

June 19, 2008

Felix Reliford
Principal Housing Planner
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, Ca 95035

RE: Centria East Remaining Below Market Rate Unit Proposal

Felix,

We are forwarding to you our request for the Agency's consideration of the three proposals we discussed at our meeting on May 29, 2008. As we discussed we are requesting approval of one of the proposals by the Agency because we have been unable to sell the remaining Below Market Rate Units at our Centria Community. Overall, we feel that any one of the three proposals have the ability to positively resolve the situation as well as create additional flexibility for the Redevelopment Agency (RDA) and City's housing program.

As you are aware, current market conditions have resulted in the reduction of the price of homes throughout the state. Although this reduction in sales prices has created greater affordability for buyers it has also created a unique and unforeseen problem in that market rate sales prices have now come close to the Moderate BMR sales prices (especially in the condominium market which has been the hardest hit market sector). Because of this reduced pricing gap (which should be noted is even smaller in the re-sale market) the limited number of potential BMR buyers are opting to stretch a bit further and buy a market rate home which is not resale and price restricted.

More specifically, the average current price of a market rate condominium at Centria is approximately \$370,000 (see Exhibit 1) and the current maximum Moderate BMR price for the same unit is approximately \$368,000. In an effort to make sure we would be able to sell the BMR units we started the pricing at \$330,000. Because we have had very limited success selling the units we have since lowered the prices twice to the current price of \$299,000 (which should be noted is the bottom of the moderate price range). As of this date we have 6 Moderate two-bedroom units and 2 Moderate one-bedroom units left to sell.

Even with the reduction in pricing and multiple and expanded advertising campaigns we have not been able to generate buyers for the last 8 units. As a result we are proposing the following:

Proposal 1 – In Lieu Fee

We would propose an in-lieu fee of \$71,000 per unit for the remaining 8 units. This amount was derived from the difference between the current market rate price and the current BMR sales price. The payment of each In-Lieu fee would be paid to the RDA out of the close of escrow for each unit. This proposal would generate approximately \$568,000 to the Agency (see attachment).

Proposal 2 – Use of the RDA's 20% Set-Aside funds

We would propose that the RDA allow for the use of a portion of its existing 20% Set-Aside funds to buy down the purchase price of each unit so that the remaining units could be sold as low income units instead of moderate income units. By our calculations, if the RDA bought the purchase price down by approximately \$75,000 the purchase price of a unit would be

June 19, 2008

approximately \$154,000 or in the low income category. If this was done for all 8 units the total cost to the RDA would be approximately \$600,000.

We would like to note that because the Centria West portion of the this project is being converted back to its original use/approval (apartments) the \$525,000 of Set-Aside funds that is committed for the 15 low and very low units for down payment assistance could be transferred to these 8 units and nearly off-set the need for new funds from the Agency's Set Aside fund.

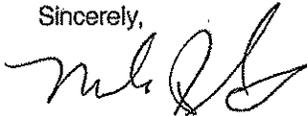
Proposal 3 -- City Purchase of Units

We would propose that the Agency purchase all 8 of the units at the current moderate price. Based on the current price of \$299,000 for a two bedroom unit and \$239,900 for a one-bedroom unit the total cost to the RDA would be \$2,273,800. This proposal would allow the RDA the greatest amount of flexibility as it could decide to wait out the market and sell them as moderate units or could sell them at any of the affordable ranges it chooses.

As indicated above, any of the three proposals will allow for the completion of the project while at the same time providing the Agency either greater affordability or flexibility for this project and/or projects in the future. Please let me know at your earliest convenience which of the three the Agency would like us to pursue.

If you have any questions I can be reached at 925.808-2600 or via e-mail at mseeley@dhimortgage.com.

Sincerely,



Michael Seeley
BMR Specialist

cc: Dean Mills

Attachment



July 14, 2008

RECEIVED

JUL 15 2008

PLANNING DIVISION

Felix Reliford
Principal Housing Planner
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, Ca 95035

RE: Centria East – Amendment to the Owners Participation Agreement & Regulatory Agreement

Dear Mr. Reliford,

Western Pacific Housing, Inc. has entered into a Purchase and Sale Agreement with an apartment builder (Lyon Capital Ventures, part of Lyon Apartment Companies) for the purchase of the Centria West project located within the Mid-Town Specific Plan area.

As a result of this sale, it is our understanding that the following must happen:

1. Lyon must enter into its own Regulatory Agreement for the Centria West Building.

It is my understanding that Lyon is now working with the City on drafting a new Regulatory Agreement and has provided the City with the necessary information regarding the company's reputation and experience as well as the company's financial strength. As we fully support Lyon's effort, please let me know if there is anything we can to assist in this process.

2. Western Pacific Housing must amend its Owners Participation Agreement (OPA) and Regulatory Agreement to reflect the unit count, Below Market Rate Units provided and Agency assistance associated solely with the Centria East building.

Overall, the Centria East community will now consist of 137 residential units consisting of 26 Below Market Rate (BMR) units versus 464 residential units consisting of 93 BMR units.

In addition, the Agency assistance will be reduced from \$1,149,480, (of which \$770,000 is for first time homebuyer's down payment assistance and the remaining \$379,480 was for Agency payment of Developer's City fees for zoning entitlements, building permits, park in-lieu, traffic mitigation, and school impact fees) to a total of \$309,904, (of which \$235,000 is first time homebuyer's down payment assistance and the remaining \$174,904 is for Agency payment of Developer's City fees for zoning entitlements, building permits, park in-lieu, traffic mitigation, and school impact fees) - an overall decrease of 82 percent.

I have attached the amended OPA and Regulatory Agreement that reflect in detail the changes outlined above.

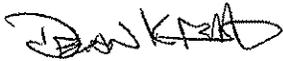
Below, I have responded to the questions raised by Staff since we have begun this process with Lyon Apartment Companies (Lyon):

- Reason
for Sale - D.R. Horton has decided to sell this asset as part of its overall business strategy for the State of California. We are selling the Centria West property to a company whose main business focus is high density multi-family residential living.
- Title - The Centria community is divided into two separate parcels (East and West). Because of this there are no difficulties presented by the sale of the West property.
- HOA - Each building was designed to have its own separate common areas (i.e., both buildings have their own pool, garage, common area rooms, etc.). The East building has an adopted HOA budget that does not include or rely on the West building. The West building will be managed and maintained by the Lyon or its management company.
- On-Sites - The construction of the remaining on-site improvements will be the responsibility of Lyon.
- Off-Sites - The construction of the remaining off-sites will be the responsibility of Lyon and D.R. Horton

If you have any additional questions or need any additional information prior to the August 5, 2008 City Council meeting, please do not hesitate to contact me at 925.808.2342 or via e-mail at dkmills@drhorton.com.

Thank you.

Sincerely,



Dean K. Mills
Director of Forward Planning

Attachments

cc: Richard Ambrosini
Nick Arenson
Melissa Trunnell

**FOURTH AMENDMENT TO
OWNER PARTICIPATION AGREEMENT**

This Fourth Amendment to Owner Participation Agreement (“**Amendment**”), is made as of this ___ day of _____, 2008 (“**Effective Date**”) by and between the Milpitas Redevelopment Agency, a public body, corporate and politic (“**Agency**”), and Western Pacific Housing, Inc., a Delaware corporation (“**Participant**,” and together with Agency, the “**Parties**”).

WHEREAS, the Agency and Fairfield Great Mall, LLC., a California limited liability company (“**Fairfield**”), entered into that certain Owner Participation Agreement dated August 17, 2005 (“**Agreement**”) to provide for the development of a residential project consisting of four hundred eighty one (481) units, including twenty four (24) very low-income units, four (4) low-income units, and seventy two (72) moderate-income units known as the Fairfield, Mid-Town, or Centria Project (“**Project**”); and

WHEREAS, pursuant to the Recitals, Section 202, and Attachment No. 6 of the Agreement, the Agency agreed to provide assistance for the ninety six (96) very low- and moderate-income units; and

WHEREAS, on or about November 23, 2005, Participant purchased the Project from Fairfield and, in connection therewith, Fairfield and Participant entered into that certain Assignment and Assumption of Owner Participation Agreement, pursuant to which, among other things, Fairfield assigned to Participant all of Fairfield’s right, title, and interest in and to the Agreement, and Participant accepted such assignment and agreed to assume, all of Fairfield’s obligations thereunder and, as a result, assumed the role of “Participant” thereunder; and

WHEREAS, Agency and Participant entered into that certain amendment dated June 20, 2006 (“**First Amendment**”) to amend the description of the project; and

WHEREAS, Agency and Participant entered into that certain amendment dated May 15, 2007 (“**Second Amendment**”) to amend the unit mix and number of units of the project; and

WHEREAS, Agency and Participant entered into that certain amendment dated August 7, 2007 (“**Third Amendment**”) to clarify the unit mix and number of units of the project; and

WHEREAS, Participant now proposes to sell transferrable entitlements and fee title ownership to land underlying half of the Project, this half commonly known as the Centria West Building to Lyon Milpitas LLC, and retain only those rights and obligations under this Agreement to the half of the Project commonly known as the Centria East Building, more specifically described in Attachment 1 to this Fourth Amendment to Owner Participation Agreement; and

WHEREAS, such sale would reduce the total number of units in Participant’s project to one hundred thirty seven (137), including in part seven (7) very low-income units, eight (8) low-income units, and eleven (11) moderate-income units; and

WHEREAS, in order to reflect the reduced size of the Project, the Agency now wishes to provide financial assistance for the remaining twenty six (26) very low, low and moderate-income units in the amended Project; and

WHEREAS, the Parties now also wish to amend the Agreement and its Attachments to reduce the total amount of Agency Financial Assistance in proportion to the amount of units by which Participant seeks to reduce its production of affordable housing; and

WHEREAS, the Agency also wishes to change the allocation of the reduced Agency Financial Assistance amount in order to reduce the number of available moderate income units and to increase the number of units available to low income households; and

WHEREAS, the previous Agency assistance totaled One Million One Hundred Forty Nine Thousand Four Hundred Eighty Dollars (\$1,149,480), of which Seven Hundred Seventy Thousand Dollars (\$770,000) was for twenty-two (22) affordable housing units at Thirty Five Thousand Dollars (\$35,000) each, and the remaining Three Hundred Seventy Nine Four Hundred Eighty Dollars (\$379,480) was for Agency payment of Developer's City fees for zoning entitlements, building permits, park in-lieu, traffic mitigation, and school impact; and

WHEREAS, the Parties now wish to amend Agency assistance so as to total Nine Hundred Forty Eight Thousand Nine Hundred Four Dollars (\$948,904), of which Two Hundred Forty Five Thousand Dollars (\$245,000) will be for seven (7) very low income affordable housing units for an amount not to exceed Thirty Five Thousand Dollars (\$35,000) each, Five Hundred Twenty Five Thousand Dollars will be for eight (8) low income affordable units for an amount not exceed Seventy Five Thousand Dollars (\$75,000) each, and the remaining One Hundred Seventy Four Nine Hundred Eight Dollars (\$178,904) will be divided among Agency payment of Developer's City fees for zoning entitlements, building permits, park in-lieu, traffic mitigation, and school impact; and

WHEREAS, the Parties wish to preserve all other rights and obligations held by the two sides under the Agreement as to the remaining portions of the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

Section 1. Unless otherwise defined herein, capitalized terms used in this Amendment shall have the same definitions as set forth in the Agreement.

Section 2. Recital B of the Agreement is hereby amended to read in its entirety as follows [deletions in ~~striketrough~~; additions in *italics*]:

- B. Participant is the fee owner of that certain real property located at the southwest corner of South Main Street and Great Mall Parkway in the City of Milpitas, California, that is more particularly described in the legal description set forth in Attachment No. 1 attached hereto and incorporated herein by this reference (the "Site"). Participant has proposed to develop a residential condominium project on the Site with approximately 464 *137* units, of which ~~93~~ 26 units (the "Restricted Units") shall be affordable for very low, low, and moderate-income persons and

households, subject to the applicable ordinance and regulations of and development permits issued by the City of Milpitas ("City") and the terms and conditions set forth herein (said development, including both the market-rate units and the Restricted Units and all related improvement and fixtures being referred to herein as the "Project").

Section 3. Recital D of the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strikethrough~~; additions in *italics*]:

- D. To effectuate the Redevelopment Plan for the Project Area and make it feasible for Participant to develop and continue to make available the Agency Assisted Units in the Project at an affordable housing cost, Agency now desires to provide certain limited financial assistance to Participant and the Project from the Low- and Moderate-Income Housing Fund that Agency maintains in accordance with Sections 33334.2 and 33334.3 of the Redevelopment Law, all as more specifically described in this Agreement. As used herein, the term "Agency Assisted Units" shall mean the ~~89~~ 26 Restricted Units that will be restricted to occupancy by very low, low, and moderate income households.

Section 4. Action 8 of Attachment No. 4 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strikethrough~~; additions in *italics*]:

8. Agency pays up to ~~\$332,045~~ \$94,870 in various City permit fees for Agency Assisted Units (Att. No. 6, pars 1 and 2).

Section 5. Action 9 of Attachment No. 4 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strikethrough~~; additions in *italics*]:

9. Agency reimburses Participant up to ~~\$47,435~~ \$14,005.60 of school fees paid by Participant for Agency Assisted Units (Att. No. 6, ¶ 3).

Section 6. Action 13 of Attachment No. 4 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strikethrough~~; additions in *italics*]:

13. Agency deposits ~~\$770,000~~\$770,000 into the down payment assistance program fund (Att. No. 6, ¶ 4).

Section 7. Recital E of Attachment No. 5 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strikethrough~~; additions in *italics*]:

- E. The OPA provides for the construction on the Property of a ~~464~~ 137 single-family residential condominium development project, consisting of a minimum of ~~93~~ 26 units (the "Project") affordable to Very Low, Low, and Moderate Income persons and households as set forth in this Agreement. ~~89~~ 26 units will be assisted by Agency Financial Assistance.

Section 8. Section 2.1 of Attachment No. 5 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strikethrough~~; additions in *italics*]:

- 2.1 Development of Restricted Ownership Units. Participant shall develop ~~93~~ *26* dwelling units (the "Restricted Ownership Units") on the Property as follows:
- 2.1.1 ~~22~~ *7* units affordable to very low income households consisting of ~~17~~ *6* 1-bedroom units and ~~5~~ *1* 2-bedroom unit.
 - 2.1.2 ~~8~~ units affordable to low income households consisting of ~~1~~ *3*-bedroom unit, ~~6~~ *2*-bedroom units and ~~1~~ *1*-bedroom unit..
 - 2.1.3 ~~67~~ *11* units affordable to moderate income households consisting of ~~22~~ *4* *1-bedroom units* ~~45~~ *7* 2-bedroom units.
 - 2.1.4 The Restricted Ownership Unit's location is as shown on the dispersal plan approved by the Agency's Executive Director and attached to this Agreement as Exhibit G.

Section 9. Attachment No. 6 to the Agreement is hereby amended to read in its entirety as follows [deletions in ~~strikethrough~~; additions in *italics*]:

AGENCY FINANCIAL ASSISTANCE

1. Agency shall pay the City an amount not to exceed \$94,870.00 to offset City of Milpitas-imposed zoning entitlement and building permit issuance costs for the Agency Assisted Units.
2. Agency shall pay the City an amount no to exceed ~~\$237,175.00~~ *\$70,028* to offset City of Milpitas-imposed park in-lieu fees and traffic mitigation fees for the Agency Assisted Units.
3. Agency shall reimburse the Participant an amount not to exceed ~~\$47,435.00~~ *\$14,005.60* to offset applicable school impact fees for the Agency Assisted Units.
4. ~~Agency shall fund and administer a down payment assistance program for qualified very low income purchasers in the amount of \$770,000. The maximum assistance provided to an individual very low income purchaser will not exceed \$35,000. Agency has previously funded and administered a down payment assistance program for qualified very low income purchasers in the amount of \$245,000. Agency shall fund and administer a down payment assistance program for qualified low income purchasers in the amount of \$770,000. The maximum assistance provided to an individual low income purchaser will not exceed \$75,000. Furthermore, such assistance to low income purchasers shall be available only to prospective owners of units moved from the moderate income units to the low income category.~~
5. If the amounts set forth in Sections 1, 2, or 3 exceed 20% of the respective total fee amounts, the financial assistance in excess of 20% will be transferred to Participant to offset a portion of the cost to be incurred by the Participant in constructing the Agency Assisted Units.

Section 10. Except as modified hereby, all of the terms and conditions of the Agreement shall continue in full force and effect and are incorporated herein by this reference. If there is a conflict between the provisions of the Agreement and the provisions of this Amendment, the provisions of this Amendment shall control.

WHEREFORE, the Parties have executed this Amendment in triplicate on or as of the date on Page 1.

Signatures on the Next Page

MILPITAS REDEVELOPMENT AGENCY, a
public body corporate and politic

By: Thomas C. Williams
Its: Executive Director

ATTEST:

By: Mary Lavelle
Its: Agency Secretary

APPROVED AS TO FORM:

By: Michael J. Ogaz
Its: Agency Counsel

WESTERN PACIFIC HOUSING, INC. a
Delaware corporation

By:
Title:

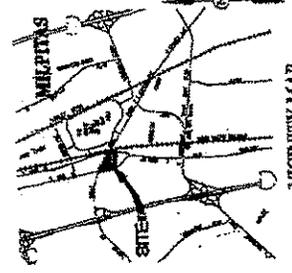
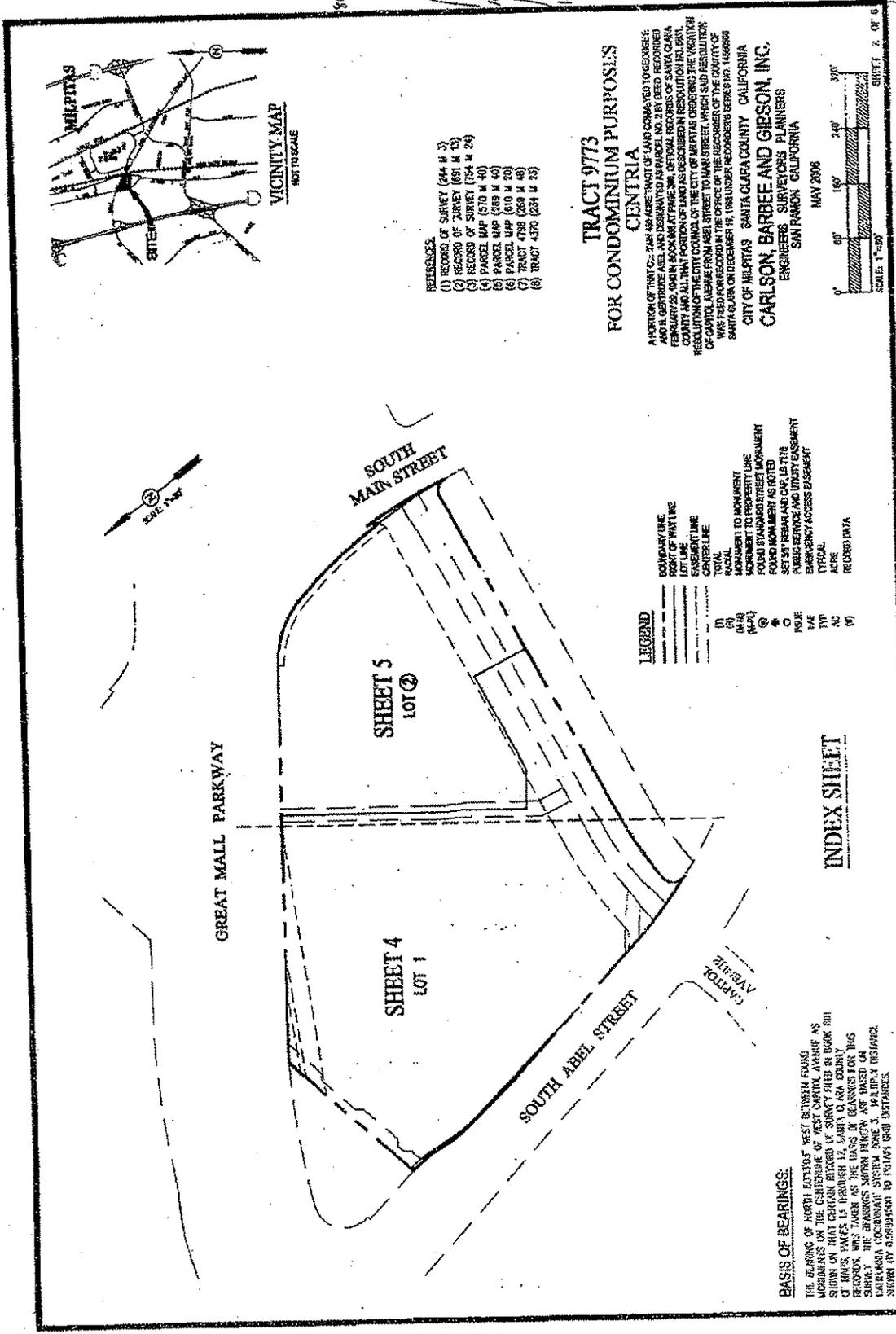
AUGUST 1, 2008
JOB NO.: 1235-010

**LEGAL DESCRIPTION
LOT 2, TRACT 9773
MILPITAS, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 2, AS SAID LOT 2 IS SHOWN AND SO DESIGNATED ON THE OFFICIAL TRACT MAP OF TRACT 9773, RECORDED JULY 24, 2006, IN BOOK 804 OF MAPS AT PAGES 9 THROUGH 14, IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY AND CONTAINING 2.95 ACRES OF LAND, MORE OR LESS.

END OF DESCRIPTION



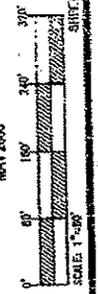
- REFERENCES:
- (1) RECORD OF SURVEY (244 # 3)
 - (2) RECORD OF SURVEY (891 # 13)
 - (3) RECORD OF SURVEY (754 # 24)
 - (4) PARCEL MAP (370 # 40)
 - (5) PARCEL MAP (289 # 46)
 - (6) PARCEL MAP (310 # 20)
 - (7) TRACT #58 (289 # 46)
 - (8) TRACT #570 (284 # 23)

**TRACT 9773
FOR CONDOMINIUM PURPOSES
CENTRIA**

A PORTION OF TRACT 9773, SANTA CLARA COUNTY, CALIFORNIA, IS HEREBY SUBDIVIDED INTO TWO LOTS, TO BE RECORDED AND THE CERTIFICATE OF INTEREST IN THIS SUBDIVISION TO BE FILED IN THE OFFICE OF THE COUNTY CLERK OF SANTA CLARA COUNTY AND ALL THAT PORTION OF LAND AS DESCRIBED IN RESOLUTION NO. 1851, COUNTY OF SANTA CLARA, CALIFORNIA, AND THE CITY OF MILPITAS, CALIFORNIA, CREATING THE VARIATION OF CAPITOL AVENUE FROM ABEL STREET TO MAIN STREET, WHICH SAID RESOLUTION WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON DECEMBER 19, 1981 UNDER RECORDING SERIES NO. 1468860.

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
 ENGINEERS - SURVEYORS - PLANNERS
 SAN RAMON CALIFORNIA

MAY 2006



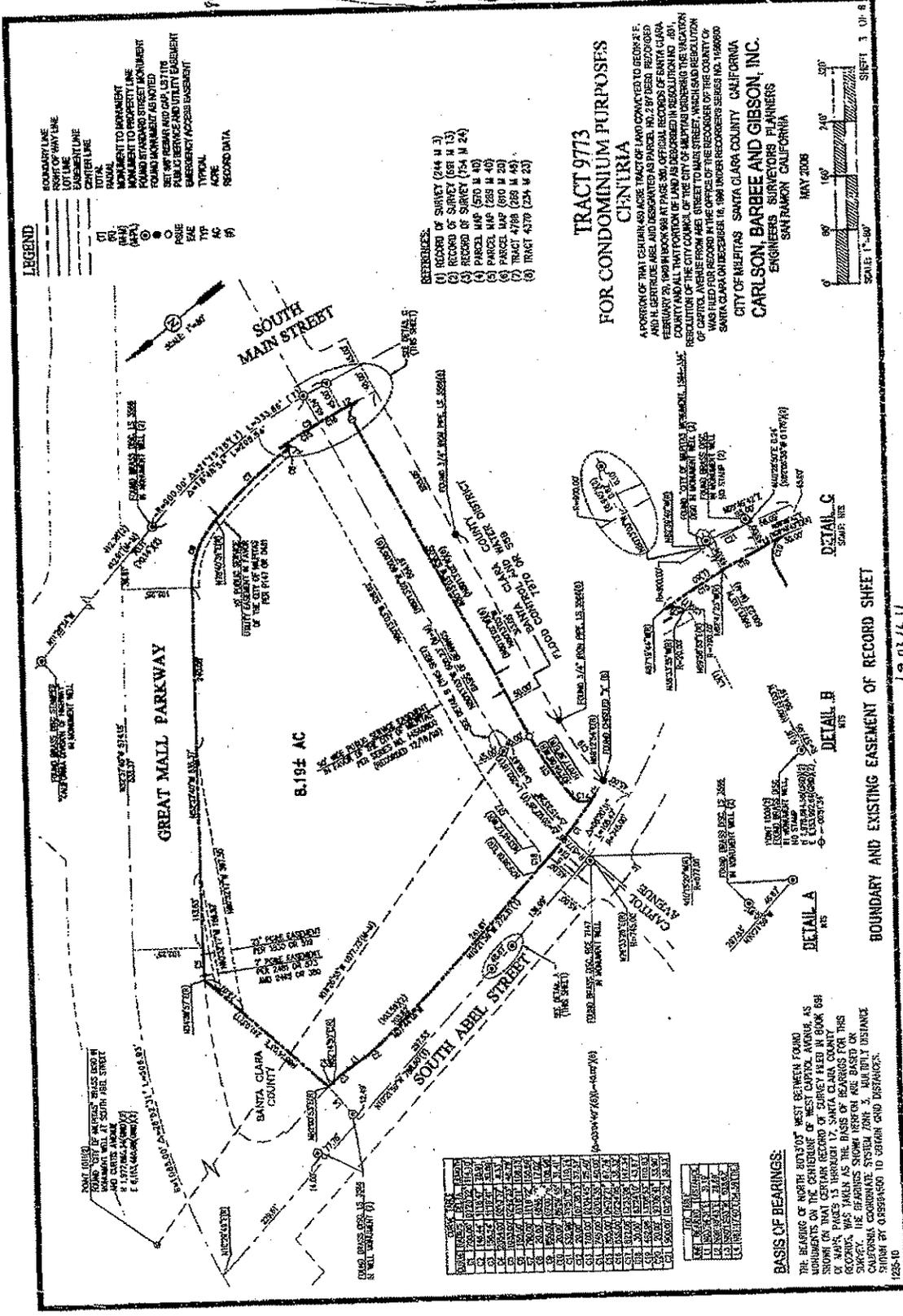
- LEGEND**
- (1) BOUNDARY LINE
 - (2) RIGHT OF WAY LINE
 - (3) LOT LINE
 - (4) EASEMENT LINE
 - (5) CENTERLINE
 - (6) TOTAL
 - (7) MONUMENT TO MONUMENT
 - (8) MONUMENT TO PROPERTY LINE
 - (9) FOUND STANDARD STREET MONUMENT
 - (10) FOUND MONUMENT AS NOTED
 - (11) SETBACK REBAR AND CAP, 12" DIA.
 - (12) FAMILY REBAR AND UTILITY EASEMENT
 - (13) EMERGENCY ACCESS EASEMENT
 - (14) TYPICAL
 - (15) ACRES
 - (16) RECORDED DATA

INDEX SHEET

BASIS OF BEARINGS:
 THE BEARINGS OF NORTH FACTORY WEST BETWEEN PLUMB MONUMENTS ON THE CENTERLINE OF GREAT MALL PARKWAY AS SHOWN ON THAT CERTAIN REBAR AND CAP, 12" DIA. EMBLEM OF THIS PROJECT, AND THE BEARINGS IN BEARINGS FOR THIS PROJECT, THE BEARINGS SHOWN HEREIN ARE BASED ON CALIFORNIA COORDINATE SYSTEM ANNE 3, MERIDIAN DESIGNATED BY ASSUMPTION TO FOLLOW THE DISTANCES.

4285-02

19037671



LEGEND

- BOUNDARY LINE
- RIGHT OF WAY LINE
- LOT LINE
- EASEMENT LINE
- CENTER LINE
- TOOK
- MONUMENT TO MONUMENT
- MONUMENT TO PROPERTY LINE
- FOUND STAKED STREET MONUMENT
- FOUND MONUMENT AS NOTED
- SET OFF REBAR AND CAP, LOT TO
- PUBLIC SERVICE AND UTILITIES EASEMENT
- EASEMENT/ACCESS EASEMENT
- TYPICAL
- ACR
- RECORD DATA

- (1) RECORD OF SURVEY (244 M 3)
- (2) RECORD OF SURVEY (68 M 13)
- (3) RECORD OF SURVEY (154 M 24)
- (4) PARCEL MAP (570 M 40)
- (5) PARCEL MAP (788 M 40)
- (6) PARCEL MAP (690 M 20)
- (7) TRACT 4788 (268 M 48)
- (8) TRACT 4370 (254 M 23)

**TRACT 9773
FOR CONDOMINIUM PURPOSES
CENTRIA**

A PORTION OF TRACT 9773, 680 ACRES TRACT OF LAND CONVEYED TO GEORGE F. AND ANNE L. GIBSON AND DESIGNATED AS PARCEL NO. 2 BY DEED, RECORDED FEBRUARY 20, 1969 IN BOOK 688 AT PAGE 360, OFFICIAL RECORDS OF SANTA CLARA COUNTY AND ALL THAT PORTION OF LAND AS DESCRIBED IN RESOLUTION NO. 101, RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE, CALIFORNIA, OF CAPITOL AVENUE FROM ABEL STREET TO MAIN STREET, WHICH SAID RESOLUTION WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, SANTA CLARA COUNTY, CALIFORNIA, ON DECEMBER 16, 1999 UNDER RECORDERS SERIES NO. 1626800.

CITY OF MUIPTAS, SANTA CLARA COUNTY, CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS, SURVEYORS, PLANNERS
SAN JOSE, CALIFORNIA

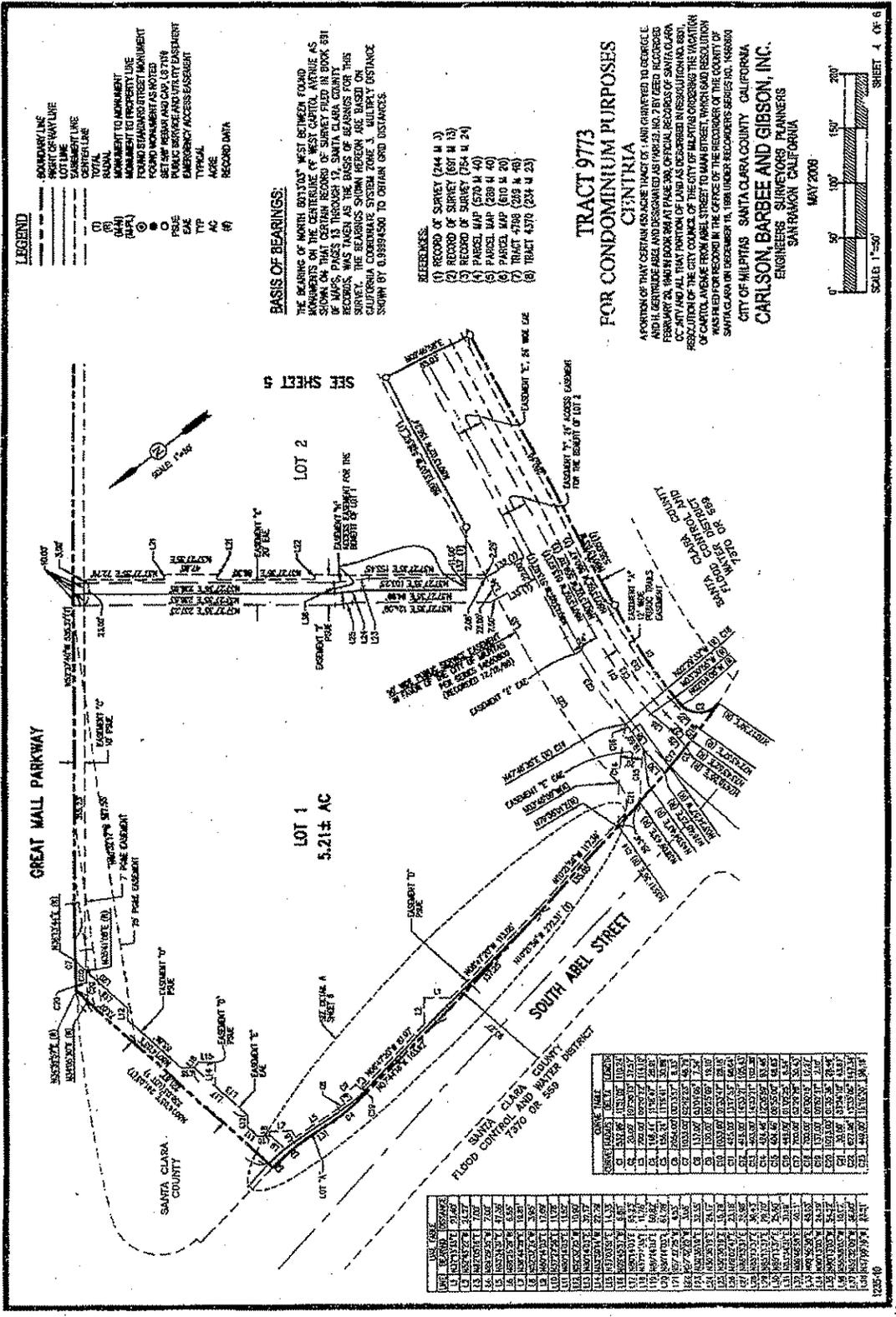
MAY 2008

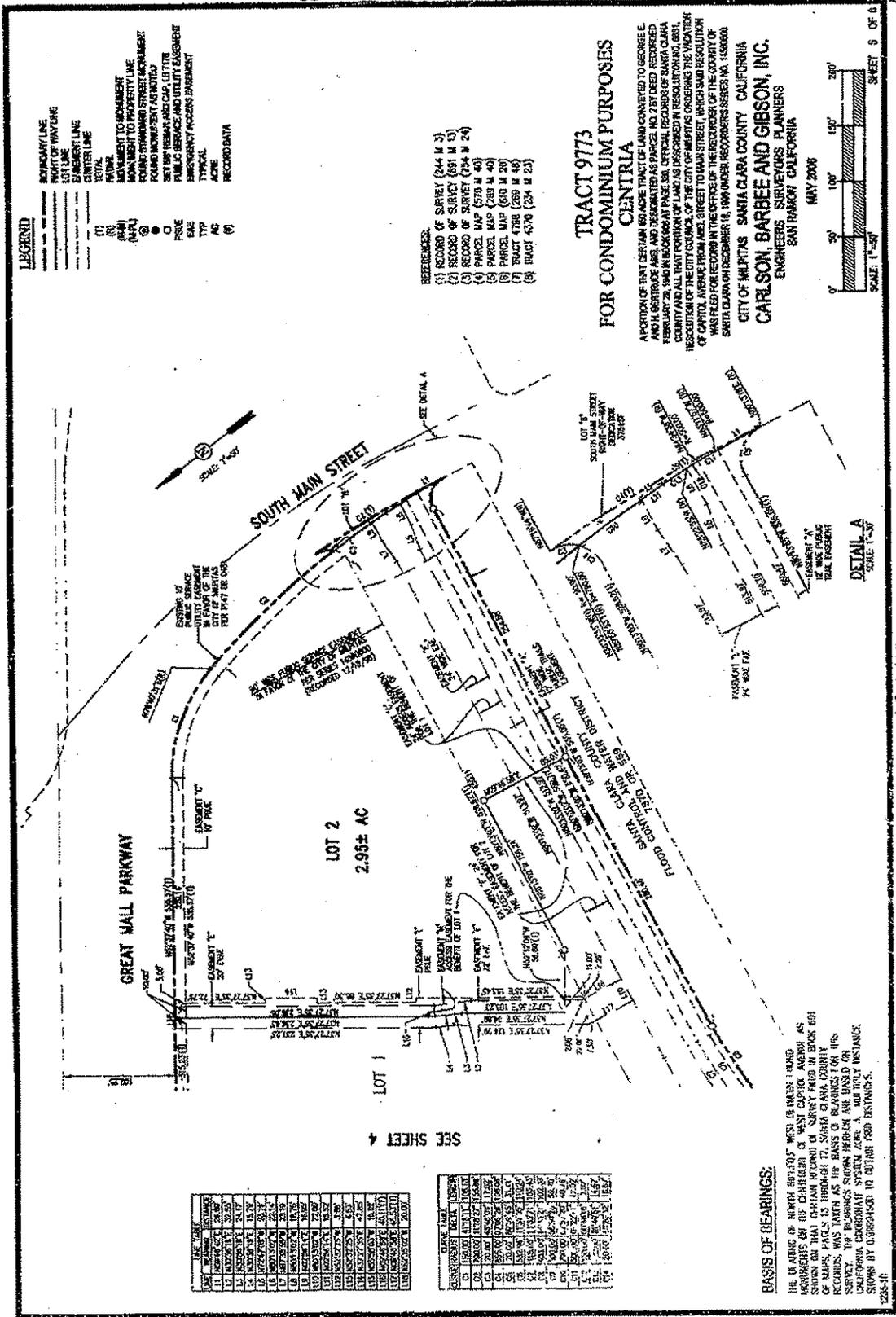


BOUNDARY AND EXISTING EASEMENT OF RECORD SHEET

BASIS OF BEARINGS:
THE BEARINGS OF NORTH POINT WEST BETWEEN CORNER MONUMENTS ON THE CENTERLINE OF WEST CAPITOL AVENUE AS SHOWN ON SHEET 15, HEREIN, IS, SANTA CLARA COUNTY, CALIFORNIA, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS SURVEY. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3, NAD 83, UNITS: DISTANCE SHOWN BY 0.185981450 TO GROUND GRID DISTANCE.

LINE NO.	BEARING	DISTANCE
1	N 89° 59' 54" W	100.00
2	S 89° 59' 54" E	100.00
3	N 00° 00' 00" E	100.00
4	S 00° 00' 00" W	100.00
5	N 89° 59' 54" W	100.00
6	S 89° 59' 54" E	100.00
7	N 00° 00' 00" E	100.00
8	S 00° 00' 00" W	100.00
9	N 89° 59' 54" W	100.00
10	S 89° 59' 54" E	100.00
11	N 00° 00' 00" E	100.00
12	S 00° 00' 00" W	100.00
13	N 89° 59' 54" W	100.00
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15	N 00° 00' 00" E	100.00
16	S 00° 00' 00" W	100.00
17	N 89° 59' 54" W	100.00
18	S 89° 59' 54" E	100.00
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20	S 00° 00' 00" W	100.00
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22	S 89° 59' 54" E	100.00
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35	N 00° 00' 00" E	100.00
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37	N 89° 59' 54" W	100.00
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56	S 00° 00' 00" W	100.00
57	N 89° 59' 54" W	100.00
58	S 89° 59' 54" E	100.00
59	N 00° 00' 00" E	100.00
60	S 00° 00' 00" W	100.00





LEGEND

- BOUNDARY LINE
- FRONT OF WAY LINE
- UTILITY LINE
- CENTERLINE
- TOTAL
- PAVING
- MOVEMENT TO MONUMENT
- MONUMENT TO PROPERTY LINE
- CONCRETE MONUMENT
- POST AND RINGS MONUMENT
- POST AND BEARINGS AND CAP LETTER
- PUBLIC SERVICE AND UTILITY EASEMENT
- EMERGENCY ACCESS EASEMENT
- TYPICAL
- ACRE
- RECORD DATA

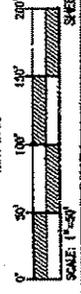
- REFERENCES:**
- (1) RECORD OF SURVEY (944 M 3)
 - (2) RECORD OF SURVEY (581 M 13)
 - (3) RECORD OF SURVEY (244 M 24)
 - (4) PARCEL MAP (578 M 40)
 - (5) PARCEL MAP (528 M 40)
 - (6) PARCEL MAP (610 M 20)
 - (7) TRACT 4788 (269 M 48)
 - (8) TRACT 4320 (234 M 23)

**TRACT 9775
CENTRIA
FOR CONDOMINIUM PURPOSES**

A PORTION OF TRACT CERTAIN 60 ACRE TRACT OF LAND CONVERTED TO GEORGE E. AND H. GORTHADE ABE, AND DESIGNATED AS PARCELS NO. 7 BY DEED RECORDED FEBRUARY 28, 1940 IN BOOK 9847 PAGE 58, OFFICIAL RECORDS OF SANTA CLARA COUNTY AND ALL THAT PORTION OF LAND AS DESCRIBED IN RESOLUTION NO. 0801, RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERTITAS CONCERNING THE VOUCHER OF CAPITAL IMPROVEMENT FROM MAIN STREET TO MAIN STREET, WHICH WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MERTITAS ON DECEMBER 16, 1960 UNDER RECORDERS SERIES NO. 1458000

**CITY OF MERTITAS SANTA CLARA COUNTY CALIFORNIA
ENGINEERS SURVEYORS PLANNERS
CARLSON, BARBEE AND GIBSON, INC.
SAN RAMON CALIFORNIA**

MAY 2006



SHEET 5 OF 6

GREAT MALL PARKWAY

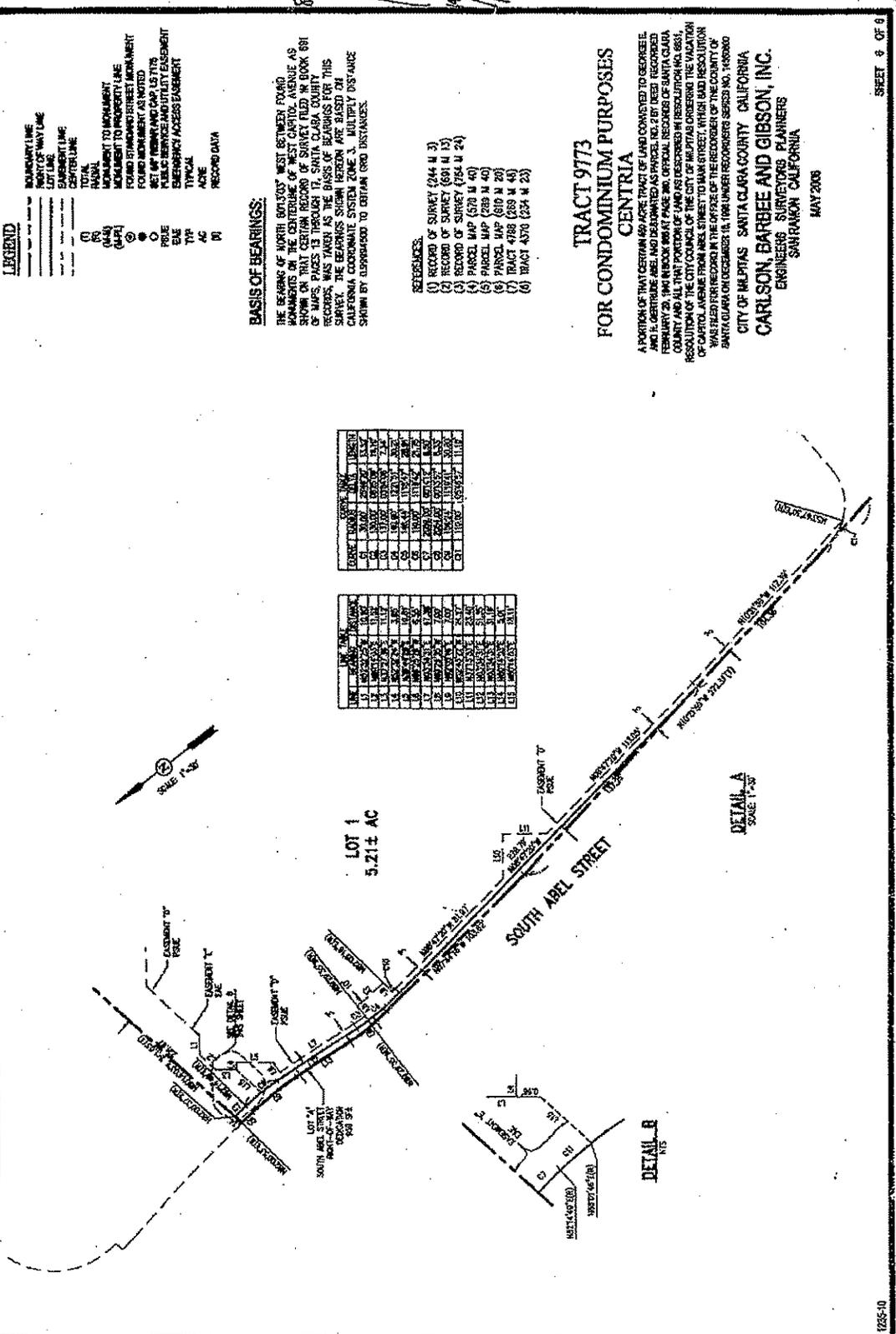
SOUTH MAIN STREET

**LOT 2
2.98± AC**

SEE SHEET 4

LINE	BEARING	DISTANCE	AREA
11	N 89° 58' 12" E	24.00	0.0000
12	N 89° 58' 12" E	24.00	0.0000
13	N 89° 58' 12" E	24.00	0.0000
14	N 89° 58' 12" E	24.00	0.0000
15	N 89° 58' 12" E	24.00	0.0000
16	N 89° 58' 12" E	24.00	0.0000
17	N 89° 58' 12" E	24.00	0.0000
18	N 89° 58' 12" E	24.00	0.0000
19	N 89° 58' 12" E	24.00	0.0000
20	N 89° 58' 12" E	24.00	0.0000
21	N 89° 58' 12" E	24.00	0.0000
22	N 89° 58' 12" E	24.00	0.0000
23	N 89° 58' 12" E	24.00	0.0000
24	N 89° 58' 12" E	24.00	0.0000
25	N 89° 58' 12" E	24.00	0.0000
26	N 89° 58' 12" E	24.00	0.0000
27	N 89° 58' 12" E	24.00	0.0000
28	N 89° 58' 12" E	24.00	0.0000
29	N 89° 58' 12" E	24.00	0.0000
30	N 89° 58' 12" E	24.00	0.0000
31	N 89° 58' 12" E	24.00	0.0000
32	N 89° 58' 12" E	24.00	0.0000
33	N 89° 58' 12" E	24.00	0.0000
34	N 89° 58' 12" E	24.00	0.0000
35	N 89° 58' 12" E	24.00	0.0000
36	N 89° 58' 12" E	24.00	0.0000
37	N 89° 58' 12" E	24.00	0.0000
38	N 89° 58' 12" E	24.00	0.0000
39	N 89° 58' 12" E	24.00	0.0000
40	N 89° 58' 12" E	24.00	0.0000
41	N 89° 58' 12" E	24.00	0.0000
42	N 89° 58' 12" E	24.00	0.0000
43	N 89° 58' 12" E	24.00	0.0000
44	N 89° 58' 12" E	24.00	0.0000
45	N 89° 58' 12" E	24.00	0.0000
46	N 89° 58' 12" E	24.00	0.0000
47	N 89° 58' 12" E	24.00	0.0000
48	N 89° 58' 12" E	24.00	0.0000
49	N 89° 58' 12" E	24.00	0.0000
50	N 89° 58' 12" E	24.00	0.0000
51	N 89° 58' 12" E	24.00	0.0000
52	N 89° 58' 12" E	24.00	0.0000
53	N 89° 58' 12" E	24.00	0.0000
54	N 89° 58' 12" E	24.00	0.0000
55	N 89° 58' 12" E	24.00	0.0000
56	N 89° 58' 12" E	24.00	0.0000
57	N 89° 58' 12" E	24.00	0.0000
58	N 89° 58' 12" E	24.00	0.0000
59	N 89° 58' 12" E	24.00	0.0000
60	N 89° 58' 12" E	24.00	0.0000
61	N 89° 58' 12" E	24.00	0.0000
62	N 89° 58' 12" E	24.00	0.0000
63	N 89° 58' 12" E	24.00	0.0000
64	N 89° 58' 12" E	24.00	0.0000
65	N 89° 58' 12" E	24.00	0.0000
66	N 89° 58' 12" E	24.00	0.0000
67	N 89° 58' 12" E	24.00	0.0000
68	N 89° 58' 12" E	24.00	0.0000
69	N 89° 58' 12" E	24.00	0.0000
70	N 89° 58' 12" E	24.00	0.0000
71	N 89° 58' 12" E	24.00	0.0000
72	N 89° 58' 12" E	24.00	0.0000
73	N 89° 58' 12" E	24.00	0.0000
74	N 89° 58' 12" E	24.00	0.0000
75	N 89° 58' 12" E	24.00	0.0000
76	N 89° 58' 12" E	24.00	0.0000
77	N 89° 58' 12" E	24.00	0.0000
78	N 89° 58' 12" E	24.00	0.0000
79	N 89° 58' 12" E	24.00	0.0000
80	N 89° 58' 12" E	24.00	0.0000
81	N 89° 58' 12" E	24.00	0.0000
82	N 89° 58' 12" E	24.00	0.0000
83	N 89° 58' 12" E	24.00	0.0000
84	N 89° 58' 12" E	24.00	0.0000
85	N 89° 58' 12" E	24.00	0.0000
86	N 89° 58' 12" E	24.00	0.0000
87	N 89° 58' 12" E	24.00	0.0000
88	N 89° 58' 12" E	24.00	0.0000
89	N 89° 58' 12" E	24.00	0.0000
90	N 89° 58' 12" E	24.00	0.0000
91	N 89° 58' 12" E	24.00	0.0000
92	N 89° 58' 12" E	24.00	0.0000
93	N 89° 58' 12" E	24.00	0.0000
94	N 89° 58' 12" E	24.00	0.0000
95	N 89° 58' 12" E	24.00	0.0000
96	N 89° 58' 12" E	24.00	0.0000
97	N 89° 58' 12" E	24.00	0.0000
98	N 89° 58' 12" E	24.00	0.0000
99	N 89° 58' 12" E	24.00	0.0000
100	N 89° 58' 12" E	24.00	0.0000

BASIS OF BEARINGS:
THE BEARINGS OF NORTH 89° 58' 12" WEST OR THERE NEAR, FOUND IN THE RECORDS OF THE COUNTY CLERK OF SANTA CLARA COUNTY, AS SHOWN ON THE CHASMAN RECORD OF SURVEY FILED IN BOOK 601 OF MAPS, PAGES 13 THROUGH 17, SANTA CLARA COUNTY RECORDS, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS SURVEY. THE PLUMBINGS SHOWN HEREON ARE BASED ON CALIFORNIA UNIVERSAL STANDARD MERIDIAN ZONE 10, 100 MILE DISTANCE, SHOWN BY COORDINATES TO OLYMPIA PEBBLE TRIANGULATION.



LEGEND

- MONUMENT LINE
- POINT OF WAY LINE
- LOT LINE
- SEAMENT LINE
- CENTERLINE
- UTAH
- IRVING
- MONUMENT TO MONUMENT
- MONUMENT TO PROPERTY LINE
- FOUND MONUMENT STREET MONUMENT
- FOUND MONUMENT AS NOTED
- SET OF IRVING LAND CAP LIST ITS
- PUBLIC SERVICE AND UTILITY EASEMENT
- ELECTRICAL ACCESS EASEMENT
- ADJACENT
- AC
- RECORD DATA

BASIS OF BEARINGS:

THE BEARINGS OF NORTH 80°30'00" WEST BETWEEN PIANO MONUMENTS ON THE CENTERLINE OF WEST CAPITOLA AVENUE AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 881 OF MAPS, PAGES 13 THROUGH 17, SANTA CLARA COUNTY RECORDS, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS SURVEY. THE BEARINGS SYSTEM HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3. MULTIPLY DISTANCE SHOWN BY TELEMEASURED TO OBTAIN GRID DISTANCES.

REFERENCES:

- (1) RECORD OF SURVEY (244 M 3)
- (2) RECORD OF SURVEY (691 M 13)
- (3) RECORD OF SURVEY (754 M 24)
- (4) PARCEL MAP (578 M 40)
- (5) PARCEL MAP (289 M 40)
- (6) PARCEL MAP (816 M 20)
- (7) TRACT 4788 (289 M 48)
- (8) TRACT 4576 (254 M 23)

**TRACT 9773
FOR CONDOMINIUM PURPOSES
CENTRIA**

A PORTION OF THAT CERTAIN 60 AC. TRACT OF LAND CONSISTED TO BEGRIE AND LORETTA ARE AND BEARINGS AS PARCEL MAP 20 BY DEED RECORDS FEBRUARY 20, 1961 WILSON MAP AT PAGE 200, OFFICIAL RECORDS OF SANTA CLARA COUNTY AND ALL THAT PORTION OF LAND AS DESCRIBED IN RESOLUTION NO. 6851, RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANTAS ORDERING THE VALUATION OF CAPITOLA AVENUE FROM ABEL STREET TO MAIN STREET, WITH LAND RESOLUTION WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON DECEMBER 16, 1961 UNDER RECORDER'S SERIES NO. 1408960

**CITY OF MANTAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE AND GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON CALIFORNIA
MAY 2008**

LINE	BEARING	DISTANCE	POINT	MARKER
1	N 80°30'00" W	100.00	1	IRON
2	S 89°30'00" E	100.00	2	IRON
3	N 80°30'00" W	100.00	3	IRON
4	S 89°30'00" E	100.00	4	IRON
5	N 80°30'00" W	100.00	5	IRON
6	S 89°30'00" E	100.00	6	IRON
7	N 80°30'00" W	100.00	7	IRON
8	S 89°30'00" E	100.00	8	IRON
9	N 80°30'00" W	100.00	9	IRON
10	S 89°30'00" E	100.00	10	IRON
11	N 80°30'00" W	100.00	11	IRON
12	S 89°30'00" E	100.00	12	IRON
13	N 80°30'00" W	100.00	13	IRON
14	S 89°30'00" E	100.00	14	IRON
15	N 80°30'00" W	100.00	15	IRON
16	S 89°30'00" E	100.00	16	IRON
17	N 80°30'00" W	100.00	17	IRON
18	S 89°30'00" E	100.00	18	IRON
19	N 80°30'00" W	100.00	19	IRON
20	S 89°30'00" E	100.00	20	IRON
21	N 80°30'00" W	100.00	21	IRON
22	S 89°30'00" E	100.00	22	IRON
23	N 80°30'00" W	100.00	23	IRON
24	S 89°30'00" E	100.00	24	IRON
25	N 80°30'00" W	100.00	25	IRON
26	S 89°30'00" E	100.00	26	IRON
27	N 80°30'00" W	100.00	27	IRON
28	S 89°30'00" E	100.00	28	IRON
29	N 80°30'00" W	100.00	29	IRON
30	S 89°30'00" E	100.00	30	IRON

LINE	BEARING	DISTANCE	POINT	MARKER
1	N 80°30'00" W	100.00	1	IRON
2	S 89°30'00" E	100.00	2	IRON
3	N 80°30'00" W	100.00	3	IRON
4	S 89°30'00" E	100.00	4	IRON
5	N 80°30'00" W	100.00	5	IRON
6	S 89°30'00" E	100.00	6	IRON
7	N 80°30'00" W	100.00	7	IRON
8	S 89°30'00" E	100.00	8	IRON
9	N 80°30'00" W	100.00	9	IRON
10	S 89°30'00" E	100.00	10	IRON
11	N 80°30'00" W	100.00	11	IRON
12	S 89°30'00" E	100.00	12	IRON
13	N 80°30'00" W	100.00	13	IRON
14	S 89°30'00" E	100.00	14	IRON
15	N 80°30'00" W	100.00	15	IRON
16	S 89°30'00" E	100.00	16	IRON
17	N 80°30'00" W	100.00	17	IRON
18	S 89°30'00" E	100.00	18	IRON
19	N 80°30'00" W	100.00	19	IRON
20	S 89°30'00" E	100.00	20	IRON
21	N 80°30'00" W	100.00	21	IRON
22	S 89°30'00" E	100.00	22	IRON
23	N 80°30'00" W	100.00	23	IRON
24	S 89°30'00" E	100.00	24	IRON
25	N 80°30'00" W	100.00	25	IRON
26	S 89°30'00" E	100.00	26	IRON
27	N 80°30'00" W	100.00	27	IRON
28	S 89°30'00" E	100.00	28	IRON
29	N 80°30'00" W	100.00	29	IRON
30	S 89°30'00" E	100.00	30	IRON

1703 1611

**Recording requested by and
When recorded, mail to:**

Milpitas Redevelopment Agency
455 East Calaveras Blvd.
Milpitas, California 95035
Attn: Executive Director

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTIONS 6103 and 27383

REGULATORY AGREEMENT
(Western Pacific Housing, Inc.)

THIS REGULATORY AGREEMENT (the “**Agreement**”) is entered into effective as of August _____, 2008 (the “**Effective Date**”) by and between the Milpitas Redevelopment Agency, a body both corporate and politic (the “**Agency**”), and Western Pacific Housing, Inc., a Delaware corporation (“**Participant**”). Participant and the Agency are referred to as the “**Parties**.”

RECITALS

A. Participant is the owner of certain real property, located at the southwest corner of South Main Street and Great Mall Parkway in the City of Milpitas (“**City**”) and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”). Participant acquired the Property from Fairfield Great Mall, LLC (“**Fairfield**”), a California limited liability company.

B. Agency and Fairfield previously attempted to enter into that certain Regulatory Agreement dated July 19, 2006 (the “**Fairfield Regulatory Agreement**”) and other related documents to ensure affordability and regulate the sale, resale and occupancy of a residential project located on the Property and certain adjacent property; however, the Fairfield Regulatory Agreement was not fully executed and was not recorded against the Property.

C. Agency and Participant now desire to enter into this Agreement to supersede the Fairfield Regulatory Agreement and memorialize the Agency’s agreement to provide financial assistance in the development of affordable housing units within the residential project located on the Property. Agency’s activities in this regard are designed to implement Agency’s effort to assist persons and families of Very Low, Low and Moderate Income to purchase residential property and to increase, improve, and preserve the supply of Very Low, Low and Moderate Income housing available in the City, in accordance with Community Redevelopment Law, Health and Safety Code Section 33000 *et seq.*

D. The Property is located within a Milpitas Redevelopment Project Area.

E. The Agency and the Participant, as successor in interest to Fairfield, are parties to an Owner Participation Agreement (“OPA”), as amended, that establishes the rights and obligations of the parties with respect to development of the Property. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the OPA, and in the event of a conflict between the OPA and this Agreement, this Agreement shall control.

F. The OPA provides for the construction on the Property of a 137 single-family residential condominium development project, consisting of a minimum of 26 units (the “Project”) affordable to Very Low, Low, and Moderate Income persons and households as set forth in this Agreement. The 26 units will be assisted by Agency Financial Assistance.

G. The Agency’s financial assistance and the use and affordability restrictions imposed by the Agency will enable eligible purchasers hereinafter defined to purchase portions of the Property with financial assistance provided for in the OPA. In exchange for Agency’s assistance, Participant and any successor in interest agrees to the restrictions on the sale, resale, and occupancy of portions of the property created by this Agreement.

NOW, THEREFORE, the Participant and Agency declare, covenant and agree, by and for themselves, their heirs, executors, administrators and assigns, and all persons claiming under or through them, that the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth.

1. DEFINITIONS.

1.1 Affordable Housing Cost shall be as defined in California Health and Safety Code Section 50052.5 or any successor thereto, and the regulations promulgated thereunder, as adjusted for household size and unit size. If the statute is no longer in effect and no successor statute is enacted, “Affordable Housing Cost” will as defined in Health and Safety Code section 50052.5 as it read at the time of its repeal. But for purposes of this Agreement only, for the unassisted 4 units affordable to low income households, “Affordable Housing Costs” means a sales price that is the product of 30% of 80% of area median household income adjusted for household size appropriate for the unit.

1.2 Area Median Income. The term “Area Median Income” means the area median income for Santa Clara County, California, adjusted for family size, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 or as published in 25 Cal. Code of Regulations Section 6932 or successor provision published pursuant to California Health and Safety Code Section 50093(c).

1.3 Eligible Purchaser. The term “Eligible Purchaser” shall mean a prospective purchaser of a Restricted Ownership 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 for the full calendar year immediately preceding the date of purchase does not exceed 120% of the Area Median Income.

(b) The prospective purchaser intends to occupy the Restricted Ownership 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. The term "Gross Income" shall have the meaning ascribed to such term in 25 Cal. Code of Regulations Section 6914.

1.5 Low-Income. The term "Low-Income" means 80% of the Area Median Income adjusted for household size.

1.6 Moderate-Income. The term "Moderate-Income" means 120% of the Area Median Income adjusted for household size.

1.7 Restricted Ownership Unit. The term "Restricted Ownership Unit" is defined in Section 2.1 hereof.

1.8 Very Low-Income. The term "Very Low-Income" means 50% of the Area Median Income adjusted for household size.

2. RESTRICTED OWNERSHIP UNITS.

2.1 Development of Restricted Ownership Units. Participant shall develop 26 dwelling units (the "Restricted Ownership Units") on the Property as follows:

2.1.1 7 units affordable to very low income households consisting of 6 1-bedroom units and 1 2- bedroom units.

2.1.2 8 units affordable to low income households consisting of 1 3-bedroom unit, 6 2-bedroom units and 1 1-bedroom unit.

2.1.3 11 units affordable to moderate income households consisting of 7 2-bedroom units and 4 1-bedroom units.

2.1.4 The Restricted Ownership Unit's location is as shown on the dispersal plan approved by the Agency's Executive Director and attached to this Agreement as Exhibit G.

2.2 Sales to Eligible Purchasers. Participant by and for itself and any successors in interest hereby covenants and agrees that each Restricted Ownership Unit thereon shall only be sold to an Eligible Purchaser at an Affordable Housing Cost. Agency or its designee shall screen prospective purchasers to determine their eligibility and shall market the Restricted Ownership Units to Eligible Purchasers. Each Eligible Purchaser shall be required to execute a Resale Restriction Agreement and Option to Purchase in substantially the form attached hereto as Exhibit B ("Resale

Agreement”) with the Agency. The Resale Agreement shall provide that the Agency shall have a right of first offer to purchase the Restricted Ownership Unit and an option to purchase such unit upon the occurrence of specified triggering events.

3. **MAINTENANCE OF PROPERTY.** Participant or its successor in interest shall maintain the improvements and landscaping on the Property in accordance with the Milpitas Municipal Code and in a manner consistent with community standards that will maintain the value of the Property, shall comply with any and all covenants and agreements established by any Declaration of Covenants, Conditions, and Restrictions controlling the Property, and shall comply with all applicable federal, state and local laws respecting the Property.

4. **ENFORCEMENT.**

4.1 **Events of Default.** In the event Participant defaults in the performance or observance of any covenant, agreement or obligation of Participant set forth in this Regulatory Agreement, and if such default remains uncured for a period of (30) days after written notice thereof shall have been given by Agency, or, in the event said default cannot be cured within said time period, Participant has failed to commence to cure such default within said thirty (30) days and diligently prosecuted said cure to completion, then Agency shall declare an “Event of Default” to have occurred hereunder, and, at its option, may take one or more of the following steps:

(a) By mandamus or other suit, action or proceeding at law or in equity, require Participant to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of this Regulatory Agreement; or

(b) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Participant hereunder.

Failure or delay in giving notice shall not constitute a waiver of default, nor shall it change the time of default.

4.2 **Mortgagee Right to Cure Default.**

(a) This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, 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 Participant hereunder and specifying the address for service thereof, then Participant shall deliver to such Mortgagee, concurrently with service thereon to Participant, any notice given to Participant with respect to any claim by Agency that Participant has committed an event of default.

Each Mortgagee shall have the right during the same period available to Participant to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the Agency's notice. Agency, through its Executive Director, may extend the thirty-day cure period provided in Section 4.1 for not more than an additional sixty (60) days upon request of Participant or a Mortgagee.

5. **COVENANTS TO RUN WITH THE LAND.** Participant hereby subjects the Property to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Agency and the Participant hereby declare their express intent that all such covenants, reservations and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Participant's successors in title to the Property; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire, except as otherwise expressly provided. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, 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 covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed of other instrument.

6. **NONDISCRIMINATION.**

6.1 **Nondiscrimination.** There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or the Project, or any part thereof, nor shall Participant, or any person claiming under or through Participant, 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.

6.2 **Anti-Discrimination Clauses in Agreements.** Participant agrees for itself and any successor in interest that Participant shall refrain from restricting the rental, sale, or lease of any portion of the Property or the Project, or contracts relating to the Property or the Project, on the basis of race, color, creed, religion, sex, marital status, ancestry, or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

6.2.1 In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, or national origin 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.

6.2.2 In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of status, race, color, creed, religion, sex, marital status, ancestry, physical or mental handicap, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased, nor shall the lessee himself, or any person 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, sublessees, subtenants, or vendees in the land herein leased."

6.2.3 In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of status, race, color, creed, religion, sex, marital status, ancestry, physical or mental handicap, or national origin in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee himself, or any person 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 of land."

7. TERM; TERMINATION; RELEASE.

7.1 The term of this Agreement shall commence upon the Effective Date, and shall continue until fifty-five (55) years following issuance of the last Certificate of Occupancy for the Project; provided however, if Participant's entitlements to develop the Project expire prior to construction of the Project and the Project is not developed pursuant to the OPA, this Regulatory Agreement shall be of no further force and effect, and the Parties shall record a termination agreement so stating in the official records of the County of Santa Clara.

7.2 Prior to the sale of a unit that is not a Restricted Ownership Unit, Owner will submit to Agency a release in a recordable form that releases the unit from the restrictions imposed by this Agreement, and Agency's Executive Director will execute and return the release to Owner within 10 business days.

8. MISCELLANEOUS.

8.1 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 to the other parties 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.

Agency: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director
Facsimile: (408) 586-3056

With a copy to: Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607
Attn: Steven T. Mattas
Facsimile: (510) 444-1108

Participant: Western Pacific Housing, Inc.
dba D.R. Horton, America's Builder

2300 Clayton Road, Suite 800
Concord, CA 94520
Attn: Richard P. Ambrosini, Division President
Telephone: (925) 808-2300
Facsimile: (925) 808-2499

8.2 Attorneys' Fees. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition or 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 to be fixed by the court which shall render a judgment, as well as the costs of the suits. 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.

8.3 Amendments. This Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Santa Clara.

8.4 Severability/Waiver/Integration.

(a) If any provision of this Agreement shall be held to be invalid, void or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in

any way be affected or impaired thereby.

(b) A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenant or condition, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

(c) Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default.

(d) Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity, which are not otherwise provided for in this Agreement, expressly including the remedy of specific performance of this Agreement.

(e) In no event shall damages be awarded against City or Agency upon an event of default or upon termination of this Agreement.

(f) With the exception of the OPA referred to in Recital D, this Agreement contains the entire Agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations, documents and discussions pertaining thereto.

8.5 Binding Effect; Due Authorization. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties hereto. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law. Participant hereby represents and warrants that all actions necessary on the part of Participant to authorize the execution of this Agreement and to undertake the actions contemplated hereby have been undertaken, and the person(s) executing this Agreement on behalf of Participant have been duly authorized to do so.

8.6 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish any of the parties as partners, co-venturers, or principal and agent with one another.

8.7 Captions; Interpretation. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

8.8 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.

8.9 Further Assurances. The parties agree to execute such instruments and to undertake such actions, including without limitation the recordation of this document, as may be necessary to effectuate the intent of this Agreement.

8.10 Governing Law; Time is of the Essence. This Agreement shall be interpreted under

and pursuant to the laws of the State of California. In all matters under this Agreement, the Parties agree that time is of the essence.

9. **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 of Milpitas 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.

IN WITNESS WHEREOF, the Agency and Participant have executed this Agreement as of the date first written above.

[EXECUTION PAGE FOLLOWS]

MILPITAS REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: Thomas C. Williams
Its: Executive Director

ATTEST:

By: Mary Lavelle
Its: Agency Secretary

APPROVED AS TO FORM:

By: _____
By: Michael J. Ogaz
Its: Agency Counsel

WESTERN PACIFIC HOUSING, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

Legal Description of the Property
[To Be Attached]

EXHIBIT B

RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 East Calaveras Boulevard
Milpitas, CA 95035

To be recorded without fee.
(Gov. Code, §§ 6103 and 27383.)

(Space Above This Line For Recorder's Use Only)

**RESALE RESTRICTION AGREEMENT
AND OPTION TO PURCHASE**

Owner: _____
Property Address: _____ Milpitas, California _____
Name of Development: _____

This RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE ("Agreement") is entered into by and between the Milpitas Redevelopment Agency ("the Agency") and _____ ("Owner") regarding certain improved real property, which is more particularly described in Exhibit A attached hereto and incorporated herein and commonly known as _____, Milpitas, CA _____ (the "Property") effective as of _____, 2005 ("Effective Date"). Agency and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. The Agency pursuant to the Community Redevelopment Law (Health & Safety Code section 33000 et seq.) and the Agency's Redevelopment Plan maintains an affordable housing fund, which it uses for the purpose encouraging the construction of housing within the Redevelopment Plan Area that is affordable to persons of very low, and moderate income ("the Program").

B. Pursuant to the Program, the Agency and _____ ("Developer") entered into an Owner Participation Agreement, dated _____, 2005 (collectively "the Agreements") under which Developer has agreed to construct and sell _____ homes at prices that are affordable to persons of

very low, low, and moderate incomes and in exchange the Agency has agreed to provided certain financial incentives.

C. Owner is the owner of certain real property located within the City of Milpitas, legally described in Exhibit A and commonly known as _____, Milpitas, CA ____ (“the Property”). The Property is one of the affordable homes constructed by Developer pursuant to the Agreements.

D. Owner is an eligible [very low, low, or moderate-]income purchaser under the Program, intends to live in the Property as an owner occupant, and agrees to maintain the Property as Owner’s principal residence.

E. In order to maintain and preserve the Property as housing affordable to eligible [very low, low or moderate-] income purchasers, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth in this Agreement. These restrictions are intended to prevent initial and subsequent purchasers from using the Property for purposes incompatible with the Program and realizing unwarranted gains from sales of the Property at unrestricted prices. The terms and conditions of this Agreement are intended to provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible [very low, low, or moderate-]income purchasers. To further serve the purposes of the Program, it is necessary that the Agency be granted an option to purchase the property so that the property may be resold by the Agency to an eligible household.

F. Accordingly, the Parties desire to enter into this Resale Restriction Agreement and Option to Purchase, which provides, generally, that Owner may only sell the property to Eligible Households (i.e. households meeting the household income limitations set forth herein) at a price not to exceed the price equal to the initial purchase price adjusted to reflect increases in median household income since the Property was initially purchased by Owner. Alternatively, the Agreement provides that the Agency may exercise its option to purchase the Property at the same price.

G. The Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of [very low, low, or moderate] income who otherwise would be unable to afford such housing. To protect and preserve this resource it is necessary, proper, and in the public interest for the Agency to administer occupancy and resale controls consistent with the Program by means of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and Agency hereby agree as follows:

1. Definitions.

a. “Affordable Unit Cost” shall mean a sales price that results in annual housing costs, including principal payments, interest, property taxes, homeowners’ insurance, homeowners’

association dues, and mortgage insurance that do not exceed 30% of income level for the Eligible Household.

b. "Area Median Income for Santa Clara County" means those income and eligibility levels determined, updated, and published each year by the California Department of Housing and Community Development, based on Santa Clara County median income levels, adjusted for household size.

c. "Persons and families of [very low, low, or moderate] income" means persons and families whose income do not exceed [fifty percent (50%); eighty percent (80%), or one hundred twenty percent (120%)] of the Area Median Income for Santa Clara County, as adjusted for household size.

d. Persons and families meeting the definition set forth in Paragraph 1(c) above shall be referred to as "Eligible Households."

2. Program Requirements.

a. **Affordability Restrictions.** Owner hereby covenants and agrees that during the term of this Agreement all of the requirements and restrictions of this Agreement shall apply, and the Property shall be sold or otherwise transferred only pursuant to the terms and conditions of this Agreement and only to (i) Eligible Households at a price not to exceed the Adjusted Resale Price, as defined in Paragraph 5, (ii) the Agency pursuant to Paragraph 3, or (iii) a Permitted Transferee pursuant to Paragraph 9.

b. **Disclosure.** DURING THE TERM OF THIS AGREEMENT THERE SHALL BE NO SALE OR OTHER TRANSFER OF THE PROPERTY WITHOUT THE WRITTEN CERTIFICATION BY THE AGENCY THAT THE TRANSFEEE QUALIFIES AS AN ELIGIBLE HOUSEHOLD AND THAT THE PROPERTY IS BEING TRANSFERRED AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE, WHICH IS CAPPED AT THE AFFORDABLE UNIT COST AS DEFINED IN PARAGRAPH 1.a. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS COVENANT SHALL BE VOID.

c. **Principal Residence Requirement.** OWNER COVENANTS AND AGREES THAT HE/SHE/THEY SHALL OCCUPY THE PROPERTY AS HIS/HER/THEIR PRINCIPAL RESIDENCE FOR THE DURATION OF HIS/HER/THEIR OWNERSHIP AND SHALL NOT RENT OR LEASE THE PROPERTY OR PORTION THEREOF DURING THE TERM OF THIS AGREEMENT. Without limiting the generality of the foregoing, any absence from the Property by Owner for a period of ninety (90) or more days shall be deemed an abandonment of the Property as the principal residence of Owner in violation of the conditions of this Paragraph. Upon request by the Agency made from time to time, the Owner of the Property shall submit an affidavit to the Agency certifying that the Property is the Owner's principal residence and provide such documents and other evidence as may be requested to verify Owner's compliance with this requirement. Abandonment of the Property shall constitute an Option Event (as defined in Paragraph 3.c below) and shall entitle the Agency to exercise its Option to purchase the Property.

3. Option to Purchase.

a. **Grant of Option to Purchase.** Owner hereby grants to the Agency an option (“Option”) to purchase all of Owner’s right, title and interest in and to the Property upon the occurrence of an Option Event (defined in Paragraph 3.c below), subject to the terms and conditions contained herein.

b. **Assignment of the Option.** The Agency may assign the Option to another government entity, a non-profit affordable housing provider or a person or family that qualifies as an Eligible Household. The Agency’s assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

c. **Events Giving Rise to Right to Exercise Option.** The Agency shall have the right to exercise its Option upon the occurrence of any of the following events (each, an “Option Event”):

i. Receipt of a Notice of Intent to Transfer (defined in Paragraph 3.d.i below);

ii. Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as provided in Paragraph 9 below;

iii. Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Paragraph 10 below;

iv. Recordation of a notice of default and/or notice of sale pursuant to California Civil Code section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

v. Commencement of a judicial foreclosure proceeding regarding the Property;

vi. Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property;

vii. Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or

viii. Any violation by Owner of any provision of this Agreement including, without limitation, the conditions set forth in Paragraph 2 above.

d. **Method of Exercising the Option.**

i. **Notice of Intent to Transfer.** If Owner desires to sell, convey, transfer (other than pursuant to Paragraph 9), lease, encumber (other than pursuant to Paragraph 10) or otherwise dispose of the Property or of any estate or interest therein, no less than 60 days prior to the date of such proposed sale, conveyance, transfer, lease, encumbrance or disposition, Owner shall notify Agency in writing to that effect (the "Notice of Intent to Transfer"). The Notice of Intent to Transfer shall be in substantially the form attached hereto as Exhibit B. In the case of a proposed sale of the Property to an identified prospective purchaser, the Owner shall submit to the Agency, together with the Notice of Intent to Transfer, a copy of the prospective purchaser's income certification, a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by Agency, in a form approved by the Agency, along with the income certification to be provided to any lender making a loan to the prospective purchaser. The Agency may require documentation evidencing and supporting the income and other financial information contained in the certifications.

ii. **Notice of Exercise.** Upon the occurrence of any Option Event, the Agency may exercise its Option by delivering notice, pursuant to Paragraph 16 and within the time period specified in Paragraph 3(d)(iv), to Owner of Agency's intent to exercise such Option pursuant to the terms of this Agreement ("Notice of Exercise"). The Notice of Exercise may be in the form attached hereto and incorporated herein as Exhibit C, or in such other form as the Agency may from time to time adopt. If the Option Event relates to the potential foreclosure of a mortgage under Paragraphs 3.c.iv, 3.c.v, or 3.c.vi, then the Agency shall also deliver the Notice of Exercise to the mortgagee or beneficiary under such mortgage, at such mortgagee's or beneficiary's address of record in the Office of the Recorder of Santa Clara County.

iii. **Notice of Consent to Transfer.** If the Agency does not exercise the Option, it may give its consent to the occurrence of the Option Event ("Consent to Transfer"). If the Option Event involves a proposed sale of the Property to a prospective purchaser, the Agency's consent shall be conditioned upon (i) the proposed purchaser's qualification as an Eligible Household; (ii) the sale of the Property at a price not to exceed the Adjusted Resale Price; (iii) the proposed purchaser's execution of a Disclosure Statement in the form attached hereto as Exhibit F or such other form or forms as may be promulgated by the Agency; and (iv) the proposed purchaser's assumption of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Agency, or execution of an agreement substantially similar to this Agreement, within sixty (60) days after the Consent to Transfer has been delivered to Owner and recordation of such assumption agreement or substitute agreement. If the prospective purchaser (i) fails to qualify as an Eligible Household, (ii) fails to execute and deliver the Disclosure Statement to the Agency, or (iii) fails to execute and deliver to the Agency an assumption agreement or an agreement substantially similar to this Agreement within such sixty (60) day period, then the Consent to Transfer shall expire and the Agency may, at its option, either notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as Eligible Household, or exercise the Option, as if no Consent to Transfer had been delivered.

iv. **Time Period for Notice.** The Agency shall deliver a Consent to Transfer, if applicable, not later than sixty (60) days after the date that it receives notification of an Option Event. The Agency shall deliver a Notice of Exercise, if applicable, on or before the date which is the later to occur of the following: (i) sixty (60) days after the date that the Agency receives

notification of an Option Event or (ii) thirty (30) days after a Consent to Transfer has expired. For purposes of computing commencement of the delivery periods, the Agency shall be deemed to have received notification of an Option Event on the date of delivery of a Notice of Intent to Transfer, pursuant to the terms of Paragraph 16 below or on the date it actually receives notice of default, summons and complaint or other pleading, or other writing specifically stating that an Option Event has occurred. The Agency shall have no obligation to deliver a Notice of Exercise or Consent to Transfer, and the applicable time period for exercise of the Option shall not commence to run, unless and until the Agency has received notification of an Option Event in the manner specified in this subparagraph. If there is a stay or injunction imposed by court order precluding the Agency from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the Agency has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

v. **Notice of Abandonment.** If the Agency fails to deliver a Notice of Exercise or Consent to Transfer within the time periods set forth in paragraph 3.d.iv, upon request by Owner, the Agency shall cause to be filed for recordation in the Office of the Recorder of Santa Clara County, a notice of abandonment, which shall declare that the provisions of the Option are no longer applicable to the Property. Unless Owner requests recordation of notice of abandonment within 30 days of the Agency's failure to deliver Notice of Exercise or Consent to Transfer, the Agency shall have no obligation to record the notice of abandonment. Upon recordation of a notice of abandonment, the Option shall terminate and have no further force and effect. If the Agency fails to record a notice of abandonment, the sole remedy of Owner shall be to obtain a judicial order instructing prompt recordation of such a notice.

vi. **Right to Reinstatement.** If the Option Event is the recordation of a notice of default, then the Agency shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the Agency shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the Agency exercises the Option, then any and all amounts paid by the Agency pursuant to this Paragraph shall be treated as Adjustments to the Base Resale Price for the Property, as defined in Paragraph 5 below.

vii. **Inspection of Property.** After receiving a Notice of Intent to Transfer or delivering a Notice of Exercise, the Agency shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the Agency shall give Owner not less than forty-eight (48) hours' written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding City holidays, unless the parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the Agency's request for inspection.

viii. **Escrow.** Promptly after delivering a Notice of Exercise, the Agency shall open an escrow account for its purchase of the Property. Close of escrow shall take place on the date that is the later to occur of the following, (a) ninety (90) days after a Notice of Exercise has been delivered, or (b) ten (10) days after Owner has performed all acts and executed all documents required for close of escrow. Prior to the close of escrow, the Agency shall deposit into escrow with a title company of Agency's choosing, an amount equal to the Adjusted Resale Price as defined in Paragraph 5 below and all escrow fees and closing costs to be paid by Agency. Commissions (not to exceed 6% of the actual sales price), closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of escrow, or as may otherwise be provided by mutual agreement. Owner agrees to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the Agency.

ix. **Proceeds of Escrow; Removal of Exceptions to Title.** Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the Effective Date with the exception of (i) taxes for the fiscal year in which the escrow for this transaction closes, which taxes shall be prorated as between Owner and Agency as of the date of close of escrow; (ii) quasi-public utility, public alley, public street easements, and rights of way of record, and (iii) such other liens, encumbrances, reservations and restrictions as may be approved in writing by Agency ("Permitted Exceptions").

The purchase price deposited into escrow by the Agency shall be applied first to the payment of any and all Permitted Encumbrances (as defined in Paragraph 10) recorded against the Property in order of lien priority, and thereafter to the payment of Owner's share of escrow fees and closing costs. Any amounts remaining after the purchase price has been so applied, if any, shall be paid to Owner upon the close of escrow. If the purchase price is insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove said liens and encumbrances. In the event that the Agency agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title recorded after the Effective Date other than Permitted Exceptions to be removed, then Owner shall indemnify, defend and hold Agency harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by Agency that relate to such exceptions and their removal as exceptions to title to the Property.

4. **Base Resale Price.** Prior to adjustment pursuant to Paragraph 5 the base resale price ("Base Resale Price") of the Property shall be the lowest of:

a. **Median Income.** The original price ("Base Price") paid by Owner for acquisition of the Property pursuant to the Program, increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Area Median Income for Santa Clara County as defined in Section 1.2(b), between the Effective Date (or, in case of a sale of the Property by an Owner other than Owner set forth in this Agreement, the date the current Owner acquired the Property from the previous owner) and the date that the Agency receives notification of an Option Event; or

b. **Index Price.** The Base Price increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose published by the U.S. Department of Labor, Bureau of Labor Statistics (“Index”) between the Effective Date (or in the case of a sale of the Property by an Owner other than the initial Owner set forth in this Agreement, the date the current owner acquired the Property from the previous Owner) and the date that the Agency receives notification of an Option Event; or

c. **Fair Market Value.** The fair market value of the Property as determined by an appraiser selected and paid for by Owner and approved in writing by the Agency.

To compute the Base Resale Price, the Agency may use the Base Resale Price Worksheet attached as Exhibit D hereto, or such other form as the Agency may from time to time adopt.

5. **Adjustments to Base Resale Price.** Subject to the Affordable Unit Cost restriction described in subparagraph (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors (“Adjustment”):

a. **Capital Improvements.** An increase for capital improvements made to the Property, but only if the amount of such improvements has been previously approved in writing by the Agency after Owner has submitted original written documentation of the cost to the Agency for verification. The amount of the Adjustment shall equal the original cost of any such capital improvements.

b. **Damages.** A decrease by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the Agency upon Agency’s exercise of its Option hereunder, including, without limitation, amounts attributed to cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures. Owner hereby covenants to, at Owner’s expense, maintain the Property in the same condition as in existence on the date of Agency’s Notice of Exercise, reasonable wear and tear excepted.

c. **Advances by the Agency.** A decrease in an amount equal to the sum of all costs advanced by the Agency for the payment of mortgages, taxes, assessments, insurance premiums, homeowner’s association fees and/or associated late fees, costs, penalties, interest, attorneys’ fees, pest inspections, resale inspections and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

d. **Adjusted Resale Price Not to Exceed Affordable Unit Cost.** The Base Resale Price as adjusted, is hereinafter referred to as the “Adjusted Resale Price.” Notwithstanding any other provision hereof to the contrary, in no event shall the Adjusted Resale Price exceed the Affordable Unit Cost.

6. Priority and Effectiveness of the Option.

a. **Recordation.** This Agreement shall be recorded in the Office of the Recorder of the County of Santa Clara on or as soon as practicable after the Effective Date. The Option shall have priority over any subsequent sale, conveyance, transfer, lease or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by Agency, the Agency shall take the Property subject only to Permitted Exceptions. Except as otherwise provided in Paragraphs 7.a and 7.b, the exercise of the Option by the Agency at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners in accordance with the terms and conditions hereof.

b. **Request for Notice of Default.** The Agency shall file a Request for Notice of Default for recordation in the Office of the Recorder of the County of Santa Clara promptly upon execution of this Agreement (see Exhibit E).

7. **Survival of Option Upon Transfer.**

a. **In General.** The Agency's right to exercise the Option shall survive any transfer of the Property by Owner. Each transferee, assignee or purchaser of the Property during the term hereof shall be required to execute an agreement substantially in the form of this Agreement, provided that the term of any such agreement shall be for the duration of the term hereof as of the date of any such transfer, assignment or sale. The Option may be exercised against the Property throughout the term hereof, regardless of whether the Property is owned, possessed or occupied by Owner or any successor, transferee, assignee, heir, executor, or administrator of Owner, regardless of household income (if applicable) including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code. Notwithstanding the foregoing, the Option shall not survive (i) the sale and transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust held by an institutional lender, provided that the Agency has received timely notice of such Option Event and has failed to either reinstate said mortgage or deed of trust or exercise its Option, or (ii) the recording of an instrument conveying Owner's interest in the Property to the Agency, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

b. **HUD Insured Mortgage.** If Owner has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development, and a notice of default has been recorded pursuant to California Civil Code Section 2924 (or successor provisions), then this Option shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured mortgage is assigned to the Secretary.

8. **Voidable Transfers.** As long as the Option has not been abandoned pursuant to Paragraph 3.d.v, any actual or attempted sale, conveyance, transfer or other disposition of the Property, or of any estate or interest therein, in violation of the terms and conditions of this Agreement, shall be voidable at the election of the Agency.

9. Permitted Transfers. Provided that the transferee assumes, within 30 days of a written request by the Agency, all of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Agency, or at Agency's election, execution of an agreement substantially similar to this Agreement, the following transfers ("Permitted Transfers") of title to the Property, or of any estate or interest therein, shall not be subject to the Agency's prior approval, shall not trigger the exercise of the Option, and shall not be considered Option Events: (a) a good-faith transfer by gift, devise or inheritance to Owner's spouse or issue; (b) a taking of title by a surviving joint tenant; (c) a court-ordered transfer of title to a spouse as part of a divorce or dissolution proceeding; (d) a transfer by Owner into an inter vivos trust in which the Owner is a beneficiary and the Owner continues to occupy the property as his/her primary residence; (e) an acquisition of title, or of any interest therein, in conjunction with marriage; or (f) any good faith transfer to an Eligible Household. Notwithstanding any Permitted Transfer, the Option shall remain effective with respect to the Property for the duration of the term hereof.

10. Permitted Encumbrances and Refinancing. This Option shall not become exercisable as the result of Owner's encumbering the Property for the purpose of securing financing to purchase the Property pursuant to the Program, to refinance indebtedness incurred to purchase the Property pursuant to the Program, or to make necessary repairs to the Property in an amount approved by Agency pursuant to Paragraph 5a ("Permitted Encumbrances"). The maximum aggregate amount of such encumbrances outstanding at any time (the "Permitted Encumbrance Amount") shall not exceed an amount equal to one-hundred percent (100%) of the Base Resale Price calculated as provided in Paragraph 4. The Permitted Encumbrance Amount shall be calculated as if the Agency had received notification of an Option Event on the earlier of (a) the date on which the deed of trust or mortgage securing the indebtedness is filed for record in the Office of the Recorder of the County of Santa Clara, or (b) the date the Agency receives Notice of Intent to Transfer pursuant to Paragraph 3.d.i above. Owner hereby covenants and agrees that he/she/they shall use his/her/their best efforts to ensure that any deed of trust or other agreement encumbering the property shall include provisions providing for notice to be delivered to Agency of any default thereunder and for Agency's right to cure such default at Agency's election.

11. Obligation of Owner After Option Abandonment. If the Agency records a notice of abandonment of the Option, then the Property may be sold by Owner to a third party without restriction as to price; however, upon such sale, Owner shall pay to Agency an amount ("Agency's Share") equal to eighty-five percent (85%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price. The Agency's Share shall be paid to the Agency concurrently with close of escrow on the sale of the Property, or upon receipt by Owner of the sale price for the Property, whichever shall first occur.

12. Limits on Liability. In no event shall the Agency become liable or obligated in any manner to Owner by reason of the assignment of this Agreement or the Option, nor shall Agency be in any way liable or obligated to Owner for any failure of the Agency's assignee to consummate a purchase of the Property or to comply with the terms of this Agreement or the Option, or any escrow instructions or agreement for the purchase of the Property.

13. Insurance Proceeds and Condemnation Award. In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Paragraph 3.d.ix had the Agency exercised its Option on the date of the destruction of condemnation valuation date shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the Agency.

14. Effective Date. The rights and obligations of the Agency and Owner set forth in this Agreement shall be effective as of the Effective Date.

15. Term of Agreement and Option. The restrictions contained herein and the Agency's option to purchase the Property shall continue for a period of fifty-five (55) years commencing on the Effective Date.

16. 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 to the other Party in accordance with this Section. All such notices shall be sent by:

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

(b) 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;

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

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Agency: Milpitas Redevelopment Agency
455 Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director
Facsimile: (408) 586-3056

Owner: At the address of the Property

17. Remedies Upon Breach.

a. **Specific Performance.** OWNER ACKNOWLEDGES THAT ANY BREACH IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL CAUSE IRREPARABLE HARM TO THE AGENCY. OWNER AGREES THAT THE AGENCY IS ENTITLED TO EQUITABLE RELIEF IN THE FORM OF SPECIFIC PERFORMANCE UPON ITS EXERCISE OF THE OPTION, AND THAT AN AWARD OF DAMAGES SHALL NOT BE ADEQUATE TO COMPENSATE THE AGENCY FOR OWNER'S FAILURE TO PERFORM ACCORDING TO THE TERMS OF THIS AGREEMENT.

b. **Other Remedies.** AGENCY SHALL HAVE ALL OF THE REMEDIES PROVIDED FOR AT LAW OR EQUITY.

18. General Provisions.

a. **Attorneys' Fees.** IF EITHER PARTY INITIATES LEGAL PROCEEDINGS TO INTERPRET OR ENFORCE ITS RIGHTS UNDER THIS AGREEMENT, THE PREVAILING PARTY IN SUCH ACTION SHALL BE ENTITLED TO AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS IN ADDITIONS TO ANY OTHER RECOVERY TO WHICH IT IS ENTITLED UNDER THIS AGREEMENT.

b. **No Joint Venture; No Third-Party Beneficiary.** No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

c. **Successors; Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. Agency shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

d. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

e. **Survival; No Merger.** All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

f. **Authority And Execution.** Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

g. **Severability.** The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the remainder of this Agreement, and the remaining terms

and provisions hereof shall not be invalidated but shall remain in full force and effect.

h. **Waiver; Modification.** No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence or any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this section may not be waived except as herein set forth. A waiver or breach of any covenant, condition or provision of this Agreement shall not be deemed a waiver of any other covenant, condition or provision hereof.

i. **Construction.** The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

j. **Governing Law.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.

k. **Time of the Essence.** Time is of the essence in this Agreement as to each provision in which time is an element of performance.

l. **Further Assurances.** Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

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

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

OWNER(S):

AGENCY:

MILPITAS REDEVELOPMENT AGENCY

Executive Director

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Resale Restriction Agreement and Option to Purchase dated _____ from _____ to the Milpitas Redevelopment Agency is hereby accepted by the undersigned office or agent on behalf of the Milpitas Redevelopment Agency pursuant to authority conferred by the Resolution No. _____ dated _____; and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____

Its: _____

EXHIBIT A

Legal Description

AUGUST 1, 2008
JOB NO.: 1235-010

**LEGAL DESCRIPTION
LOT 2, TRACT 9773
MILPITAS, CALIFORNIA**

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 2, AS SAID LOT 2 IS SHOWN AND SO DESIGNATED ON THE OFFICIAL TRACT MAP OF TRACT 9773, RECORDED JULY 24, 2006, IN BOOK 804 OF MAPS AT PAGES 9 THROUGH 14, IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY AND CONTAINING 2.95 ACRES OF LAND, MORE OR LESS.

END OF DESCRIPTION

804.9

7/4

legal

SHEET 1 OF 4

OWNERS STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON, THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY, THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN HEREON WITH THE EXCEPTED EASEMENTS, AND WE HEREBY AGREE TO MAINTAINANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

1. LOTS "X" AND "Y" FOR STREET AND PUBLIC UTILITY PURPOSES.
2. EASEMENT "A" FOR PUBLIC TRAIL PURPOSES.
3. EASEMENT "B" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (EAS).
4. EASEMENT "C" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EAC).

WE ALSO HEREBY AGREE FOR THE PRIVATE USE OF THE LOT OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSEES, AGENTS AND TENANTS WITH MAINTENANCE THEREBY BY THEIR LOT OWNERS THE FOLLOWING:

5. EASEMENT "D" (ACCESS EASEMENT FOR THE BENEFIT OF LOT 2)
6. EASEMENT "E" (ACCESS EASEMENT FOR THE BENEFIT OF LOT 1)
7. EASEMENT "F" (ACCESS EASEMENT FOR THE BENEFIT OF LOT 3)

THE ABOVE MENTIONED EASEMENTS (TRAIL, EASEMENT, POLE & EAC) SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES AND LAWFUL FENCES, UNRESTRICTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

OWNER: WESTERN PACIFIC HOUSING, INC. A DELAWARE CORPORATION

BY: Dennis A. Ganswert DATE: 7/4/06
 TITLE: President
 (PRINTED NAME)

OWNERS ACKNOWLEDGMENT

STATE OF CALIFORNIA
 COUNTY OF Alameda
 ON JAN 3 2006 BEFORE ME, a notary public
ALISSA J. MCKEY, PERSONALLY APPEARED
DEBRA L. BAUGHNER

PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/HEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITIE(S) 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
 NOTARY'S SIGNATURE: ALISSA J. MCKEY
 PRINT NAME: ALISSA J. MCKEY
 PRINCIPAL PLACE OF BUSINESS: PRELIMINARY CA
 MY COMMISSION EXPIRES: JANUARY 15, 2008
 MY COMMISSION NUMBER: 18416074

1228-9

OWNERS STATEMENT

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WITNESS MY HAND
 NOTARY'S SIGNATURE: ALISSA J. MCKEY
 PRINT NAME: ALISSA J. MCKEY
 PRINCIPAL PLACE OF BUSINESS: PRELIMINARY CA
 MY COMMISSION EXPIRES: JANUARY 15, 2008
 MY COMMISSION NUMBER: 18416074

1228-9

CITY ENGINEERS STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN FINAL MAP, THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERNATIVE MAPS, THAT THE SUBDIVISION COMPLIES WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

DATE: 6/27/06
 BY: Mark L. Zander
 CITY ENGINEER, CITY OF MERRING

CITY ENGINEERS STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN FINAL MAP, THAT THE SUBDIVISION AS SHOWN THEREIN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERNATIVE MAPS, THAT THE SUBDIVISION COMPLIES WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP.

DATE: 6/27/06
 BY: Mark L. Zander
 CITY ENGINEER, CITY OF MERRING

CITY CLERK'S CERTIFICATE

I, MARY LANGLEY, CITY CLERK OF THE CITY OF MERRING, CALIFORNIA, HEREBY CERTIFY THAT SAID CITY COUNCIL, AS CONVENED BODY OF SAID CITY AT A REGULAR MEETING HELD ON JANUARY 3, 2006, HAS TAKEN THE FOLLOWING ACTIONS:

1. APPROVED THIS TRACT MAP NO. 9773
- ACCEPTED, SUBJECT TO APPROVEMENT, ON BEHALF OF THE PUBLIC, PARCELS IDENTIFIED AND DESIGNATED FOR PUBLIC USE IN CONFORMANCE WITH THE TERMS OF ORDER OF SUBDIVISION TO WIT:
1. LOTS "X" (TRAIL AND STREET) AND "Y" (SOUTH MAIN STREET) FOR STREET AND PUBLIC UTILITY PURPOSES.
2. EASEMENT "A" FOR PUBLIC TRAIL PURPOSES.
3. EASEMENT "B" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (EAS).
4. EASEMENT "C" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EAC).

FOR ASSESSMENT DISTRICTS CREATED BY THIS CONVENING BODY, THE COUNCIL HAS DETERMINED THAT PROCEEDINGS HAVE BEEN MADE FOR SUBDIVISION OF THE PARCELS OF EACH OF THE PROPOSED NEW PARCELS FOR A PORTION OF ASSESSMENT PAYMENT OBLIGATION IN THE MANNER PROVIDED IN THE STATUTE PURSUANT TO WHICH THE ASSESSMENTS WERE LEVIED. COMMUNITY FACILITIES DISTRICT 2006-1.

DATE: 6-27-06
 BY: Mary Langley
 CITY CLERK, CITY OF MERRING

SURVEYOR'S STATEMENT

I, CHRISTOPHER S. HANSEN, SURVEYOR, HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, LICENSE NO. 10000, AND THAT I AM THE REGISTERED PROFESSIONAL SURVEYOR OF THIS MAP, AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES AT THE REQUEST OF FARMERS GREAT HALL LLC ON OCTOBER 2005 AND IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE RETURNED TO BE FILED FIRST TO THE PLANS OF THE FINAL MAP AND IT IS TECHNICALLY CORRECT. I HEREBY STATE THAT THE INSTRUMENTS WILL LOCATE THE POSTING BOUNDARIES OF THE SUBDIVISION, AND WILL BE THE QUANTITIES INDICATED, AND THE SURVEYOR TO UNABLE THE SURVEY TO BE RETURNED.

SIGNED: Christopher S. Hansen DATE: 5-2-06
 CHRISTOPHER S. HANSEN, P.L.S. 7078
 LICENSE EXPIRATION DATE: OCTOBER 31, 2007

PHOENIX STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE: 6/27/06
 BY: Mark L. Zander
 CITY ENGINEER, CITY OF MERRING

PHOENIX STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE WITHIN MAP AND THAT I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE: 6/27/06
 BY: Mark L. Zander
 CITY ENGINEER, CITY OF MERRING

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OWNER: WESTERN PACIFIC HOUSING, INC. A DELAWARE CORPORATION

BY: Dennis A. Ganswert DATE: 7/4/06
 TITLE: President
 (PRINTED NAME)

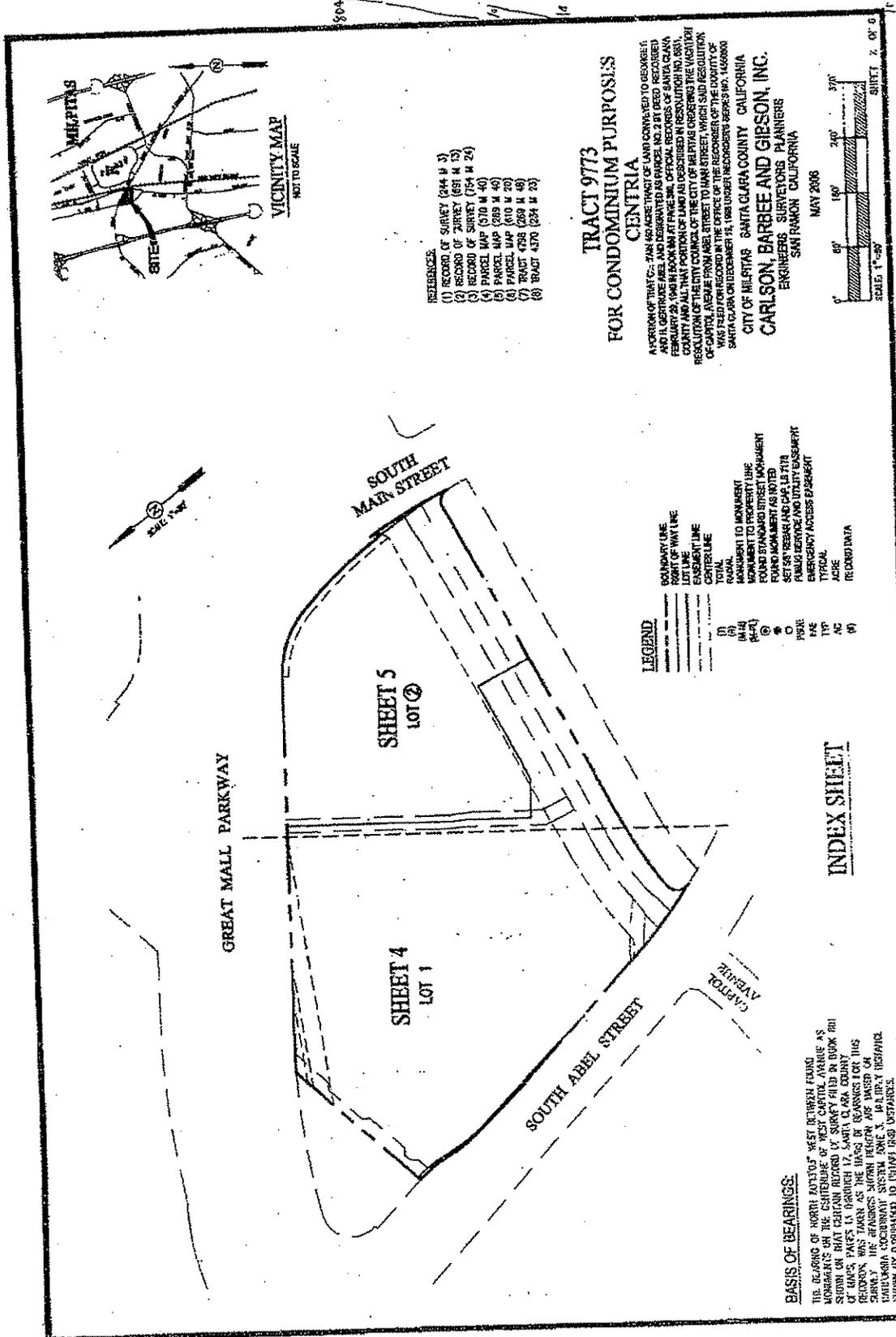
OWNER'S ACKNOWLEDGMENT

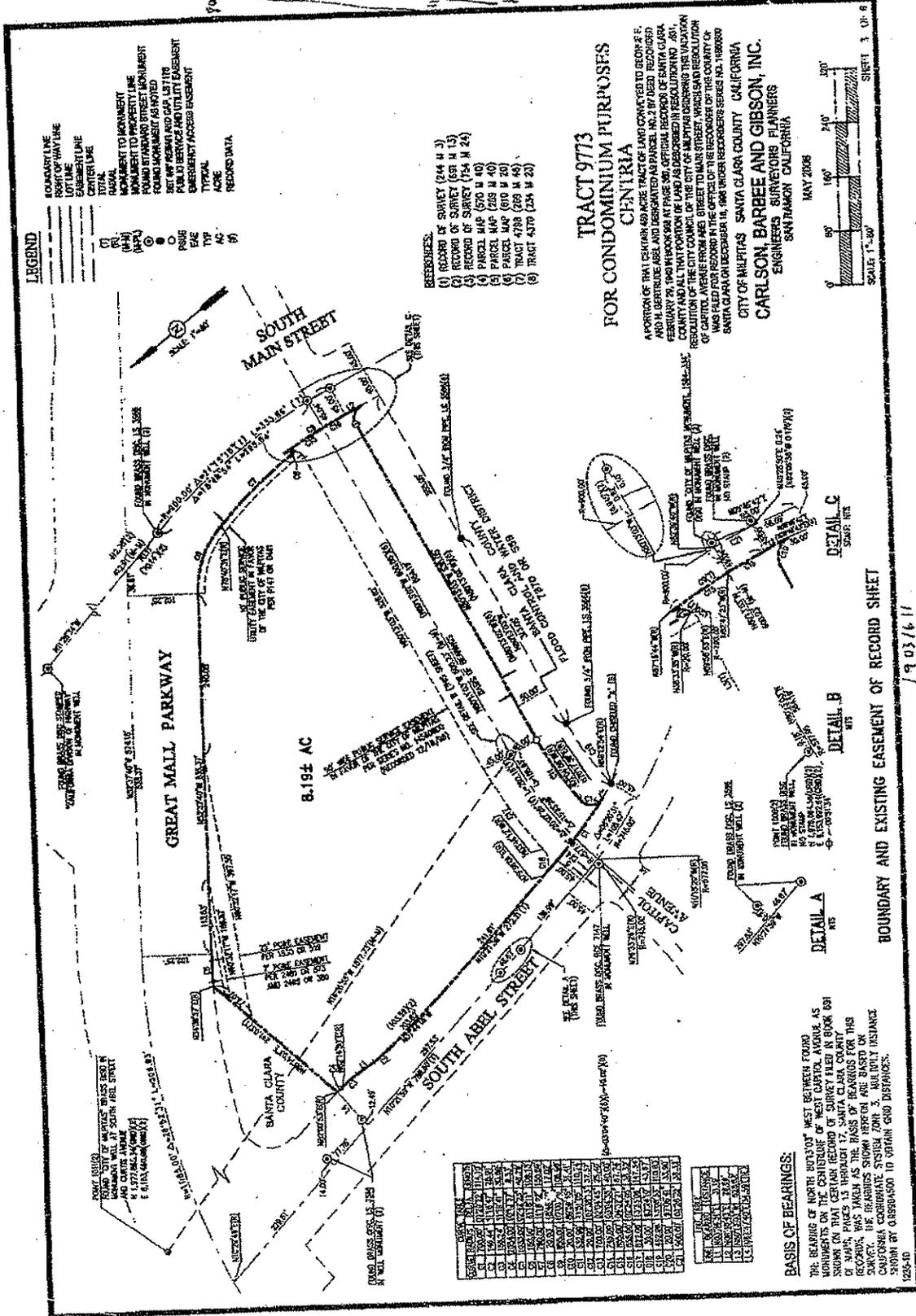
STATE OF CALIFORNIA
 COUNTY OF Alameda
 ON JAN 3 2006 BEFORE ME, a notary public
ALISSA J. MCKEY, PERSONALLY APPEARED
DEBRA L. BAUGHNER

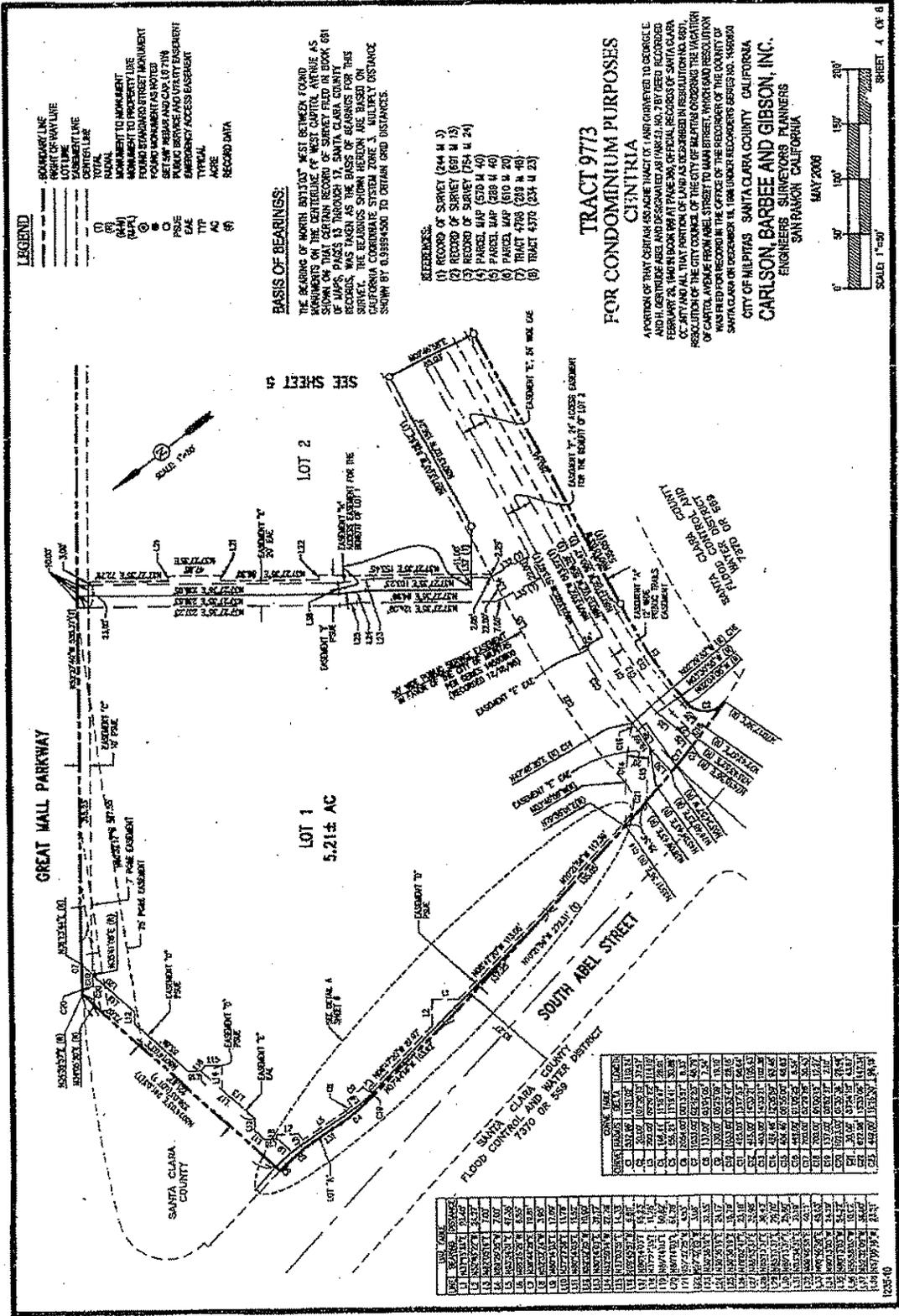
PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE) TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/HEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITIE(S) AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S), ACTED, EXECUTED THE INSTRUMENT.

WITNESS MY HAND
 NOTARY'S SIGNATURE: ALISSA J. MCKEY
 PRINT NAME: ALISSA J. MCKEY
 PRINCIPAL PLACE OF BUSINESS: PRELIMINARY CA
 MY COMMISSION EXPIRES: JANUARY 15, 2008
 MY COMMISSION NUMBER: 18416074

1228-9







LEGEND

BOUNDARY LINE
RIGHT OF WAY LINE
LOT LINE
EASEMENT LINE
CENTER LINE
RAIL
MONUMENT TO MONUMENT
MONUMENT TO PROPERTY LINE
FOUND MONUMENT AS NOTED
BE TYPED MONUMENT AS NOTED
MONUMENT TO EASEMENT
EMERGENCY ACCESS EASEMENT
TYPICAL
ACRE
RECORD DATA

(R) RECORD OF SURVEY
 (P) PARCEL MAP
 (M) METRIC MAP
 (A) AERIAL PHOTOGRAPHY
 (C) CURVED CENTERLINE
 (E) EASEMENT
 (T) TYPICAL
 (A) ACRE
 (R) RECORD DATA

BASIS OF BEARINGS:

THE BEARINGS OF "MORIER BROTHERS" WEST BETWEEN FORD AND BARRINGTON ON THE CENTERLINE OF WEST CAPITOL AVENUE AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 881 OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY CLERK OF SANTA CLARA COUNTY, CALIFORNIA, WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3, MULLIKEN DISTANCE SHOWN BY 0.93894580 TO OBTAIN GRID DISTANCES.

REFERENCES:

(1) RECORD OF SURVEY (244 M 3)
 (2) RECORD OF SURVEY (631 M 13)
 (3) RECORD OF SURVEY (754 M 24)
 (4) PARCEL MAP (570 M 40)
 (5) PARCEL MAP (283 M 40)
 (6) PARCEL MAP (610 M 20)
 (7) TRACT 4768 (208 M 46)
 (8) TRACT 4370 (234 M 23)

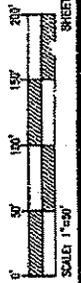
**TRACT 9773
CENTRIA**

APPROXIMATELY THAT CERTAIN AND MORE TRACT (T) THAT OFFERED TO GEORGE L. ARBON, LATE OF SANTA CLARA COUNTY, CALIFORNIA, AND HIS HEIRS, AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED IN BOOK 881 OF RECORDS OF SURVEY IN THE OFFICE OF THE COUNTY CLERK OF SANTA CLARA COUNTY, CALIFORNIA, ALL THAT PORTION OF LAND AS DESCRIBED IN RESOLUTION NO. 8801 OF THE CITY COUNCIL OF THE CITY OF MILPITAS ORDERING THE VACATION OF CAPITAL AVENUE FROM ABEL STREET TO MAIN STREET, WHICH SAID RESOLUTION WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON DECEMBER 16, 1986 UNDER RECORDERS SERIES NO. 14688800.

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

CARLSON, BARBEE AND GIBSON, INC.
 ENGINEERS SURVEYORS PLANNERS
 SAN RAMON, CALIFORNIA

MAY 2006



SHEET 4 OF 6

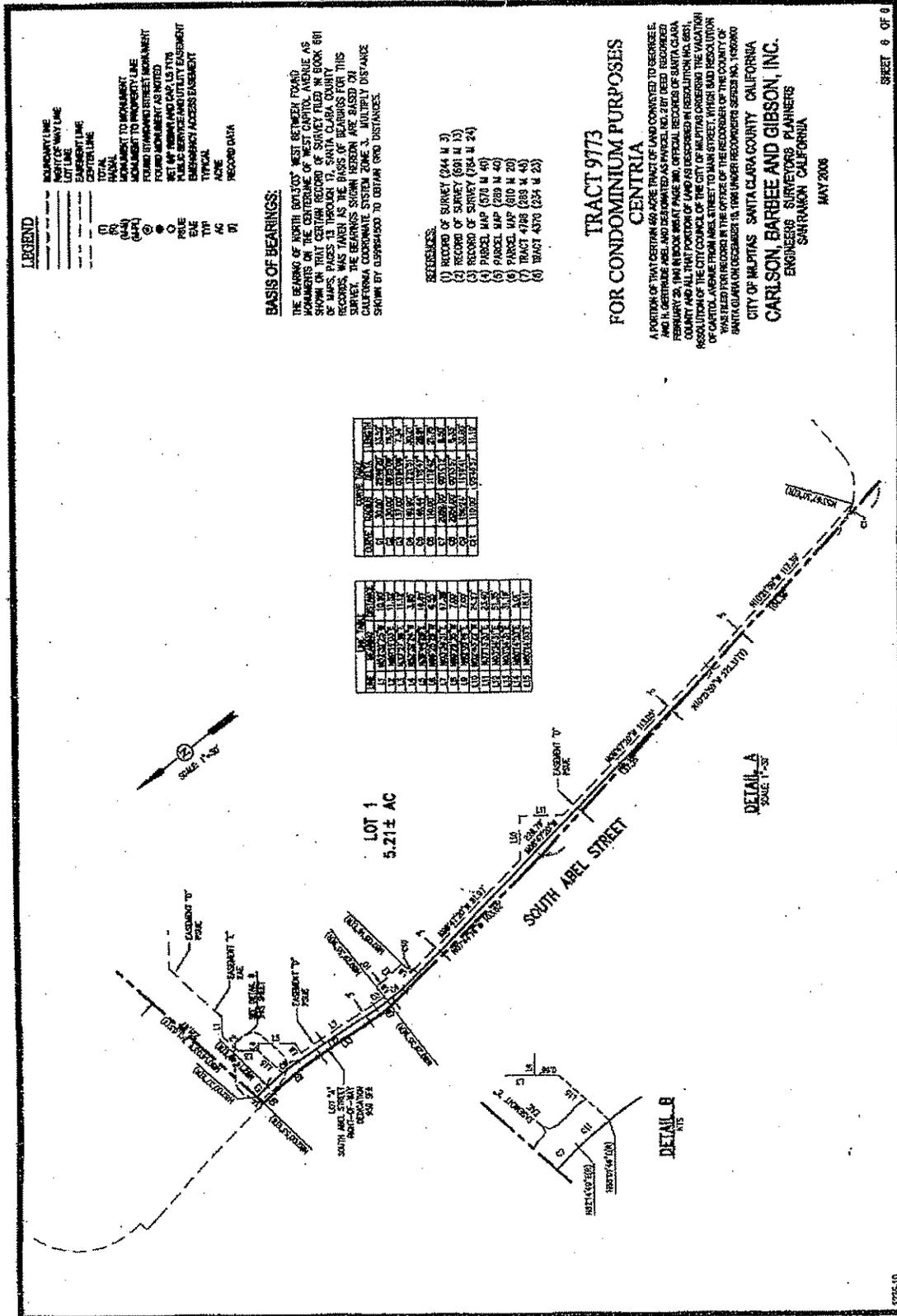


EXHIBIT B
FORM: NOTICE OF INTENT TO TRANSFER

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

To: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

Date: _____

Re: Notice of Intent to Transfer

Pursuant to the terms of the Resale Restriction Agreement and Option to Purchase, dated _____, the undersigned Owner(s), _____, hereby give(s) notice of his/her/their intent to transfer the property located at _____, Milpitas, California (the "Property"). Owner may be contacted at the Property or at the following address:

Owner's daytime telephone number is () _____

[If applicable: The proposed transfer of the Property is to the following person(s):

Name: _____

Address: _____

Telephone: () _____]

The proposed transfer is (check one):

Sale

Other

Specify: _____

Owner(s) signature(s):

EXHIBIT C
FORM: NOTICE OF EXERCISE

Date: _____

To: _____
Owner or Transferee

Address

Re: Notice of Exercise

The Milpitas Redevelopment Agency ("Agency") hereby gives notice that it is exercising its option to purchase the real property located at _____, Milpitas, California. The option has been granted to the Agency pursuant to the Resale Restriction Agreement and Option to Purchase between Owner and the Agency dated _____ and recorded on _____ as Instrument No. _____. [The Agency has assigned its option to purchase the real property to _____.] An escrow for the purchase will be opened with the First American Title Company.

MILPITAS REDEVELOPMENT AGENCY

By: _____

Its: _____

EXHIBIT D

BASE RESALE PRICE WORKSHEET

Date: _____
Owner: _____
Address: _____
Purchase Price: _____
Date of Purchase: _____
Years Owned: _____ years

METHOD #1: CALCULATION BASED ON INCREASE IN MEDIAN INCOME***

Present Median Income: \$ _____ Effective Date: _____
Family of four, County of Santa Clara
(at time of sale of unit)

Original Median Income: \$ _____ Effective Date: _____
Family of four, County of Santa Clara
(at time of purchase of unit)

Amount of Increase: _____
Family of four, County of Santa Clara
(Present median income minus original median income)

Increase in Price: _____ x _____ x _____ = _____

Method #1 Resale Price: _____ + _____ = _____

METHOD #2: CALCULATION BASED ON INCREASE IN MEDIAN INCOME

Present CPI: _____ Effective Date: _____

Original CPI: _____ Effective Date: _____

Rate of Increase: _____ per annum

Increase in Price: _____ x _____ x _____ = _____

Method #2 Resale Price: _____ + _____ = _____

Based on the above, the base resale price as of this date, _____, is:

By: _____

EXHIBIT E
REQUEST FOR NOTICE OF DEFAULT

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Agency Executive Director

(Space Above This Line For Recorder's Use Only)

REQUEST FOR NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. _____ on _____, _____, in the Official Records of Santa Clara County, California, and describing land therein as:

executed by _____, as Trustor, in which _____ is named as Beneficiary, and _____, as Trustee, be mailed to the Milpitas Redevelopment Agency, 455 Calaveras Boulevard, Milpitas, California _____, Attn: _____.

By: _____

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)

EXHIBIT F

DISCLOSURE STATEMENT

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE AGENCY FOLLOWING AGENCY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE HOUSING COST."

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____. **ANY SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL BE VOIDABLE AT THE ELECTION OF THE AGENCY.**

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT THE MILPITAS REDEVELOPMENT AGENCY.

YOU SHOULD ALSO READ THE RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE MILPITAS REDEVELOPMENT AGENCY OR FROM THE ESCROW COMPANY.

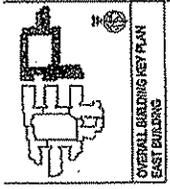
I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

BUYER

BUYER

EXHIBIT G
DISPERSAL PLAN

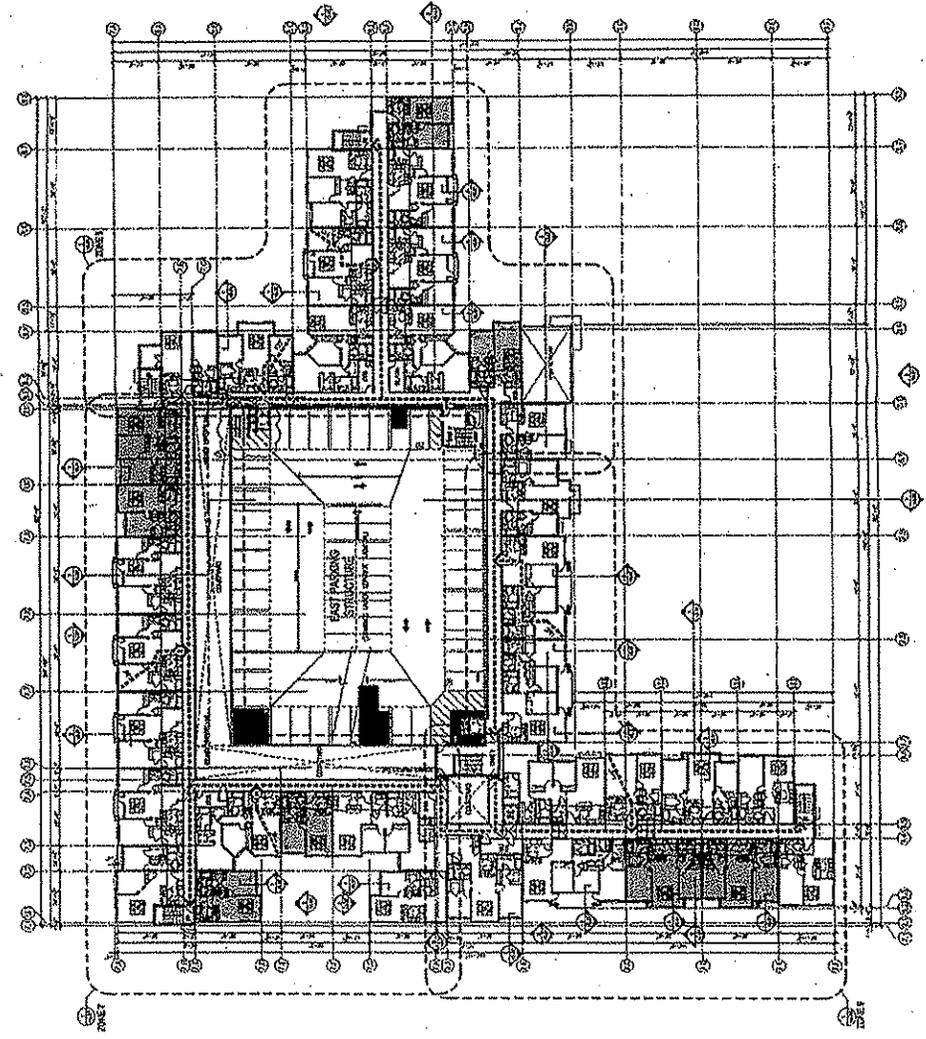
<p>DATE: 11/15/01 DRAWN BY: J. J. [unclear] CHECKED BY: [unclear]</p>	<p>CONTRACT: [unclear] PROJECT: [unclear] SHEET: [unclear]</p>	<p>CONTRACT: [unclear] PROJECT: [unclear] SHEET: [unclear]</p>
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OVERALL EAST BUILDING
Second Floor Plan

1



11/15/01 J. J. [unclear]

