

**Index of attachments for Centria West Amendments  
Resolution**

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## RESOLUTION NO. \_\_\_\_\_

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AND THE MILPITAS REDEVELOPMENT AGENCY MODIFYING LAND USE ENTITLEMENTS AND TERMINATING BY MUTUAL CONSENT THE OWNER PARTICIPATION AGREEMENT FOR THE CENTRIA WEST PROJECT AT 1102 SOUTH ABEL STREET**

**WHEREAS**, on September 16, 2008, Lyon Milpitas LLC entered into an Owner Participation Agreement with the Milpitas Redevelopment Agency to ensure the provision of 67 affordable housing units within the development commonly known as the Centria West project located at 1102 South Abel Street in Milpitas, California; and

**WHEREAS**, on April 20, 2009, an application was submitted by Lyon Reality Advisors, Inc., for a new Tentative Map for the project in order to allow for the addition of 54 more residential units, a Conditional Use Permit to deviate from height development standards for parking garage, and a Site Development Permit amendment to allow for changes to the originally approved façade of the project. In order to accommodate these design and development changes, the applicant also requested the termination of the Owner Participation Agreement by mutual consent and release from the obligation to provide affordable housing units within the Centria West project; and

**WHEREAS**, the Centria West project is located within the Zoned Multi-Family Very High Density (R4) with Transit Oriented Development (-TOD) and Site and Architectural (-S) and part of the Midtown Specific Plan (APN 086-12-021); and

**WHEREAS**, an environmental assessment was completed for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the City Council determine this project categorically exempt from further environmental review pursuant to Sections 15182 and 15168 of the CEQA Guidelines; and

**WHEREAS**, on July 8, 2009, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties; and

**WHEREAS**, on August 4, 2009, the City Council and the Agency Board held a duly noticed public hearing on the subject application, and considered evidence presented by City and Agency staff, the applicant, and other interested parties.

**NOW, THEREFORE**, the City Council of the City of Milpitas and the Board of Directors of the Redevelopment Agency of the City of Milpitas hereby find, determine, and resolve as follows:

1. The City Council and the Agency Board have considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The project is exempt from further environmental review pursuant to Section 15182 (Residential Projects Pursuant to a Specific Plan) and Section 15168(c)(2) (Program EIR) of the CEQA Guidelines. The project proposes the addition of 54 more residential units, thereby bringing the total unit count of the residential development to 381 residential units. The project is consistent with the activities and development considered in the Midtown Specific Plan Program EIR and is being undertaken pursuant to and in conformity with the Midtown Specific Plan guidelines, goals and policies.
3. The project is consistent with the Milpitas General Plan Policies 2.a-G-2, 2.a-G-3, and 2.a-I-1 in that the project promotes development that fills in the urban fabric and maintains the urban form while providing a variety of housing types and densities that meet the needs of individuals and families.
4. The project also complies with all requirements for the approval of a new Tentative Map for the project in order to allow for the addition of 54 more residential units, a Conditional Use Permit to deviate from height development standards for a combined parking garage and clubhouse structure, and a Site Development Permit amendment to allow for changes to the originally approved façade of the project.

- a. The layout of the site and design of the proposed buildings, structures and landscaping are physically compatible with and aesthetically harmonious with adjacent and surrounding development.
  - b. The project is also consistent with the development standards for developments in the “R4” Multiple Family Very High Density District and Transit Oriented Development Overlay District.
  - c. The project is consistent with the Midtown Specific Plan in that it provides a multi-family, high density project with a variety of unit types for all residences. The additional number of units proposed for the project is consistent with the per acre unit limitations for the overall Centria development under density averaging standards, the use of which is hereby found to be consistent with and in furtherance of the Midtown Specific Plan policies for high density residential developments in the transit oriented development (TOD) overlay zone around the Great Mall Parkway area. The project also provides bicycle parking to encourage alternate transportation uses and provides pedestrian connections to the Great Mall Transit and Light Rail Station, consistent with Midtown Specific Plan TOD overlay zone policies.
5. The project provides substantial public benefits that justify the termination of the Owner Participation Agreement and its requirement to provide 67 affordable housing units. The project provides substantial improvements over the development’s originally proposed floor plans, architecture, and amenity types and locations. These upgrades will provide additional variety in the City’s housing stock. Furthermore, the proposed project will provide additional tax increment and other revenue support that will benefit the Agency.
  6. Major Tentative Map No. MT09-0001, Site Development Permit Amendment No. SA09-0007, and Conditional Use Permit No. UP09-0009 are hereby approved, subject to Conditions of Approval attached hereto as Exhibit A.
  7. The Agency Executive Director is further directed to execute and/or record any documents necessary to terminate the Owner Participation Agreement By and Between the Milpitas Redevelopment Agency and Lyon Milpitas, LLC, dated September 16, 2008.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk/Agency Secretary

\_\_\_\_\_  
Robert Livengood, Mayor/Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney/Agency Counsel

## EXHIBIT A

### CONDITIONS OF APPROVAL

#### MT09-0001, SA09-0007, UP09-0009, AND EA09-0010

A request to approve a new Tentative Map to allow for the addition of 54 units, a Conditional Use Permit to deviate from height development standard for parking garage, and a Site Development Permit amendment to allow for the façade changes to the originally approved façade for Centria West located 1102 South Abel Street. (APN: 086-12-021)

#### General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on July 8, 2009, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)

2. All approved landscaping shall be permanently maintained and replaced in kind as necessary. (P)
3. MT09-0001, SA09-0007, UP09-0009, AND EA09-0010, Centria West shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a building permit, the project shall not be deemed to have commenced until the date of the building permit is issued and a foundation is completed.

Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of MT09-0001, SA09-0007, UP09-0009, AND EA09-0010 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)

4. Mitigation Measure Air-1: The following basic control measures are required to be implemented at all construction sites in the Midtown area. These measures shall be incorporated into construction contracts for projects in the Midtown area.
  - I. Water all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
  - II. Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
  - III. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
  - IV. Sweep daily (preferably with water sweepers) all paved access roads, parking and areas and staging areas at construction sites.
  - V. Sweep streets daily (preferably with water sweepers) if visible soil material is carried on to adjacent public streets.
  - VI. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
  - VII. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
  - VIII. Limit traffic speeds on unpaved roads to 15 miles per hour.

- IX. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- X. Replant vegetation in disturbed areas as quickly as possible.
- XI. Suspend excavation and grading activity whenever the wind is so high that it results in visible dust plumes despite control efforts.

(P)

5. Mitigation Measure Bio-1: Undeveloped areas proposed for development during the nesting season (April 15 to July 15) shall be surveyed for burrowing owls. The survey must follow the California Department of Fish and game (CDFG) protocol. The Survey report shall be submitted to Milpitas Planning Division for review and approval. If owls are observed during the surveys, or if a burrowing owl nest has been documented on the site within the last three years, a burrowing owl habitat map and mitigation plan must be prepared by a qualified ornithologist and submitted to the City for approval. (P)
6. Mitigation Measure Cult-3: Project developers shall be required to implement provisions for historical or unique archaeological resources accidentally discovered during construction in accordance with CEQA Guidelines Section 15064.5(e)(f). This requirement shall be specified in all building and grading permits. These provisions require the immediate evaluation of the find by a qualified archaeologist or historic archaeologist meeting the Secretary of the Interior's Professional Qualification Standards. If the find is determined to be an historical or unique archaeological resource, funding will be made available by the project developer and a schedule identified for implementing avoidance measures or appropriate mitigation. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place. (P)
7. Mitigation Measure Cult-4: In the event that human remains are encountered, City planning staff will be contacted and excavation or disturbance activities at the site or at any nearby area reasonably suspected to overlie adjacent human will be halted. This requirement shall be specified in all building and grading permits. The Santa Clara County coroner will be contacted and appropriate measures implemented. These actions would be consistent with the State Health and Safety Code Section 7050.5, which prohibits disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery. If the County coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased Native American. The most likely descendent may make recommendation to the landowner for the person responsible for the excavation work, for means of treating or disposing of, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98 (P)
8. A project-specific acoustical analysis shall be prepared to ensure that the interior noise levels will be 45 dBA DNL or lower and any outside recreation areas will be 65 dBA DNL or lower. The analysis shall be submitted to the City for review and approval prior to the issuance of a building permit. (P)
9. **Park In-Lieu Fees-** Prior to issuance of any building permits or final map approval, satisfaction of this obligation through dedication of acreage and/or improvements for park purposes equal to \$1,079,598 dollars shall be paid to the City. . Lyon has agreed to design and construct the property that was purchased by the City for a new park. The design and construction costs will be deducted for the Park In-Lieu Fee amount. If however, it can be demonstrated to City staff that this is not possible, the full amount of the In-lieu fee will be accepted. (P)
10. Developer must comply with all the conditions previously approved by the Planning Commission and City Council for Tentative Tract Map No. MA2005-4, Site and Architecture Approval No. SZ2004-9, and Use Permit No. UP2005-3. (E)
11. Developer shall submit plans and specifications necessary to construct at its sole cost and expense for the new public park parcel as described in Grant Deed Recorder's Serial No. 20167671, recorded March 13, 2009 (APN No. 086-12-010). The public park improvements shall be constructed prior to the time of issuance of building certificate of occupancy or as directed by the City's Planning Director and City Engineer. The new public park improvements shall be dedicated to the City along with all other related public improvements for the project. (E)

12. Developer shall submit an agreement for the density averaging of the project to the satisfaction of the City Attorney. The recordation of this agreement with the County of Santa Clara shall occur prior to the recordation of the final map.
13. Prior to building permit issuance, the developer shall obtain design approval and bond for construction costs of all necessary public improvements and proposed Public Park as identified below:
  - Public improvements along Great Mall Parkway and Abel Street as shown on the approved public improvements plans for the Tract 9733 (CENTRIA).
  - Construction of the new public park parcel as described in Grant Deed Recorder's Serial No. 20167671, recorded March 13, 2009 (APN No. 086-12-010).(E)
14. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance of the first production unit. (E)
15. The developer shall submit the following items with the building permit application and pay the related fees prior to building permit issuance:
  - The water connection fee of **\$64,020**, based on 55 additional units @ \$1,164 per unit.
  - The sewer connection fee of **\$77,330**, based on 55 additional units @ \$1,406 per unit.
  - Storm water connection fee was paid for as part of Centria East.
  - Water Service Agreement(s) for water meter(s) and detector check(s).
  - Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.(E)
16. Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)
17. Prior to building permit issuance, the developer shall contribute its "fair share" of traffic impact fee (based on a Midtown impact fee, Montague Expressway impact fee and Calaveras Boulevard impact fee) in the amount of **\$25,909**. (E)
18. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), plan check and inspection deposit, and 2.5% building permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. (E)
19. Make changes as noted on Engineering Services Exhibit "T" dated 6/24/2009, and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. (E)
20. The submitted drawings are not reviewed nor approved for fire permits and construction. These notes are provided to assist with the Fire Department permit during construction permit process. Comments are based on the current 2007 edition of the California Building Codes. (F)
21. A Community Warning System may be required for this project and equipment access easements may be required to be granted to the City of Milpitas. Please contact the Milpitas Fire Prevention Bureau. (F)
22. In-Building Public Safety Communications. In new building where adequate interior emergency radio communication is not possible, a system or equipment that will provide emergency radio coverage, acceptable to the fire code official, shall be installed. The City of Milpitas Fire Department may require one or more of the following

be performed at the developer's expense to insure adequate communications between emergency responders inside buildings and the public safety dispatch facility: (1) pre-construction design review by a professional engineering firm specializing in radio frequency systems, (2) post-construction radio coverage testing by a technician employed by the City, and (3) installation of equipment to mitigate in-building radio coverage problems and its maintenance, and periodic re-testing. International Fire Code Section 511.1, added by MMC (Milpitas Municipal Code) Section V-300-2.20 (F)

23. Fire apparatus access. Fire apparatus access shall be provided to all buildings and site.

- a) Driveways shall provide a minimum clear width of 26 feet. This requirement is for the use and function of a fire ladder apparatus. International Fire Code, Appendix D, Sections D103.1 and D105, adopted and amended by Milpitas Municipal Code.
- b) Fire apparatus access roads shall meet the Milpitas Fire Department turning radii guidelines and shall provide continuous apparatus travel. Turning radii for fire apparatus access roads shall be a minimum net clearance of 48 feet 6 inches for the outside radius and 28 feet 0 inches for the inside radius. The layout for the outside and the inside radius shall be from the same reference point. California Fire Code Section 503.2.4
- c) Fire apparatus access roads and emergency vehicle roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather capabilities. CFC Section 503.2.3
- d) No parking in fire access roads. The required access road shall be designated and clearly marked as a fire lane. The designated fire lane shall be identified as set forth in Section 22500.1 of the Vehicle Code. The designation shall be indicated (1) by a sign posted immediately adjacent to, and visible from, the designated place clearly stating in letters not less than one inch in height that the place is a fire lane, (2) by outlining or painting the place in red and, in contrasting color, marking the place with the words "FIRE LANE", which are clearly visible from a vehicle, or (3) by a red curb or red paint on the edge of the roadway upon which is clearly marked the words "FIRE LANE". CFC Section 503.3
- e) Access Control Devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which would inhibit rapid fire department emergency access to the site or building are installed, such devices shall be approved by the fire code official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress. (Knox box location shall be at 6 feet above finished floor, or fire access walkway or road). CFC Section 504.4 as amended by MMC V-300-2.16
- f) No parking is permitted in front of fire hydrants. Hydrants located on streets (public or private street) shall have an unobstructed clearance of not less than 30 feet per CA Vehicle Code 22514. Provide stripping per CA Vehicle Code 22500.1 at onsite hydrants. California Fire Code Section 508.5.4. CFC 508.5.4
- g) New above ground structure(s) shall not encroach or impede fire apparatus access. Projections into the driveway (or any other roadway) are not permitted. Fire apparatus access roads shall remain clear and unobstructed. CFC Section 503.4

(F)

24. Water supply for fire flow and sprinkler system.

- a. The utilities drawings provided are not reviewed nor approved for construction. The Fire Department reserves the right to designate the location of the fire department connection and the number and location of hydrants throughout the site (public streets and on-site private areas). California Fire Code 901.2
- b. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into or within the jurisdiction. The fire code official will determine the specific number and location of hydrants during construction permit process. CFC Section 508.1

- c. Private fire service mains and appurtenances shall be installed in accordance with NFPA 24. CFC Section 508.2.1
- d. Private fire service mains shall be periodically inspected, tested and maintained in accordance with Title 19 California Code of Regulations Chapter 5. CFC Section 508.5.3
- e. The location of the FDC/PIV (fire department connection/post indicator valve) shall be approved by the Fire Code Official. CFC Section 912.2

(F)

- 25. Fire Protection: When fire apparatus access roads or a water supply for fire protection is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction. Combustible construction shall not begin until water mains and hydrants are operational and fire apparatus access roads are installed. CFC Section 501.4 (F)
- 26. Premises Identification. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters and shall be consistent with Milpitas standardized addressing guidelines. California Fire Code Section 505.1, amended by MMC V-300-2.17 (F)
- 27. Access Control Devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which would inhibit rapid fire department emergency access to the site or building are installed, such devices shall be approved by the fire code official. All access control devices shall be provided with an approved means for deactivation or unlocking by the fire department. Access control devices shall also comply with Chapter 10 Egress. (Knox box location shall be at 6 feet above finished floor, or fire access walkway or road). CFC Section 504.4 as amended by MMC V-300-2.16 (F)
- 28. Automatic fire sprinkler systems. The proposed buildings (including parking structures) are required to be provided with an automatic fire sprinkler system. California Fire Code Section 903.2, amended by MMC Section V-300-2.25 (F)
- 29. The number and limitations for each fire sprinkler riser shall conform to the NFPA 13, Chapter 8, Section 8.2. (F)
- 30. Fire riser location. The fire sprinkler system riser shall not be located within electrical rooms or storage closets and shall be provided with clear access and working clearance. California Fire Code Section 903.3.5.3, added by MMC Section V-300-2.27 (F)
- 31. Standpipe system shall be installed in accordance with the California Fire Code Section 905.2 and NFPA 15. When stairs are provided with intermediate landings, the stand pipes shall be located at the bottom floor level, at the top floor level and at all intermediate landings. CFC Section 905.2 (F)
- 32. Portable fire extinguishers shall be selected, installed and maintained in accordance with CFC Section 906.2 and Chapter 3, Title 19 California Code of Regulations. CFC Section 906.2 (F)
- 33. A fire alarm system and detection system shall be provided for these structures per the California Fire Code Chapter 9, Section 907. CFC Section 907 (F)
- 34. Single- and multiple-station smoke alarms for R-2 Occupancy. Listed single- and multiple-station smoke alarms complying with UL 217 shall be installed in accordance with the provisions of the fire code and the household fire-warning equipment provisions of NFPA 72. CFC Section 907.2.10 (F)
- 35. Visible alarm notification appliances shall be provided in accordance with the CFC Sections 907.10.1.1 through 907.10.1.5. CFC Section 907.10.1 (F)

36. Fire alarm systems required by the California Fire Code or the California Building Code shall be monitored by an approved supervising station in accordance with NFPA 72. CFC Section 907.15 (F)
37. Fire Walls. When fire walls are required, the wall construction shall be completed (with all openings protected) immediately after the building is sufficiently weather-protected at the location of the wall(s). California Fire Code Section 1404.8, added by MMC V-300-2.35 (F)
38. Fire safety during construction, alteration or demolition of the building shall meet the requirements of CFC Chapter 14, and the Standards for Construction Site Fire Safety (un-024) by “unidocs” organization (<http://www.unidocs.org>). A Construction Site Fire Safety plan shall be submitted to the Milpitas Fire Prevention Division for review and approval prior to the start of combustible construction. (F)
39. Milpitas Municipal Code requirements for R-2 Occupancies over 4 stories. Milpitas Municipal Code Section V-300-2.29 added Section 914.12 to the California Fire. All Group B office buildings and Group R, Division 1 & 2 Occupancies, each having floor used for human occupancy located more than 60 feet above the lowest level of Fire Department vehicle access, or more than 4 stories in height. *(Prior to the purchase of materials, a materials list shall be submitted to the Fire Department for review and approval. The Fire Dept. reserves the right to make changes due to obsolete equipment or operation changes).*
- A. Equipment cache rooms shall be located on the 1<sup>st</sup> floor above the ground floor, and every other floor thereafter, or as directed by the fire agency.
- B. Each equipment storage room size should be a minimum of 4’ deep, full height (8’ to 9’), with a door the minimum width of 43”. A roll-up door can be used provided it has a 43” minimum width and unobstructed access. It shall have a power outlet to provide electricity, a light (connected to a ‘timer’), be sprinklered, and be locked with a ‘break-away’ type lock. Fixed shelving<sup>1</sup> shall be provided in a configuration approved by the fire agency to store items that may include, but not be limited to:
- 2 - Hotel Hose pack (double jacketed hose) with 100 feet of 1¾-inch fire hose and a 1½” variable fog nozzle (Task Force Tip, 1 ¾”) with a detachable bail, both having National Standard threads. Each pack to have 1-spanner wrench, 1- 2 ½” X 1 ½” gated wye, and 1-2 ½” X 1 ½” reducer coupling Red Head Brass 2 ½” X 1 ½” reducer
  - 2 - 50’ banded hose rolls (North American Hose)
  - 2 - 2-1/2” 10’ hose with one male end connector & female end connector both with National Standard threads (‘Stynger’)
  - 1-Hooligan tool (Paratech Hooligan, 11 pound)
  - 2 - pick head axe (Council Axe, Pick head)
  - 1-Little Giant Ladder, or 1- attic ladder; Fire agency to determine type.
  - 1- 3’ Ames Tru Temper Wrecking bar,
  - 12 -Open Door Industries, door stops
  - 4 – salvage covers (blue tarps) measuring 18’ X 24’ with grommets every 16”
  - 3-Spare sprinkler heads, for each type used (these are in addition to those required in the riser room)
  - 1-each Sprinkler head wrench(es), one for each type of head used
  - 1-Push type cart for use to move air bottles (type subject to Fire agency approval)
  - 1-Rapid Intervention Pack (RIT) (location to be determined by Fire agency)
  - 1- Evacuation Chair Stryker Model 6253 (per side)
  - Air Bottles\*: Fixed SCBA bottle storage rack, number of bottles to be determined by the fire agency. A minimum capacity for 8 bottles per closet shall be provided. Individual rack slots should be positioned for horizontal storage, and be oversized to accommodate changes in bottle sizes. Current manufacturer is ‘Survivair’ 4500psig, 45 minute bottle, H.P. carbon

\*When required, an air bottle filling system shall have the fill access port located at a reasonable distance from each structure that takes into account debris fall out & collapse zones. A ‘monument-type’ fill station port should

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<sup>1</sup> Shelving shall be every 16” after ladder placement is determined.

be located near a public roadway, not adjacent to the structure. The underground piping system, designed and installed with stainless steel welded fittings and piping, should terminate at this monument. A weather tight access panel with Knox-box key entry should also be provided. The storage system should be designed to provide enough air @ 4500 psig for up to fifty 45 minute bottles, prior to augmentation by an outside air source.  
(F)

#### 40. HI-RISE BUILDING

Please note the definition for high-rise building. AT the ground, the elevation shall be measured from the fire access road and not from the elevation of the 1<sup>st</sup> floor. If this building falls under the classification of hi-rise, the following Code Section will apply:

- California Fire Code Section 509
- California Building Code Section 403
- Milpitas Municipal Code Section V-300-2.28
- 

41. Stairs to roof. Buildings located four or more stories in height above grade plane, except those with a roof slope greater than four units vertical in 12 units horizontal, shall be provided with stairway to the roof. The Fire Dept. reserves the right to request more than 1 stairway up the roof based on the layout and access of the proposed building. California Fire Code 504.3 (F)

42. All elevators shall be size to meet the gurney size requirements per the California Building Code Section 3002.4a. Update note and plans to show compliance and update the elevator details to show the required minimum cab size.  
(F)

43. Provisions shall be made for emergency escape and rescue in Group R occupancies. Courts shall provide clear access to a public way. California Fire Code Section 1026. (F)

44. Where exit signs are required, additional approved low-level exit signs shall be provided in all interior corridors. California Fire Code Section 1011.6 (F)

45. ENCLOSED COURTS. Fire access shall be provided to enclosed courts for fire fighting and rescue operations.

a. Each court shall be designed to provide readily accessible method of bring a fire department ground ladder (36' long) into the courtyard. Please anticipate and accommodate personnel carrying ladder.

b. Interior courts shall be designed with means of "exit discharge."

(F)

46. Complete plans and specifications for all aspects of Fire-Protection systems shall be submitted to the Fire Department for review and approval prior to system installation. CFC Section 901.2 (F)

(P) = Planning

(E) = Engineering

(F) = Fire Prevention



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: July 8, 2009

**APPLICATION:** **MAJOR TENTATIVE MAP NO. MT09-0001, SITE DEVELOPMENT PERMIT AMENDMENT NO. SA09-0007, CONDITIONAL USE PERMIT NO. UP09-0009, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA09-0010**

**APPLICATION SUMMARY:**

A request to approve a new Tentative Map to allow for the addition of 54 units, and remove affordability restrictions; a Conditional Use Permit to deviate from height development standard for parking garage; and a Site Development Permit amendment to allow for the façade changes to the originally approved façade for Centria West. Such requests include a proposal to terminate by mutual consent an Owner Participation Agreement requiring the provision of affordable housing in the project.

**LOCATION:** 1102 South Abel Street (APN: 086-12-021)

**APPLICANT:** Lyon Reality Advisors, Inc., 4901 Brich Street, Newport Beach, CA 92660

**OWNER:** Lyon Reality Advisors, Inc., 4901 Brich Street, Newport Beach, CA 92660

**RECOMMENDATION:** **Staff recommends that the Planning Commission:**

- 1. Close the public hearing; and**
- 2. Adopt Resolution No. 09-032 recommending approval of the project to the City Council, subject to the conditions of approval.**

**PROJECT DATA:**

General Plan/

Zoning Designation:

Overlay Districts:

Specific Plans:

Related Permits:

Zoned Multi-Family Very High Density (R4)

Transit Oriented Development (-TOD) and Site and Architectural (-S)

Midtown

MA2005-4, SZ2004-9, UP2005-3, Midtown EIR, SZ2006-4, and UP2006-5

**CEQA Determination:** Categorically exempt from further environmental review pursuant to Section 15168 for Subsequent projects within the scope of the Programmed Midtown Specific Plan Environmental Impact Report of the California Environmental Quality Act (CEQA) guidelines.

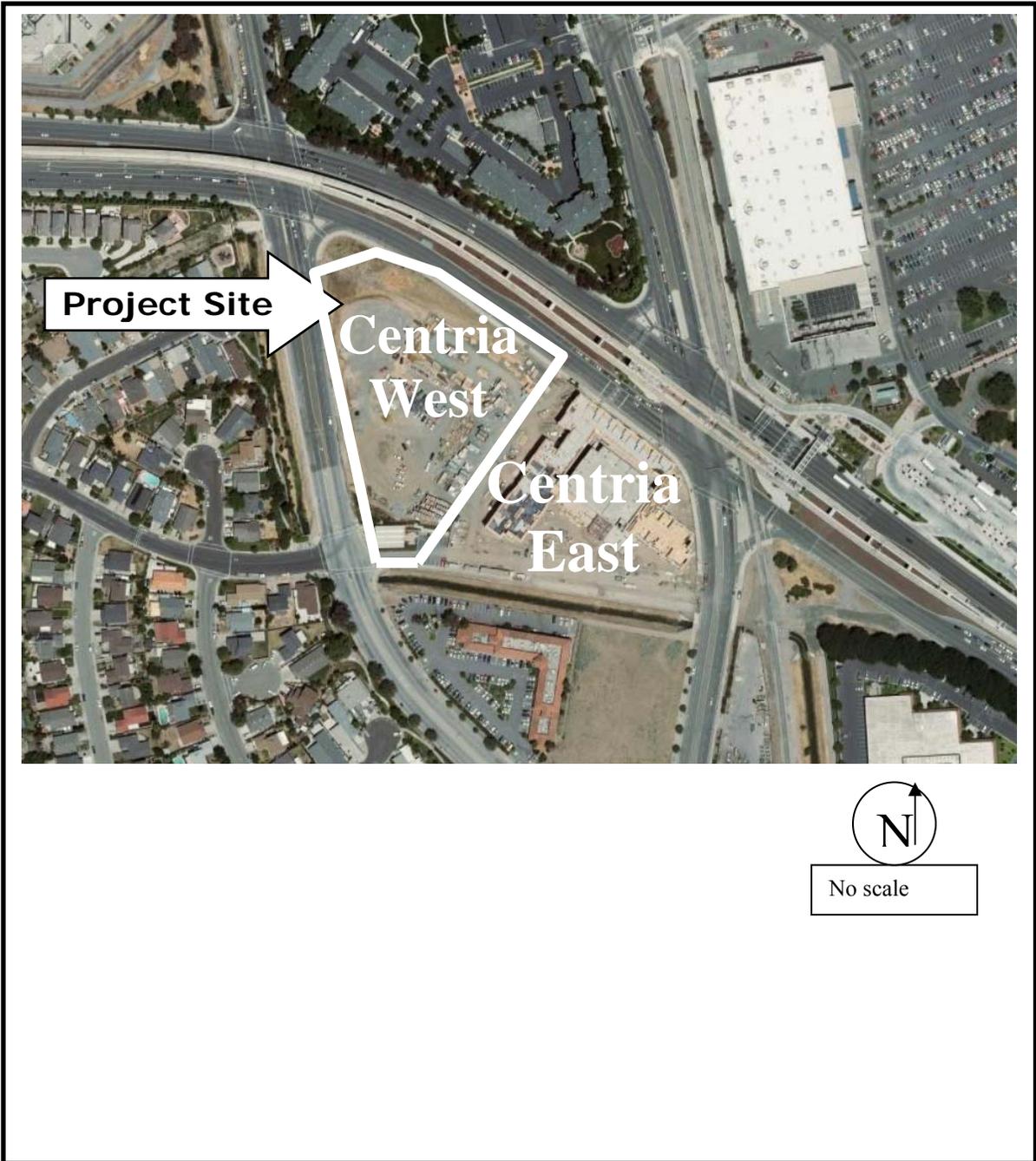
**PLANNER:** Tiffany Brown, Junior Planner

PJ #: 2583

ATTACHMENTS:

- A. Resolution No. 09-032
- B. Project Site Plans and elevations
- C. Project Initial Study
- D. Letter from the applicant requesting to eliminate the OPA
- E. Owner participation agreement (OPA) for Centria West

# LOCATION MAP



**BACKGROUND**

On May 11, 2005, the Planning Commission approved a Conditional Use Permit and 'S' Zone permit to allow for a two building, 481 unit Multi-Family Very High Density Project (sometimes referred to collectively as the "Centria Project"). The project proposal included a Major Tentative Map which subdivided the property into two parcels, allowing the project to be built in two separate phases (*see map on previous page*). The City Council approved the Major Tentative Map on August 16, 2005. D.R. Horton purchased the Centria Project and, with the City's approval, reduced the total amount of units from 481 to 464, with 93 units to be designated for lower income households.

Phase I of the project, known as Centria East, was built and completed in 2008 by D.R. Horton. This first building contains 137 condominium units with 26 units restricted for very-low, low, and moderate income households. The remaining 327 units in Phase II of the Centria Project, Centria West, have not yet been constructed. In June 2008, Lyon Milpitas, LLC ("Lyon") purchased the Centria West project from D.R. Horton. Lyon entered into an owner participation agreement (OPA) with the Milpitas Redevelopment Agency on September 16, 2008 to continue the provision of the remaining 67 affordable units within the Centria West project.

Lyon is proposing modifications to the Centria West approvals to include more units, enhancements and relocation of the common area amenities, and minor façade changes. The project is submitted pursuant to Chapter 1, Section 4 (Tentative Maps) and Chapter 10, Sections 57.03 and 57.04 (Site Development Permits and Conditional Use Permits) of Title XI of the Municipal Code. Lyon is also proposing the termination, by mutual party consent, the existing owner participation agreement so as to eliminate the affordable housing requirement.

**PROJECT DESCRIPTION**

The applicant proposes to add 54 units to the west portion of the approved Centria Project, bringing the total unit count to 381 units. The proposal includes a five story, multi-family residential building with the dwelling units (23 studios, 140 one bedroom units, 198 two bedroom units, and 20 three bedroom units) that wrap around an eight story parking structure with a club house and common area situated on the site. The club house and common area are located on top of the parking structure. The club house includes a club room, Wi Fi lounge, a small kitchen, restrooms, and a fitness center. The common area includes a heavily landscaped deck with spa and pool. The "wrap around" design is identical in concept to the architecture of the adjacent Centria East community and would promote visual and interactive consistency.

***Differences from approved to proposed***

The proposed modifications include changes to the number and type of units available, and a relocation of the common area and pool. (*See table on following page for unit differences*) The 2008 approval shows the common area with pool to be located on the ground level on the side of the project facing Abel and Centria East. This proposal, as previously stated moved the common area from the ground level street side to the top of the parking structure which will have more access to the daylight and the views of a high rise building.

**Table 1**  
**Unit Types**

<b>Unit Type</b>	<b>Centria West 2008 approval</b>	<b>Centria West Proposal</b>
Studio	0	23
One Bedroom	101	140
Two Bedrooms	186	198
Three Bedrooms	40	20
<b>Total</b>	<b>327</b>	<b>381</b>

***Development Standards***

The following table summarizes the project’s compliance with the Zoning Ordinance’s development standards.

**Table 2**  
**Development Standards**

	<b>Zoning Ordinance</b>	<b>Proposed</b>
<u>Density</u> (Maximum)	60 units per gross acre	60 units per gross acre with density averaging*
<u>Setbacks</u> (Minimum)		
North side of project; abutting S. Able Street and Great Mall Parkway Intersection	Minimum 12, Maximum 20 from property line	12 feet from property line
East portion of project; On Great Mall Parkway	Minimum 12, Maximum 20 from property line	Varies from 12 feet to approximately 20 feet
South portion of project; abutting Phase I of the Centria Project	Minimum 12, Maximum 20 from property line	As conditioned, a minimum of 12 feet from property line
West side of project abutting S. Abel Street	Minimum 12, Maximum 20 from property line	As conditioned, a minimum of 12 feet from property line
<u>Building Height</u> (Maximum)	Building height; 5 stories, 75 feet	Residential Buildings 5 stories, 50.1 feet tall Parking Garage 8 stories, 75 feet Club house on top of Parking Structure 1 story, 14.1 feet, 89’ measured from grade

\* Refer to Density Averaging discussion under the ADOPTED PLANS AND ORDINANCES section

**Building Height Exception**

The Midtown Specific Plan area allows for a deviation from the development standards if the proposed project conforms to the intent and the specific requirements of the Midtown Specific Plan. This exception may be approved by the Planning Commission upon review of a use permit, in accordance with the requirements of the zoning code (see *Zoning Ordinance section on page 10*) and the following two findings listed below.

**Table 3**  
**Midtown Exception Required Findings**

Finding	Consistency Finding
<i>Page 8-4: The deviation from the Midtown Specific Plan Standard meets the design intent identified within the Specific Plan and does not detract from the overall architectural, landscaping and site planning integrity of the proposed development.</i>	Consistent.
<i>Page 8-4: The deviation form the Midtown Specific Plan Standard allows for a public benefit no otherwise obtainable through the strict application of the Design Standard.</i>	Consistent.

**Architecture**

The new façade is slightly different with the introduction of varying colors and style from the original project, but the project still complements the constructed west portion of the development (Centria East) (see picture below).



The materials selected include masonry stucco with iron rod balconies, which will convey a sense of durability and permanence. The colors are earth tones and are compatible with the constructed Centria

East development. The proposed façade uses tiered, alternating heights and three dimension pop-outs that are colored differently, creating an aesthetically pleasing look and feel to the building.

***Open Space and Landscaping***

A minimum of 25 percent of the total site shall be usable open space or recreational facilities. Balconies, porches, or roof decks may be considered usable open space when properly developed for work, play or outdoor living areas.

**Table 4**  
**Usable Open Space Requirements**

<b>Overall Site Development</b>	<b>Required Usable Public Space (25%)</b>	<b>Proposed Usable Public Open Space</b>
226,512 sq.ft.	56,628sq.ft.	76,510sq.ft. (≈33%)

The applicant proposes a variety of trees, groundcover, and shrubs throughout the project. Per the Midtown Specific Plan, a landscaping base is provided within the front and side setbacks of the proposed development. The pedestrian walkways are heavily landscaped and provide buffering between the path way and adjacent residential units. The vehicular access ways are landscaped similarly to the adjacent streets and spaced evenly throughout the walkway.

***Parkland and Open Space***

All residential projects within the Midtown Specific Plan are shall provide park land at a ratio of 3½ acres per on 1,000 people. And per Section 10.4.05 (D) up to 43% of the public park and open space requirement may be provided in the form of private recreational space, which would include on-site usable common areas or private open space. If the project design does not include the amount of park and open space required, they then agree to pay a park in-lieu fee to the City for future development of parks. When the project was approved in 2005, an agreement was approved to included the design and construction of trails as park land and the design and construction costs would the be deducted from the remaining Park in-lieu fee. Upon development of Centria East, the required park area and in-lieu fee for the number of units was completed. The City used the In-Lieu Fee amount from Centria East to purchase the half acre parcel that abuts Centria West for the use of a park. The Park In-Lieu fees for Centria West are explained below.

The Park land and open space required per the 2005 agreement for Centria West is \$2,834 per unit. Centria West is proposing a total of 381 units. The amount of park land and open space per unit multiplied by the number of units is \$1,079,598 and therefore the Park In-Lieu fee for Centria West is \$1,079,598. Lyon has agreed to design and construct the property that was purchased by the City for a new park. The design and construction costs will be deducted from the Park In-Lieu Fee amount.

**Parking**

The project includes an eight story parking structure with a total of 650 parking spaces provided. The table below demonstrates compliance with zoning standards.

**Table 5**  
**Parking Requirements**

<b>Unit Type</b>	<b>Proposed # of Units</b>	<b>Parking Ratio</b>	<b>Required parking stalls</b>	<b>TOD Overlay allowed parking reduction (20%)</b>	<b>Proposed parking stalls</b>
Studio	23	1 per unit	23	18.4	19
1 bedroom	140	1.5 per unit	210	168	180
2 bedroom	198	2 per unit	396	316.8	332
3 bedroom	20	2 per unit	40	32	34
Guest parking required	-	15% of total required	100	80	85
<b>Total</b>				<b>615</b>	<b>650</b>
Bicycle Parking	-	Long Term: 1 space per every 4 units Short Term: 1 space per every 20 parking spaces	Long Term 95  Short Term 31	-	As Conditioned Will provide 95 long term and 31 short term bicycle parking spaces
<b>Total</b>					<b>126</b>

**Traffic**

In September 2008, Lyon purchased the west parcel (Centria West) with an entitlement to construct 327 units. Lyon is now seeking a redesign of the west parcel building, which would increase the unit count to 381 units or an additional 54 units.

In order to determine the impact of constructing an additional 54 units, a trip generation analysis was performed to document additional vehicular traffic generated from the project site. Table 6 below summarizes trip generation comparison of the approved and proposed projects for both Centira East and West combine.

**Table 6**  
**Trip Generation**

	Intensity	Trip Rate	Trips	AM Peak Hour			PM Peak Hour		
				%	In	Out	%	In	Out
<b>Approved Project</b>	462 DU	6/DU	2,772	8 20/80	44	178	9 70/30	174	75
<b>Proposed Project</b>	517 DU	6/DU	3,102	8 20/80	50	198	9 70/30	195	84
<b>Difference</b>	+ 55		+ 330		+ 6	+ 20		+ 21	+ 9
<b>Transit Reduction</b>			-30		- 1	- 2		- 2	- 1
<b>Net</b>			+ 300		+ 5	+ 18		+ 19	+ 8

As shown on Table 4, the proposed project will result in an additional 300 daily vehicle trips with an increase of 23 and 27 trips during the AM and PM peak hours, respectively. This increase in daily and peak hour traffic is considered insignificant and will not impact the surrounding street network.

***Affordable Housing***

The project site is located with City’s redevelopment area. California redevelopment law requires that 15% of all housing units built with the redevelopment area be affordable to very-low (6%) and low/moderate income (9%) households. The General Plan Housing Element contains polices that encourage projects to provide 20% of units for affordable housing.

The original Centria project was subject to an owner participation agreement (OPA) with the Redevelopment Agency to secure 93 (20%) of the 464 approved units as affordable housing. 26 of the 93 units were constructed with the completion of Centria East. The remaining 67 units were to be completed with Centria West. Lyon is now proposing to eliminate the existing Owner Participation Agreement that requires affordable housing in the Centria West project. Consistent with this effort, the current project design and entitlement proposal does not include any type of affordable housing units.

Staff is supporting the request remove this requirement because the Redevelopment Agency is currently exceeding its requirement as show in the table below:

	Total Units	Total Affordable Units	Very Low Income	Low / Moderate
Units Built & Under Construction	5,039	1,071 21%	538 11%	533 11%
RDA Requirements		756 15%	302 6%	454 9%
<b>Surplus</b>		<b>315</b>	<b>236</b>	<b>79</b>

Lyon has also made substantial improvements to the project floor plans, architecture, and location and type of amenities to make the project attractive to executives and other professionals. These upgrades will result in providing additional variety in the City’s housing stock which is helps fulfill other housing goals while still meeting the Redevelopment Agency requirements.

**ADOPTED PLANS AND ORDINANCES CONSISTENCY**

***General Plan***

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

**Table 7**  
**General Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>2.a-G-2: Maintain a relatively compact urban form</i>	Consistent.
<i>2.a-G-3: Provide for a variety of housing types and densities that meet the needs of individuals and families.</i>	Consistent.
<i>2.a-I-1: Promote development within the incorporated limits which acts to fill-in the urban fabric rather than providing costly expansion of the urban services into outlying areas.</i>	Consistent.

The project is consistent with the Milpitas General Plan in that it promotes development that fills-in the urban fabric and maintains the urban form while providing a variety of housing types and densities that meet the needs of individuals and families.

***Zoning Ordinance***

Pursuant to Chapter XI, Section 1 for Subdivisions, a Tentative Map requires a Conditional Use Permit with a recommendation from the Planning Commission and approval from the City Council. The change in the façade of for the project requires a Site Development Permit Amendment pursuant to Chapter XI, Section 10.57.03. The project proposal is consistent with the Zoning Ordinance in that:

1. Its design and improvements are consistent with the General Plan;
2. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development;
3. The project is consistent with the development standards for the R4 zoning with Transit Oriented Development Overlaying District; and
4. The proposal is consistent with the Midtown Specific Plan.

***Midtown Specific Plan***

The table and text below outline the project’s consistency with applicable Midtown Specific Plan Guiding Principles and Implementing Policies:

**Table 8**  
**Midtown Specific Plan Consistency**

<b>Policy</b>	<b>Consistency Finding</b>
<i>Policy 3.2: Provide for higher density residential development within the TOD overlay zone around Great Mall Parkway.</i>	<b>Consistent.</b>
<i>Policy 3.8: Encourage creativity in high-density residential design. Consider housing types, such as live/work lofts, that are not currently developed in the City.</i>	<b>Consistent.</b>

***Density Averaging***

Density averaging is the practice by which a higher density structure on a portion of a project site is allowed to exceed the usual density development limits, provided that the overall density on the entire project site conforms with applicable development standards set forth in a general plan, specific plan or other land use standard. In this manner, density increases in one area are offset by a corresponding decrease in allowable density in another part of the site. As previously described, the Centria West project was previously part of a single, larger development project that has now been broken up into three ownership groups: the Centria West project (owned by the applicant), an area designated for a future public park (owned by the City), and the completed Centria East multi-family project. The original Centria project used density averaging as shown below:

**Table 9**  
**Original Centria Densities**

	Acreage	Units	Units/Acre
Phase 1 – Centria East	3.0	137	39
Phase 2 – Centria West	5.2	327	63
<b>Total</b>	<b>8.2</b>	<b>464</b>	<b>57</b>
R4-TOD maximum density			60

The applicant’s proposal is utilize the 0.5 acre City owned parcel at the corner of Great Mall Parkway and Abel Street and a portion of the right-of-way around the project be included within the density averaging allow the increased unit count. This proposal would not exceed the 63 units/acre originally approved with the Centria project.

**Table 10**  
**Proposed Density**

	Acreage	Units	Units/Acre
Centria West parcel	5.2		
City parcel & right-of-way	0.8		
Sub-total	6.0	381	63
Centria East parcel	3.0	137	39
<b>Total</b>	<b>9.0</b>	<b>518</b>	<b>57</b>
R4-TOD maximum density			60

Such density averaging shall be recorded solely on the City and applicant properties and conforms to the Midtown Specific Plan policies of providing high density transit oriented residential developments and to encourage unique, upscale live/work uses not previously offered in the City.

### **ENVIRONMENTAL REVIEW**

The Planning Division conducted an initial environmental assessment of the project to determine whether the project is within the scope of the Midtown Specific Plan in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is within the scope of the Programmed Environmental Impact Report that was prepared for the Midtown Specific Plan area and therefore is categorically exempt from further environmental review pursuant to Section 15168 for Subsequent projects within the scope of the Program Environmental Impact Report of the California Environmental Quality Act (CEQA) guidelines. A copy of the initial study is included as Attachment C.

### **PUBLIC COMMENT/OUTREACH**

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

### **CONCLUSION**

The project proposal is consistent with the General Plan, the Zoning Ordinance, and the Midtown Specific Plan. The façade changes and addition of 54 units to the originally approved project adds a compatible new look to the building and a variety of units available for Milpitas residence. The height and tearing of the project is strategically done to reduce the massing of the building and still provide for the needs of the residence that will be living there. The relocation of the club house and common area to the top of the parking structure adds character to the parking structure and will be the first of its type within Milpitas.

### **RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission recommend approval to the City Council of permits MT09-0001, SA09-0007, UP09-0009, and EA09-0010, subject to the attached Resolution and Conditions of Approval.

#### *Attachments:*

- A. Resolution No. 09-032
- B. Project Site Plans and elevations
- C. Project Initial Study
- D. Letter from the applicant requesting to eliminate the OPA
- E. Owner participation agreement for Centria West

UNAPPROVED

## PLANNING COMMISSION MINUTES

July 8, 2009

## IX. PUBLIC HEARING

**1. MAJOR TENTATIVE  
MAP NO. MT09-0001,  
SITE DEVELOPMENT  
PERMIT AMENDMENT  
NO. SA 09-0007,  
CONDITIONAL USE  
PERMIT NO. UP09-  
0009, AND  
ENVIRONMENTAL  
IMPACT ASSESSMENT  
NO. EA09-0010**

Tiffany Brown, Junior Planner, presented a request to record a new tentative map to allow for the addition of 54 units, a conditional use permit to set the development standards, and a site development permit amendment to allow for the façade changes to the originally approved façade for Centria West located within the Midtown Specific Plan. Centria East was built and completed in 2008 by D.R. Horton. In June 2008, Lyon Milpitas purchased the Centria West project from D.R. Horton. Lyon is proposing modifications to the Centria West approvals to include more units, enhancements and relocation of the common area amenities, and minor façade changes. Ms. Brown recommended adopting Resolution No. 09-032 recommending approval of the project to the City Council, subject to the conditions of approval. Ms. Brown also stated that under the Conditions of Approval there is a typo for Condition No. 8 that should read **\$1,079,598**.

Vice-Chair Mandal asked about solar power. Ms. Brown deferred this question to the applicant.

**Peter D. Zak, Vice President of Development, Lyon Realty Advisors, Inc., 4901 Brich Street, Newport Beach, CA** – stated Lyon Realty purchased the property from D.R. Horton on September 2008. In order for the project to really work, their target is to focus on the high end luxury young professional move down potential buyer. Some of the enhancements are open floor plan, granite counter tops throughout, kitchen stainless steel appliances, and European cabinets to name a few. They are requesting the elimination of Below Market Rate units. They have also eliminated all compact parking spaces. Mr. Zak stated at least 70% of the units will have balconies. Mr. Zak stated the solar energy is something they are happy to evaluate and see if it is feasible to incorporate.

Chair Williams stated he agreed on the color scheme and thought the recreation area was a great concept. Chair Williams asked about the parking regulations. Mr. Zak stated they wanted to make sure they have adequate parking for the residents. Mr. Zak stated it is policing the situation regarding parking. The City needs to develop their own standards for parking ratios and the developer needs to abide by those and Lyon has surpassed those.

Vice-Chair Mandal asked about solar energy. Jack Selman, architect, stated that solar energy has the least economic returns. Mr. Selman stated they can explore using solar energy on the pool area and the recreation facility. When it comes to the units themselves it is not very cost effective.

Commissioner Tabladillo asked if the activities from the roof top be seen from the public. Mr. Zak stated the pool area will be screened by the Club House. Commissioner Tabladillo also asked about safety requirements. Mr. Zak stated there is Plexiglas surrounding the pool area for 2 reasons; 1) wind screen and 2) safety requirements of the height and security around the pool.

Chair Williams opened the public hearing.

**Guy Haas, 1277 Fallenleaf Drive, CA**, asked about parking. He is concerned about the elimination of compact parking spaces.

**Ms. Ching, Resident of Centria East**, is concerned with traffic in the area. She is opposed to additional units.

**Ms. Chan, Resident of Centria East**, stated she is also opposed of the additional units

in that area.

**Motion** to close the public hearing.

M/S: Mandal, Sandhu

AYES: 7

NOES: 0

ABSENT: 1 (Mark Tiernan)

ABSTAIN: 0

Vice-Chair Mandal asked the applicant to reconsider to add compact and full size parking. Mr. Zak stated they would be willing to work with staff to accommodate parking.

Commissioner Sandhu asked if the pool is screened from the Light Rail. Mr. Zak stated yes it is. It is screened by the Club House.

Bryan Otake, Assistant City Attorney, read the 2 additional Conditions of Approval. They are: 1) applicant shall work with City staff to explore adding compact size parking stalls to the current full size stall layout if such mixture could increase the total parking stall count, and 2) applicant shall be required to draft CC&R provisions to the satisfaction of Planning and City Attorney staff that create enforceable parking limitations in compliance with the parking requirements for said project.

**Motion** to adopt Resolution No. 09-032 recommending approval of the project to the City Council, subject to the conditions of approval and to include additional conditions of approval.

M/S: Galang, Mandal

AYES: 7

NOES: 0

ABSENT: 1 (Mark Tiernan)

ABSTAIN: 0

**OWNER PARTICIPATION AGREEMENT**

**by and between**

**MILPITAS REDEVELOPMENT AGENCY**

**and**

**LYON MILPITAS, LLC**

## OWNER PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into as of the 16<sup>th</sup> day of September 2008 (the "Effective Date"), by and between the MILPITAS REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency") and LYON MILPITAS, LLC LLC, a Delaware limited liability company ("Participant"). Agency and Participant are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

### RECITALS:

A. Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (California Health and Safety Code Sections 33000 et seq. (the "Redevelopment Law").

B. Participant is acquiring fee ownership 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 327 units, of which 67 units (the "Restricted Units") shall be affordable for very low, low, and moderate-income persons and households, subject to the applicable ordinances and regulations of and development permits issued by the City of Milpitas (the "City") and the terms and conditions set forth herein (said development, including both the market-rate units and the Restricted Units and all related improvements and fixtures being referred to herein as the "Project").

C. The Site is located within the Milpitas Redevelopment Project Area No 1 (the "Project Area"), the Redevelopment Plan ("Redevelopment Plan") for which was initially approved and adopted by the City Council of the City by Ordinance No. 192, as subsequently amended by Ordinance No. 192.14.

D. The Site and that certain real property located directly to the east of the site owned by Western Pacific Housing, Inc. (the "Adjacent Site") is currently subject to the terms and conditions of that certain Owner Participation Agreement (the "Original Agreement") dated as of August 17, 2005, by and between Fairfield Great Mall LLC ("Fairfield") and the Agency, as thereafter assigned to Western Pacific Housing, Inc. ("WPH") and thereafter amended by WPH and the Agency.

E. Participant is acquiring fee ownership in the Site from WPH pursuant to that certain Purchase and Sale Agreement dated as of June 12, 2008, as amended, and the Parties desire to enter into this Agreement to govern the terms and conditions of the development of the Site by Participant upon Participant's acquisition of the Site.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and the covenants and promises hereinafter contained, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Agency and Participant hereby agree as follows:

## AGREEMENT

### I. [§100] SUBJECT OF AGREEMENT

#### [§101] Purpose of This Agreement.

The purpose of this Agreement is to effectuate the Redevelopment Plan for Milpitas Redevelopment Project Area No. 1 by providing for the development of affordable housing for very low, low, and moderate income persons and households within the Project to be developed by Participant on the Site. It is also to confirm the termination of the Original Agreement as it relates to the Site.

#### [§102] The Redevelopment Plan.

This Agreement is subject to the provisions of the Redevelopment Plan that was approved and adopted by the City Council of the City on September 21, 1976, by Ordinance No. 192, and restated and amended on June 17, 2003, by Ordinance No. 192.14. The Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein; provided, however, that any amendments to the Redevelopment Plan adopted after the Effective Date of this Agreement which extend the duration of the Redevelopment Plan, which change the uses or development permitted on the Site, or which otherwise change the restrictions or controls that apply to the Site or otherwise affect Participant's obligations or rights with respect to the Site shall require the written consent of Participant.

#### [§103] The Project Area

The Project Area is located in the City of Milpitas, California, and the exact boundaries of the Project Area are specifically described in the eighth amendment of the Redevelopment Plan, which is available for public inspection in the Office of the Milpitas City Clerk at 455 East Calaveras Boulevard, Milpitas, California 95035.

#### [§104] The Site

The Site is that certain real property located within the Project Area more particularly described in the "Legal Description of the Site" attached hereto as Attachment No. 1. The general location of the Site is depicted on the "Map of the Site" attached hereto as Attachment No. 2.

#### [§105] Agency.

Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Redevelopment Law.

The principal office of Agency is located at 455 East Calaveras Boulevard, Milpitas, California 95035.

The term "Agency," as used in this Agreement, includes the Milpitas Redevelopment Agency and any assignee of or successor to its rights, powers, and responsibilities.

[\S106] Participant/Owner of the Site.

Participant is Lyon Milpitas, LLC, a Delaware limited liability company. The principal office of Participant is located at 4901 Birch Street, Newport Beach, California 92694. Upon closing of the purchase of the Site from WPH pursuant to the Purchase Agreement, Participant will own fee title to the Site as of the Effective Date of this Agreement and therefore qualifies as an "owner participant" as that term is used in the Redevelopment Plan and Redevelopment Law.

The term "Participant," as used in this Agreement, includes Lyon Milpitas LLC, and any permitted assignee of or successor to its rights, powers, and responsibilities.

[\S107] Transfer and Assignment.

A. The qualifications and identity of Participant are of particular concern to Agency, and it is because of such qualifications and identity that Agency is entering into this Agreement with Participant.

B. Prior to Agency's issuance of a Certificate of Completion for the Project, as set forth in Section 218, and except as provided in this Section 107 and in Section 214. Participant shall not assign or transfer this Agreement, or any of Participant's rights hereunder, or any interest in the Site or in the Project to be constructed thereon, directly or indirectly, voluntarily or by operation of law (individually and collectively a "Transfer"), without Agency's prior written approval. Any such purported Transfer in violation of this Agreement shall be null and void.

Not by way of limitation of the foregoing and except as expressly set forth in Paragraph C of this Section 107, for purposes of this Section 107 a "Transfer" shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of any of Participant's right, title, and interest in and to this Agreement, the Site, or the Project thereon.

C. Notwithstanding any other provision set forth in this Agreement to the contrary, the following shall not be deemed to constitute a "Transfer" within the meaning of this Agreement and Agency approval shall not be required therefor:

- (i) A Transfer to an entity in which Participant or an entity owned and controlled by Participant is the sole managing member or sole general partner of such entity;
- (ii) Transfers resulting from the death or mental or physical incapacity of an individual;
- (iii) Transfers in trust for the benefit of a spouse, children, grandchildren, or other family members;
- (iv) A transfer of stock in a publicly held corporation or the transfer of the beneficial interest in any publicly held partnership or real estate investment trust;

(v) The conveyance or dedication of any portion of the Site or any interest therein to the City or other governmental agency or public utility or the granting of easements or permits required in connection with the development and construction of the Project;

(vi) A sale of the Site or any portion thereof or any interest therein at foreclosure or a conveyance thereof in lieu of a foreclosure pursuant to a foreclosure by a "Permitted Mortgagee" (as that term is defined in Section 214);

(vii) The sale of any of the residential units in the Project (provided that nothing herein shall be deemed to allow Participant to permit occupancy of any such units prior to the City's issuance of a certificate of occupancy or final inspection permitting such occupancy);

(viii) Changes in the ownership of Participant, the 100% member of Participant ("Sole Member"), and/or the 100% member of the Sole Member, and/or Lyon Housing (Horton Portfolio) XXXIX, LLC ("Lyon Housing") as of the Effective Date, provided that in all events the day-to-day management of Participant shall continue to be controlled by Lyon Housing or one of its Affiliates;

(ix) Transfers of the interest of Lyon Housing in Participant to a new entity; provided that such new entity (a) shall have a net worth of at least One Hundred Million Dollars (\$100,000,000) and a cash and cash equivalent value of at least Twenty-Five Million Dollars (\$25,000,000) and (b) shall have expertise and experience in purchasing, developing and building residential condominium residential projects in the United States; and

(x) The encumbrance of the Site and any legal parcel thereof with construction and/or permanent financing used for financing the acquisition of the Site and/or development and management of the Project thereon, provided that the aggregate amount of any such encumbrances shall not exceed one hundred percent (100%) of Participant's total estimated Development Costs for the Project. As used herein, the term "Development Costs" shall include, without limitation, all of Participant's direct and indirect costs incurred to acquire the Site and develop the Project thereon through the date of Agency's issuance of its Certificate of Completion, including without limitation costs for planning, engineering, design, permit fees, financing costs (including interest and fees), construction/installation of public improvements and utilities that may have been required as conditions of approval for the Project, insurance, real estate taxes and assessments, bond premiums, and reasonable management and construction supervision fees, but expressly excluding the items paid for with the Agency Financial Assistance.

D. Approval of a proposed Transfer by Participant that requires Agency approval hereunder shall be given by Agency if all of the following conditions are satisfied:

(i) At the time of such proposed Transfer, this Agreement is in full force and effect, no default by Participant then exists with respect to this Agreement, and no default will exist with respect to the Site (or applicable portion thereof) upon consummation of the Transfer;

(ii) Agency determines in its reasonable discretion that the proposed assignee or transferee has demonstrated qualifications and experience that are sufficient in all material respects to perform the obligations of Participant hereunder that have not been performed as of the date of the proposed Transfer, including but not limited to: (a) financial strength; (b) experience in the successful development of first class residential condominium residential projects and the successful development and marketing of first class residential condominium residential projects similar to the size and quality of improvements to be constructed pursuant to this Agreement; (c) character and reputation; and (d) the ability to perform all of the agreements, undertakings, and covenants of this Agreement as to the Site or portion thereof to be so assigned or transferred; and

(iii) The proposed assignee or transferee (except any Permitted Mortgagee, or an assignee or transferee in connection with a foreclosure or deed in lieu of foreclosure of a Permitted Mortgagee's loan, or an assignee or transferee in connection with a rental of any residential unit, all of which shall not be required to execute an assignment and assumption agreement pursuant to this Section) shall have executed an express assignment and assumption agreement, in form and substance reasonably satisfactory to Agency's legal counsel, with respect to all of the obligations and liabilities of Participant set forth in this Agreement that arise on and after the effective date of the Transfer as to the Site or portion thereof to be so assigned or transferred.

(iv) The proposed assignee or transferee agrees to be bound by all the provisions of this Agreement, the Regulatory Agreement, and all conditions of approval attached to all discretionary approvals applicable to the Project.

E. In the event that Participant requests Agency's written consent to a proposed Transfer requiring Agency approval pursuant to this Agreement, Participant agrees to make available to Agency's legal counsel and/or economic consultant for their review and inspection such information that Agency may reasonably require in order to evaluate the solvency, financial responsibility, and relevant business acumen and experience of the proposed assignee or transferee. Such information shall include, without limitation, financial statements and a balance sheet of the proposed assignee or transferee as of a date within one hundred twenty (120) days of the request for Agency's consent and statements of income or profit and loss of the proposed assignee or transferee for the two-year period, if available, preceding the request for Agency's consent, if the same be available (or such other similar information that shall be available at the time the request for approval of the Transfer is made), and a written statement in reasonable detail as to the business and experience of the proposed assignee or transferee (or its principals) during the five (5) years preceding the request for Agency's consent. Participant will pay all Agency's reasonable costs incurred in reviewing information submitted by Participant under this Section.

Within thirty (30) days after the receipt of both Participant's written notice requesting Agency approval of a Transfer and whatever information Participant may submit regarding the proposed assignee or transferee, Agency shall respond in writing by stating what further information, if any, Agency reasonably requires in order to determine whether or not to approve the requested Transfer. Upon receipt of such a response, Participant shall promptly furnish to Agency such further information as may be reasonably requested. Agency's failure to timely request further information shall be deemed an acceptance of the completeness of the information initially provided by Participant.

Agency's Executive Director shall approve or disapprove any requested Transfer within thirty (30) days after Participant's request therefor is accepted as (or is deemed) complete. Any disapproval shall be in writing and shall specify the reasons for the disapproval and, if applicable, the conditions required to be satisfied by Participant in order to obtain approval. If Agency fails to notify Participant within said time of Agency's approval or disapproval of any requested Transfer, the request shall be conclusively deemed to have been approved at that time.

F. Upon the effective date of any permitted Transfer and any assignment or transfer which does not require Agency approval as provided for in Paragraph B of this Section 107, the transferor shall be released from its obligations under this Agreement arising after such date with respect to the Site, this Agreement, or the portion thereof that is so transferred, except as may be expressly provided for in the Agency-approved (if applicable) assignment and assumption agreement.

G. Notwithstanding the foregoing, the provisions of this Section 107 shall not apply after Agency issues its Certificate of Completion for the Project pursuant to Section 218 and after that date Participant may Transfer this Agreement and any of Participant's rights hereunder, and any interest in the Site or in the Project, without obtaining Agency's approval.

H. This Agreement may be terminated by Agency pursuant to Section 404 hereof if, in violation of this Agreement and without the prior written approval of Agency, Participant Transfers all or any portion of its rights under this Agreement, the Site, or the Project prior to Agency's issuance of a Certificate of Completion and fails to cure said default (or obtain Agency approval for such Transfer) within the time provided for in Section 401 for curing defaults or the time provided for in this Section 107 for obtaining Agency approval of a Transfer, as applicable. If Agency terminates this Agreement because of a wrongful Transfer by Participant, Participant shall promptly repay to Agency any Agency Financial Assistance referred to in Section 202 and more particularly described in Attachment No. 6 that Agency has paid to or for the benefit of Participant prior to the date of such termination, plus interest at the average prime lending rate then being quoted by the five (5) largest California banks as the rate charged to their most creditworthy commercial customers.

## II. §200 DEVELOPMENT OF THE PROJECT

### §201 Development of the Project by Participant.

Participant shall develop the Project on the Site according to the portions of the Scope of Development and the Project Description Conceptual Site Plan and Elevations relating to the Project and Site set forth in Attachment No 3.

### §202 Agency Financial Assistance.

### §203 [Reserved]Scope of Development/Time of Construction.

Participant agrees that the Project shall be developed in accordance with the portions of the Scope of Development relating to the Project and Site set forth in Attachment No. 3 / and within the time set forth in the Schedule of Performance set forth in Attachment No. 4.

### §204 Commencement of Construction Pursuant to Plans; Agency Approval of Dispersal Plan for Restricted Units.

Participant shall commence construction of the Project no later than the date set forth in the Schedule of Performance, Attachment No. 4.

The original dispersal plan for the Restricted Units at the Site is as set forth as Exhibit D in the Regulatory Agreement. It is understood and agreed that the purpose of the dispersal plan is to assure that the Restricted Units are not concentrated in small locations within the Project, that the required bedroom counts provided for in the Regulatory Agreement are achieved and maintained in accordance with the Regulatory Agreement, and that the locations and amenities for the Restricted Units are generally comparable in the aggregate with the locations and amenities provided with respect to the non-Restricted Units.

### §205 City Review of Plans, Drawings, and Related Documents.

Agency and Participant shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt consideration. Agency will request the cooperation of the City in issuance of all required entitlements, approvals, and permits.

### §206 Cost of Construction.

The cost of developing the Project on the Site shall be borne exclusively by Participant, except to the extent of the Agency Financial Assistance as set forth herein. Agency and Participant shall each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

### §207 City and Other Governmental Agency Permits and Fees.

Prior to the commencement of construction on the Site, or any portion thereof, Participant shall, at its own expense, secure, or cause to be secured, any and all permits which may be

required by the City and any other governmental agency with jurisdiction over such construction and pay all required fees therefor. Agency shall provide all proper assistance to Participant in securing these permits.

[§208] Construction Schedule.

Participant shall commence and complete all construction and development within the times specified in the Schedule of Performance or such reasonable extensions of these times as are provided for in Section 503 of this Agreement.

[§209] Insurance.

Prior to commencement of any work of excavation, grading, site preparation, or construction with respect to the Project and continuing thereafter until Agency issues its Certificate of Completion for the Project, Participant shall maintain the following minimum insurance coverages, issued by an insurer and in a form reasonably acceptable to the Agency:

- (i) A policy of Worker's Compensation Insurance in such amounts as will fully comply with the laws of the State of California and which shall indemnify, insure, and provide legal defense for both Participant and Agency against any loss, claim, or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Participant in the course of carrying out the work or services contemplated in this Agreement.
- (ii) Comprehensive General Liability Insurance written on a per occurrence basis in an amount not less than the amount of insurance coverage the Participant is required to maintain by the primary construction lender for the Project.
- (iii) Comprehensive Automotive Insurance written on a per occurrence basis in an amount no less than either (a) bodily injury liability limits of Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) per occurrence and property damage liability of Five Hundred Thousand Dollars (\$500,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate or (b) combined single limit liability of One Million Dollars (\$1,000,000). Said policy shall include coverage for owned, non-owned, leased, and hired cars.
- (iv) Builder's all-risk insurance in the amount of the estimated cost of construction.

The required insurance shall be provided under an occurrence form. Comprehensive General Liability, Comprehensive Automobile Liability, and property insurance policies shall be endorsed to name as additional insureds the Agency and the City, and their respective board members, officers, employees and, to the extent permitted by Owner's insurance carriers, agents. All policies and bonds shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to Agency pursuant to Section 504 below. Upon Agency's request at any time prior to the date that Agency issues its Certificate of Completion for the Project, Participant shall provide

certificates of insurance, in a form and with insurers reasonable acceptable to Agency, evidencing compliance with the requirements of this Section 209.

If a holder of a security interest in the Project requires greater insurance coverage, then such greater coverage shall apply in the place of the coverage described above for purposes of this Section 209.

[§210] Hazardous Materials.

A. Prior to the date that Agency issues its Certificate of Completion for the Project, Participant shall not use, generate, manufacture, store, or dispose of, on, under, or about the Site, or transport to or from the Site, any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including (without limitation) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to as "Hazardous Materials") except such of the foregoing as may be customarily and lawfully kept and used in and about residential property and in the construction thereof.

Participant shall immediately advise Agency in writing if at any time prior to the date that Agency issues its Certificate of Completion for the Project Participant receives written notice of (i) any and all enforcement, cleanup, removal, or other governmental or regulatory actions instituted, completed, or threatened against Participant or the Site pursuant to any applicable federal, state, or local laws, ordinances, or regulations relating to any Hazardous Materials ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against Participant or the Site relating to damage, contribution, cost recovery compensation, loss, or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are referred to as "Hazardous Materials Claims"); or if Participant discovers (iii) any occurrence or condition on any real property adjoining or in the vicinity of the Site that could cause the Site or any part thereof to be classified as "border-zone property" under California Health and Safety Code Sections 25220 et seq. or corresponding regulations, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability, or use of the Site under any Hazardous Materials Law.

B. Participant shall indemnify, defend (with counsel reasonably acceptable to Agency), and hold harmless Agency and its directors, officers, employees, and agents from and against any loss, damage, costs, expense, or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on or under the Site between the date Participant acquired fee title to the Site and the date Agency issues its Certificate of Completion for the Project, including (without limitation): (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Site and the preparation and implementation of any closure, remedial, or other required plans; and (iii) all reasonable costs and expenses incurred by Agency in connection with clauses (i) and (ii), including (but not limited to) reasonable attorneys' fees. This paragraph shall survive termination of this Agreement. Agency agrees to cooperate with Participant to mitigate its damages in such event.

[§211] Local, State, and Federal Laws.

Participant shall carry out the construction of the Project in conformity with all applicable laws, including all applicable federal and state labor laws and standards. Agency makes no representation or warranty with respect to the applicability or non-applicability of California's prevailing wage laws to the Project and Participant agrees to defend, indemnify, protect and hold harmless Agency and the City and their respective officers, employees, and agents from, regarding, and against any all liabilities, obligations, orders, claims, damages, fines, penalties; and expenses of any kind whatsoever, together with fees (including, without limitation; reasonable attorneys' fees), whenever arising resulting from or in connection with Participant's obligation to comply with all laws with respect to the construction of the Project, including, without limitation, all applicable federal and state labor laws and standards and the prevailing wage laws. Notwithstanding the foregoing, by entering into this Agreement Participant does not consent to the application to the Project or the Site of any federal, state, or local laws, rules, or regulations that may be adopted or approved after the Effective Date and Participant reserves all rights and remedies that it might have to challenge or contest the applicability of such laws, rules, and regulations in the absence of this Agreement.

[§212] Anti-discrimination During Construction.

Participant, for itself, its successors and assigns, agrees that in the construction of the Project provided for in this Agreement, Participant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual preference, marital status, ancestry or national origin.

[§213] Taxes, Assessments, Encumbrances, and Liens.

Prior to the date Agency issues its Certificate of Completion for the Project, Participant shall pay prior to delinquency all real property taxes and assessments assessed and levied on or against the Site. Upon failure to so pay, Participant shall remove, or shall have removed, any levy, or attachment made on the Site, or shall assure the satisfaction thereof within a reasonable time, but in any event, prior to the sale thereunder. Nothing herein contained shall be deemed to prohibit Participant from contesting the validity, applicability to Participant or the Site, or amount of any tax, assessment, encumbrance, or lien, or to limit the remedies available to Participant with respect thereto.

[§214] Encumbrances, Deeds of Trust, and Other Financing.

Participant shall have the right to encumber the Site and any legal parcel thereof prior to Agency's issuance of its Certificate of Completion with construction and/or permanent financing used for financing the acquisition of the Site and/or development and management of the Project thereon, provided that the aggregate amount of any such encumbrances shall not exceed one hundred percent (100%) of the Development Costs (as that term is defined in Section 107(C)(x) of this Agreement). The holder of any such mortgage or deed of trust is referred to in this Agreement as a "Permitted Mortgagee." No such financing Transfer shall be deemed to release Participant from any of its obligations set forth in this Agreement until Participant completes development of the Project, as evidenced by Agency's issuance of its Certificate of Completion.

The provisions and restrictions in this Section 214 shall terminate upon Agency's issuance of its Certificate of Completion for the Project (or, with respect to any separate legal parcel within the Site for which a separate Certificate of Completion has been issued, upon Agency's issuance of its Certificate of Completion for that parcel). Thereafter, there shall be no restrictions on the mortgages, deeds of trust, or other security instruments which may encumber the Site or any portion thereof.

[\$215] Permitted Mortgagee Not Obligated to Construct.

No Permitted Mortgagee shall in any way be obligated by the provisions of this Agreement to construct, or complete such construction of, the Project, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit, or authorize any Permitted Mortgagee to devote the Site to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement

[\$216] Notice of Default to Permitted Mortgagee; Right to Cure.

Whenever Agency shall deliver any notice or demand to Participant with respect to any breach or default by Participant in the completion of construction of the Project, Agency shall at the same time deliver to each Permitted Mortgagee (who has previously made a request therefor), a copy of such notice or demand. Each such Permitted Mortgagee shall (insofar as the rights of Agency are concerned) have the right, at its option within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such Permitted Mortgagee to undertake or continue the construction of the improvements or the completion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made), without first having expressly assumed Participant's obligations to Agency by written agreement satisfactory to Agency. The Permitted Mortgagee in that event must agree to complete, in the manner provided in this Agreement, the construction of the Project (or applicable portion thereof) to which the lien or title of such Permitted Mortgagee relates. Any such holder properly completing the Project shall be entitled, upon written request made to the Agency, to a Certificate of Completion from the Agency.

[\$217] Right of Agency to Cure Defaults.

Prior to Agency's issuance of its Certificate of Completion for the Project, in the event of a default or breach by Participant of its obligations under a loan issued by any Permitted Mortgagee, Agency shall have the right but not the obligation to cure the default prior to completion of any foreclosure. To this end, within five (5) days following receipt by Participant of any notice or demand from a Permitted Mortgagee with respect to any alleged default or breach pertaining to the mortgage or deed of trust of such Permitted Mortgagee, Participant shall deliver to Agency a copy of such notice or demand. Agency agrees to provide a minimum of fifteen (15) days written notice to Participant of Agency's intent to cure such default or breach. Agency shall be entitled to reimbursement from Participant of all costs and expenses reasonably incurred by Agency in curing the default. Agency shall also be entitled to a lien pursuant to

Civil Code § 2881, upon the Site to the extent of such costs and disbursements until paid by Participant. Any such lien shall be subject and subordinate to the rights of any Permitted Mortgagee.

[§218] Certificate of Completion.

The Project shall be constructed and developed in one phase. Promptly after completion of the construction of the Project by Participant, and upon Participant's written request, Agency shall execute in recordable form and cooperate with Participant in recording a Certificate of Completion.

The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of the Project required by this Agreement upon the Site and of full compliance with the terms hereof related to the Site. After issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants contained in the Regulatory Agreement to be recorded against the Site as provided for in Section 219 and those obligations of Participant that survive issuance of the Certificate of Completion, as set forth in clause (iii) of Section 303. Otherwise, after the issuance of the Certificate of Completion for the Site, neither Agency, City, nor any other person shall have any rights, remedies, or controls with respect to the Site that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties with reference to the Site shall be as set forth in the Regulatory Agreement and Section 303.

Agency shall not unreasonably withhold issuance of the Certificate of Completion. If Agency fails to furnish the Certificate of Completion within thirty (30) days after such written request, Participant shall conclusively be deemed entitled to issuance of the Certificate of Completion. If Agency timely disapproves a request by Participant for issuance of the Certificate of Completion, Agency shall provide Participant within said ten (10) day period with a written statement of the reasons for such disapproval and the actions Participant must take to obtain the Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping or minor non-life safety "punchlist" items that do not prevent occupancy of the residential units, Agency will issue its Certificate of Completion upon the posting by Participant of a cash deposit (or such other security as Agency may approve in its sole and absolute discretion) in an amount representing the fair value of the work not yet completed.

The Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with or satisfaction of any obligation of Participant to any Permitted Mortgagee or other holder of a mortgage or any insurer of a mortgage securing money loaned to finance the construction of the Project or any part thereof. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

[\\$219] Regulatory Agreement.

Prior to the issuance of the first building permit for the Project, Participant and Agency shall execute a Regulatory Agreement in the form attached hereto as Attachment No. 5 which provides for certain covenants, conditions, and restrictions to be imposed on the Site consistent with the terms and purpose of this Agreement. Agency is authorized to, and shall, record the Regulatory Agreement upon its mutual execution by Agency and Participant. The Regulatory Agreement will provide that any lender in a junior position to the Regulatory Agreement will receive notice of, and be given an opportunity to cure, any Participant default of any material Regulatory Agreement provision.

[\\$220] Rights of Access.

For the purposes of determining whether the Project is being developed or has been completed in accordance with this Agreement, after providing Participant with notice, representatives of Agency and the City shall have the reasonable right of access to the Site at all reasonable times prior to Agency's issuance of its Certificate of Completion without charges or fees for the purpose of inspection of the Site. Such representatives of Agency or City shall be those who are so identified in writing by Agency's Executive Director. The right of entry shall be at the sole risk and expense of Agency or City and any damage to the Site, or to the improvements constructed thereon caused by Agency or City shall promptly be repaired at the sole cost and expense of Agency or City. Except in the event of an emergency, Agency or City shall be required to provide a minimum of forty-eight (48) hours notice to Participant prior to entering onto the Site and at the time of any such entry the Agency or City representative(s) shall report first to the on-site construction superintendent. During the period of any such entry, the Agency or City representative(s) shall comply with all reasonable safety rules governing the development of the Project and shall not interfere with the course of construction.

**III. [\\$300] USE OF THE SITE**

[\\$301] General Use of the Site.

From and after recordation of the Regulatory Agreement against the Site in accordance with Section 219 of this Agreement, Participant shall use the Site consistent with the Regulatory Agreement for the period(s) of time set forth therein.

[\\$302] Obligation to Refrain from Discrimination.

From and after recordation of the Regulatory Agreement against the Site in accordance with Section 219 of this Agreement, Participant and the Site shall be subject to the non-discrimination covenants set forth in the Regulatory Agreement.

[\\$303] Effect and Duration of Covenants.

Except as expressly set forth hereinbelow, all of the Parties' respective rights and obligations set forth in this Agreement shall terminate and be of no further force or effect upon Agency's issuance of its final Certificate of Completion for the Project pursuant to Section 218:

(i) If this Agreement is terminated prior to Agency's issuance of the Certificate of Completion, the Parties' rights, remedies, and obligations shall be as otherwise provided for herein;

(ii) Those rights and obligations of the Parties set forth in the Regulatory Agreement (the form of which is attached hereto as Attachment No. 5) shall survive Agency's issuance of its Certificate of Completion and shall continue in effect for the period(s) of time set forth therein;

(iii) To the extent that any claims are pending against Participant or Agency at the time the Certificate of Completion is issued or any claims are thereafter made arising out of acts or omissions that occurred or allegedly occurred prior to Agency's issuance of its Certificate of Completion, the provisions in this Agreement relating to insurance and indemnity obligations (including without limitation Sections 209, 210, 211, and 220) shall remain in full force and effect; and

(iv) If Agency has not paid all of the Agency Financial Assistance to or for the benefit of Participant as provided for in Section 202 and Attachment No. 6 to this Agreement, Agency shall continue to have the obligation to make such payments.

#### IV. [§400] DEFAULT, REMEDIES

##### [§401] Defaults; No Cross-Defaults After Sale of Parcel.

Subject to Section 503, a failure or delay by either Party to timely perform any material term or provision of this Agreement constitutes a default under this Agreement. The non-defaulting Party shall notify the defaulting Party that a default exists and that the defaulting Party must cure or commence to cure same within thirty (30) days of receipt of the notice of default. The Party who so fails or delays must within thirty (30) days of receipt of the notice of default, commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction, or remedy with reasonable diligence and during any period of curing shall not be in default. Any failure or delay by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of such rights or remedies. Delays by either Party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert, or enforce any such rights or remedies.

Notwithstanding any other provision set forth in this Agreement to the contrary, in no event shall a default by Participant with respect to one of Parcels within the Site be deemed to constitute a default hereunder or under the Regulatory Agreement relating to the other Parcel within the Site, and in such event Agency's rights and remedies (including without limitation both legal and equitable remedies and its remedy of rescission or termination, if applicable) shall be limited to the Parcel as to which such default exists. This prohibition will apply where the parcels are owned by separate, unrelated owners. This prohibition will not apply where both parcels are under the ownership of a single owner.

[§402] Legal Actions.

In addition to any other rights or remedies, either Party may institute legal action to cure, correct, or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Santa Clara, State of California, in any other appropriate court in that county, or in the appropriate United States District Court in the State of California.

The non-defaulting Party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting Party's breach. Further, the non-defaulting Party may file legal action to require the defaulting Party to specifically perform the terms and conditions of this Agreement or the Regulatory Agreement.

[§403] Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

[§404] Agency Termination of Agreement Prior to Issuance of Certificate of Completion.

In addition to the other rights and remedies that Agency may have for a Participant default prior to Agency's issuance of a Certificate of Completion, if Participant commits a material default and fails to cure the same within the time set forth in Section 401 and Section 503 (if applicable), Agency shall have the right to terminate this Agreement upon delivery of written notice to Participant. In such event, Participant shall promptly repay to Agency any Agency Financial Assistance paid to or for the benefit of Participant prior to the termination, plus interest at the average prime lending rate then being quoted by the five (5) largest California banks as the rate charged to their most creditworthy commercial customers.

**V. [§500] GENERAL PROVISIONS**

[§501] Conflicts of Interest.

No member, official, officer, director, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Participant warrants that it has not paid or given, and will not pay or give, any official, employee, or agent of either Agency or the City any money or other consideration for obtaining this Agreement.

[§502] Non-liability of Agency and Participant Officials and Employees.

No member, official, or employee of the Agency shall be personally liable to the Participant in the event of any default or breach or for any amount which may become due to the

Agency or on any obligations under the terms of this Agreement. Agency acknowledges that this Agreement is entered into by a formal entity and Agency agrees that no individual officer, director, employee, official, agent, partner, member, or representative of Participant or the entities of which Participant is comprised shall have any personal liability under this Agreement.

[§503] Enforced Delay Extension of Times of Performance.

In addition to the specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions, freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of Agency shall not excuse performance by Agency) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Agency and Participant. The Executive Director of Agency shall have the authority on behalf of Agency to approve extensions of time not to exceed a cumulative total of Three Hundred Sixty-Five (365) days.

[§504] Notices and Communications.

Formal notices, demands, and communications between Agency and Participant shall be sufficiently given if personally delivered, delivered by a reputable same-day or overnight courier services that provides a receipt showing date and time of delivery, or delivered by United States mail, registered or certified, postage prepaid, return receipt requested, to the following addresses:

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

With a copy to:                      Milpitas Redevelopment Agency  
455 East Calaveras Boulevard  
Milpitas, CA 95035  
Attn: Michael J. Ogaz, Agency Counsel

If to Participant:                      Lyon Milpitas, LLC  
4901 Birch Street  
Newport Beach, CA 92660  
Attn: Frank T. Suryan, Jr.  
Telephone: (949) 838-1220  
Facsimile: (949) 838-1225

With a copy to:

Madden, Jones, Cole & Johnson  
111 W. Ocean Blvd., Suite 1300  
Long Beach, CA 90802  
Attn: Steven A. Jones  
Telephone: (562) 435-6565  
Facsimile: (562) 590-7909

All notices shall be deemed to be effective as of the earlier of the actual receipt by the addressee thereof or the expiration of forty-eight (48) hours after depositing in the United States Postal System in the manner described in this Section. Such written notices, demands, and communications may be sent in the same manner to such other addresses as a party may from time to time designate by notice delivered in the same manner as required herein.

[\$505] No Third Party Beneficiaries.

Notwithstanding any other provision set forth in this Agreement to the contrary, and excluding only those provisions in this Agreement that are expressly described as being intended to benefit the City or any existing or prospective Permitted Mortgagee, nothing herein is intended to create any third party beneficiaries to this Agreement, and no person or entity other than Agency and Participant and the permitted successors and assigns of either of them shall be authorized to enforce the provisions of this Agreement.

[\$506] Modifications.

Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each Party hereto.

[\$507] Binding Effect of Agreement.

This Agreement shall be binding upon and shall insure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns. This Agreement shall likewise be binding upon and encumber the Site and the successors in interest of Participant's fee interest in the Site for the applicable term of the various covenants set forth herein and in the Regulatory Agreement.

[\$508] Assurances to Act in Good Faith; Approvals and Consents.

Agency and Participant agree to execute all documents and instruments and to take all actions and to use their best efforts to accomplish the purposes of this Agreement. Agency and Participant shall each diligently and in good faith pursue the satisfaction of any conditions or contingences subject to their approval. Except to the extent this Agreement may specifically authorize a Party to withhold its approval or consent in its sole and absolute discretion, when either Agency or Participant shall require the consent or approval of the other Party in fulfilling any agreement, covenant, provision, or condition contained herein, such consent or approval shall not be unreasonably withheld, conditioned, or delayed by the Party from which such consent or approval is sought and if action is required to occur within a specific time or pursuant

to a specific procedure set forth herein such specific times and procedures shall be strictly enforced.

[§509] Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

[§510] Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

[§511] Entire Agreement.

This Agreement and all documents incorporated herein contain the entire understanding among the Parties hereto relating to the transaction contemplated herein and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein and shall be of no further force or effect.

[§512] Waiver.

All waivers of the provisions of this Agreement, unless specified otherwise herein, must be in writing and signed by the appropriate authorities of Agency or Participant, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Participant. No delay or omission by either Party hereto in exercising any right or power accruing upon the lack of compliance or failure of performance by the other Party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party hereto of a breach of any of the covenants, conditions, or agreements hereof to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions hereof.

[§513] Agency Indemnity of City.

Agency shall indemnify, defend, and hold harmless the City of Milpitas from and against any and all actions, suits, claims, damages liabilities, including legal costs and attorney's fees and expert witness fees, whether or not suit is actually filed, and any judgment rendered against City and/or its officers, employees, agent, representatives, and volunteers (hereinafter, collectively, "Claims") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with this Agreement.

[§514] Counterparts.

This Agreement may be executed in counterparts, each of which, when this Agreement shall have been signed by both Parties hereto, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

[§515] Authority.

Agency and each person executing this Agreement on behalf of Agency represents and warrants that: (i) it is a redevelopment agency duly organized and existing under the laws of the State of California; (ii) by proper action of Agency, Agency has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers; and (iii) the entering into this Agreement by Agency does not violate any provision of any other agreement to which Agency is a party.

Participant and each person executing this Agreement on behalf of Participant represents and warrants that: (i) it is a limited liability company duly organized and existing under the laws of the State of California; (ii) by proper action of Participant, Participant has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized principals or officers; and (iii) the entering into this Agreement by Participant does not violate any provision of any other agreement to which Participant is a party.

[§516] Estoppels.

At the request of Participant or any existing or prospective Permitted Mortgagee, Agency shall timely execute and deliver to Participant or such existing or prospective Permitted Mortgagee a written statement of Agency that no default or breach exists (or would exist with the passage of time, or giving of notice, or both) by Participant under this Agreement or the Regulatory Agreement, if such be the case, and certifying as to whether or not Participant has, as of the date of such certification, complied with any obligation of Participant as to which Participant or such existing or prospective Permitted Mortgagee may inquire. The form of any estoppel letter or certificate shall be prepared by Participant or the existing or prospective Permitted Mortgagee and shall be at no cost to Agency.

[§517] Litigation.

In the event any third party institutes a legal action to challenge the validity or enforceability of any provision of this Agreement or any approval by the City referred to in Attachment No. 3 or otherwise contemplated by this Agreement, the Parties agree to cooperate in defending said action as set forth in this Section 517. Not by way of limitation of the foregoing, without Participant's prior written consent, Agency shall not allow any default to be taken against it in any such action and shall not enter into any settlement or compromise of any claim which has the effect, directly or indirectly, of prohibiting, preventing, delaying, or further conditioning or impairing Participant's development of the Project or its use and maintenance of any portion of the Site in accordance with this Agreement. In addition, Agency shall keep Participant fully informed regarding the status of any such legal action. Any legal action taken by Agency in compliance with this Section 517 shall be at the Participant's costs, and the Participant shall reimburse the Agency for its reasonable legal costs.

[§518] Relationship of Parties.

The Parties agree that Agency and Participant are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement.

[§519] Administration of Agreement.

Following the approval and execution of this Agreement by Agency, Agency's Executive Director (or his or her designee) shall have the authority to administer this Agreement on Agency's behalf, including without limitation the authority to: (i) execute documents; (ii) approve Participant's evidence of required insurance coverages as provided for in Section 209; (iii) approve any Transfer to a Permitted Mortgagee as authorized in Section 214; (iv) issue the Certificate of Completion for the Project when the same shall have been completed in accordance with this Agreement; (v) approve the initial dispersal plan for the Restricted Units within the Project (and any subsequent amendments thereto), as provided for in Section 204 and the Regulatory Agreement, as applicable; and (vi) issue interpretations, waive provisions, and enter into minor amendments of this Agreement on behalf of Agency so long as such actions do not substantially change the uses or development permitted on the Site or add to the costs to Agency as specified herein or as agreed to by Agency's Board of Directors. The authority of the Agency Executive Director to approve extensions of the times of performance provided for herein shall be limited as set forth in Section 503. Any other waivers or amendments to this Agreement not specifically described in this Section 519 shall require the written consent or approval of Agency's Board of Directors.

[§520] Exhibits.

This Agreement includes all exhibits and attachments attached hereto, which by this reference are incorporated in this Agreement in their entirety. This Agreement also includes the Redevelopment Plan and any other documents expressly incorporated herein by reference, as though fully set forth herein.

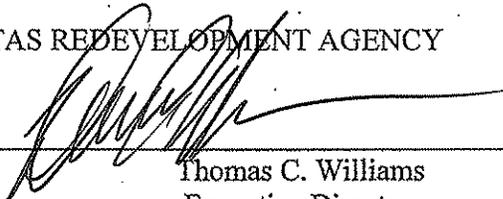
Attachment No. 1	Legal Description of the Site
Attachment No. 2	Map of the Site
Attachment No. 3	Scope of Development
Attachment No. 4	Schedule of Performance
Attachment No. 5	Regulatory Agreement

**VI. [§ 600] TIME FOR EXECUTION OF AGREEMENT BY AGENCY**

This Agreement, when executed by Participant, must be authorized, executed, and delivered by Agency to Participant within thirty (30) days after the date of signature by Participant or this Agreement shall be void, except to the extent that Participant may consent in writing to further extensions of time for the authorization, execution, and delivery of this Agreement. In no event shall this Agreement become effective until it has been approved by Agency's Board of Directors and executed by an authorized signatory on behalf of Agency.

MILPITAS REDEVELOPMENT AGENCY

By:



Thomas C. Williams  
Executive Director

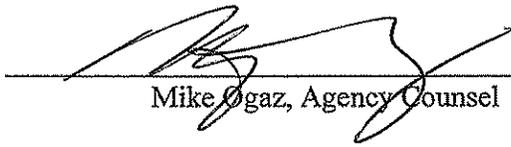
Its:

Attest:



Mary Lavelle, Agency Secretary

Approved as to form:



Mike Ogaz, Agency Counsel

PARTICIPANT:

LYON MILPITAS, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY

BY: LYON HORTON PORTFOLIO INVESTORS,  
LLC, A DELAWARE LIMITED LIABILITY  
COMPANY, ITS SOLE MEMBER

BY: Lyon Housing (Horton Portfolio) XXXIX, LLC , A  
Delaware limited liability company, Its Managing  
Member

By:



Name: Frank T. Suryan, Jr

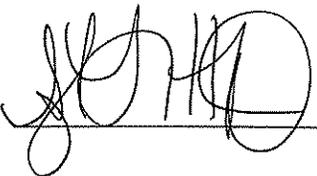
Title: President

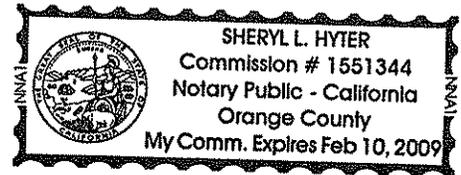
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Orange )

On Sept. 12, 2008 before me, Sheryl L. Hyter, Notary Public, personally appeared Frank T. Suryan, Jr., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Santa Clara }

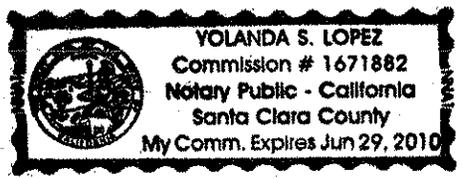
On September 16, 2008 before me, Yolanda S. Lopez, Notary Public  
Date Here insert Name and Title of the Officer

personally appeared Thomas C. Williams  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
 Signature Yolanda Lopez  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

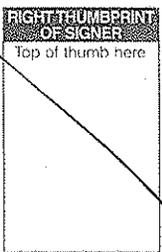
*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: OPA between Milpitas RDA and Lyons Milpitas  
 Document Date: September 16, 2008 Number of Pages: 21 w/ attachments  
 Signer(s) Other Than Named Above: Frank T. Suryan, Jr. Lyon Milpitas

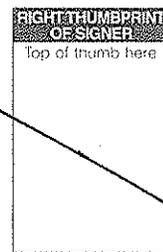
**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: Thomas C. Williams
- Individual
  - Corporate Officer — Title(s): Executive Director
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: City of Milpitas RDA

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



Signer Is Representing: \_\_\_\_\_

**ATTACHMENT NO. 1**

**LEGAL DESCRIPTION OF THE SITE.**

**LEGAL DESCRIPTION**

**Attachment No. "1"**

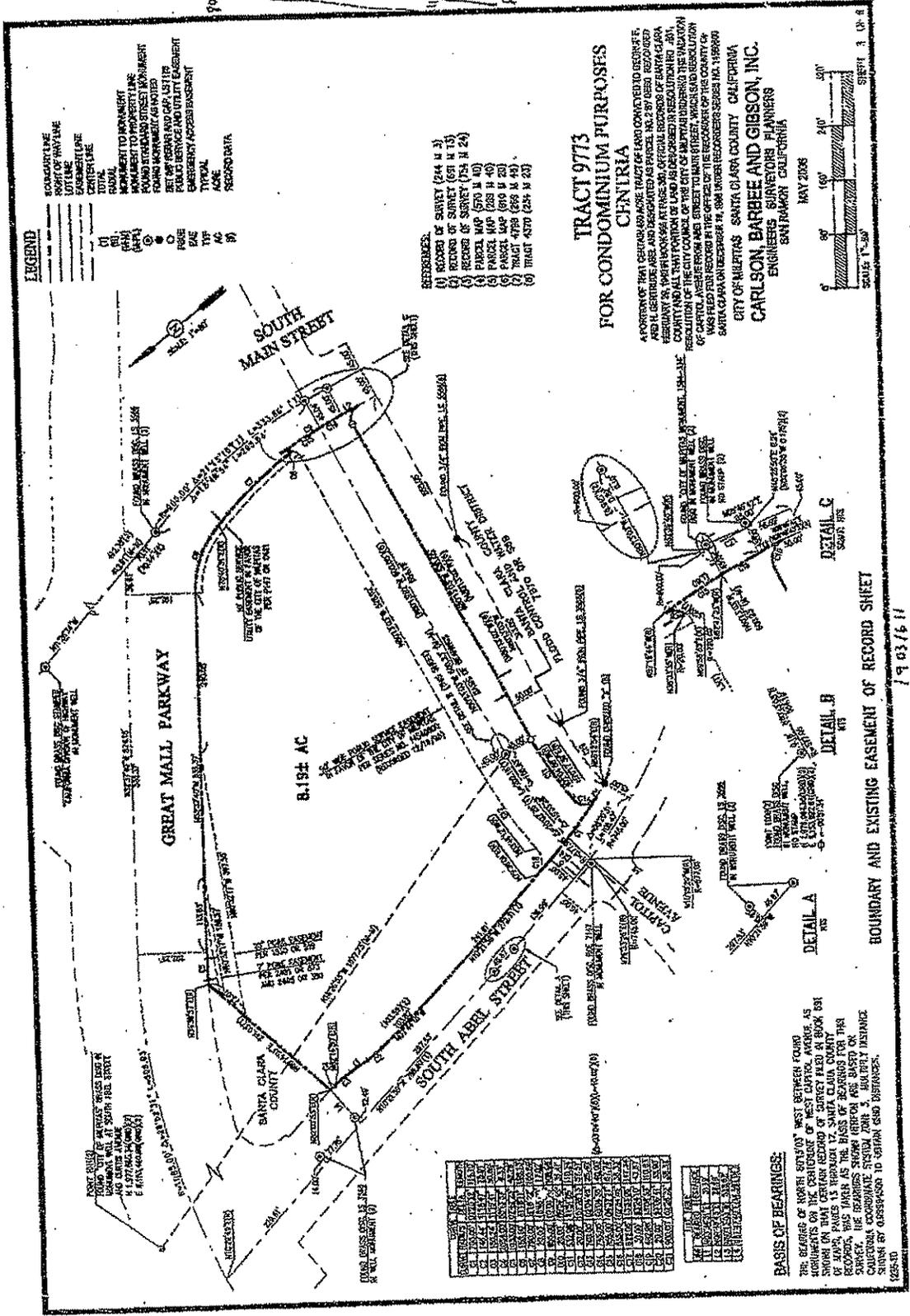
THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MILPITAS , COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lot 1, as shown on that certain Map entitled, "Tract No. 9773 Centria", which was filed in the office of the Recorder of the County of Santa Clara, State of California on July 24, 2006 in Book 804 of Maps, pages 9 through 14.

APN: 086-12-021

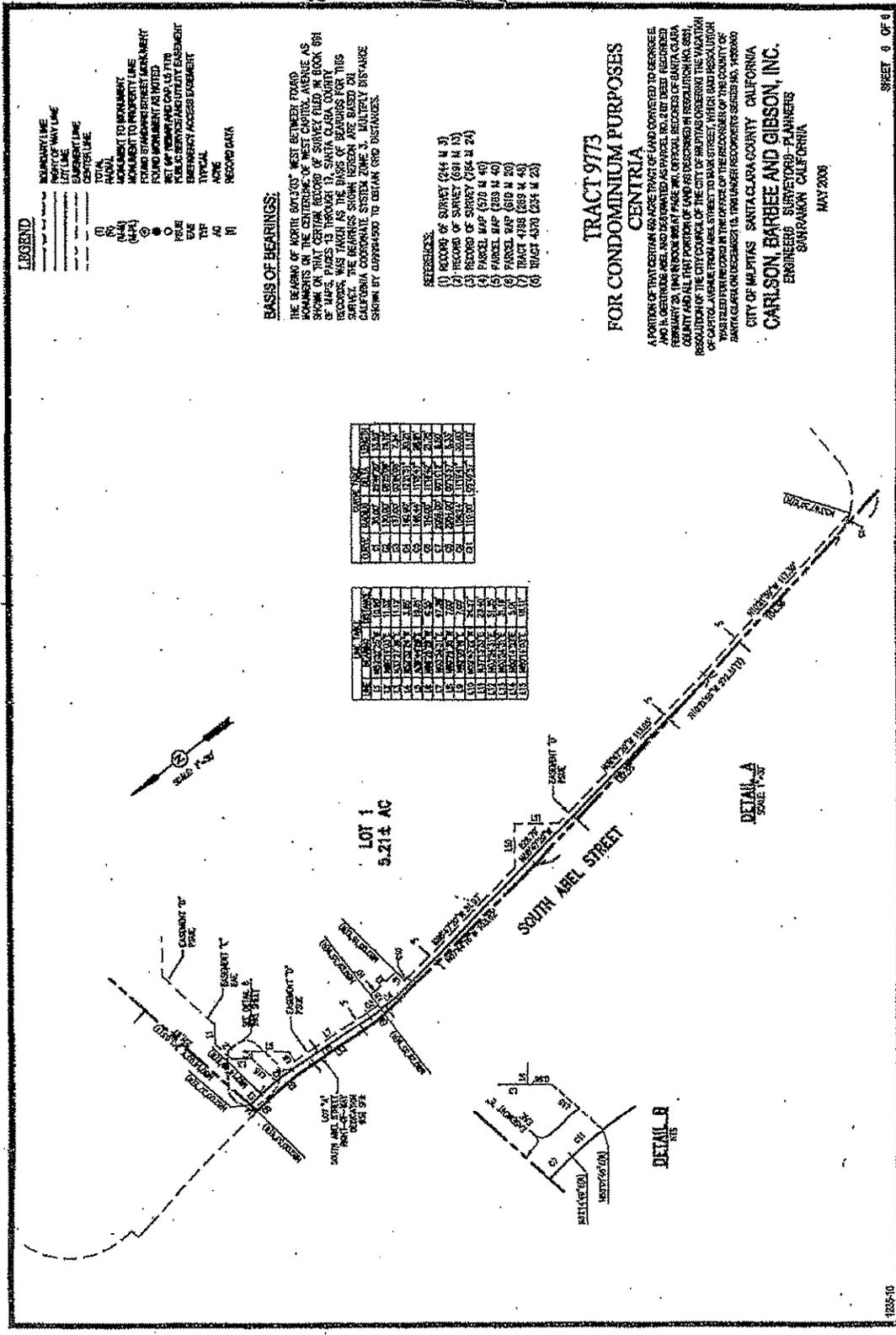












**LEGEND**

MONUMENT LINE  
 RIGHT OF WAY LINE  
 EASEMENT LINE  
 CENTERLINE  
 TOTAL  
 PARCEL  
 MONUMENT TO MONUMENT  
 MONUMENT TO PROPERTY LINE  
 PROPERTY TO MONUMENT  
 EASEMENT TO MONUMENT  
 EASEMENT TO EASEMENT  
 PUBLIC SERVICE UTILITY EASEMENT  
 PUBLIC SERVICE UTILITY EASEMENT  
 TYPICAL  
 ACCESS  
 RECORD DATA

**BASIS OF BEARINGS:**  
 THE BEARINGS OF NORTH 85°30' WEST BETWEEN PARCELS 1 AND 2 AND THE BEARINGS OF SOUTH 85°30' EAST BETWEEN PARCELS 1 AND 2 WERE OBTAINED FROM THE RECORDS OF SURVEY FILED IN BOOK 681 OF MAPS, PAGES 13 THROUGH 15, SANTA CLARA COUNTY RECORDS, WHICH WERE TAKEN AS THE BASIS OF BEARINGS FOR THIS SURVEY. THE BEARINGS SHOWN HEREON ARE BASED ON CALIFORNIA COORDINATE SYSTEM ZONE 3, HORIZONTAL DISTANCE SHOWN BY APPROXIMATION TO OBTAIN GRID DISTANCES.

- REFERENCES:**
- (1) RECORD OF SURVEY (244 N 3)
  - (2) RECORD OF SURVEY (691 N 15)
  - (3) RECORD OF SURVEY (784 N 23)
  - (4) PARCEL MAP (570 N 40)
  - (5) PARCEL MAP (269 N 40)
  - (6) PARCEL MAP (610 N 30)
  - (7) TRACT 4158 (289 N 43)
  - (8) TRACT 4578 (234 N 23)

**TRACT 9773  
 CENTRIA  
 FOR CONDOMINIUM PURPOSES**

A PORTION OF TRACT 9773 (AND ADJACENT PARCELS) AND COVERED TO BESEES AND IS DESTROYED AND DESTROYED AS PARCEL NO. 210, BESEES RECORDS FEBRUARY 20, 1940 IN BOOK 681, OFFICIAL RECORDS OF SANTA CLARA COUNTY AND ALL THAT PORTION OF LAND AS DESCRIBED IN RESOLUTION NO. 8881, RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ORDERING THE VACATION OF CAPITAL AVENUE FROM ADEL STREET TO MAIN STREET, WHICH SAID RESOLUTION WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, CALIFORNIA, TO THE PUBLIC RECORDS OF SAID COUNTY, BESEES RECORDS MAY 20, 1940 IN BOOK 681, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

**CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA**  
**CARLSON, BARBEE AND GIBSON, INC.**  
 ENGINEERS, SURVEYORS - PLANNERS  
 SAN JOAQUIN, CALIFORNIA  
 MAY 2006

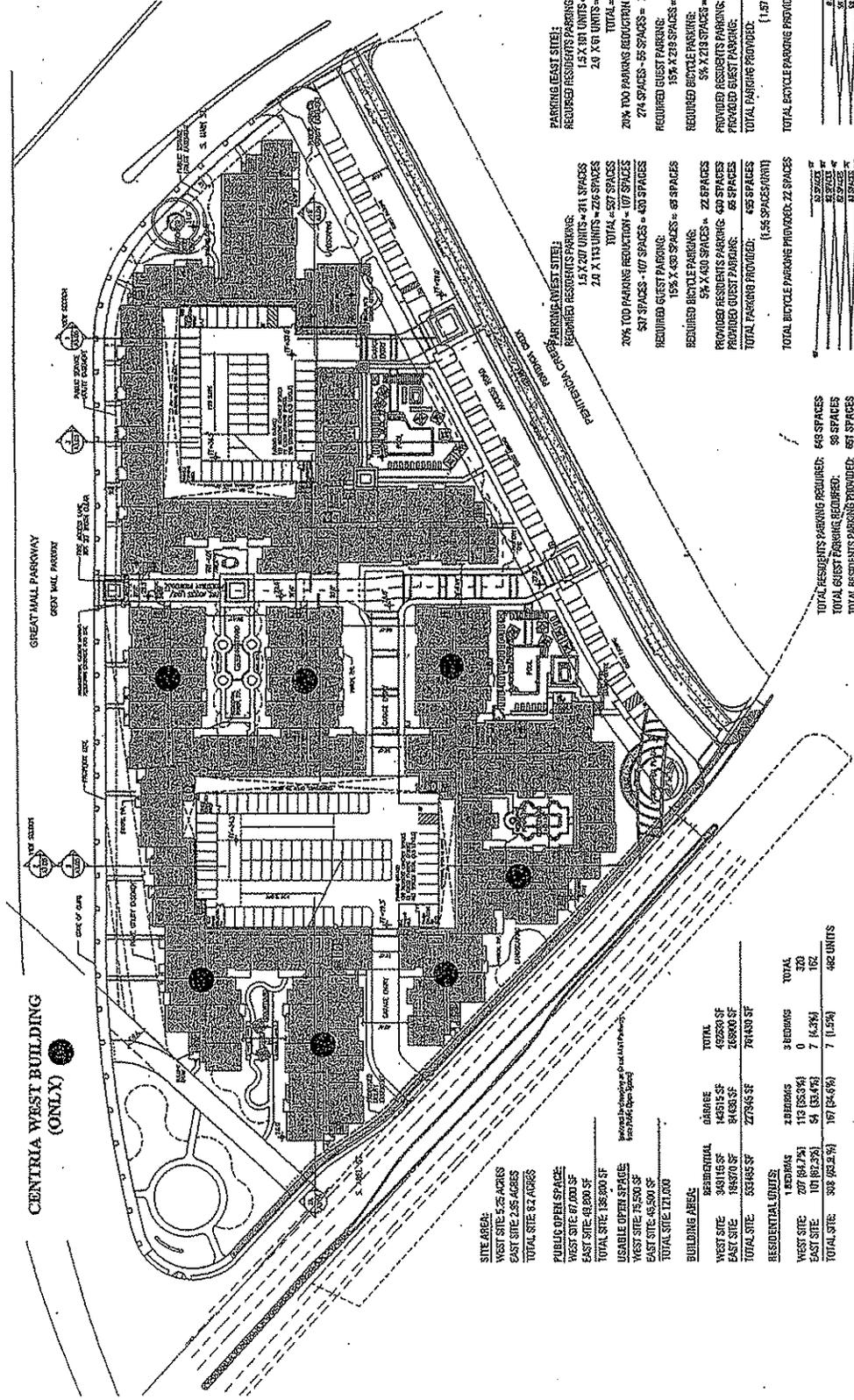
LINE NO.	BEARING	DISTANCE
1	N 85°30'00" W	100.00
2	S 85°30'00" E	100.00
3	N 85°30'00" W	100.00
4	S 85°30'00" E	100.00
5	N 85°30'00" W	100.00
6	S 85°30'00" E	100.00
7	N 85°30'00" W	100.00
8	S 85°30'00" E	100.00
9	N 85°30'00" W	100.00
10	S 85°30'00" E	100.00
11	N 85°30'00" W	100.00
12	S 85°30'00" E	100.00
13	N 85°30'00" W	100.00
14	S 85°30'00" E	100.00
15	N 85°30'00" W	100.00
16	S 85°30'00" E	100.00
17	N 85°30'00" W	100.00
18	S 85°30'00" E	100.00
19	N 85°30'00" W	100.00
20	S 85°30'00" E	100.00
21	N 85°30'00" W	100.00
22	S 85°30'00" E	100.00
23	N 85°30'00" W	100.00
24	S 85°30'00" E	100.00
25	N 85°30'00" W	100.00
26	S 85°30'00" E	100.00
27	N 85°30'00" W	100.00
28	S 85°30'00" E	100.00
29	N 85°30'00" W	100.00
30	S 85°30'00" E	100.00

LINE NO.	BEARING	DISTANCE
1	N 85°30'00" W	100.00
2	S 85°30'00" E	100.00
3	N 85°30'00" W	100.00
4	S 85°30'00" E	100.00
5	N 85°30'00" W	100.00
6	S 85°30'00" E	100.00
7	N 85°30'00" W	100.00
8	S 85°30'00" E	100.00
9	N 85°30'00" W	100.00
10	S 85°30'00" E	100.00
11	N 85°30'00" W	100.00
12	S 85°30'00" E	100.00
13	N 85°30'00" W	100.00
14	S 85°30'00" E	100.00
15	N 85°30'00" W	100.00
16	S 85°30'00" E	100.00
17	N 85°30'00" W	100.00
18	S 85°30'00" E	100.00
19	N 85°30'00" W	100.00
20	S 85°30'00" E	100.00
21	N 85°30'00" W	100.00
22	S 85°30'00" E	100.00
23	N 85°30'00" W	100.00
24	S 85°30'00" E	100.00
25	N 85°30'00" W	100.00
26	S 85°30'00" E	100.00
27	N 85°30'00" W	100.00
28	S 85°30'00" E	100.00
29	N 85°30'00" W	100.00
30	S 85°30'00" E	100.00

**ATTACHMENT NO. 2**

**MAP OF THE SITE**

The Project is that structure labeled as “Centria West” building in the site map below.



**CENTRIA WEST BUILDING  
(ONLY)**

**SITE AREA:**  
 WEST SITE: 2.25 ACRES  
 EAST SITE: 2.25 ACRES  
 TOTAL SITE: 4.5 ACRES

**PUBLIC OPEN SPACE:**  
 WEST SITE: 67,000 SF  
 EAST SITE: 67,000 SF  
 TOTAL SITE: 134,000 SF

**USABLE OPEN SPACE:**  
 WEST SITE: 74,500 SF  
 EAST SITE: 74,500 SF  
 TOTAL SITE: 149,000 SF

**BUILDING AREA:**  
 WEST SITE: 207,847 SF  
 EAST SITE: 101,823 SF  
 TOTAL SITE: 309,670 SF

**RESIDENTIAL UNITS:**  
 WEST SITE: 207 (84.7%)  
 EAST SITE: 101 (34.3%)  
 TOTAL SITE: 308 (64.5%)

**UNIT DENSITY:**  
 TOTAL SITE: 58.78 UNITS/ACRE

CHANGES	TOTAL
RESIDENTIAL UNITS	308
ACCESSIBLE UNITS	32
TOTAL UNITS	340
RESIDENTIAL UNITS	308 (84.5%)
ACCESSIBLE UNITS	32 (9.4%)
TOTAL UNITS	340 (73.3%)

**PARKING (WEST SITE):**  
 REQUIRED RESIDENTS PARKING: 127 X 210 UNITS = 267 SPACES  
 TOTAL = 267 SPACES  
 20% TOY PARKING REDUCTION = 107 SPACES  
 REQUIRED GUEST PARKING: 57 SPACES  
 15% X 210 SPACES = 31 SPACES  
 REQUIRED BICYCLE PARKING: 57 X 4.0 SPACES = 22 SPACES  
 PROVIDED RESIDENTS PARKING: 60 SPACES  
 PROVIDED GUEST PARKING: 65 SPACES  
 TOTAL PARKING PROVIDED: 125 SPACES (1.54 SPACES/UNIT)

**PARKING (EAST SITE):**  
 REQUIRED RESIDENTS PARKING: 127 X 210 UNITS = 267 SPACES  
 TOTAL = 267 SPACES  
 20% TOY PARKING REDUCTION = 107 SPACES  
 REQUIRED GUEST PARKING: 57 SPACES  
 15% X 210 SPACES = 31 SPACES  
 REQUIRED BICYCLE PARKING: 57 X 4.0 SPACES = 22 SPACES  
 PROVIDED RESIDENTS PARKING: 271 SPACES  
 PROVIDED GUEST PARKING: 24 SPACES  
 TOTAL PARKING PROVIDED: 295 SPACES (1.57 SPACES/UNIT)

TOTAL RESIDENTS PARKING REQUIRED: 60 SPACES  
 TOTAL GUEST PARKING REQUIRED: 65 SPACES  
 TOTAL RESIDENTS PARKING PROVIDED: 60 SPACES  
 TOTAL GUEST PARKING PROVIDED: 65 SPACES

**A1.01**

PLANNING & ZONING APPLICATION SUBMITTAL  
 Site Plan  
 April 20, 2005

07/22/04 80  
 Scale: 1" = 40'-0"



Fairfield Residential LLC

**Milpitas Mid-Town**  
 Transit-Oriented Development



**ATTACHMENT NO. 3**

**SCOPE OF DEVELOPMENT**  
**(PROJECT DESCRIPTION, CONCEPTUAL SITE PLAN & ELEVATIONS)**

The Project shall be developed substantially in accordance with all of the terms and conditions applicable to Vesting Major Tentative Tract Map (MA 2005-4) Site, Architecture Review (SZ 2004-9) and Use Permit No. UP 2005-3, as approved by the City Council of the City of Milpitas on August 16, 2005, as said permits may be amended from time to time. In the event of any inconsistency between the description of the Project set forth in the narrative provisions of this Agreement and in said entitlements, the entitlements shall govern and control except with respect to the requirement to provide affordable units as set forth in this Agreement and any other applicable Regulatory Agreements.

**ATTACHMENT NO. 4**

**SCHEDULE OF PERFORMANCE**

<b>Action</b>	<b>Date</b>
1. Agency executes and delivers Agreement to Participant.	Within one (1) week after Agency Board of Directors approves Agreement.
2. Participant submits application(s) to City and obtains City approval of all discretionary land use entitlements for Project (Section 207 and Att. No. 3).	Completed.
3. Participant submits application(s) to City for all permits required for demolition and clearance of any existing improvements on the Site, excavation and grading, site improvements, and construction of Project, including without limitation any required encroachment and grading permits (Section 207).	No later than fourteen (14) months after Effective Date.
4. Agency and Participant execute and record Regulatory Agreement against the Site (Section 219).	Prior to issuance of first building permit for the residential building at the Project.
5. Intentionally Omitted.	
6. Participant exercises reasonable diligence, with Agency's cooperation, in effort to obtain City approval of all permits required for construction of Project (Item 3 above) (Sections 205 and 207).	As soon as reasonably practicable after applications are submitted.
7. Participant pays applicable permit fees and commences construction of Project. (Sections 203, 207, and 208.)	Subject to Section 503, within sixty (60) days after City and other governmental agencies with jurisdiction issue all required permits.
8. Intentionally Omitted.	
9. Intentionally Omitted.	
10. Marketing of Restricted Units to commence (Section 1.7 of Regulatory	Concurrently with marketing of market-rate units.

Action	Date
Agreement).	
11. Subject to Section 503, Participant completes construction of Project and exercises best efforts to obtain all final inspections from City and initial acceptance of any public improvements to be constructed/installed by Participant (Sections 203, 207, and 208).	No later than thirty-six (36) months after commencement of construction (Item No. 7).
12. Agency issues and records Certificate of Completion (Section 218).	Within the time provided in Section 218.
13. Intentionally Omitted.	

It is understood that the foregoing Schedule is subject to all of the terms and conditions of the text of this Agreement, including without limitation Section 503. The summary of the items of performance in this Schedule is not intended to supersede or modify the more complete description in the text. In the event of any conflict or inconsistency between this Schedule and the text of this Agreement, the text shall govern.

**ATTACHMENT NO. 5**

**FORM OF REGULATORY AGREEMENT**

[§100]	SUBJECT OF AGREEMENT	2
	[§101] Purpose of This Agreement	2
	[§102] The Redevelopment Plan	2
	[§103] The Project Area	2
	[§104] The Site	2
	[§105] Agency	2
	[§106] Participant/Owner of the Site	3
	[§107] Transfer and Assignment	3
II.	[§200] DEVELOPMENT OF THE PROJECT	7
	[§201] Development of the Project by Participant	7
	[§202] Agency Financial Assistance	7
	[§203] Scope of Development/Time of Construction	7
	[§204] Commencement of Construction Pursuant to Plans; Agency Approval of Dispersal Plan for Restricted Units	7
	[§205] City Review of Plans, Drawings, and Related Documents	7
	[§206] Cost of Construction	7
	[§207] City and Other Governmental Agency Permits and Fees	7
	[§208] Construction Schedule	8
	[§209] Insurance	8
	[§210] Hazardous Materials	9
	[§211] Local, State, and Federal Laws	10
	[§212] Anti-discrimination During Construction	10
	[§213] Taxes, Assessments, Encumbrances, and Liens	10
	[§214] Encumbrances, Deeds of Trust, and Other Financing	10
	[§215] Permitted Mortgagee Not Obligated to Construct	11
	[§216] Notice of Default to Permitted Mortgagee; Right to Cure	11
	[§217] Right of Agency to Cure Defaults	11
	[§218] Certificate of Completion	12
	[§219] Regulatory Agreement	13
	[§220] Rights of Access	13
III.	[§300] USE OF THE SITE	13
	[§301] General Use of the Site	13
	[§302] Obligation to Refrain from Discrimination	13
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- 2 MAP OF THE SITE
- 3 SCOPE OF DEVELOPMENT
- 4 SCHEDULE OF PERFORMANCE
- 5 FORM OF REGULATORY AGREEMENT
- 6 AGENCY FINANCIAL ASSISTANCE

Recording requested by  
and when recorded mail to:

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

EXEMPT FROM RECORDING FEES  
PER GOVERNMENT CODE 6103 27383

Space above this line for Recorder's use.

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

**BY AND BETWEEN**

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

**and**

**LYON MILPITAS, LLC**  
**a Delaware limited liability company**

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "Agreement") is entered into effective as of Sept 16, 2008 (the "Effective Date") by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (the "Agency") and Lyon Milpitas LLC, a Delaware limited liability company ("Owner"). Agency and Owner are hereinafter collectively referred to as the "Parties."

## RECITALS

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

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

C. Owner intends to construct, own and operate on the Property a three hundred twenty-seven (327) unit multifamily housing development (the "Project") in which, pursuant to this Agreement, sixty-seven (67) units (the "Restricted Units") will be restricted for occupancy by very low, low, and moderate-income households at affordable rent for a period of not less than 55 years.

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

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

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

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

"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.

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

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

"Eligible Purchaser" means 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.

"Gross Income" shall have the meaning ascribed to such term in 25 Cal. Code of Regulations Section 6914.

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

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

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

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

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

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

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

- Studio units -one person
- One bedroom -two persons
- Two bedroom -three persons
- Three bedroom -four persons
- Four bedroom -five persons

"Regulations" means Title 25 of the California Code of Regulations.

"Rent Restricted" means the gross rent charged for an applicable Restricted Rental Unit does not exceed the Qualifying Rent for the applicable household income category as adjusted for family size appropriate for the unit (as defined in this Section 1).

"Restricted Rental Unit" means a Restricted Unit that is reserved for occupancy at a Qualifying Rent by a Very Low-Income, Low-Income or Moderate-Income Household as adjusted for family size appropriate for the unit, in accordance with and as set forth in Sections 1, 2.1, 2.2 and Exhibit B.

Restricted Ownership Unit" means a Restricted Unit that is reserved for sale to an Eligible Purchaser in accordance with and as set forth in Sections 2.1 and 2.2 and Exhibits B and E.

"Restricted Unit" means a Restricted Ownership Unit or a Restricted Rental Unit.

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

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of a 327-unit multifamily housing development in compliance with the development approvals granted by the City of Milpitas, and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of Agency. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

2.1 Affordability Requirements. For a term of fifty-five (55) years commencing upon the date of issuance of a final certificate of occupancy for the Project (the "Affordability Period"), sixty-seven (67) of the dwelling units in the Project shall be either Restricted Rental Units or Restricted Ownership Units and occupied (or if vacant, available for occupancy) by Eligible Households whose income does not exceed Very Low-, Low- or Moderate-Income in accordance with Exhibit B attached hereto and incorporated herein by this reference.

## 2.2 Restricted Units.

2.2.1 Location. The initial location of the Restricted Units shall be as stated on the dispersal plan attached to this Agreement as Exhibit D.

2.2.2 Restricted Rental Units. Rents for Restricted Rental Units shall be limited to Qualifying Rents. Notwithstanding the foregoing, no tenant qualifying for a Restricted Rental Unit shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's income increases to exceed the qualifying limit for such Restricted Rental Unit. A household which at initial occupancy qualifies as an Eligible Household shall be treated as continuing to be an Eligible Household of the same income category as initially established so long as the household's income does not exceed 140% of the applicable income limit. In the event the household income of an Eligible Household that qualified as Very Low-, Low-, or Moderate-Income at initial occupancy exceeds the applicable income limit for a unit, that unit will continue to be considered as satisfying the applicable income limit if the unit remains Rent-Restricted. In the event that re-certification of tenant income indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number required as specified in Section 2.1 and Exhibit B, Owner shall rectify the condition by renting the next available unit(s) in the Project to Eligible Household(s) until the requirements of this Agreement are satisfied.

2.2.3 Restricted Ownership Units. Owner by and for itself and any successors in interest hereby covenants and agrees that each Restricted Ownership Unit thereon may only be sold to an Eligible Purchaser at an Affordable Housing Cost. Agency or its designee shall screen prospective purchasers to determine their eligibility. Agency and Owner 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 E ("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.

2.3 Unit Sizes, Design and Location. The Restricted Units shall consist of twenty-eight (28) one-bedroom units, thirty-six (36) two-bedroom units and three (3) three-bedroom units allocated among affordability categories as set forth in Exhibit B. In renting or selling Restricted Units, Owner shall give first preference to Eligible Households in which at least one member lives in the City of Milpitas, and second preference to Eligible Households in which at least one member works in the City of Milpitas, unless compliance with the foregoing criteria is prohibited by law or by state or federal sources of financing for the Project.

2.4 Reserved.

2.5 Sale of Units as Condominiums. Prior to the expiration of the Affordability Period, Owner may sell the Restricted Units as condominiums in phases. Owner covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property or any part thereof, that upon the sale of the Restricted Units as condominiums and thereafter, the Property shall remain subject to the uses specified in, and otherwise comply with the terms and conditions of, this Agreement. All uses conducted on the Property, including, without limitation, all activities undertaken by the Owner pursuant to this Agreement, shall conform to all applicable provisions of the City of Milpitas Municipal Code. Owner covenants and agrees to sell the Restricted Units at an Affordable Housing Cost. The sales contract for each Restricted Unit shall not exceed the Affordable Housing Cost. Once a Restricted Unit has been sold as a Restricted Ownership Unit, it shall no longer be considered a Restricted Rental Unit.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

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

2.6.2 Non-Discrimination. Owner covenants for itself and its successors and assigns that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project or the Property, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenants shall run with the land. All deeds, leases or contracts made or entered into by Owner its successors or assigns, as to any portion of the Property or the Project shall contain or be subject to substantially the following nondiscrimination and non-segregation language:

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

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

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

of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of land."

3. Reporting Requirements.

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

3.2. Annual Report: Inspections. Until there are no longer any Restricted Rental Units at the Property, Owner shall submit an annual report ("Annual Report") to the Agency in form satisfactory to Agency, together with a certification that the Project is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each Restricted Rental Unit in the Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; and (vii) documentation of source of household income. Upon Agency's request, Owner shall include with the Annual Report, an income re-certification for each household occupying a Restricted Rental Unit, documentation verifying tenant eligibility, and such additional information as Agency may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by Agency; provided however, during such time that the Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing Agency with a copy of compliance reports required in connection with such financing. Owner shall permit representatives of Agency to enter and inspect the Property and the Project during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours advance notice of such visit to Owner or to Owner's management agent.

4. Term of Agreement.

4.1. Term of Restrictions. This Agreement shall remain in effect through the 55<sup>th</sup> anniversary of the issuance of the final certificate of occupancy for the Project. Upon request by either party after the issuance of said certificate of occupancy, the parties shall record an addendum to this Agreement setting forth the termination date.

4.2. Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Property or the Project or any part thereof or interest therein, (i) any payment, prepayment or

extinguishment of any loan or note secured by the Property, or (iii) any reconveyance of the Deed of Trust, unless this Agreement is terminated earlier by Agency in a recorded writing.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term specified in Section 4 1.

5. Binding Upon Successors: Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The Agency and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and Agency, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to Agency an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of Agency.

6. Property Management; Repair and Maintenance; Marketing.

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

6.2 Management Entity. Agency shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Project, which approval shall not be unreasonably withheld. Agency agrees that Lyon Management

Group, Inc. and any affiliate of Owner is an approved management entity. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner, or its successors and assigns, shall at its own expense, maintain the Property and the Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Project and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking garage and walkways) in a condition free of all waste, nuisance, debris, un-maintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security services for occupants of the Project. Owner shall not be responsible for any such obligations arising after the Owner's sale or transfer of the Property.

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

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

6.5 Approval of Amendments. If Agency has not responded to any submission of the Management and Marketing Plan, the proposed management entity, or a proposed amendment or change to any of the foregoing within 30 days following Agency's receipt of such plan, proposal or amendment, the plan, proposal or amendment shall be deemed approved by Agency.

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

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

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

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

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

8. Transfer and Encumbrance.

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

8.2 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of temporary easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to City entitlements, if any; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; or (iv) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest. In addition, Agency shall not withhold its consent to the sale, transfer or other disposition of the Project, in whole or in part, provided that (1) the Project is and shall continue to be operated in compliance with this Agreement; (2) the transferee expressly assumes all obligations of Owner imposed by this Agreement; (3) the transferee executes all documents reasonably requested by the Agency with respect to the assumption of the Owner's obligations under this Agreement, and upon Agency's request, delivers to the Agency an opinion of its counsel to the effect that such document and this Agreement are valid, binding and enforceable obligations of such transferee; and (4) either (A) the transferee has at least three years' experience in the ownership, operation and management of low-income rental housing projects of similar size to that of the Project, without any record of material violations of nondiscrimination provisions or other state or federal laws or regulations applicable to such projects, or (B) the transferee agrees to retain a property management firm with the experience and record described in subclause (A). Consent to any proposed Transfer may be given by the Agency's Executive Director unless the Executive Director, in his or her discretion, refers the matter of approval to the Agency's governing board. If a proposed Transfer has not been approved by Agency in writing within thirty (30) days following Agency's receipt of written request by Owner, it shall be deemed rejected. Notwithstanding the foregoing, the consent of the Agency shall not be required to transfer condominiums, provided that the buyer of an Restricted Ownership Unit executes a Resale Agreement in the form of Exhibit E and such Resale Agreement is recorded concurrently with the transfer of the condominium, and the transfer complies with the other applicable restrictions set forth in this Agreement.

8.3 Encumbrances. Owner agrees to use commercially reasonable efforts to ensure that any deed of trust secured by the Project for the benefit of a lender other than Agency ("Third Party Lender") shall contain each of the following provisions: (i) Third-Party Lender shall use its commercially reasonable efforts to provide to Agency a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner (provided however, the failure to do so shall not impair such Third-Party Lender's rights and remedies); (ii) Agency shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional 60 days; Owner agrees to provide to Agency a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

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

9. Default and Remedies.

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

- (a) The occurrence of a Transfer in violation of Section 8 hereof;
- (b) Owner's failure to maintain insurance on the Property and the Project as required hereunder, and the failure of Owner to cure such default within 10 days.
- (c) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or the Project or failure to pay any other charge that may result in a lien on the Property or the Project, and Owner's failure to cure such default within 10 days.
- (d) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Subsection 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which Agency shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within 30 days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith, but in no event longer than 60 days

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

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

(a) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(b) For violations of obligations with respect to rents for Restricted Units, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Qualifying Rent;

(c) Pursue any other remedy allowed at law or in equity.

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

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

11. Miscellaneous.

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

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

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

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

Owner:         Lyon Milpitas, LLC  
                  4901 Birch Street  
                  Newport Beach, CA 90802  
                  Attention: Frank T. Suryan, Jr.  
                  Facsimile: (949) 838-1225

Copy: Madden, Jones, Cole & Johnson  
111 W. Ocean Blvd., Suite 1300  
Long Beach, CA 90802  
Attention: Steven A. Jones  
Facsimile: (562) 590-7909

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

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

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

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

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

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

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

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

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

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

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

*SIGNATURES ON FOLLOWING PAGE*

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

LYON MILPITAS LLC,  
a Delaware limited liability company

By: LYON HORTON PORTFOLIO INVESTORS, LLC,  
A Delaware limited liability company, Its Sole Member

BY: LYON HOUSING (Horton Portfolio) XXXIX, LLC,  
A Delaware limited liability company, Its Managing Member

By:   
Name: Michael Barmettler  
Its: Secretary

REDEVELOPMENT AGENCY  
OF THE CITY OF MILPITAS

\_\_\_\_\_  
By:  
Thomas C. Williams, Executive Director

ATTEST:

\_\_\_\_\_  
By:  
Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
By:  
Agency Counsel

SIGNATURES MUST BE *NOTARIZED*.

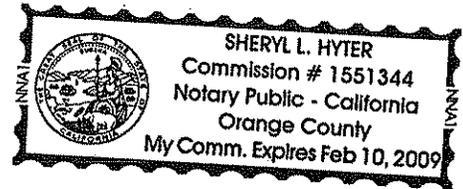
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Orange )

On Sept. 15, 2008 before me, Sheryl L. Hyter, Notary Public  
personally appeared Michael A. Barmetter, who proved to me on the basis  
of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within  
instrument and acknowledged to me that ~~he~~/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal) \_\_\_\_\_



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

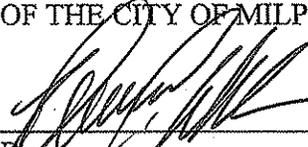
LYON MILPITAS LLC,  
a Delaware limited liability company

By: LYON HORTON PORTFOLIO INVESTORS, LLC,  
A Delaware limited liability company, Its Sole Member

BY: LYON HOUSING (Horton Portfolio) XXXIX, LLC,  
A Delaware limited liability company, Its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

REDEVELOPMENT AGENCY  
OF THE CITY OF MILPITAS

  
\_\_\_\_\_  
By:  
Thomas C. Williams, Executive Director

ATTEST:

  
\_\_\_\_\_  
By:  
Mary Lavelle, Agency Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
By:  
Agency Counsel

SIGNATURES MUST BE NOTARIZED.

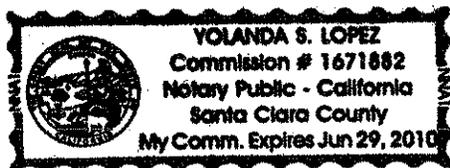
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Santa Clara

On September 16, 2008 before me, Yolanda S. Lopez, Notary Public

personally appeared Thomas C. Williams



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Yolanda S. Lopez  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Affordable Housing Regulatory Agreement

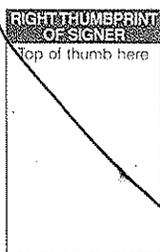
Document Date: September 16, 2008 Number of Pages: 40 pages

Signer(s) Other Than Named Above: Lyon Horton Portfolio Investors, LLC

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Thomas C. Williams

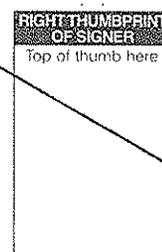
- Individual
- Corporate Officer — Title(s): Executive Director
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: City of Milpitas RDA

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

Exhibit A  
PROPERTY

(Attach legal description.)

**LEGAL DESCRIPTION**

**Attachment No. "1"**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MILPITAS , COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lot 1, as shown on that certain Map entitled, "Tract No. 9773 Centria", which was filed in the office of the Recorder of the County of Santa Clara, State of California on July 24, 2006 in Book 804 of Maps, pages 9 through 14.

APN: 086-12-021

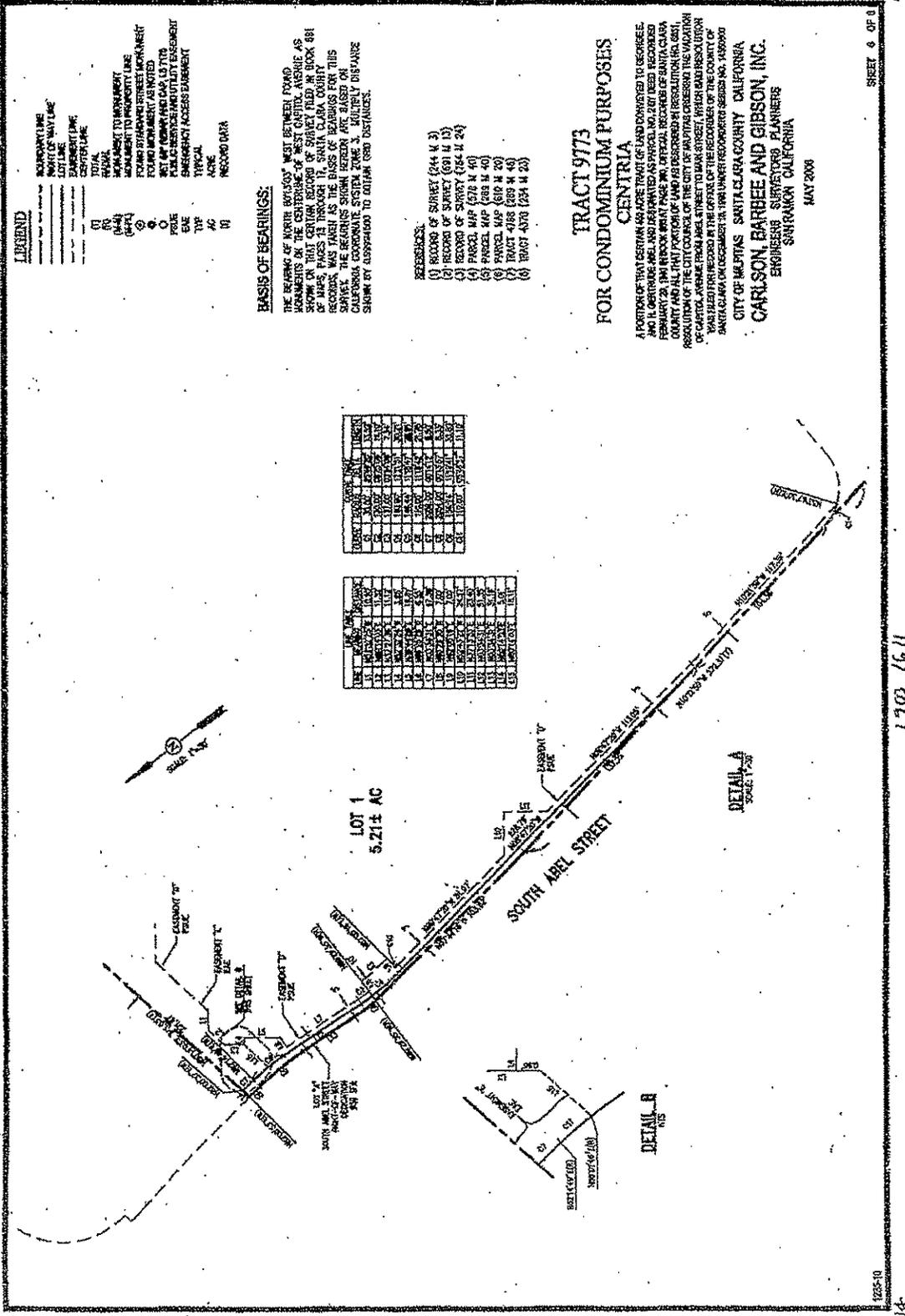












**LEGEND**

- BOUNDARY LINE
- CENTERLINE
- EASEMENT (DME)
- CENTERLINE
- TOTAL
- EASEMENT TO UTILITY LINE
- EASEMENT TO PROPERTY LINE
- FOUND BY HARVEY STREET ACKNOWLEDGMENT
- FOUND BY MONUMENT AS INTENTED
- SET BY MONUMENT AND CAP, 1/3" TO 1/2" DIA.
- PUBLIC UTILITY EASEMENT
- EASEMENT ACCESS EASEMENT
- TYPICAL
- RECORD DATA

**BASIS OF BEARINGS:**

THE BEARINGS OF NORTH WOLSKOY WEST BETWEEN FOUND MONUMENTS ON THE CENTERLINE OF WEST CENTRAL AVENUE AS SHOWN ON TRACT 9773 RECORD OF SURVEY FILED IN BOOK 881 OF MAPS PAGES 13 THROUGH 14, SANTA CLARA COUNTY RECORDS, ARE TAKEN AS THE BASIS OF BEARINGS FOR THIS RECORD. THE BEARINGS OF THE BOUNDARIES OF THIS CALIFORNIA EASEMENT SYSTEM, TIME & UTILITY DISTANCE SHOWN BY APPROXIMATION TO OBTAIN USED DISTANCES.

- REFERENCES:**
- (1) RECORD OF SURVEY (244 M 3)
  - (2) RECORD OF SURVEY (691 M 13)
  - (3) RECORD OF SURVEY (284 M 20)
  - (4) PARCEL MAP (278 M 40)
  - (5) PARCEL MAP (283 M 40)
  - (6) PARCEL MAP (610 M 20)
  - (7) TRACT 4788 (289 M 40)
  - (8) TRACT 4070 (224 M 20)

**TRACT 9773 FOR CONDOMINIUM PURPOSES CENTRIA**

A PORTION OF TRACT 9773 AND A PORTION OF TRACT 9774 LOCATED IN THE CITY OF CENTRIA, SANTA CLARA COUNTY, CALIFORNIA, AND ALL THAT PORTION OF LAND HEREBY DESCRIBED BY RESOLUTION NO. 6881 OF THE CITY COUNCIL OF THE CITY OF SAN JOSE, CALIFORNIA, AND ALL THAT PORTION OF LAND HEREBY DESCRIBED BY RESOLUTION NO. 6881 OF THE CITY COUNCIL OF THE CITY OF SAN JOSE, CALIFORNIA, WHICH SAID RESOLUTION WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA ON DECEMBER 14, 1998 UNDER RECORDING SERIES NO. 1499900 CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA.

**CITY OF SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA**

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

MAY 2008

1703 16 11

Exhibit B

Number of Units by Unit Size and Eligible Income Levels

	Very Low	Low	Moderate	Total
1-Bedroom	11		17	28
2-Bedroom	4		32	36
3-Bedroom		3		3
Total	15	3	49	67

Exhibit C  
INSURANCE REQUIREMENTS

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

A. Property Insurance. Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss -Special form (ISO Form CP 1030) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Property ("Improvements"), in an amount equal to one hundred percent (100%) of the full replacement cost of all such property. The insurance shall (a) cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property, and (b) cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management Agency or as shown on a National Flood Insurance Program flood map. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Twenty Five Thousand Dollars (\$25,000) deductible prior to completion of construction and a Ten Thousand Dollars (\$10,000) deductible after completion of construction (or such higher deductible approved by the Agency, which approval shall not be unreasonably withheld) from the loss payable for any casualty. The policies of insurance carried in accordance with this paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."

B. Liability Insurance. Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Property and the Improvements. The limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Twenty Five Thousand Dollars (\$25,000) deductible prior to completion of construction and a Ten Thousand Dollars (\$10,000) after completion of construction (or such higher deductible as may be approved by Agency, which approval shall not be unreasonably withheld). The insurance shall also include coverage for:

(i) liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Project or the Property;

(ii) premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Property or the Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;

(iii) broad form property damage liability;

(iv) additional insured and primary insured endorsements protecting the Agency, the City of Milpitas and their respective elected and appointed officials, officers, employees and agents;

(v) personal injury endorsement.

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

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

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

Insurance policies to be provided hereunder shall meet the following requirements:

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

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

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

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

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

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

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

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

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

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

H. Compliance with policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time

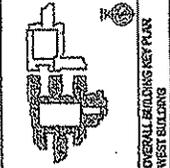
in force with respect to the Property, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

Exhibit D  
DISPERSAL PLAN

Location and Dispersal of Restricted Units. The Restricted Units shall be restricted to occupancy by Eligible Households and shall be composed of twenty-eight (28) one bedroom Restricted Units, thirty-six (36) two bedroom Restricted Units, and three (3) three bedroom Restricted Units meeting the eligible income levels described in Exhibit B. The size of the Restricted Units shall be substantially the same size as units of the corresponding bedroom number which are not Restricted Units. Likewise, the amenities of Restricted Units shall be the same as the "base amenity package" offered to units which are not Restricted Units. The initial location of the Restricted Units are as shown on the dispersal plan attached to this Agreement in this Exhibit D. Notwithstanding the foregoing, the Restricted Units may be moved from one location to another throughout the Project during such period, provided that if the location of a Restricted Unit is moved, the Restricted Units, including the replacement Restricted Unit, shall be remain dispersed throughout the Project and shall not be concentrated in any area of the Project or any floor of the Project. Each floor of the Project shall have a minimum of nine (9) Restricted Units. In addition, no more than fourteen (14) Restricted Units shall overlook or border the garage entries. If a Restricted Rental Unit becomes vacant, and no applicant from an Eligible Household meeting Owner's qualifying requirements applies to lease such Restricted Rental Unit, Owner may lease the unit to a non-qualifying person but must hold the next available unit open to an Eligible Household meeting Owner's qualifying requirements in the manner described in this section. By the first of May of each year, the Owner shall submit a unit map and written report ("Annual Dispersal Plan Report") showing the location of all Restricted Units, their type, and a brief text summary of which units have been relocated since the previous year's report. Such Annual Dispersal Plan Reports shall be used to ensure compliance with the performance standards stated herein.



Center - Airport - West Building			
Center - Airport - West Building			
Center - Airport - West Building			
Center - Airport - West Building			

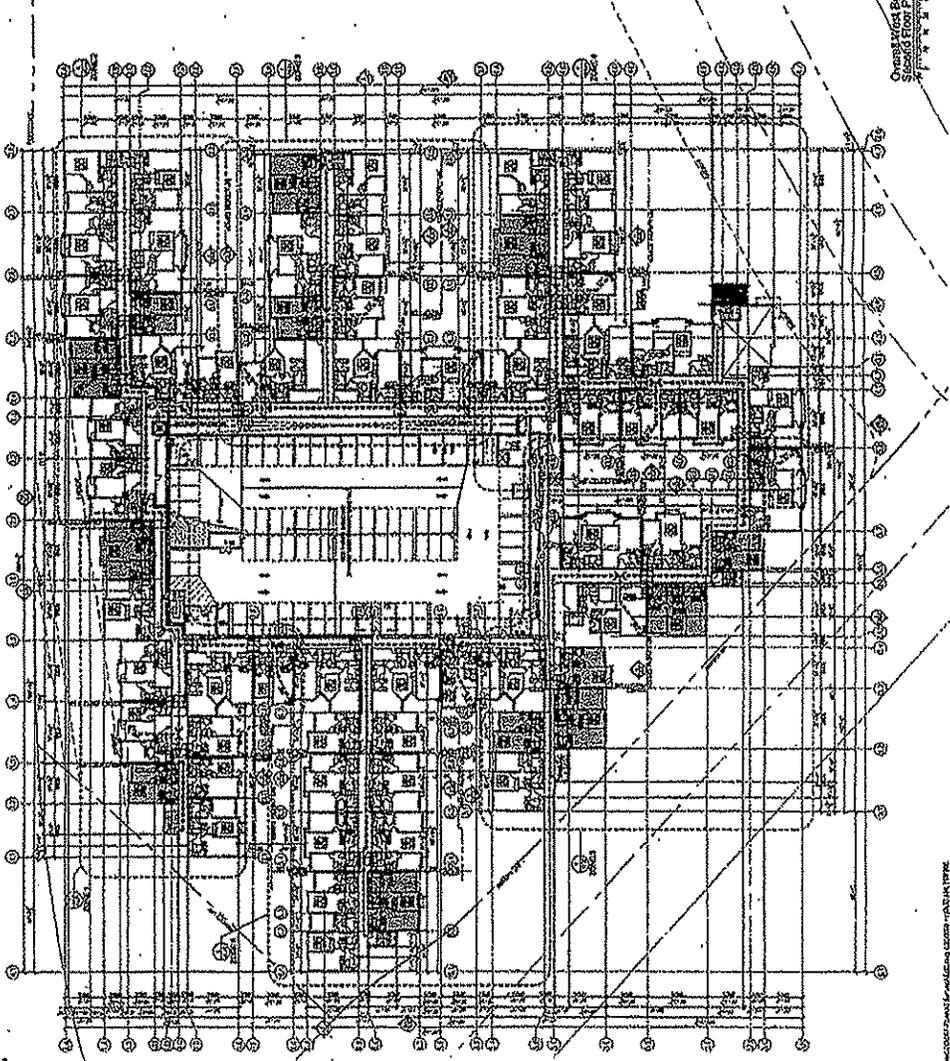


OVERALL BUILDING REF PLAN  
WEST BUILDING



1

Overall Building  
Structural Engineering  
10/10/2010



10/10/2010 10:00:00 AM







Exhibit E  
RESALE AGREEMENT

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY  
455 East Calaveras Boulevard  
Milpitas, CA 95035

To be recorded without fee. (Space Above This Line For Recorder's Use Only) (Gov.  
Code, §§ 6103 and 27383.)

**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, California (the "Property"), effective as of \_\_\_\_\_ 20\_\_ (the "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 Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants, dated July \_\_, 2008 ("the Agreement") 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, California ("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.

"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.

"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.

"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.

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"):

(d) 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; 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; 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:

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 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 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 until \_\_\_\_\_, 20\_\_ [fifty-five (55) years following the date of issuance of a final certificate of occupancy for the Property].

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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

(j) Time of the Essence. Time is of the essence in this Agreement as to each provision in which time is an element of performance.

(k) 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.

(l) 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

---

Agency Counsel

STATE OF CALIFORNIA \_\_\_\_\_ )  
\_\_\_\_\_)  
COUNTY OF SANTA CLARA \_\_\_\_\_ )

On \_\_\_\_\_, 2008 before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me ( ) proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



## LYON REALTY ADVISORS, INC.

4901 BIRCH STREET, NEWPORT BEACH, CA 92660 (949) 252-9101, FAX (949) 252-9202

May 4, 2009

Mr. James Lindsay  
Planning & Neighborhood Services Director  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5411

### **RE: JUSTIFICATION FOR ELIMINATION OF CENTRIA WEST OWNER PARTICIPATION & REGULATORY AGREEMENTS**

Dear James:

As you are aware, Lyon has proposed several revisions to the Centria West project for purposes of improving the quality and livability for future residents. When implemented, these enhancements will result in a 382 unit upscale, luxury multi-family project. These modifications include:

- Enhanced exterior architecture (still compatible with Centria East building)
- Luxury specification level of finish throughout unit interiors
- Redesigned "open" floor plans
- Increase in number of private balconies provided for residents (45% of units had balconies in originally designed project; 70% of units with balconies in revised designed project)
- Increased dimension of parking spaces throughout the garage, as well as an overall increase in parking ratio (parking spaces provided exceed City requirement)
- Improved amenities (relocation of pool, fitness and clubroom to the parking structure rooftop- estimated additional \$2.5M investment in these amenity improvements)

This luxury differentiation of the Centria West Project and anticipated revenue associated with luxury housing are critical to Lyon's ability to obtain viable construction financing for the Project in today's difficult financial marketplace. In order to demand from residents a higher price point at Centria West, it is necessary to differentiate the Centria West from Centria East. To accomplish this objective, it will be necessary to incorporate higher quality amenities and a higher specification level of finishes in the units.

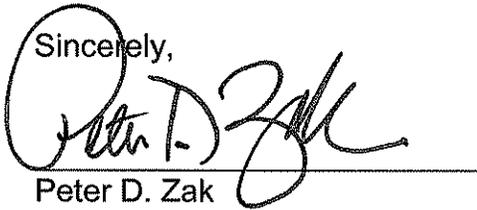
The current project entitlement requires a total of 67 below market rate units (15 very low, 3 low, and 49 moderate) as described in the Owner Participation and Regulatory Agreements (approved on 5/15/05 and as amended on 8/7/07). However, in order to justify the additional capital required for the project enhancements (described above), Lyon seeks to re-entitle this project with 100% market rate units and thereby eliminate the respective Owner Participation and Regulatory Agreements.

Our interests are aligned with the City in commencing construction as soon as possible. We believe that the inclusion of these upgrades in the Project along with the elimination of the affordable component will enable us to complete our financing and commence construction of the Project in the near future.

We hope that Milpitas City staff will support this request and ultimately obtain City Council approval at the City Council Meeting scheduled for June 2, 2009.

Feel free to contact me with questions. We look forward to your favorable response and outcome.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Zak", written over a horizontal line.

Peter D. Zak  
Vice President, Development  
Lyon Realty Advisors, Inc.

CC: Felix Reliford- Principal Housing Planner, City of Milpitas  
Tiffany Brown- Planning Division, City of Milpitas  
Mike Barnettler- Chief Legal Counsel, Lyon Realty Advisors, Inc.

# CENTRIA WEST

## Milpitas, California

### LYON REALTY ADVISORS, Inc

Project Tabulation

Project Team

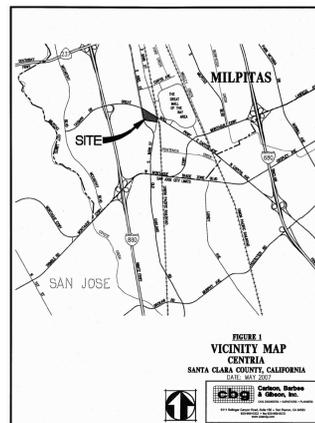
Sheet Index

BUILDING / UNIT MIX											05/04/09	
Level	Studio	1 BR			2 BR				2 BR-D		3 BR	Total
	S	A1	A2	A3	E1	B2	B3	B3A	B3B	B4	C1	
1	4	17	8	4	11	4	17	0	1	2	4	72
2	4	12	11	4	16	4	18	0	0	2	4	75
3	5	12	12	4	16	4	18	1	0	2	4	78
4	5	12	12	4	16	4	18	1	0	2	4	78
5	5	12	12	4	16	4	18	1	0	2	4	78
Totals	23	65	55	20	75	20	89	3	1	10	20	381
	6.0%	17.1%	14.4%	5.2%	19.7%	5.2%	23.4%	0.8%	0.3%	2.6%	5.2%	100.0%

Unit	Unit SF	Qty.	SF TOT.
S	567	23	13,041
A1	738	65	47,970
A2	753	55	41,415
A3	809	20	16,180
B1	1,046	75	78,450
B2	995	20	19,900
B3	1,066	89	94,874
B3A	1,198	3	3,594
B3B	1,115	1	1,115
B4	1,374	10	13,740
C1	1,277	20	25,540
Avg.	934	381	355,819

PARKING SUMMARY						
Unit Type	Number of Units	Stalls/Unit	Per City Zoning Code	Stalls Req'd Per City Zoning Code	20% TOD Allowed Reduction	Total Stalls Provided
Studio	23	1.00	23	23	18.4	15
1 BR	140	1.50	210	168		180
2 BR	188	2.00	396	316.8		332
3 BR	20	2.00	40	32		34
Total Req'd	381	1.76	688	535		565
Guest		0.15	100	80		85
TOTAL			788	615		650
Stalls Per Unit			2.02	1.62		1.71

Accessible Stalls:		Req'd Accessible	
Dwelling Units	381	2%	7.62
Visitor parking	85	5%	4.25
			11.87 = 12 Req'd



**OWNER:**  
**LYON REALTY ADVISORS, Inc.**  
 4901 Birch Street  
 Newport Beach, CA 92660  
 (949) 838-1209  
 Attn. Peter Zak

**LANDSCAPE ARCHITECT:**  
**IMA Design**  
 2500 Michelson Drive, Suite 125  
 Irvine, CA 92612  
 (949) 250-0023  
 Attn. Doug Tobin

**ARCHITECT:**  
**Architects Orange**  
 144 N. Orange Street  
 Orange, CA 92866  
 (714) 639-9860  
 Attn: Tobin Symmank

**CIVIL ENGINEER:**  
**Carlson, Barbee, Gibson, Inc.**  
 6111 Bollinger Canyon Road, Suite 150  
 San Ramon, CA 94583  
 (925) 866-0322  
 Attn: Jason Neri

- A1.1 Title Sheet
- A2.1 Site Plan
- A2.2 Site Plan - Club Building Over Garage/Section
- A2.3 Site Plan - Exit Plan Enlargements
- A3.1 First & Second Floor Building Plan
- A3.2 Third Floor Bldg Plan (4th-5th Sim.) & Roof Plan
- A4.1 Garage Tier Plans
- A5.1 Exterior Elevations
- A5.2 Exterior Elevations
- A6.1 Unit Plans
- A6.2 Unit Plans
- A6.3 Unit Plans
- A6.4 Unit Plans
- A7.1 Recreation / Pool Deck Plan

Project Information

**Description:** Multifamily Apartments

**Occupancy:** R2 (Apartments)  
 A3 (Recreation Building)  
 S2 (Parking Structure)

**Construction Type:** III-A (Apartments)  
 II-A (Recreation Building)  
 II-A (Parking Structure)

**Firewall Rating:** 3-Hour

- L-1 Landscape Concept Plan
- L-2 Recreation Area Concept Plan
- L-3 Landscape Section A-A
- L-4 Landscape Section B-B
- L-5 Landscape Section C-C & D-D
- L-6 Open Space Diagram

# Conditional Use Permit

**LYON / CENTRIA**

**MILPITAS, CA**

**LYON REALTY ADVISORS**

4901 BIRCH STREET NEWPORT BEACH, CALIFORNIA, 92660 949-838-1209

**ARCHITECTS ORANGE**

144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92866 (714) 639-9860

09-003 JUNE 04, 2009

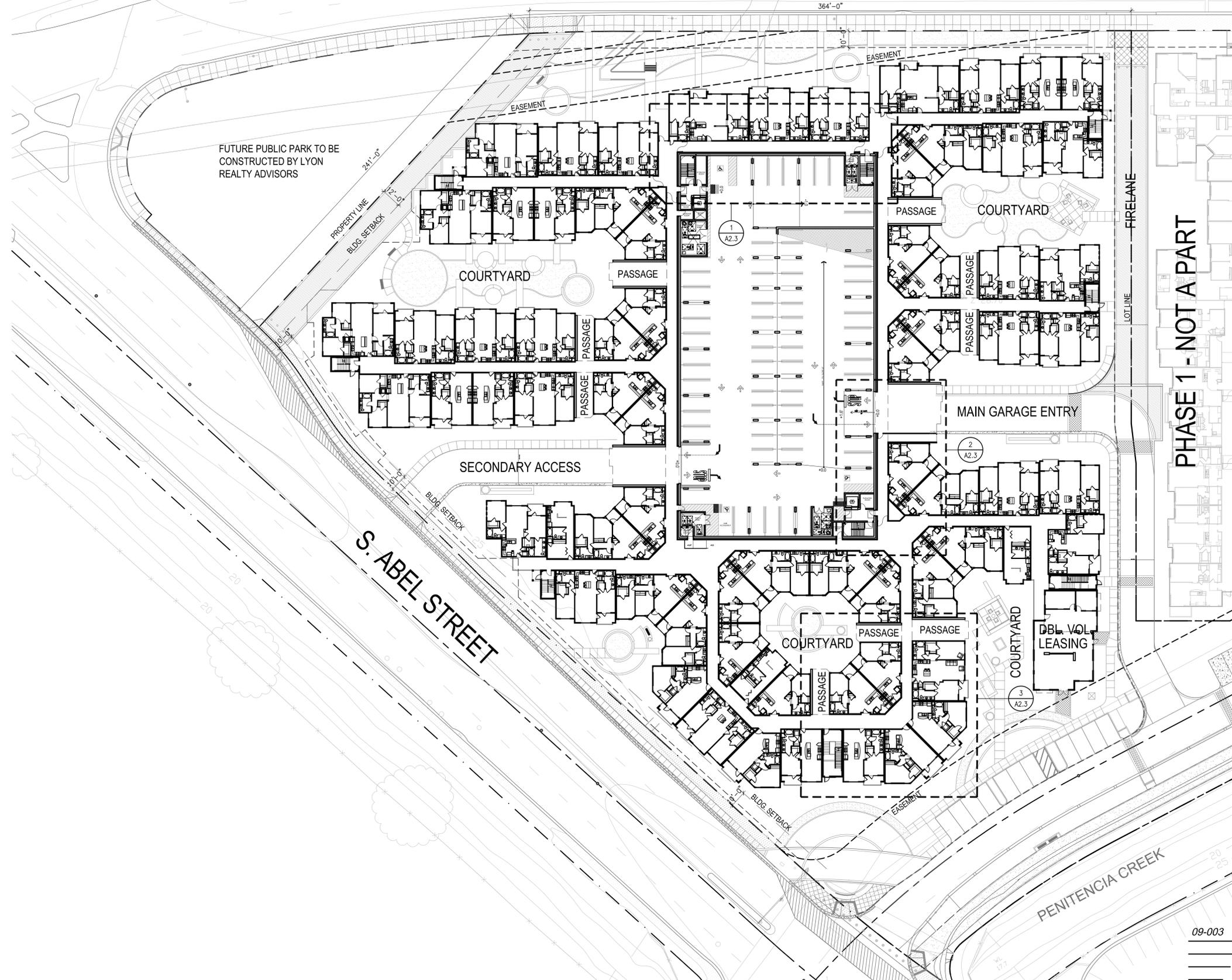


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TITLE SHEET		A1.1
No.	ITEM	DATE
1	SUBMITTAL	04.17.09
2	SUBMITTAL	06.04.09
CASE FILE NUMBERS: X X		

06.04.09 AGENCY SUBMITTAL

GREAT MALL PARKWAY



**BUILDING / UNIT MIX**

Level	Studio	1 BR	2 BR	2 BR-D	3 BR	Total
1	17	8	4	17	4	42
2	12	11	4	18	0	45
3	12	12	4	18	1	47
4	12	12	4	18	1	47
5	12	12	4	18	1	47
23	65	95	20	75	3	258
<b>Totals</b>	<b>23</b>	<b>140</b>	<b>198</b>	<b>198</b>	<b>20</b>	<b>381</b>
	6.0%	17.1%	34.4%	52.2%	23.4%	100.0%

**Unit**

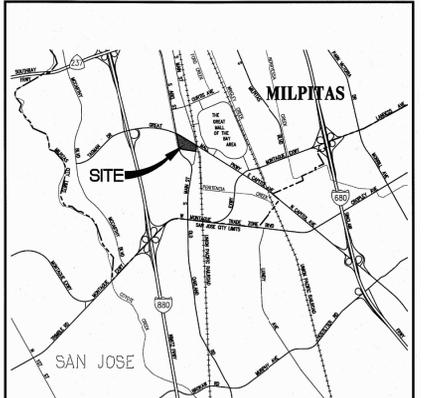
Unit	Unit SF	Gy.	SF TOT.
S	567	20	11,340
A1	738	65	47,970
A2	753	55	41,415
A3	809	20	16,180
B1	1,048	75	78,600
B2	995	20	19,900
B3	1,056	89	94,084
B3A	1,158	3	3,474
B3B	1,115	1	1,115
B4	1,374	10	13,740
C1	1,277	20	25,540
<b>Avg</b>	<b>934</b>	<b>381</b>	<b>389,819</b>

**PARKING SUMMARY**

Unit Type	Number of Units	Stalls/Unit Per City Zoning Code	Stalls Req'd Per City Zoning Code	20% TOD Allowed Reduction	Total Stalls Provided
Studio	23	1.00	23	18.4	19
1 BR	140	1.50	210	168	180
2 BR	198	2.00	396	316.8	332
3 BR	20	2.00	40	32	34
<b>Total Req'd</b>	<b>381</b>	<b>1.76</b>	<b>669</b>	<b>535</b>	<b>565</b>
Guest		0.15	100	80	85
<b>TOTAL</b>			<b>769</b>	<b>615</b>	<b>650</b>
<b>Stalls Per Unit</b>			<b>2.02</b>	<b>1.62</b>	<b>1.71</b>

**Accessible Stalls:**

Dwelling Units	381	2%	7.62
Visitor parking	85	5%	4.25
			<b>11.87 = 12 Req'd</b>



**FIGURE 1**  
VICINITY MAP  
CENTRIA  
SANTA CLARA COUNTY, CALIFORNIA  
DATE: MAY 2007



09-003 JUNE 04, 2009



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LYON / CENTRIA

LYON REALTY ADVISORS

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MILPITAS, CA

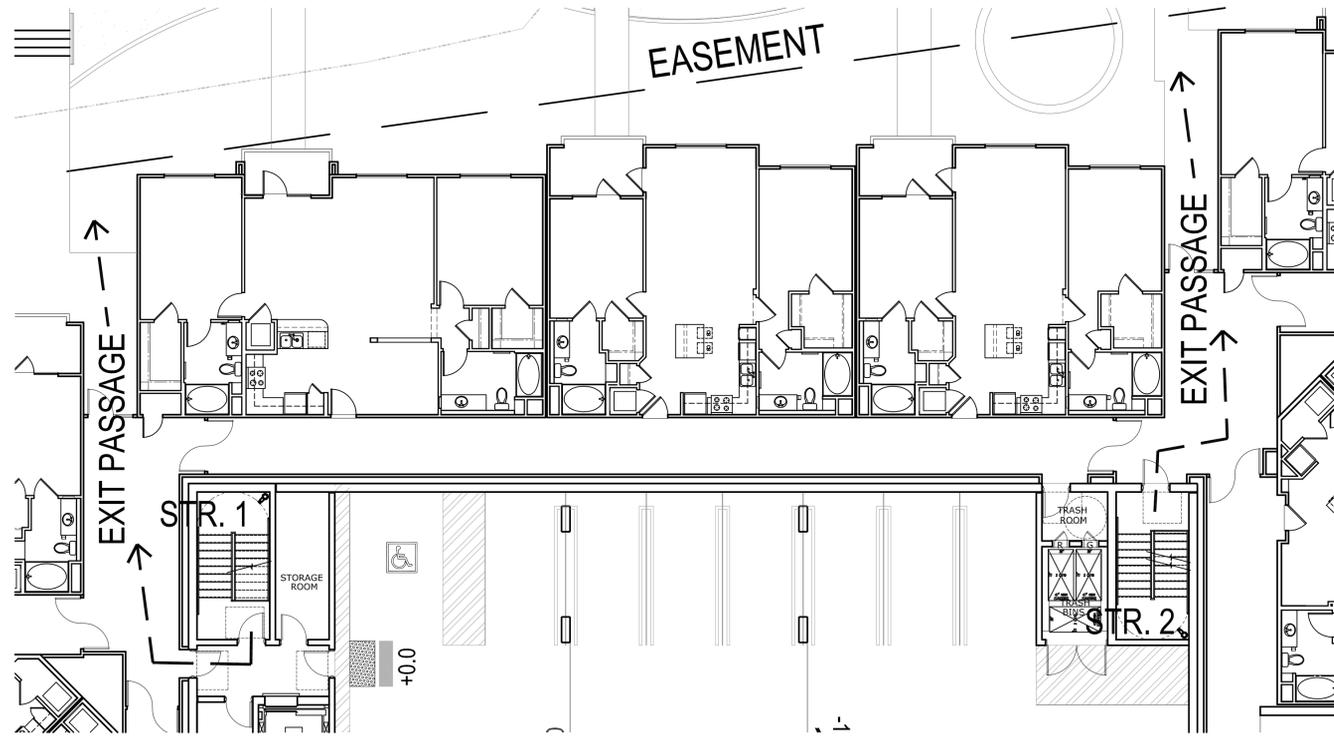
ARCHITECTS ORANGE

144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92866 (714) 639-9860

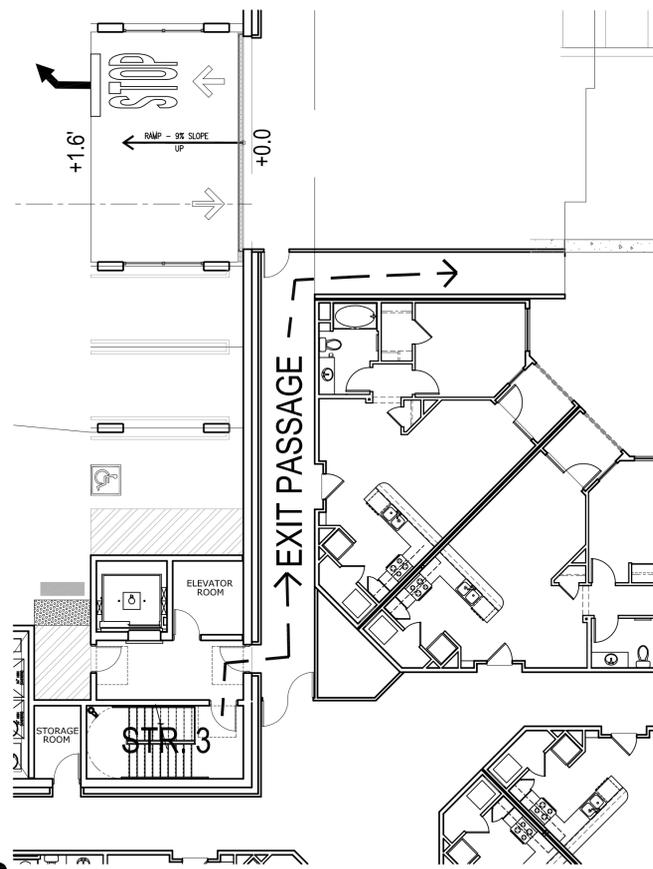
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No.	ITEM	DATE
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2	SUBMITTAL	06.04.09
CASE FILE NUMBERS:		X

06.04.09 AGENCY SUBMITTAL

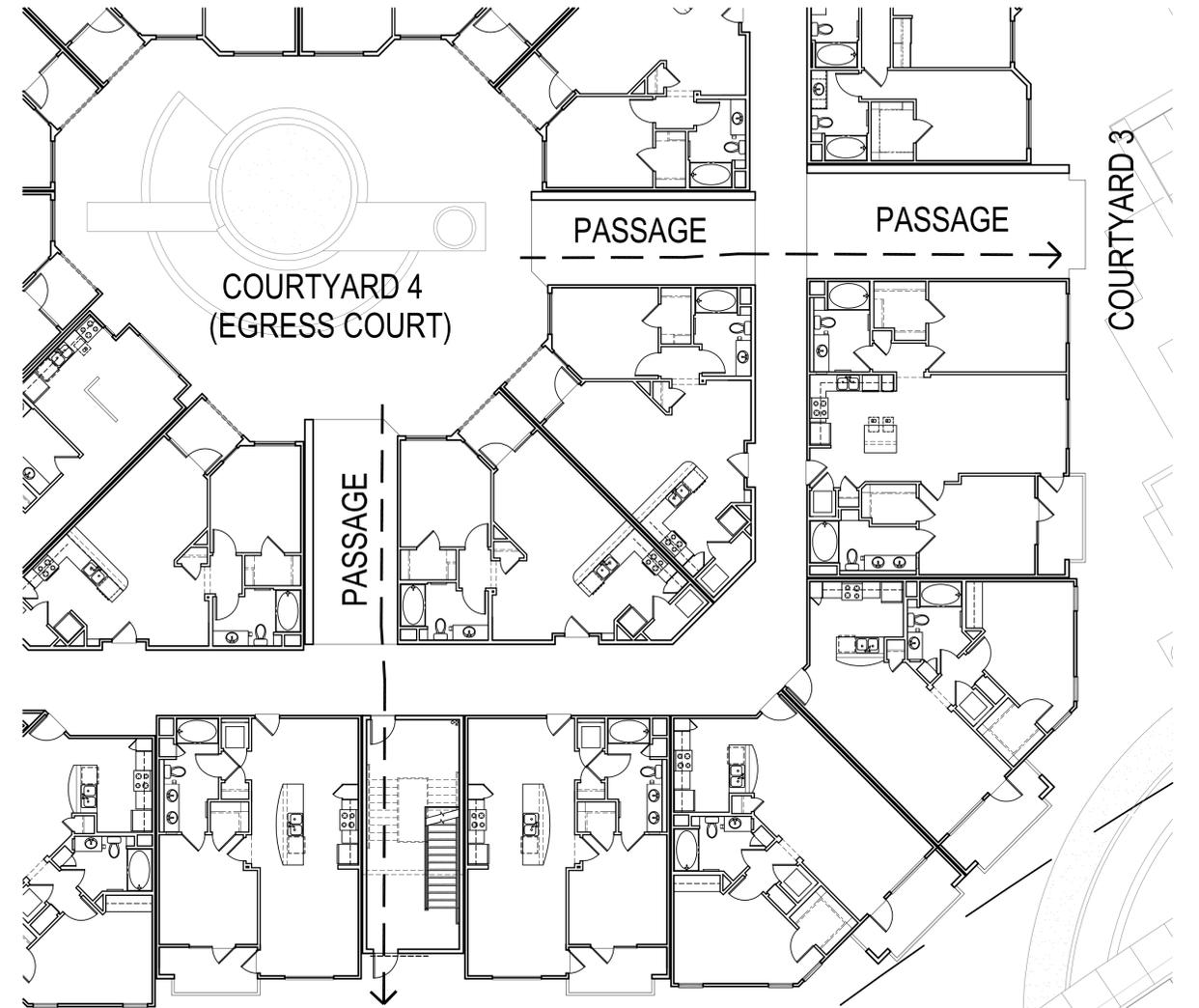




**1 EXIT FROM GARAGE STAIR 1 & 2**



**2 EXIT FROM GARAGE STAIR 3**



**3 EXIT FROM COURTYARD 4**

**LYON / CENTRIA**

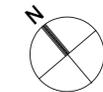
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**MILPITAS, CA**

**ARCHITECTS ORANGE**

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0' 10' 20' 30'  
SCALE: 1" = 10'

09-003 JUNE 04, 2009



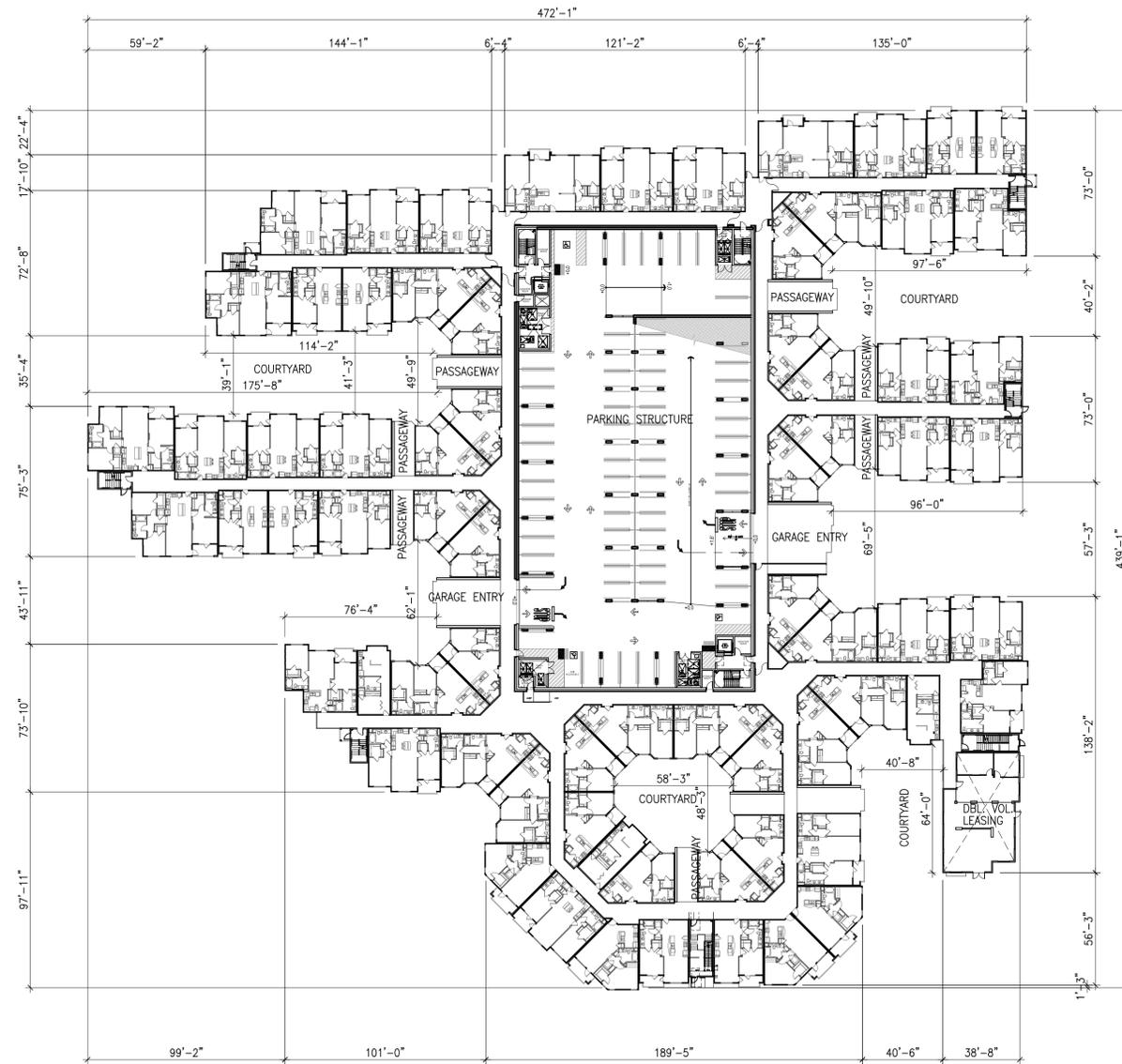
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**EXIT PLANS A2.3**

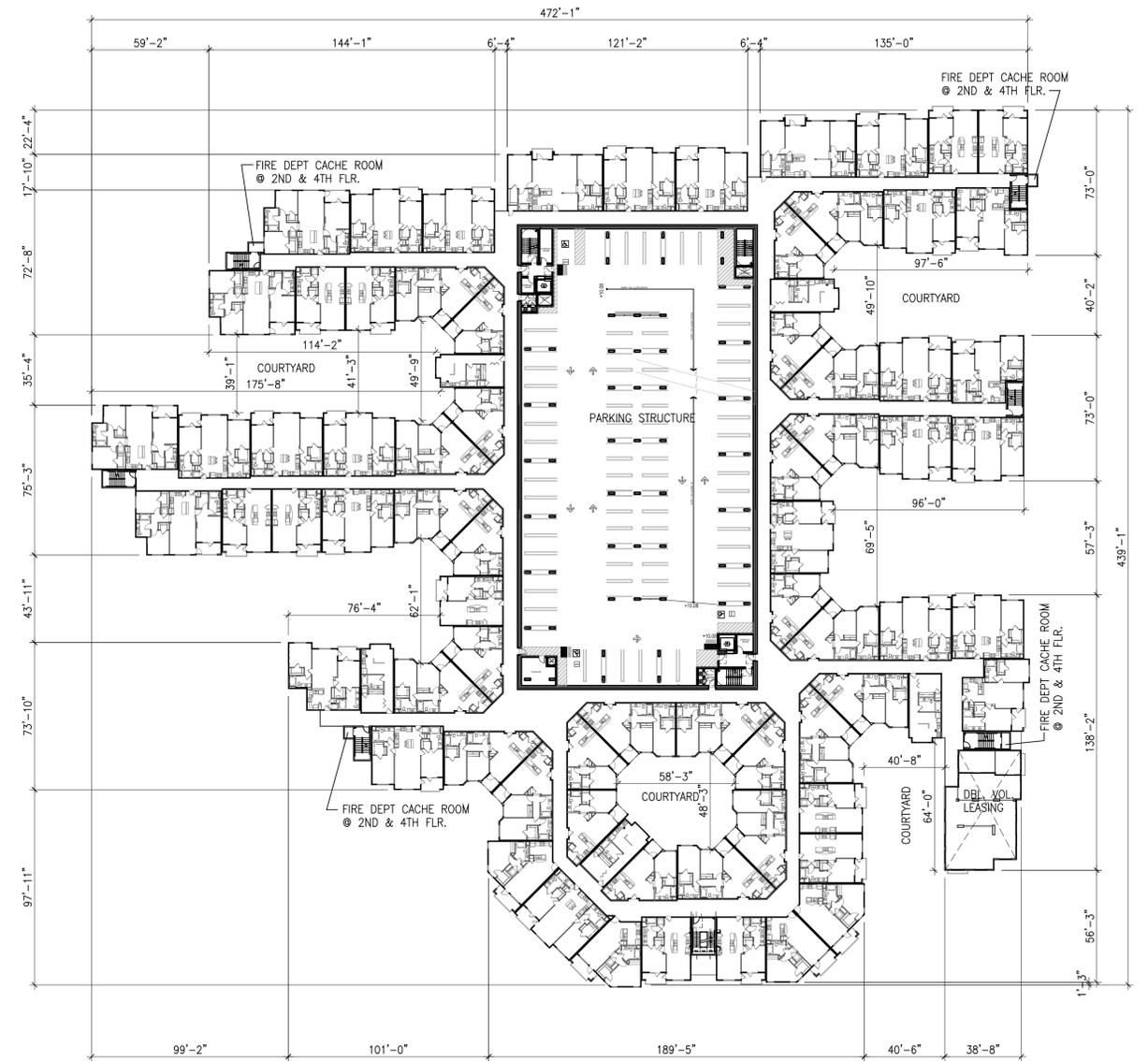
No.	ITEM	DATE
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2	SUBMITTAL	06.04.09

CASE FILE NUMBERS:  
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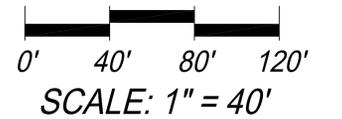
AGENCY SUBMITTAL 06.04.09



**FIRST FLOOR BUILDING PLAN**



**SECOND FLOOR BUILDING PLAN**



**LYON / CENTRIA**

**LYON REALTY ADVISORS**

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**MILPITAS, CA**

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09-003 JUNE 04, 2009



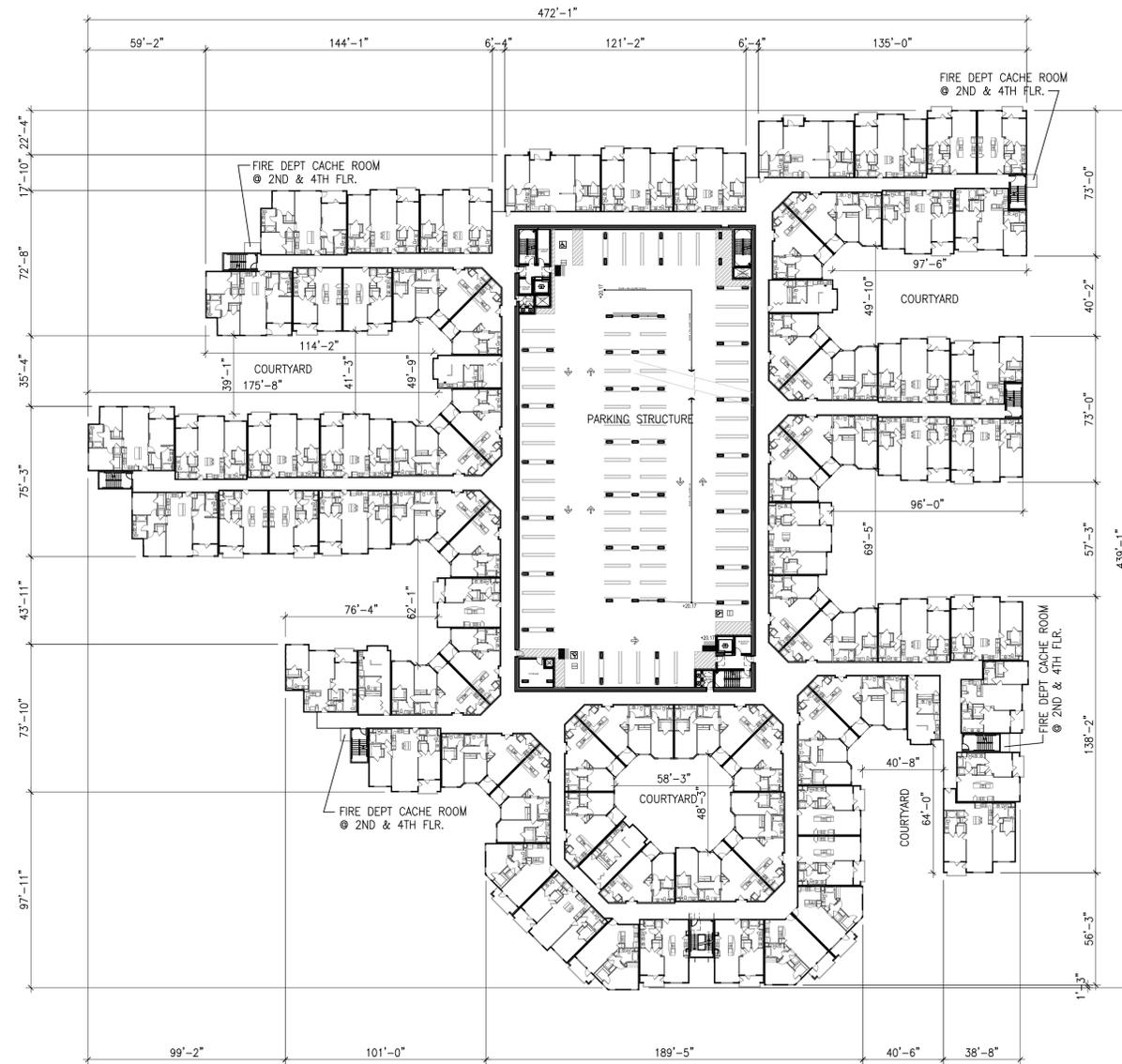
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**BUILDING PLAN  
FIRST AND  
SECOND FLOOR** **A3.1**

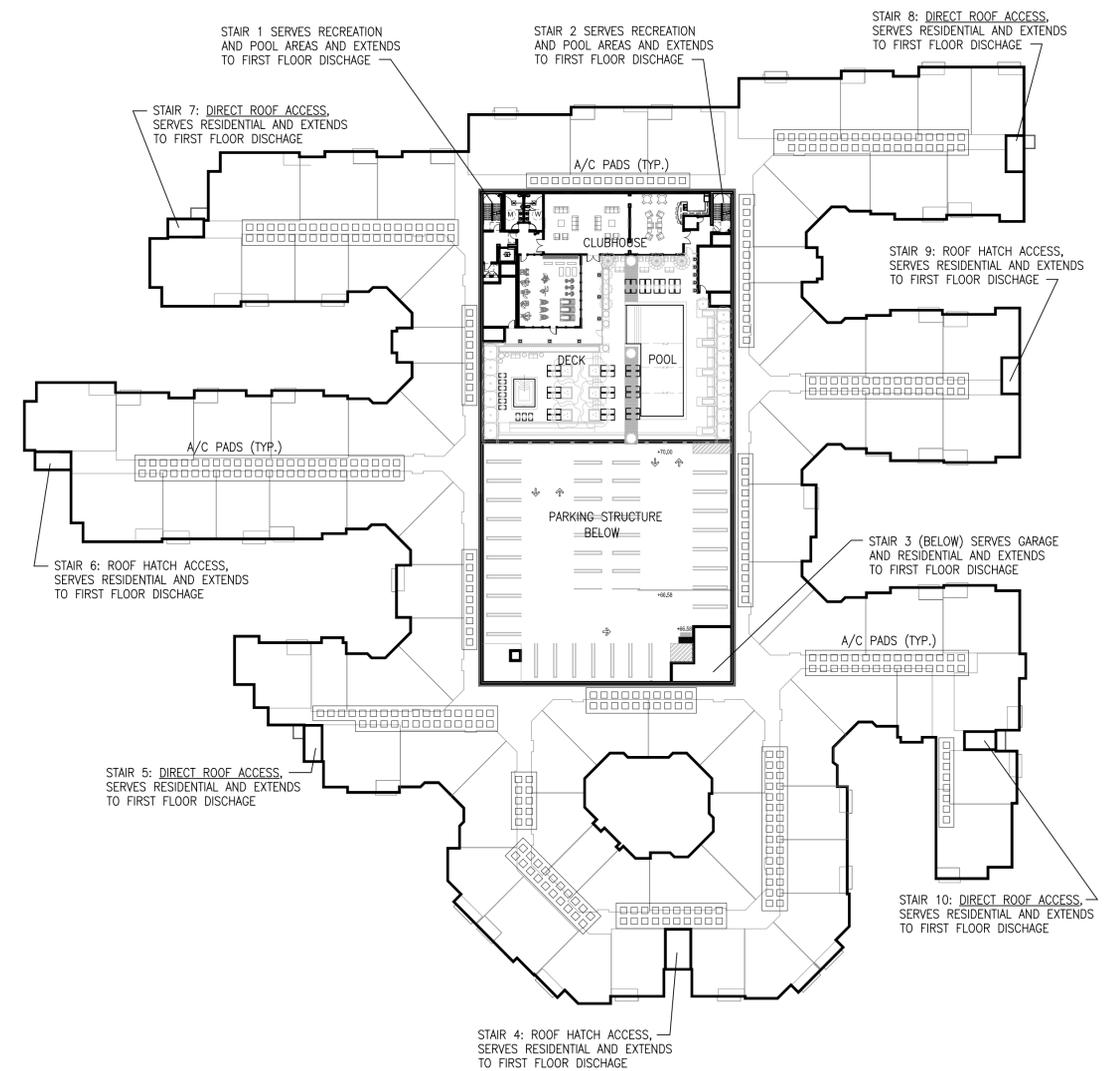
No.	ITEM	DATE
1	SUBMITTAL	04.17.09
2	SUBMITTAL	06.04.09

CASE FILE NUMBERS:  
X X

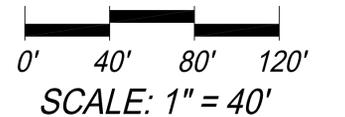
06.04.09  
AGENCY SUBMITTAL



**THIRD FLOOR BUILDING PLAN (4th & 5th Similar)**



**ROOF PLAN w/CLUB @ TOP GARAGE LEVEL**



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**LYON REALTY ADVISORS**  
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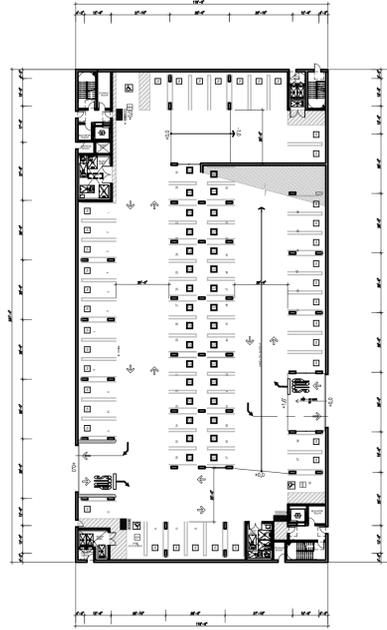
**ARCHITECTS ORANGE**  
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92866 (714) 639-9860

09-003 JUNE 04, 2009

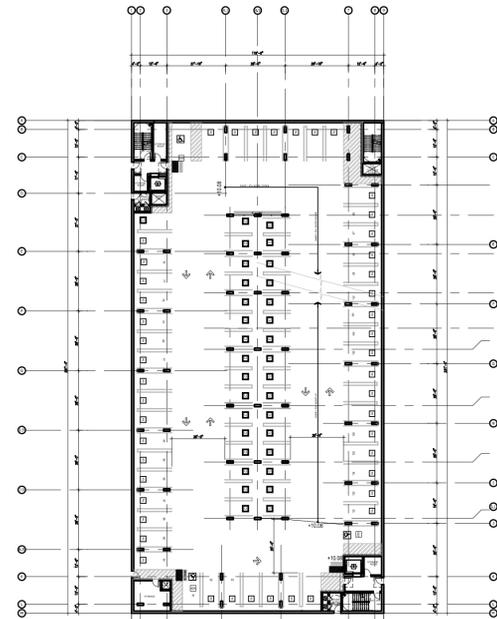


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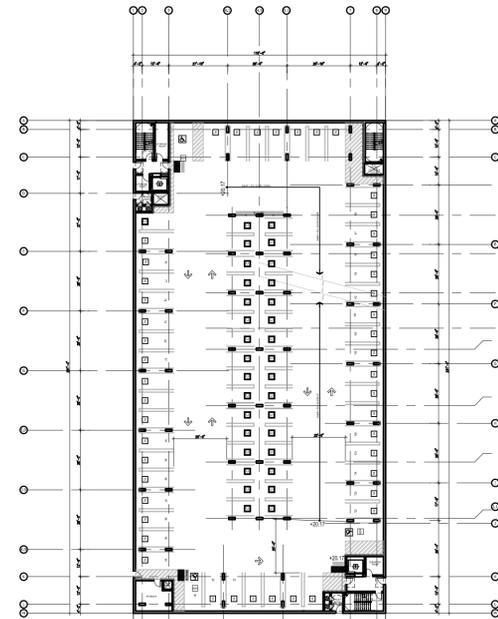
BUILDING PLAN THIRD-FIFTH AND ROOF PLAN		<b>A3.2</b>	06.04.09
No.	ITEM	DATE	
1	SUBMITTAL	04.17.09	
2	SUBMITTAL	06.04.09	
CASE FILE NUMBERS: X			AGENCY SUBMITTAL
X			



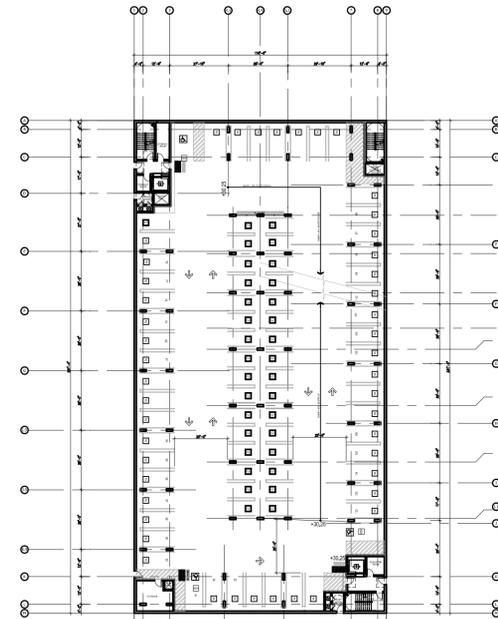
1ST LEVEL



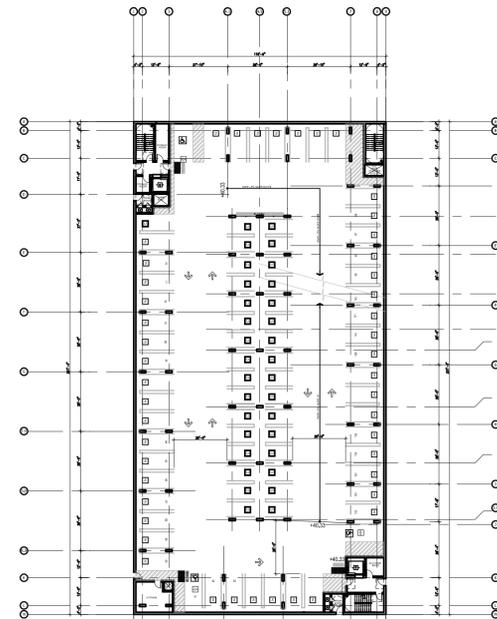
2ND LEVEL



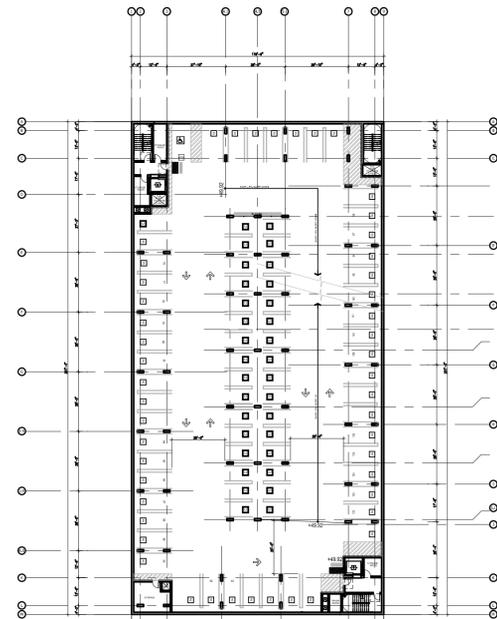
3RD LEVEL



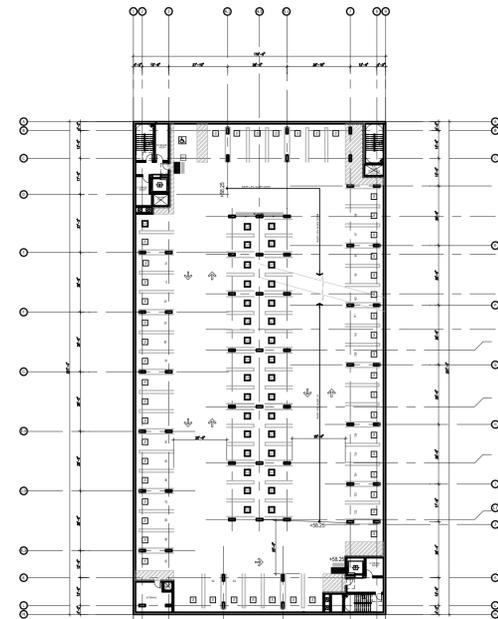
4TH LEVEL



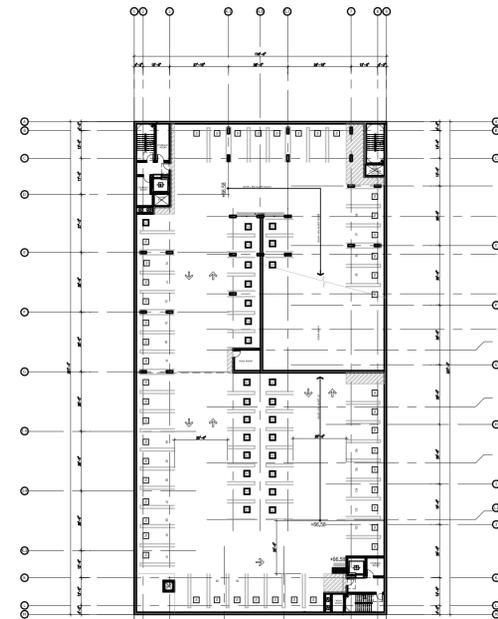
5TH LEVEL



6TH LEVEL



7TH LEVEL



ROOF LEVEL

**PARKING SUMMARY**

Unit Type	Number of Units	Stalls/Unit Per City Zoning Code	Stalls Req'd Per City Zoning Code	20% TOC Allowed Reduction	Total Stalls Provided
Studio	23	1.00	23	18.4	19
1 BR	140	1.50	210	168	189
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Guest		0.15	100	80	85
<b>TOTAL</b>			<b>769</b>	<b>615</b>	<b>650</b>
Stalls Per Unit			2.02	1.62	1.71

**Accessible Stalls:**

Category	Number	Percentage	Req'd Accessible
Dwelling Units	381	2%	7.62
Visitor parking	85	5%	4.25
<b>Total</b>			<b>11.87</b>

= 12 Req'd

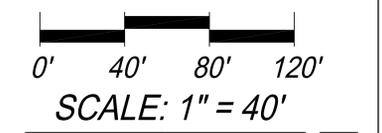
**Parking Structure Parking Provided**

Level	Units Per Level	Garage Stalls	HC Stalls	Guest Stalls
1st Level	73	84	3	2
2nd Level	75	83	3	2
3rd Level	78	83	3	2
4th Level	78	83	3	2
5th Level	78	83	3	2
6th Level	0	83	3	2
7th Level	0	83	3	2
Roof Level	0	57	1	57
<b>Total in Garage</b>	<b>382</b>	<b>639</b>	<b>15</b>	<b>74</b>
Surface Parking		11	1	1
<b>Total Provided</b>		<b>650</b>	<b>16</b>	<b>85</b>

**Stall Dimensions**

Stall Type	Dim	Qty
Standard	9x18'	330
Handicap	9x18'	16
Compact	8.5x15'	254
<b>Total</b>		<b>650</b>

30%



**LYON / CENTRIA**  
**LYON REALTY ADVISORS**  
 4901 BIRCH STREET NEWPORT BEACH, CALIFORNIA, 92660 949-838-1209

**MILPITAS, CA**

**ARCHITECTS ORANGE**  
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92866 (714) 639-9860

09-003 JUNE 04, 2009

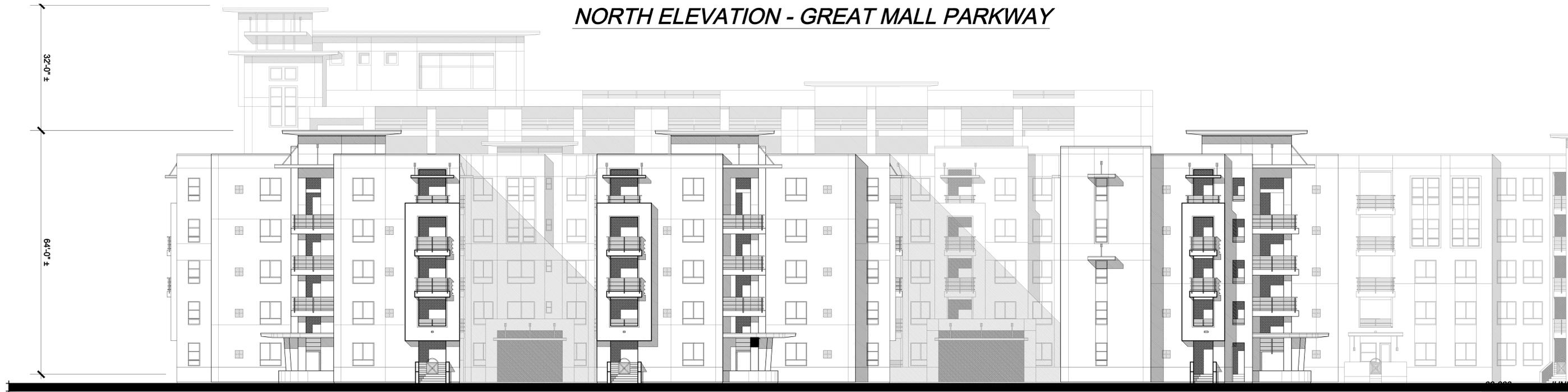


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<b>GARAGE TIER PLANS</b>		<b>A4.1</b>	06.04.09
No.	ITEM	DATE	AGENCY SUBMITTAL
1	SUBMITTAL	04.17.09	
2	SUBMITTAL	06.04.09	
CASE FILE NUMBERS:		X	



***NORTH ELEVATION - GREAT MALL PARKWAY***



***WEST ELEVATION - ADJACENT TO FUTURE PARK***

MATERIAL LEGEND	
DESCRIPTION	
1.	METAL FASCIA
2.	METAL CANOPY
3.	SCORE LINES
4.	STUCCO
5.	WINDOWS
6.	METAL RAILING

0' 10'-8" 21'-4" 32'  
**SCALE: 3/32" = 1'-0"**

**LYON / CENTRIA**

**LYON REALTY ADVISORS**

4901 BIRCH STREET NEWPORT BEACH, CALIFORNIA, 92660 949-838-1209

**MILPITAS, CA**

**ARCHITECTS ORANGE**

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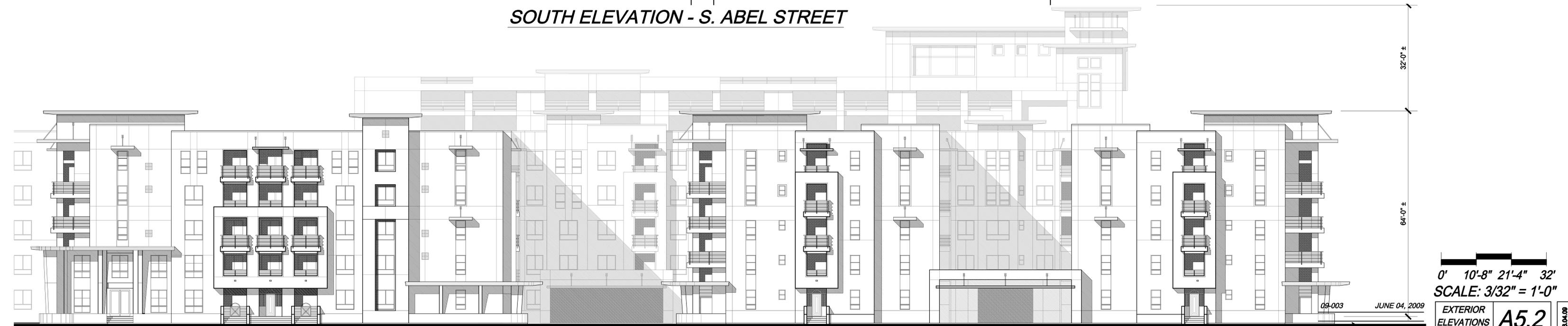
EXTERIOR ELEVATIONS		A5.1
No. ITEM	DATE	
1 SUBMITTAL	04.16.09	
2 SUBMITTAL	06.04.09	

CASE FILE NUMBERS:  
 X X

AGENCY SUBMITTAL 06.04.09



**SOUTH ELEVATION - S. ABEL STREET**



**EAST ELEVATION - FIRELANE**

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**MILPITAS, CA**

**LYON REALTY ADVISORS**

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**ARCHITECTS ORANGE**

144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 639-9860



09-003 JUNE 04, 2009

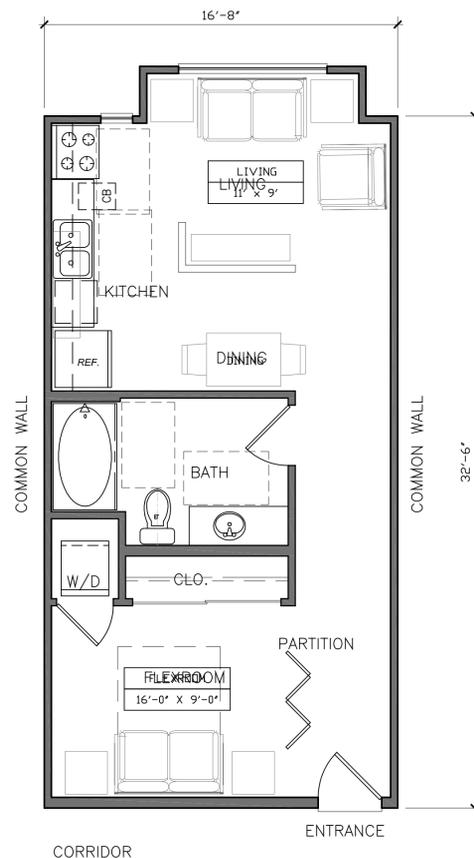
0' 10'-8" 21'-4" 32'  
SCALE: 3/32" = 1'-0"

EXTERIOR ELEVATIONS		A5.2
No. ITEM	DATE	
1 SUBMITTAL	04.16.09	
2 SUBMITTAL	06.04.09	

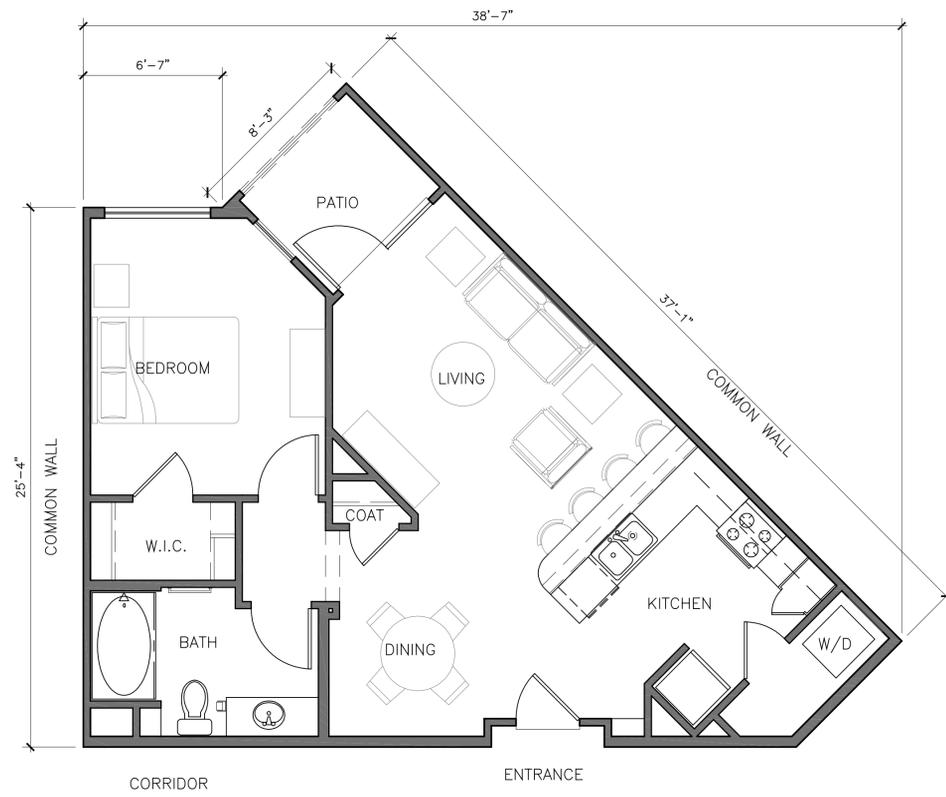
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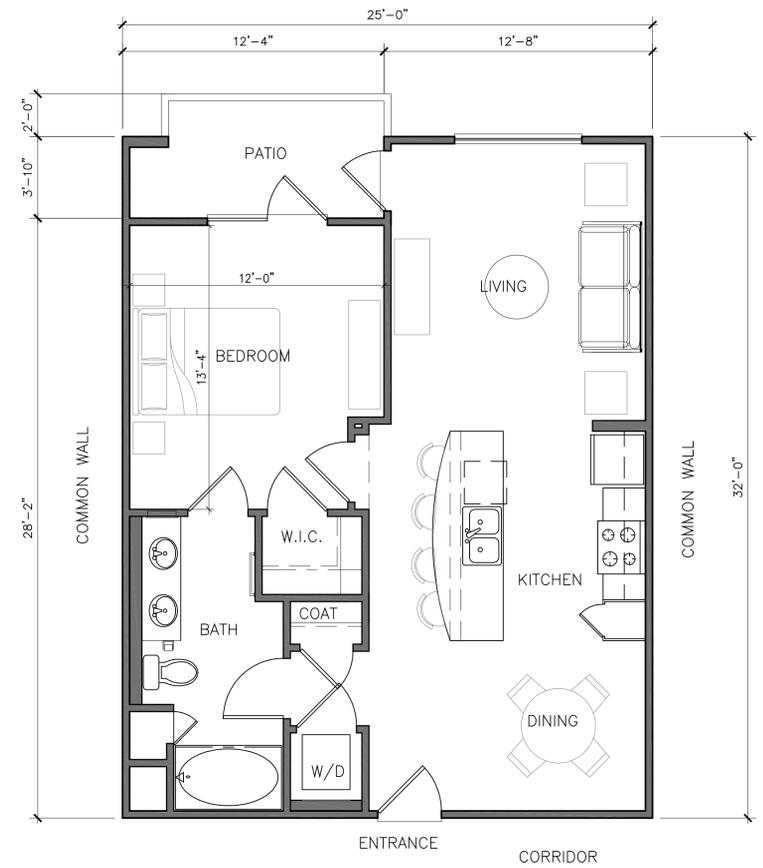
AGENCY SUBMITTAL 06.04.09



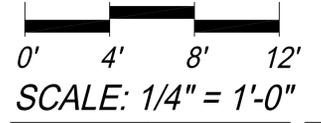
**UNIT S2**  
**STUDIO - 1 BATH**  
**LIVABLE AREA: 567 SQ.FT.**



**UNIT A1 - INSIDE CORNER**  
**1 BEDROOM - 1 BATH**  
**LIVABLE AREA: 738 SQ.FT.**  
**PATIO/BALCONY: 45 SQ.FT.**



**UNIT A2 - ALT 1**  
**1 BEDROOM - 1 BATH**  
**LIVABLE AREA: 753 SQ.FT.±**  
**PATIO/BALCONY: 62 SQ.FT.±**



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09-003 JUNE 04, 2009

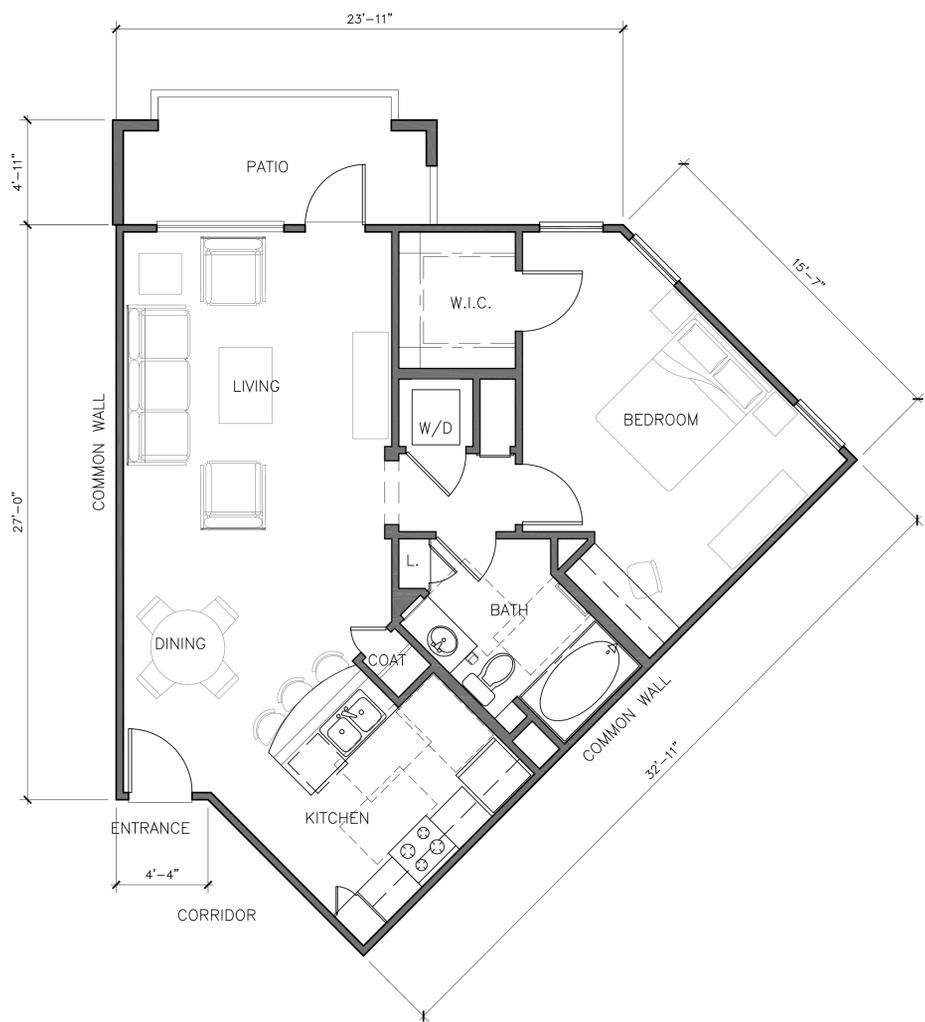


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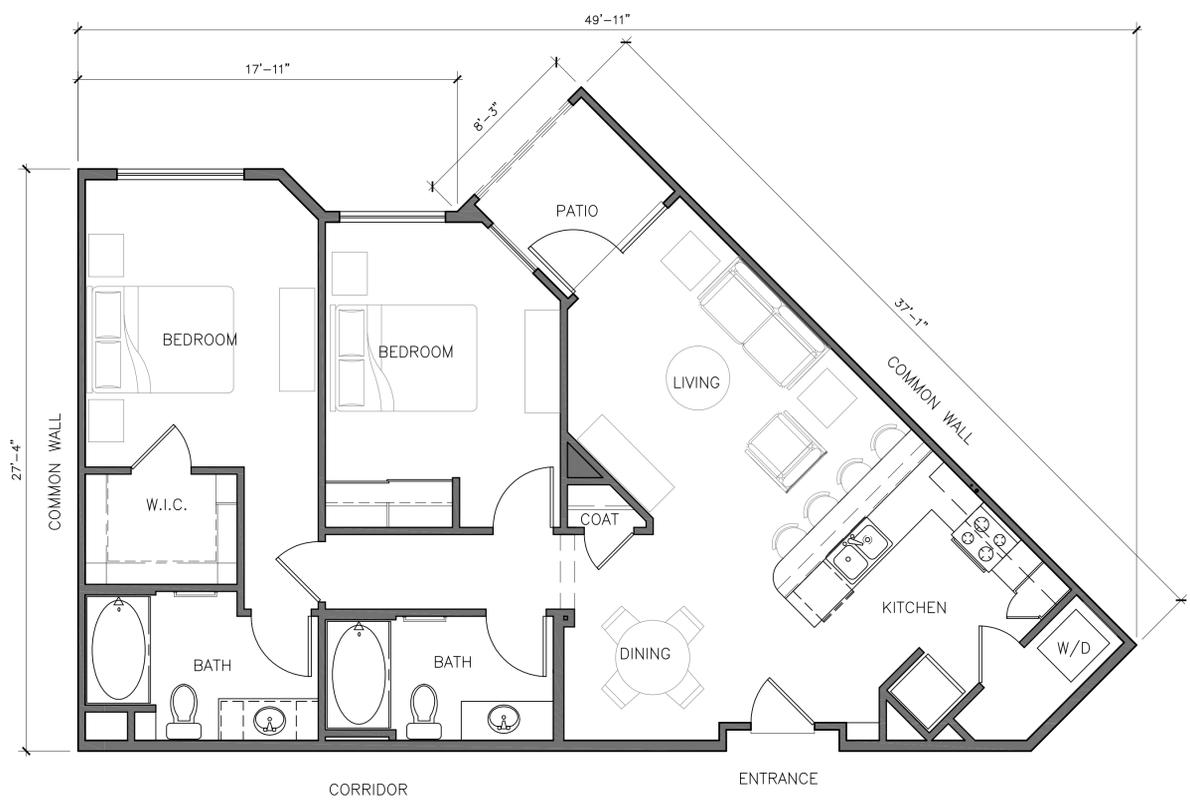
UNIT PLANS		<b>A6.1</b>
No.	ITEM	DATE
1	SUBMITTAL	04.17.09
2	SUBMITTAL	06.04.09

CASE FILE NUMBERS:  
 X X

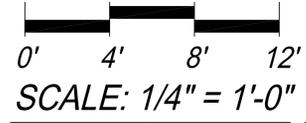
06.04.09  
 AGENCY SUBMITTAL



**UNIT A3 - OUTSIDE CORNER**  
**1 BEDROOM - 1 BATH**  
**LIVABLE AREA: 809 SQ.FT.±**  
**PATIO/BALCONY: 81 SQ.FT.±**



**UNIT B1 - INSIDE CORNER**  
**2 BEDROOM - 2 BATH**  
**LIVABLE AREA: 1,046 SQ.FT.**  
**PATIO/BALCONY: 45 SQ.FT**



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UNIT PLANS		<b>A6.2</b>
No.	ITEM	DATE
1	SUBMITTAL	04.17.09
2	SUBMITTAL	06.04.09

CASE FILE NUMBERS:  
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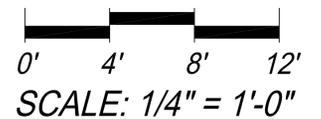
06.04.09 AGENCY SUBMITTAL



**UNIT B2**  
 2 BEDROOM - 2 BATH  
 LIVABLE AREA: 995 SQ.FT.±.  
 PATIO/BALCONY: 71 SQ.FT.±



**UNIT B3**  
 2 BEDROOM - 2 BATH  
 LIVABLE AREA: 1,066 SQ.FT.±.  
 PATIO/BALCONY: 72 SQ.FT.±



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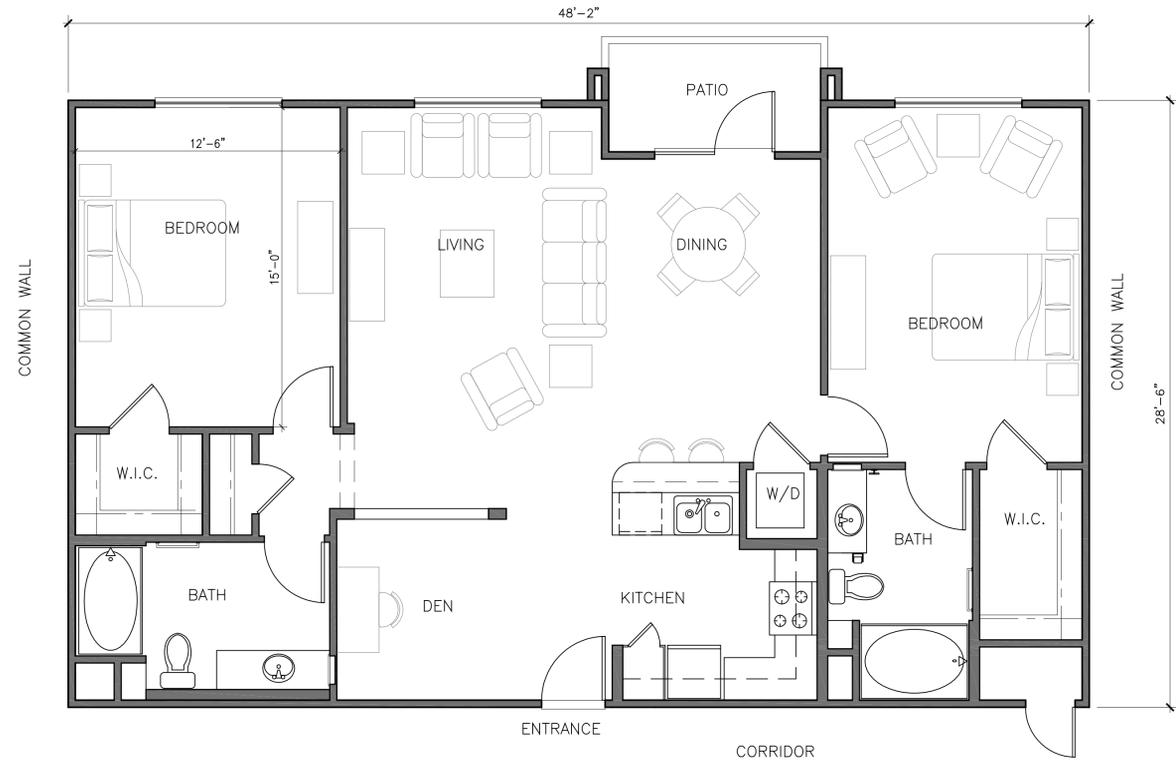
09-003 JUNE 04, 2009



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UNIT PLANS		<b>A6.3</b>
No.	ITEM	DATE
1	SUBMITTAL	04.17.09
2	SUBMITTAL	06.04.09
CASE FILE NUMBERS:		
X		X

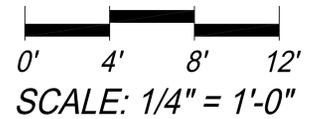
AGENCY SUBMITTAL 06.04.09



**UNIT B4**  
 2 BEDROOM - DEN - 2 BATH  
 LIVABLE AREA: 1,334 SQ.FT.±  
 PATIO/BALCONY: 51 SQ.FT.±



**UNIT C1**  
 3 BEDROOM - 2 BATH  
 LIVABLE AREA: 1,277 SQ.FT.  
 PATIO/BALCONY: 71 SQ.FT.



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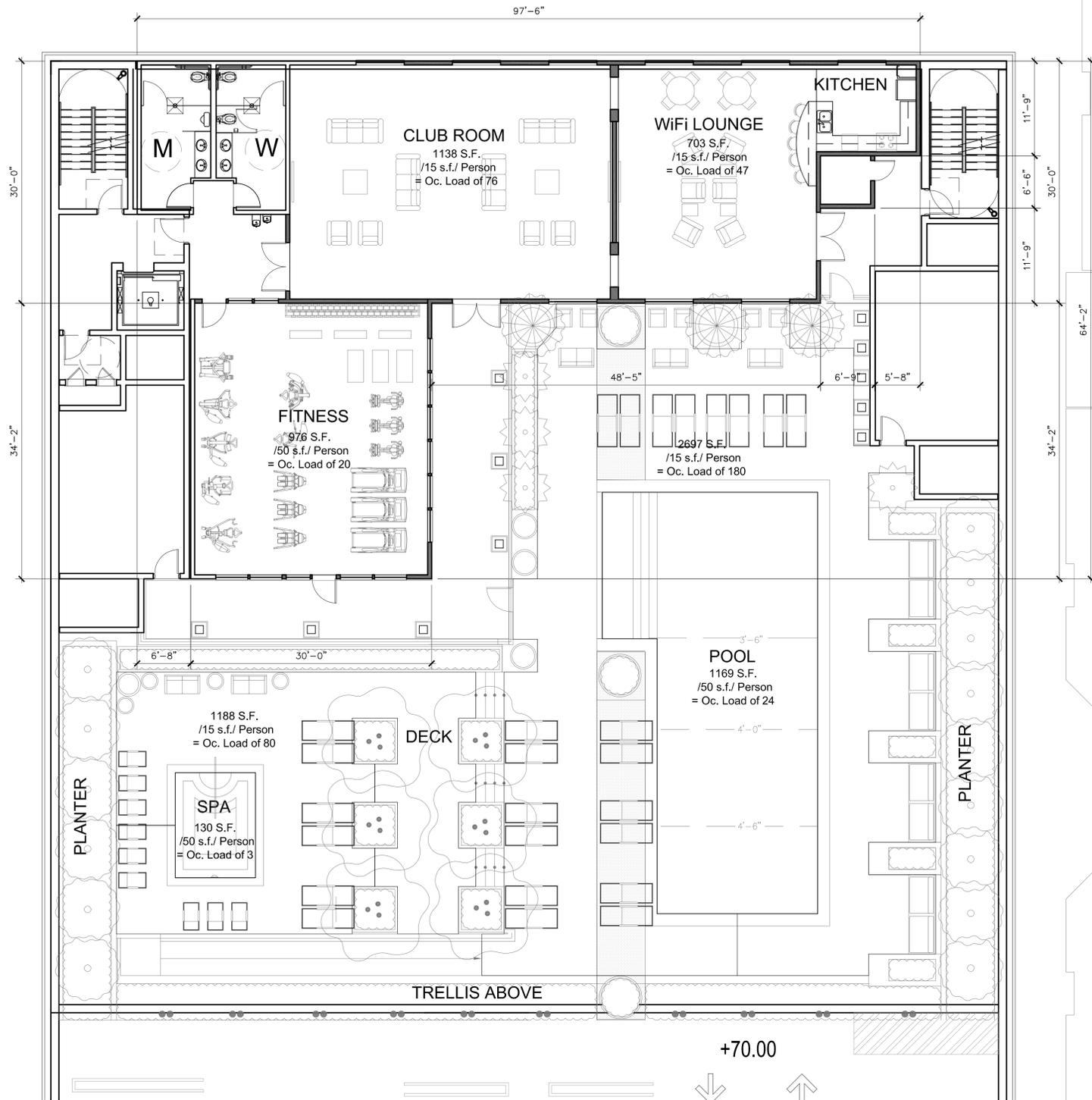
09-003 JUNE 04, 2009



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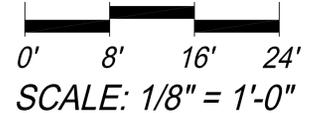
UNIT PLANS		<b>A6.4</b>
No.	ITEM	DATE
1	SUBMITTAL	04.17.09
2	SUBMITTAL	06.04.09
CASE FILE NUMBERS: X X		

06.04.09 AGENCY SUBMITTAL



**OCCUPANT LOADS:**  
 A3 (ENCLOSED ROOMS) = 146  
 A3 (POOL/SPA/DECK) = 284  
 EACH AREA < 300 OCCUPANTS  
 PER CBC CODE 509.2

**RECREATION BUILDING @ TOP GARAGE LEVEL**



09-003 JUNE 04, 2009



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RECREATION PLAN		<b>A7.1</b>
No.	ITEM	DATE
1	SUBMITTAL	04.17.09
2	SUBMITTAL	06.04.09
CASE FILE NUMBERS: X X		

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06.04.09 AGENCY SUBMITTAL

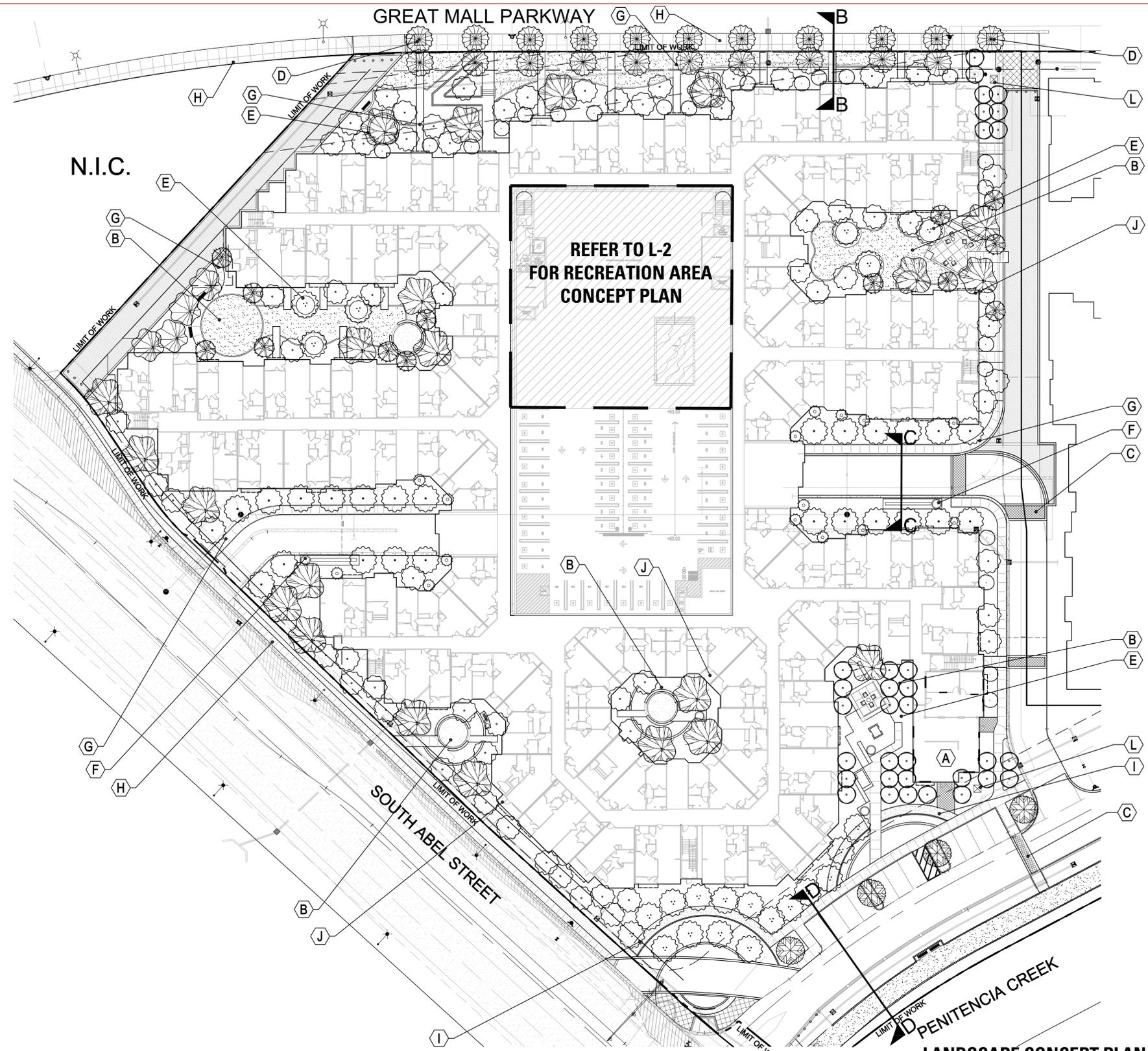
**AMENITIES LEGEND**  
SYMBOL DESCRIPTION

(A)	LEASING OFFICE
(B)	COMMON OPEN SPACE
(C)	PEDESTRIAN CROSSING
(D)	STREET TREE
(E)	PLANTER AREA
(F)	POTTERY
(G)	WALK
(H)	PUBLIC SIDEWALK
(I)	DECOMPOSED GRANITE
(J)	UNIT PATIO
(L)	SIGNAGE

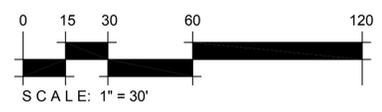
NOTE:  
REFER TO SHEET L-4 THRU SHEET L-5 FOR SECTIONS.

**TREE LEGEND**

DISCRIPTION	SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	SIZE AT 5 YEAR GROWTH (HT. X SPERAD)	SIZE AT MATURITY (HT. X SPREAD)
STREE TREE		Liriodendron tulipifera	Tulip Tree	15 GAL. MIN.	18'X10'	50'X30' 40'X50'
ENTRY DRIVE		Celtis reticulata	Western Hackberry	15 GAL. MIN.	16'X10'	25'X25'
PROJECT ENTRY		Juniperus c. 'Spartan'	Spartan Juniper	15 GAL. MIN.	10'X3'	18'X4'
VERTICAL ACCENT		Magnolia grandiflora	Southern Magnolia	15 GAL. MIN.	12'X8'	30'X30'
		Lophostemon confertus	Tristania Conferta	15 GAL. MIN.	20'X10'	30'X25'
		Prunus c. 'Krauter Vesuvius'	Purple Leaf Plum	15 GAL. MIN.	10'X8'	18'X12'
		Gingko biloba	Gingko	15 GAL. MIN.	10'X8'	35'X20'
ENTRY GROVE		Podocarpus macrophylla	Yew Pine	5 GAL. MIN.	12'X6'	25'X10'
		Olea 'Wilsonii'	Wilson Olive	15 GAL. MIN.	12'X15'	18'X20'
		Cinnamomum camphora	Camphor Tree	15 GAL. MIN.	16'X12'	30'X30'
INTERIOR COURTYARD		Podocarpus macrophylla	Yew Pine	5 GAL. MIN.	12'X6'	25'X10'
		Bambusa m. 'Alphonse Karr'	'Alphonse Karr' Bamboo	5 GAL. MIN.	15' TALL	25' TALL
DECIDUOUS ACCENT		Plantanus racemosa	California Sycamore	15 GAL. MIN.	15'x8'	25'X40'
GROUNDCOVER & SHRUBS		Shrub	Mix	1 GAL. MIN.	-	-
		Ground cover	Mix	FLATS	-	-
		Marathon III	Turf	Sod	-	-



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09-003 APRIL 17, 2009

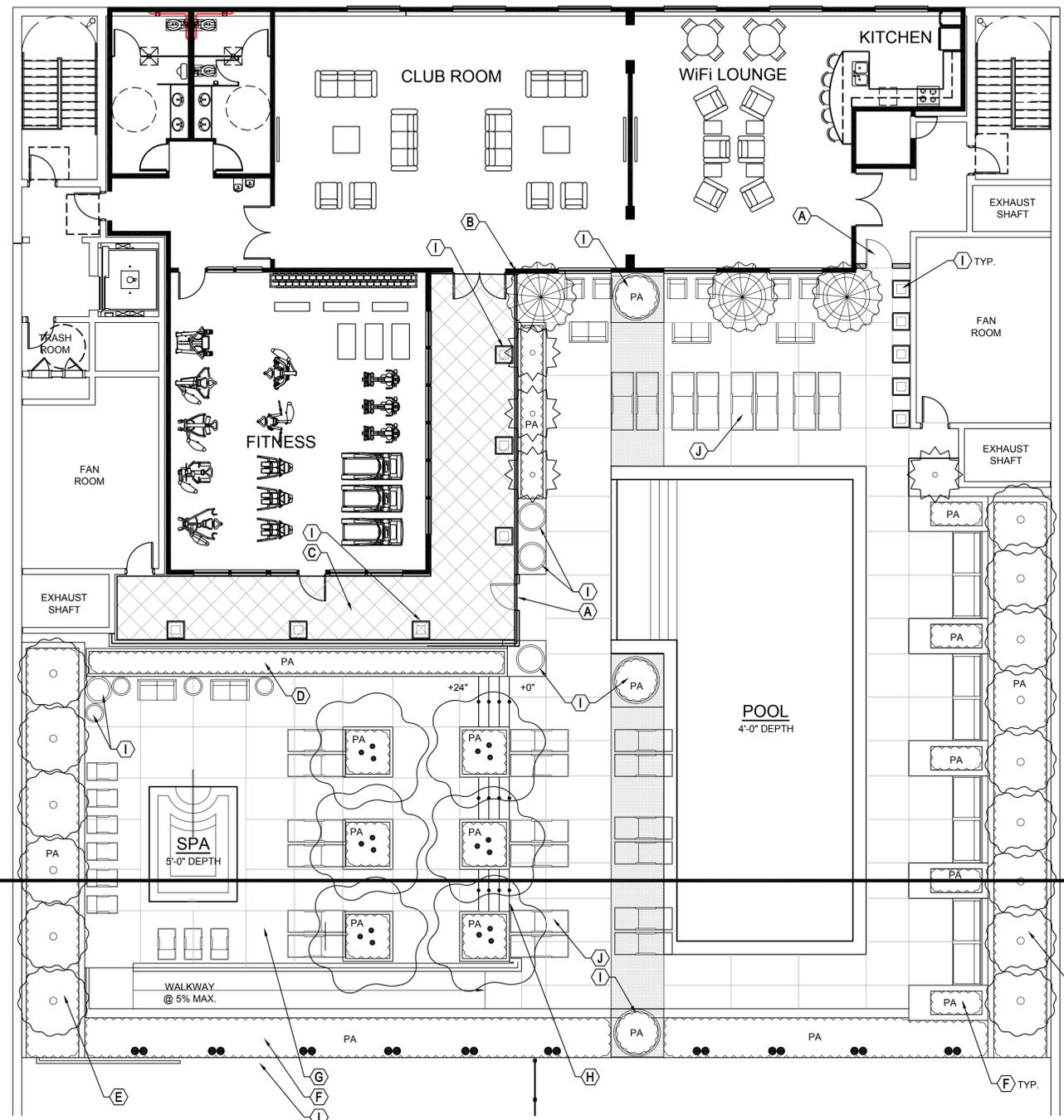


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**LANDSCAPE CONCEPT PLAN**

<b>ima</b>		<b>L-1</b>	04.17.09
No. ITEM	DATE		
1	SUBMITTAL	04.17.09	
CASE FILE NUMBERS:			
X	X		

AGENCY SUBMITTAL



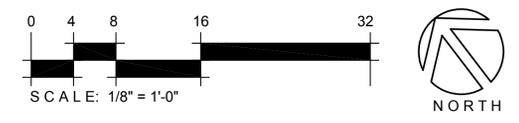
### AMENITIES LEGEND

SYMBOL DESCRIPTION	SYMBOL DESCRIPTION	SYMBOL DESCRIPTION
(A) POOL ENTRY GATE	(E) 'BAMBOO' BOSQUE	(I) ACCENT POTTERY, TYP.
(B) POOL ENCLOSURE FENCE	(F) RAISED PLANTER	(J) SITE FURNITURE, TYP.
(C) OUTDOOR TERRACE	(G) RAISED SPA TERRACE	
(D) EVERGREEN SCREEN	(H) STEPS @ SPA TERRACE	

NOTE:  
REFER TO SHEET L-3 FOR SECTION.

### TREE LEGEND

DESCRIPTION / SYMBOL	BOTANICAL NAME	COMMON NAME	CONTAINER SIZE	SIZE AT 5 YEAR GROWTH (HT. X SPERAD)	SIZE AT MATURITY (HT. X SPREAD)
EVERGREEN SCREEN	Ficus microcarpa 'Nitida'	Indian Laurel (Columnar)	15 GAL.	10'X8'	20'X12'
	Bambusa multiplex 'Alphonse Karr'	Alphonse Karr Bamboo	15 GAL.	10'X8'	20'X15'
COLUMNAR ACCENT	Prunus caroliniana 'Compacta'	Carolina Laurel Cherry	15 GAL.	15'X10'	25'X20'
	Podocarpus macrophyllus	Yew Pine	15 GAL.	10'X8'	30'X10'
SPA COURTYARD	Ilex wilsonii	Wilson Holly	15 GAL.	10'X8'	20'X12'
	Metrosideros excelsa	New Zealand Christmas Tree	15 GAL.	12'X10'	25'X15'
VINES (@ TRELLIS)	Clytostoma callistegioides	Violet Trumpet Vine	5 GAL. MIN.	-	VINE
GROUNDCOVER & SHRUBS	Shrub	Mix	1 GAL. MIN.	-	-
	Ground cover	Mix	1 GAL. MIN.	-	-



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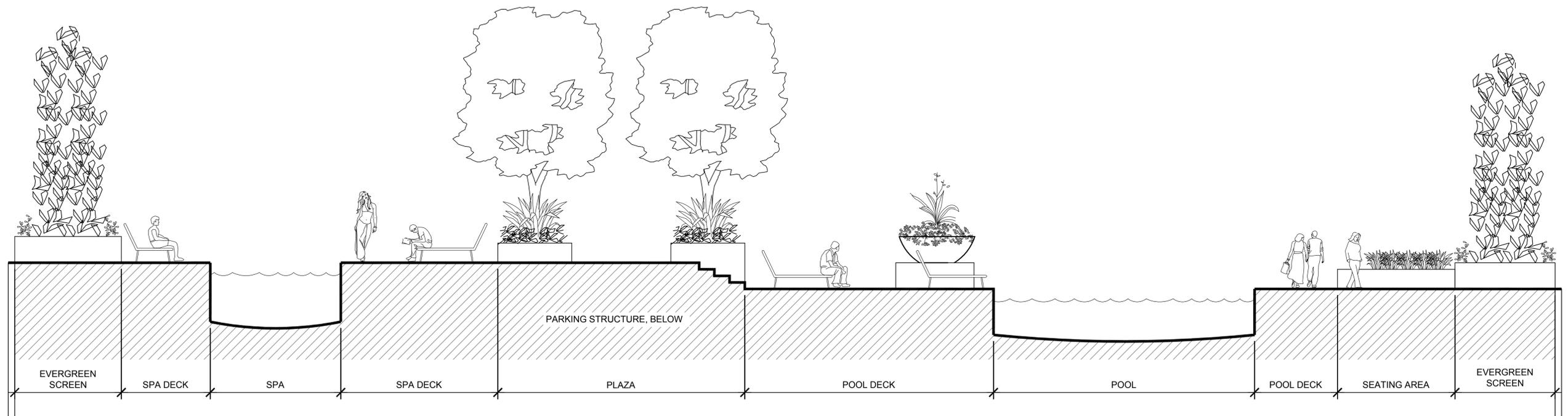


REC AREA CONCEPT PLAN

<b>ima</b>		<b>L-2</b>
No. ITEM	DATE	
1	SUBMITTAL	04.17.09
CASE FILE NUMBERS: X X		

09-003 APRIL 17, 2009

04-17.09  
AGENCY SUBMITTAL



**RECREATION AREA SECTION 'A - A'**

SCALE: 1/4" = 1'-0"

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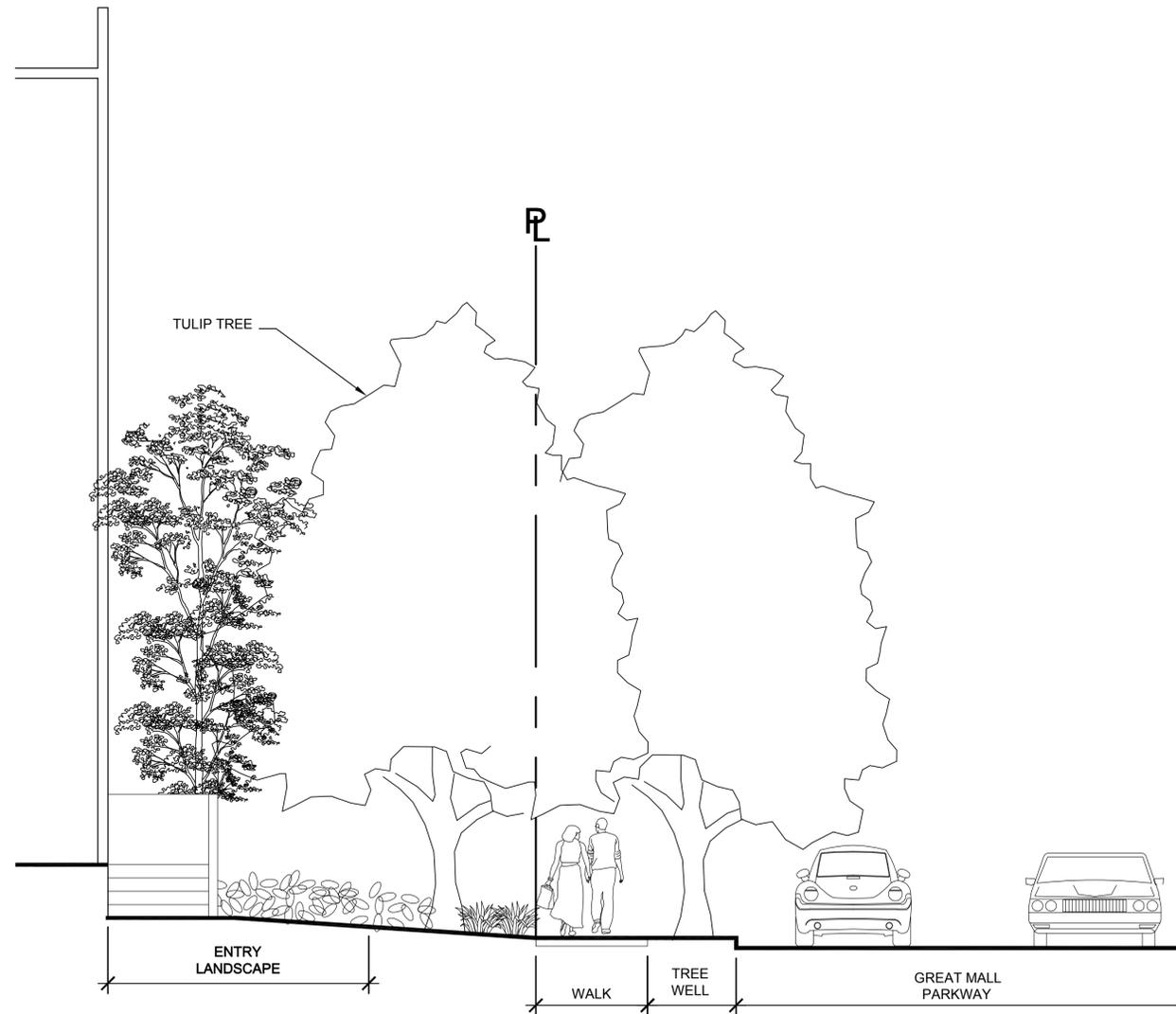
SECTION 'A-A'

**ima** L-3

No.	ITEM	DATE
1	SUBMITTAL	04.17.09

CASE FILE NUMBERS:  
 X X

04.17.09 AGENCY SUBMITTAL



**GREAT MALL PARKWAY LANDSCAPE - SECTION B'-B'**

SCALE: 1/4" = 1'-0"

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SECTION 'B-B'

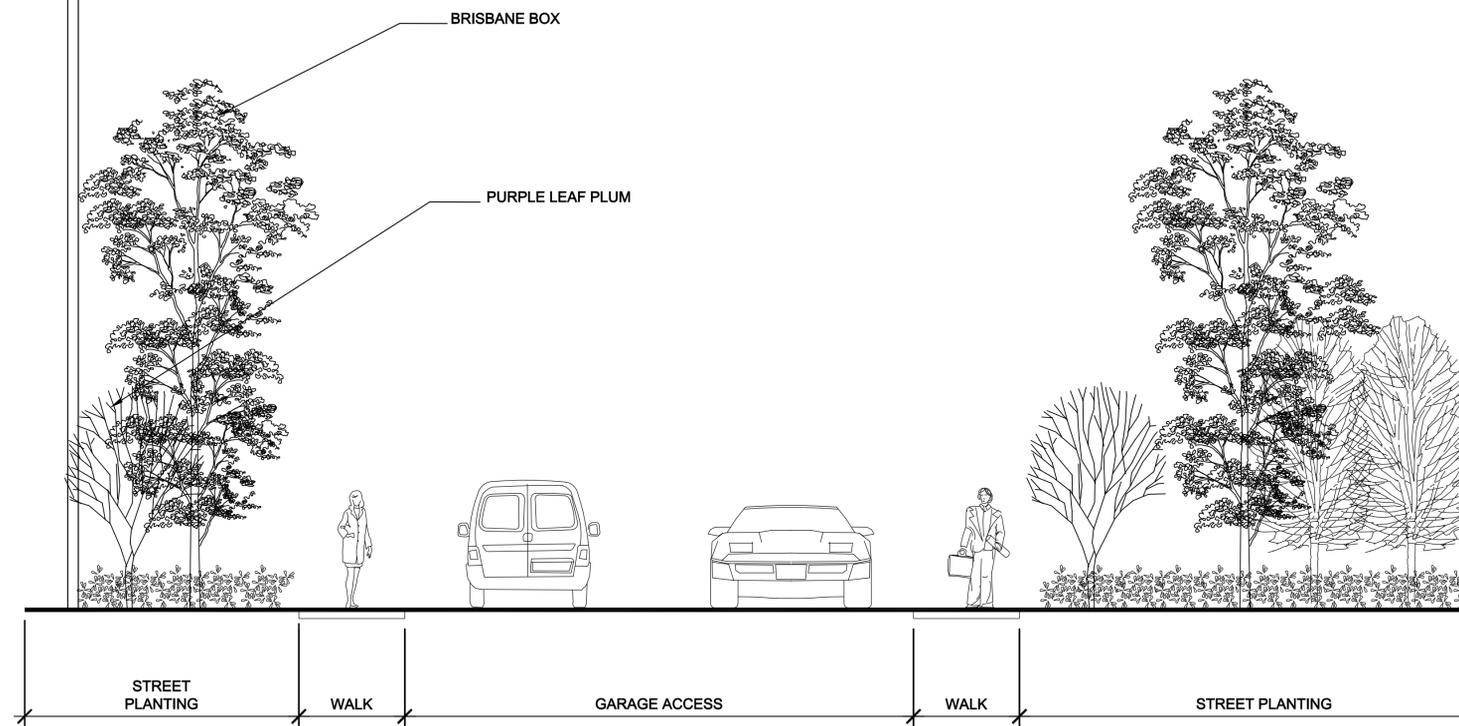
**ima** L-4

No.	ITEM	DATE
1	SUBMITTAL	04.17.09

CASE FILE NUMBERS:  
 X X

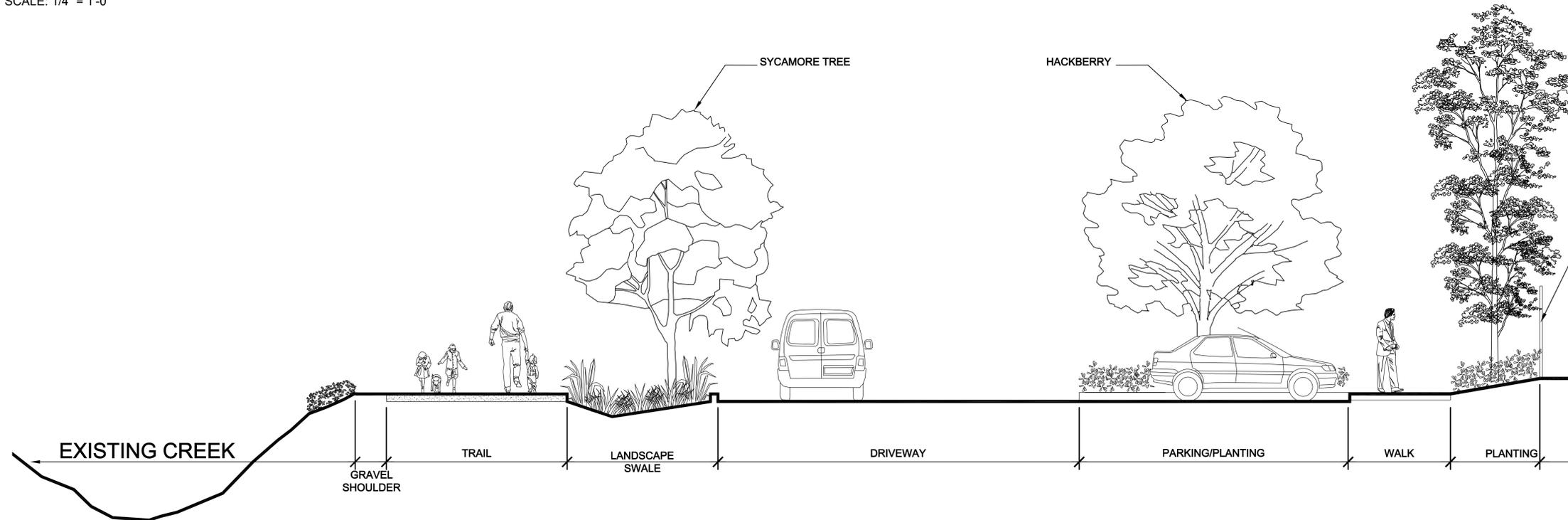
04:17:09

AGENCY SUBMITTAL



**GARAGE ACCESS DRIVEWAY SECTION C'-C'**

SCALE: 1/4" = 1'-0"



**PRIVATE DRIVE - SECTION D'-D'**

SCALE: 1/4" = 1'-0"

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09-003

APRIL 17, 2009



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SECTIONS 'C-C' & 'D-D'

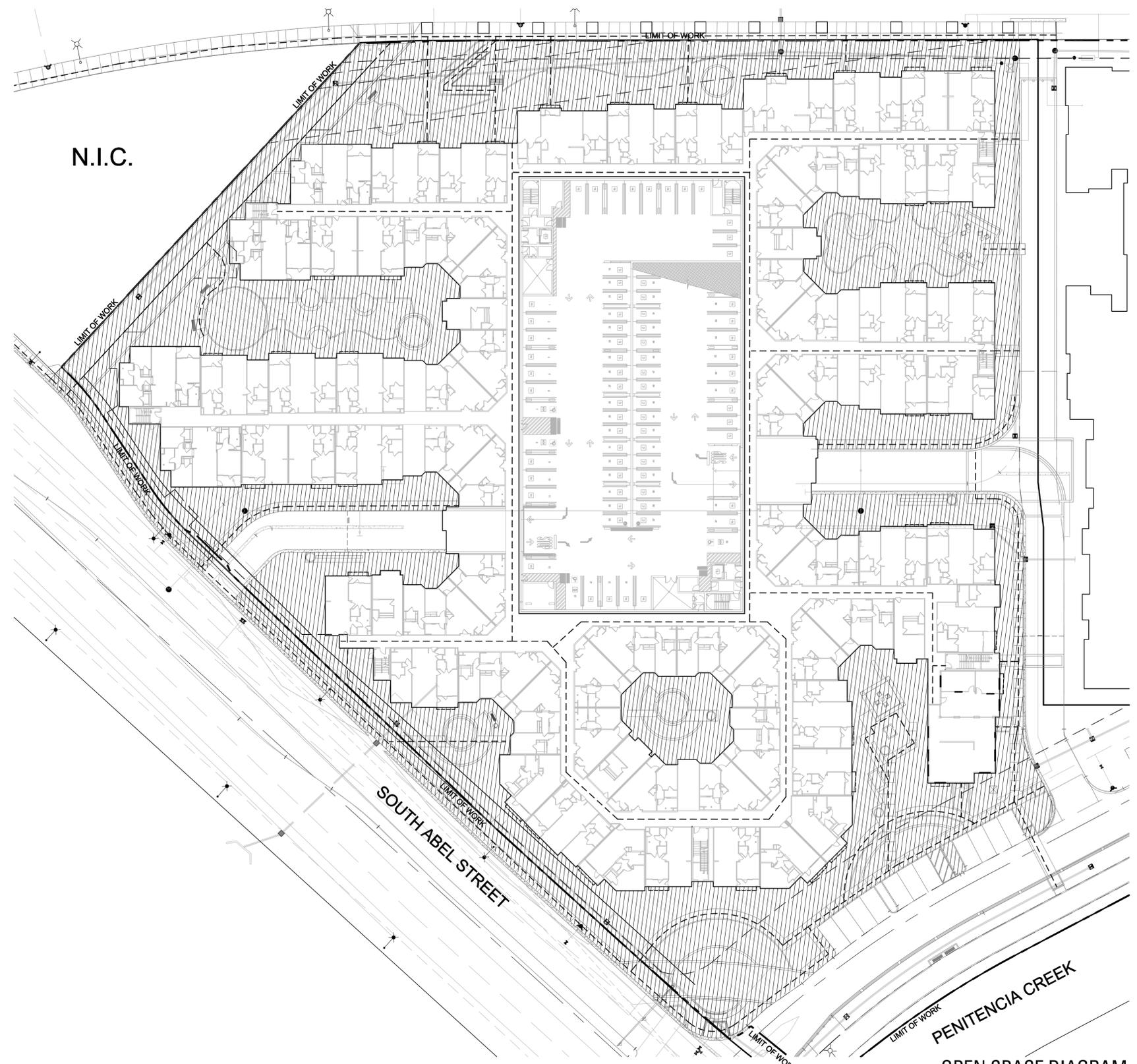
**ima L-5**

No.	ITEM	DATE
1	SUBMITTAL	04.17.09

CASE FILE NUMBERS:  
 X X

04.17.09

AGENCY SUBMITTAL



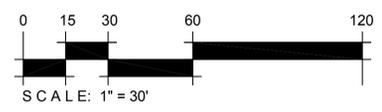
**OPEN SPACE CALCULATION:**

OVERALL SITE SQUARE FOOTAGE: 226,512 S.F.  
 OVERALL PUBLIC OPEN SPACE: 68,100 S.F.  
 OVERALL PUBLIC OPEN SPACE PERCENTAGE: 30%  
 (REQUIRED MINIMUM OPEN SPACE PERCENTAGE: 25%)  
 OVERALL USABLE OPEN SPACE: 76,510 S.F.  
 OVERALL USABLE OPEN SPACE PERCENTAGE: 34%

NUMBER OF UNITS: 382 D.U.  
 USABLE OPEN SPACE REQUIRED: (382x200 SF) = 76,400 S.F.  
 USABLE OPEN SPACE PROVIDED: 76,510 S.F.

**OPEN SPACE & PATH OF TRAVEL LEGENDS:**

----- PATH OF TRAVEL  
 [Hatched Box] PUBLIC OPEN SPACE



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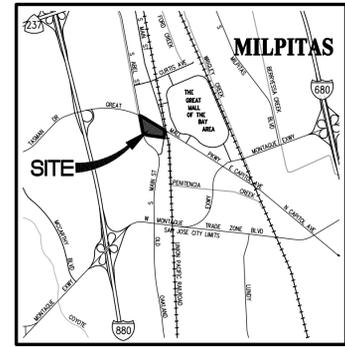
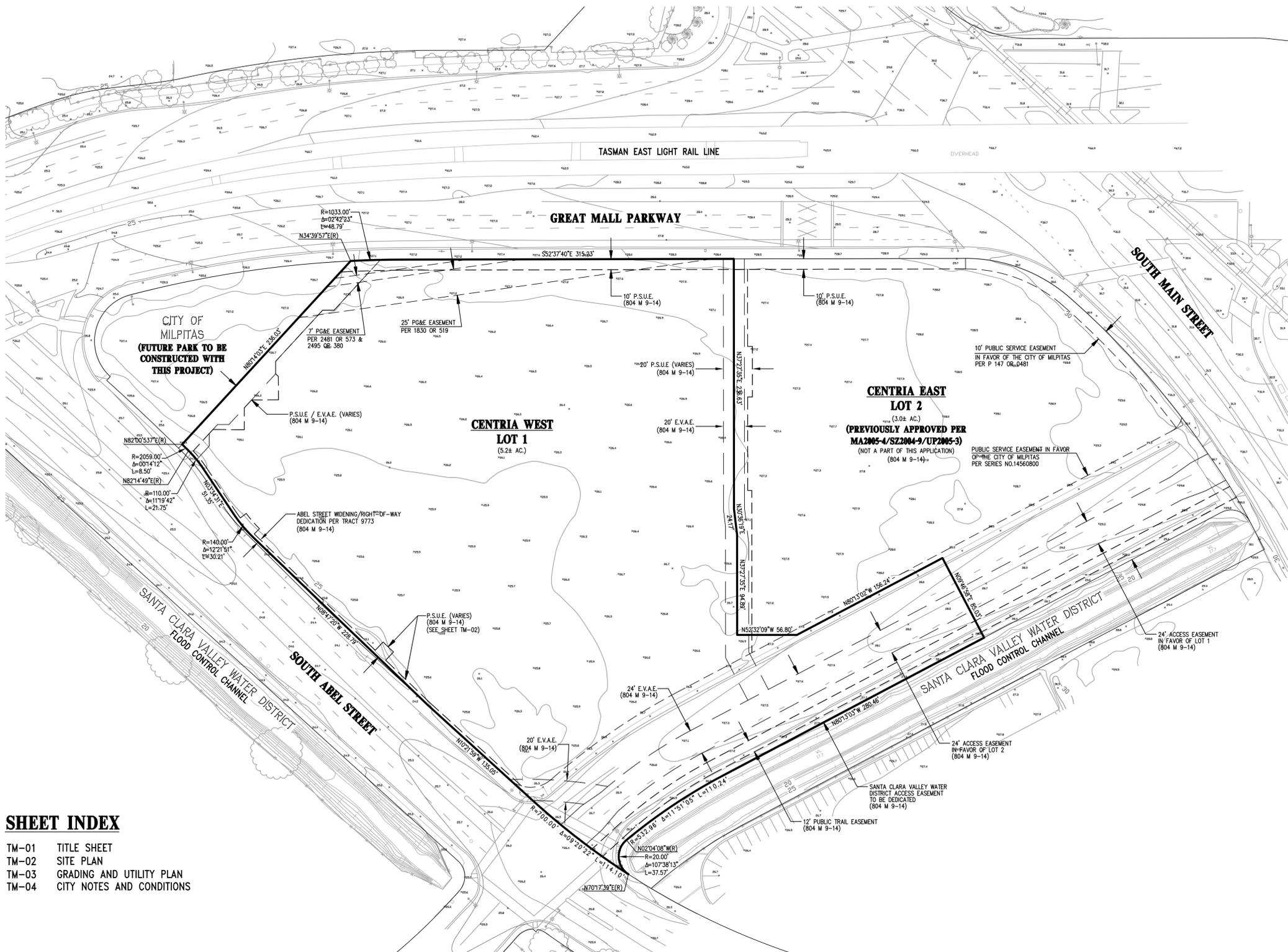
**OPEN SPACE DIAGRAM**

**ima L-6**

No.	ITEM	DATE
1	SUBMITTAL	04.17.09

CASE FILE NUMBERS:  
 X X

04.17.09 AGENCY SUBMITTAL



**GENERAL NOTES**

- ASSESSORS PARCEL NO: 086-12-021
- SITE ADDRESS: NORTHEAST PARCEL AT THE INTERSECTION OF SOUTH ABEL STREET AND W. CAPITAL AVENUE
- TOTAL SITE AREA: (INCLUDES LOT 1, LOT 2, PARK PARCEL) 8.7± ACRES
- SUBDIVISION BOUNDARY AREA: 5.2± ACRES
- ZONING: R4-TOD
- EXISTING USE: VACANT  
PROPOSED USE: MULTI-FAMILY RESIDENTIAL
- MINIMUM LOT SIZE: 5.2± AC (LOT 1) (227,300 SF)
- BENCHMARK: A BRASS DISK MONUMENT (NO. 1594-334-2) IN MONUMENT WELL AT THE INTERSECTION OF CAPITOL AVENUE AND SOUTH MAIN STREET DESIGNATED "CAP-MAI", ELEVATION 30.076, NGVD 29 DATUM PER CITY OF MILPITAS GPS LEVEL SURVEYS OF 12/1999 TO 02/2000.
- STREETS: ALL STREETS WITHIN THE SUBDIVISION WILL BE PRIVATE STREETS AND WILL BE PRIVATELY MAINTAINED. ALL STREETS WILL BE WITHIN P.S.U.E.'S (MINIMUM LONGITUDINAL SLOPE = 0.6%). ACCESS EASEMENTS WILL BE PROVIDED FOR BOTH PROPERTIES.
- STREET TREES: STREET TREES SHALL BE PROVIDED AS REQUIRED BY THE CITY AND WILL BE PRIVATELY MAINTAINED.
- STREET LIGHTS: STREET LIGHTS ON PRIVATE STREETS WILL BE PRIVATELY MAINTAINED.
- WALLS: ALL WALLS WILL BE PRIVATE FACILITIES AND PRIVATELY MAINTAINED.
- STORM DRAIN: PROPOSED STORM DRAIN FACILITIES WILL BE PRIVATE FACILITIES AND WILL BE PRIVATELY MAINTAINED, EXCEPT AS NOTED.
- PUBLIC UTILITIES: PROPOSED WATER AND SANITARY SEWER FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY WILL BE CONSTRUCTED AS PER CITY OF MILPITAS STANDARDS AND DEDICATED TO CITY.
- PRIVATE UTILITIES: PROPOSED WATER AND SANITARY SEWER FACILITIES WITHIN THE SUBDIVISION WILL BE PRIVATELY MAINTAINED, EXCEPT AS NOTED.
- WELLS ONSITE: NONE
- WATER: CITY OF MILPITAS
- SEWER: CITY OF MILPITAS
- GAS & ELECTRIC: PG&E
- TELEPHONE: SBC
- CABLE TV: AT&T BROADBAND
- CONDOMINIUM MAP: A CONDOMINIUM MAP WILL BE RECORDED FOR LOT 1. THE SUBDIVISION IS A CONDOMINIUM PROJECT AS DEFINED IN SECTION 1350 ET. SEQ. OF THE CIVIL CODE OF THE STATE OF CALIFORNIA AND FILED PURSUANT TO THE SUBDIVISION MAP ACT. THE TOTAL NUMBER OF CONDOMINIUM DWELLING UNITS SHALL BE NO MORE THAN 381 UNITS.
- DIMENSIONS: ALL DIMENSIONS ARE PRELIMINARY AND SUBJECT TO FINAL PARCEL MAP.
- PUBLIC SERVICES & UTILITY EASEMENT (P.S.U.E.): SUBJECT TO APPROVAL BY THE CITY, EXISTING P.S.U.E.'S MAY BE ALTERED / QUITCLAIMED AS NECESSARY BASED ON FINAL BUILDING AND UTILITY LAYOUT.

**VICINITY MAP**  
(NOT TO SCALE)

**SHEET INDEX**

- TM-01 TITLE SHEET
- TM-02 SITE PLAN
- TM-03 GRADING AND UTILITY PLAN
- TM-04 CITY NOTES AND CONDITIONS

**CONTACTS**

- OWNER/SUBDIVIDER: LYON MILPITAS, LLC  
4901 BIRCH STREET  
NEWPORT BEACH, CA 92660  
(949) 838-1281
- ENGINEER: CARLSON, BARBEE & GIBSON, INC.  
6111 BOLLINGER CANYON ROAD, SUITE 150  
SAN RAMON, CA 94583  
(925) 866-0322  
JASON J. NERI

**LEGEND**

- SUBDIVISION BOUNDARY
- PROPERTY LINE
- SPOT ELEVATIONS
- E.V.A.E. EMERGENCY VEHICLE ACCESS EASEMENT
- P.S.U.E. PUBLIC SERVICES & UTILITY EASEMENT
- LOT NUMBER

**SUBDIVISION TENTATIVE MAP**  
This Map has been reviewed by the City Engineer.

City Engineer \_\_\_\_\_ Date \_\_\_\_\_

Recommended for Approval by the Milpitas Planning Commission, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and Approved by the Milpitas City Council this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Community Development Manager \_\_\_\_\_ Date \_\_\_\_\_

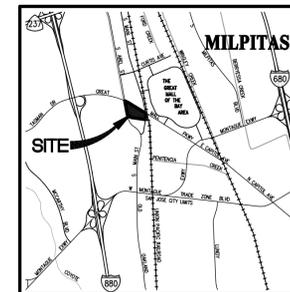
**VESTING TENTATIVE SUBDIVISION TRACT MAP FOR CONDOMINIUM PURPOSES CENTRIA WEST**

CITY OF MILPITAS      SANTA CLARA COUNTY      CALIFORNIA

SCALE: 1" = 50'  
JUNE 11, 2009

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SHEET NUMBER  
**TM-01**



VICINITY MAP  
(NOT TO SCALE)

**GENERAL NOTES**

- OWNER: LYON MILPITAS, LLC  
4901 BIRCH STREET  
NEWPORT BEACH, CA 92660  
(949) 838-1281
- APPLICANT: LYON REALTY ADVISORS  
4901 BIRCH STREET  
NEWPORT BEACH, CA 92660  
(949) 838-1281
- ENGINEER: CARLSON, BARBEE & GIBSON, INC.  
6111 BOLLINGER CANYON ROAD, SUITE 150  
SAN RAMON, CA 94583  
(925) 866-0322  
JASON NERI, RCE 59136
- SOILS ENGINEER: TREADWELL & ROLLO, INC.  
501 14TH STREET, THIRD FLOOR  
OAKLAND, CA 94612  
(510) 874-4500
- TOPOGRAPHIC SOURCE: AERIAL TOPOGRAPHY COMPILED BY:  
AEROMETRIC SURVEYS  
915 CLAREMONT STREET  
SAN MATEO, CA 94402
- ASSESSORS PARCEL NO: 086-12-021
- EXISTING LAND USE: VACANT
- PROPOSED LAND USE: MULTI-FAMILY RESIDENTIAL
- TOTAL SITE AREA: 8.70± AC
- SUBDIVISION BOUNDARY AREA: 5.20± AC
- TOTAL NUMBER OF UNITS:  
(TOTAL SITE) LOT 1 381  
LOT 2 137  
TOTAL 518
- DENSITY (TOTAL SITE): PROPOSED 59.5 UNITS/AC
- PARKING (LOT 1): RESIDENT (GARAGE) 565 STALLS  
GUEST (GARAGE) 74 STALLS  
GUEST (STREET) 11 STALLS  
TOTAL 650 STALLS
- EXISTING ZONING: R4-TOD
- PROPOSED ZONING: R4-TOD
- GAS & ELECTRIC: PACIFIC GAS & ELECTRIC
- TELEPHONE: SBC
- WATER: CITY OF MILPITAS
- SEWER: CITY OF MILPITAS
- STORM DRAIN: CITY OF MILPITAS
- FLOOD ZONE: ZONED AO - FLOOD DEPTH OF 1 FOOT  
REFER TO:  
FLOOD INSURANCE RATE MAP  
PANEL 060344-0003 G (JUNE 22, 1998)
- TOTAL IMPERVIOUS SURFACE:  
(LOT 1 AND LOT 2) 267,900± SF (6.15± AC)
- SANTA CLARA VALLEY WATER DISTRICT:  
WATER DISTRICT: ANY WORK ALONG THE S.C.V.W.D. FRONTAGE  
REQUIRES THE DISTRICT'S REVIEW AND APPROVAL.  
ALL PLANTING IN THE SWALE AND S.C.V.W.D.  
FRONTAGE SHALL BE REVIEWED AND APPROVED BY  
THE DISTRICT. NO PLANTING WILL BE ALLOWED ON  
THE CREEK'S BANK.
- PUBLIC SERVICES & UTILITY  
EASEMENT (P.S.U.E.): SUBJECT TO APPROVAL BY THE CITY, EXISTING  
P.S.U.E.'S MAY BE ALTERED / QUITCLAIMED AS  
NECESSARY BASED ON FINAL BUILDING AND UTILITY  
LAYOUT.

**SITE PLAN  
MILPITAS MIDTOWN  
CENTRIA WEST**

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

**cbg** Carlson, Barbee & Gibson, Inc.  
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SHEET NUMBER  
**TM-02**

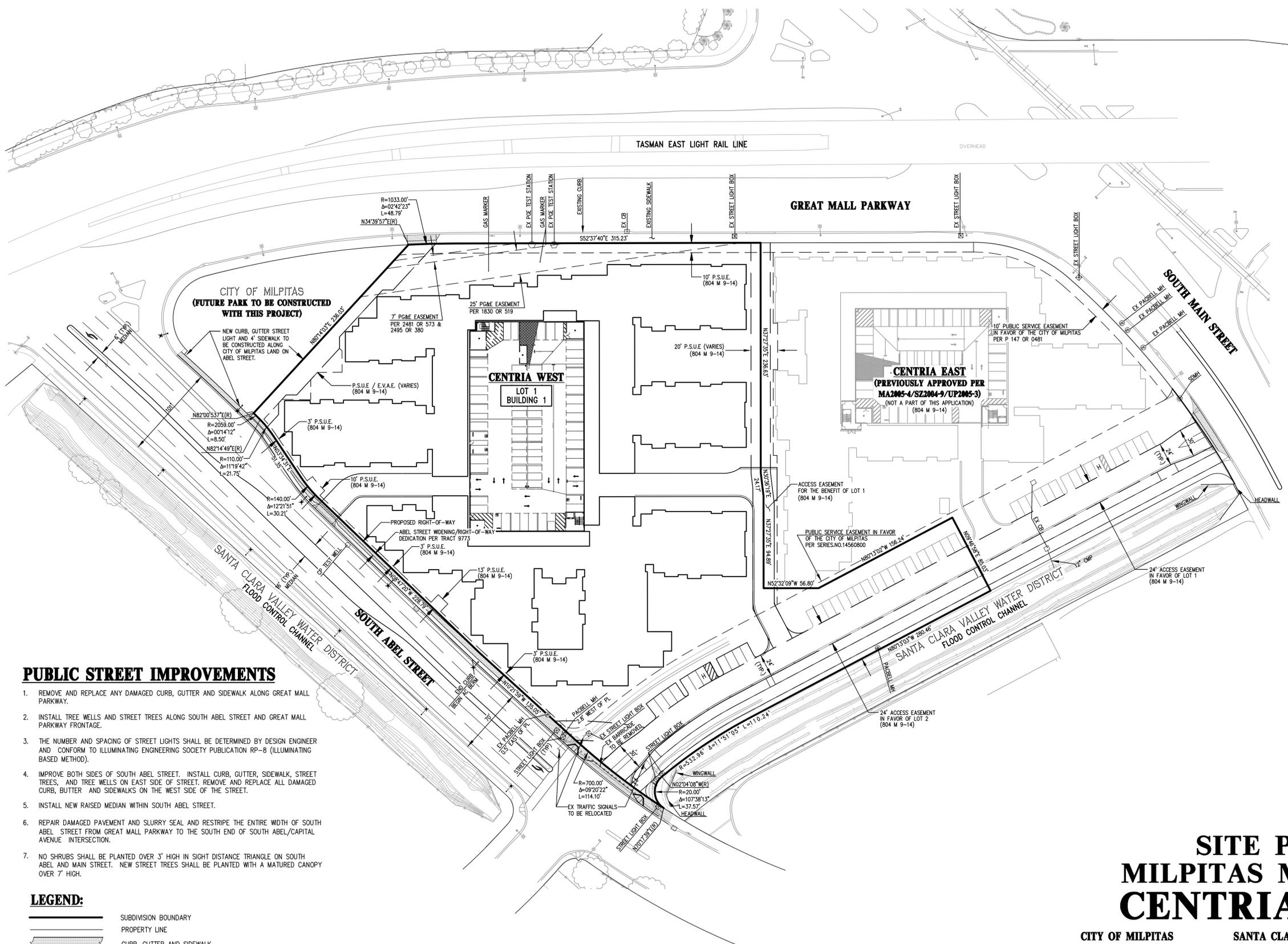
SCALE: 1" = 50'  
JUNE 11, 2009

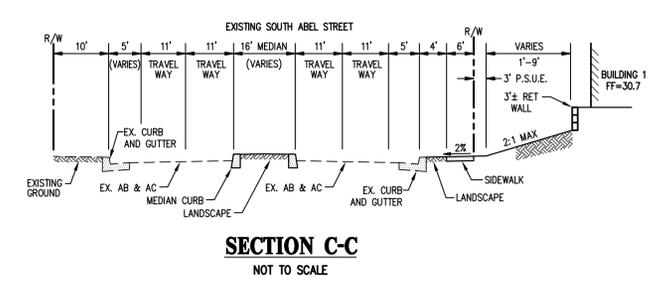
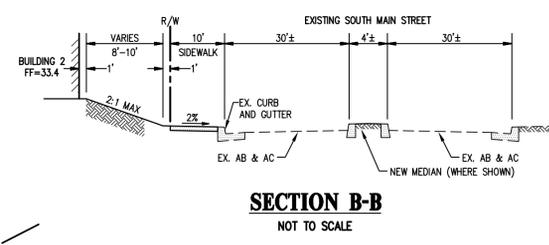
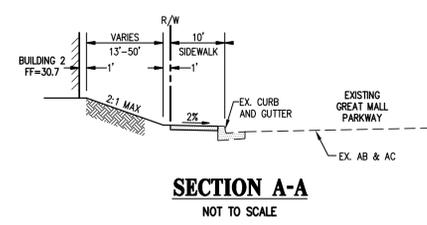
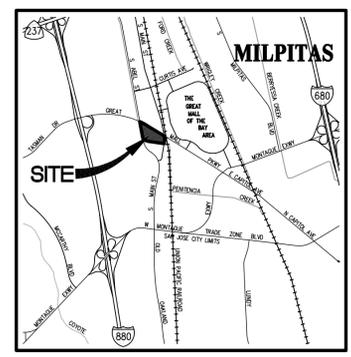
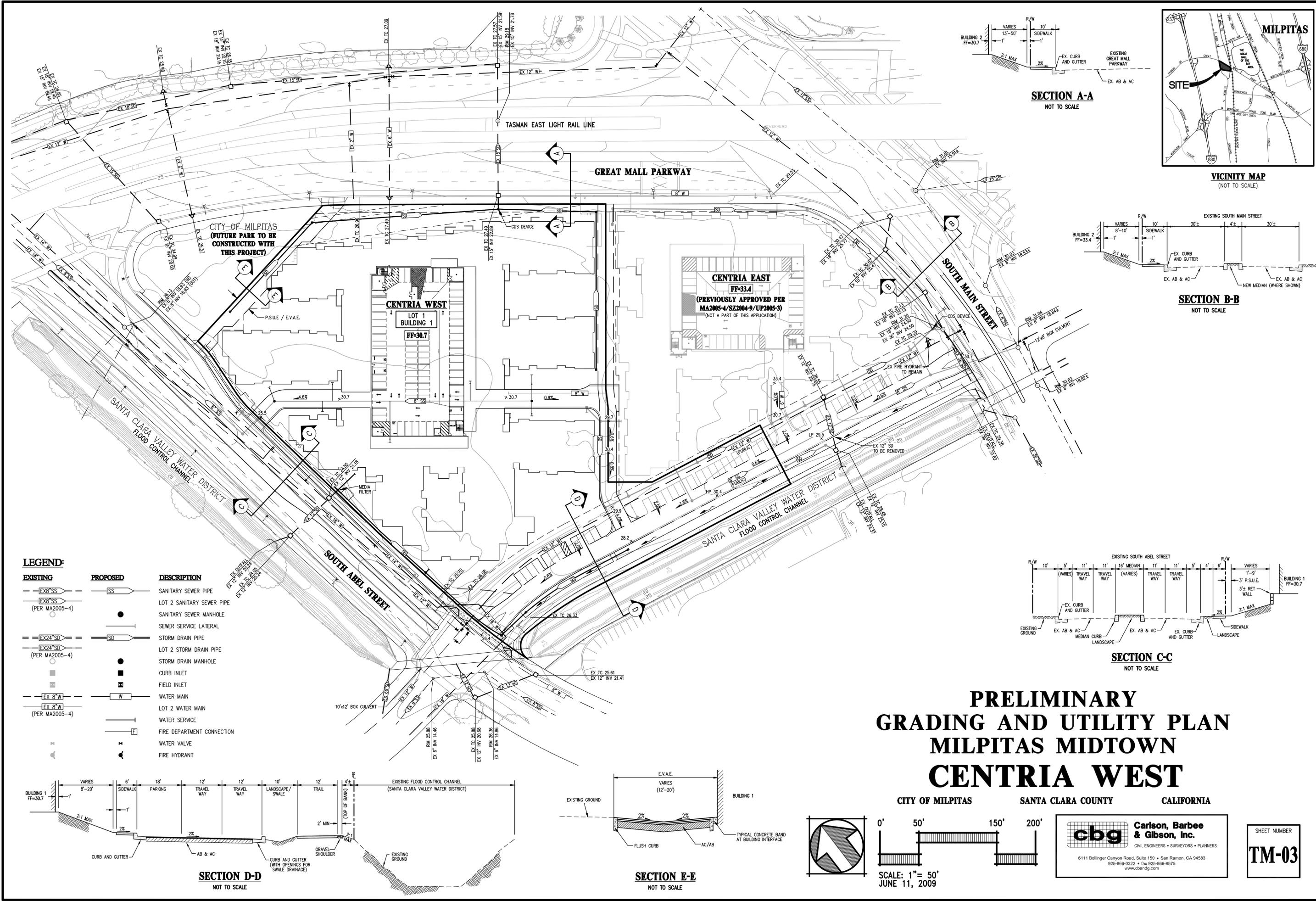
**PUBLIC STREET IMPROVEMENTS**

- REMOVE AND REPLACE ANY DAMAGED CURB, GUTTER AND SIDEWALK ALONG GREAT MALL PARKWAY.
- INSTALL TREE WELLS AND STREET TREES ALONG SOUTH ABEL STREET AND GREAT MALL PARKWAY FRONTAGE.
- THE NUMBER AND SPACING OF STREET LIGHTS SHALL BE DETERMINED BY DESIGN ENGINEER AND CONFORM TO ILLUMINATING ENGINEERING SOCIETY PUBLICATION RP-8 (ILLUMINATING BASED METHOD).
- IMPROVE BOTH SIDES OF SOUTH ABEL STREET. INSTALL CURB, GUTTER, SIDEWALK, STREET TREES, AND TREE WELLS ON EAST SIDE OF STREET. REMOVE AND REPLACE ALL DAMAGED CURB, BUTTER AND SIDEWALKS ON THE WEST SIDE OF THE STREET.
- INSTALL NEW RAISED MEDIAN WITHIN SOUTH ABEL STREET.
- REPAIR DAMAGED PAVEMENT AND SLURRY SEAL AND RESTRIPE THE ENTIRE WIDTH OF SOUTH ABEL STREET FROM GREAT MALL PARKWAY TO THE SOUTH END OF SOUTH ABEL/CAPITAL AVENUE INTERSECTION.
- NO SHRUBS SHALL BE PLANTED OVER 3' HIGH IN SIGHT DISTANCE TRIANGLE ON SOUTH ABEL AND MAIN STREET. NEW STREET TREES SHALL BE PLANTED WITH A MATURED CANOPY OVER 7' HIGH.

**LEGEND:**

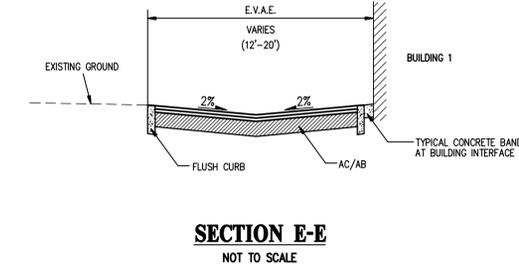
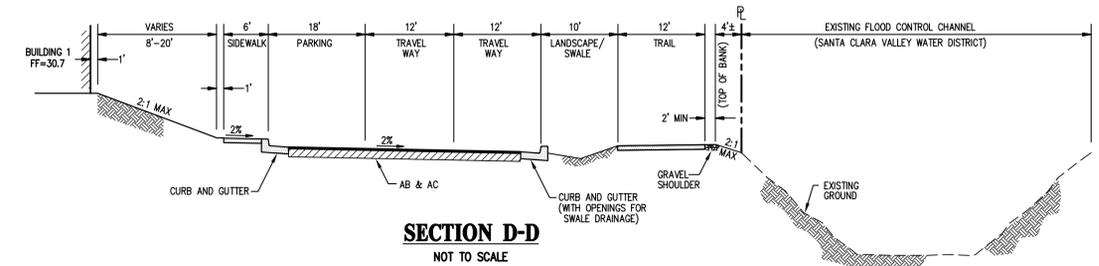
- SUBDIVISION BOUNDARY
- PROPERTY LINE
- CURB, GUTTER AND SIDEWALK
- SPOT ELEVATIONS
- WHEELCHAIR ACCESSIBLE SPACE
- STREET LIGHT





**LEGEND:**

EXISTING	PROPOSED	DESCRIPTION
EX 8" SS	SS	SANITARY SEWER PIPE
EX 8" SS (PER MA2005-4)	●	LOT 2 SANITARY SEWER PIPE
	○	SANITARY SEWER MANHOLE
	—	SEWER SERVICE LATERAL
EX 24" SD	SD	STORM DRAIN PIPE
EX 24" SD (PER MA2005-4)	●	LOT 2 STORM DRAIN PIPE
	○	STORM DRAIN MANHOLE
	■	CURB INLET
	□	FIELD INLET
EX 8" W	W	WATER MAIN
EX 8" W (PER MA2005-4)	—	LOT 2 WATER MAIN
	—	WATER SERVICE
	—	FIRE DEPARTMENT CONNECTION
	—	WATER VALVE
	—	FIRE HYDRANT



# PRELIMINARY GRADING AND UTILITY PLAN

## MILPITAS MIDTOWN CENTRIA WEST

CITY OF MILPITAS      SANTA CLARA COUNTY      CALIFORNIA

SCALE: 1" = 50'  
JUNE 11, 2009

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SHEET NUMBER  
**TM-03**

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PENDING CITY NOTES AND CONDITIONS  
(TO BE PROVIDED BY CITY)**

**CITY NOTES AND CONDITIONS  
CENTRIA WEST**

**CITY OF MILPITAS**

**SANTA CLARA COUNTY**

**CALIFORNIA**

 **Carlson, Barbee  
& Gibson, Inc.**  
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SHEET NUMBER  
**TM-04**