

RESOLUTION NO. 10-___

A RESOLUTION APPROVING VARIOUS AGREEMENTS IN CONNECTION WITH THE STAPLES RANCH PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENTS

WHEREAS, the Pleasanton City Council has approved the Stoneridge Drive Specific Plan Amendment/Staples Ranch concerning the proposed annexation and development of the Staples Ranch property (“the Staples Ranch Project”); and

WHEREAS, to implement the Staples Ranch Project, City staff has negotiated a number of agreements with representatives of the Surplus Property Authority of Alameda County, Alameda County, the Hendrick Automotive Group and Continuing Life Communities Pleasanton, namely an Agreement for the Purchase and Sale of Real Property (concerning the Neighborhood Park/Detention Basin), a Funding and Improvement Agreement for the Neighborhood Park/Detention Basin, a Growth Management Agreement, an Agreement Concerning Independent Living Units, and an Agreement regarding the transfer of property tax revenues; and

WHEREAS, the City Council finds that it is in the best interest of the City to enter into these agreements in order to carry out the Staples Ranch Project.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES RESOLVE, DECLARE, DETERMINE, AND ORDER THE FOLLOWING:

SECTION 1. Approves the agreements referenced in the second “Whereas” and authorizes the City Manager to sign the agreements when approved as to final form by the City Attorney.

SECTION 2. This resolution shall become effective immediately upon its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Pleasanton at a regular meeting held on .

I, Karen Diaz, City Clerk of the City of Pleasanton, California, certify that the foregoing resolution was adopted by the City Council at a regular meeting held on , by the following vote:

- Ayes:
- Noes:
- Absent:
- Abstain:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

**AGREEMENT FOR PURCHASE AND SALE OF
REAL PROPERTY AND ESCROW INSTRUCTIONS**

Between

**SURPLUS PROPERTY AUTHORITY OF ALAMEDA COUNTY,
a public corporation
("Seller")**

and

**CITY OF PLEASANTON
a municipal corporation
("Buyer")**

_____, 2010

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**AGREEMENT FOR PURCHASE AND SALE OF
REAL PROPERTY AND ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW INSTRUCTIONS (“**Agreement**”) is made and entered into as of _____, 2010 (“**Agreement Date**”), by and between SURPLUS PROPERTY AUTHORITY OF ALAMEDA COUNTY, a public corporation (“**Seller**”), CITY OF PLEASANTON, a municipal corporation (“**Buyer**”), and CHICAGO TITLE COMPANY (“**Escrow Holder**”).

RECITALS

A. Seller is the owner of certain real property located in the unincorporated area of the County of Alameda (“**County**”), State of California, described as Lot 4 (titled “Neighborhood Park”) as approximately shown on the Draft Tentative Map attached as **Exhibit A** consisting of approximately 4.8 acres. Lot 4 is referred to in this Agreement as the “**Property**.”

B. The Property is part of a larger parcel of real property presently owned by Seller. The larger parcel presently owned by Seller (excluding the Property) is referred to as “**Seller’s Retained Property**” and consists of approximately 118.72 acres, and is also shown on **Exhibit A**. Prior to Close of Escrow (defined in **Section 2.1**), Seller shall cause the Property to become a separate legal parcel pursuant to the California Subdivision Map Act as provided in **Section 3**.

C. Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, in accordance with the terms and conditions contained in this Agreement.

AGREEMENT

1. PURCHASE AND SALE.

1.1 Agreement to Buy and Sell. Subject to the provisions of this Agreement, Seller agrees to sell and convey to Buyer, and Buyer hereby agrees to acquire and purchase from Seller, the Property. As used in this Agreement, “**Property**” includes Seller’s fee interest in the Property, and all of Seller’s right, title, and interest in and to all privileges, rights, easements, mineral rights, oil and gas rights, water and water rights, and appurtenant rights related to the Property.

1.2 Purchase Price. The purchase price of the Property (the “**Purchase Price**”) is Four Million Eight Hundred Thirty-Two Thousand Three Hundred Twenty-Nine and 00/100 Dollars (\$4,832,329.00). The Purchase Price is payable on Close of Escrow as provided in **Section 2.3**.

2. ESCROW AND CLOSING.

2.1 Opening of Escrow. An escrow (the “**Escrow**”) has been previously opened with Escrow Holder at its office located at One Kaiser Plaza, Suite 745, Oakland, California

94612. When this Agreement is executed by Seller and Buyer, the parties shall deposit with Escrow Holder a copy of the fully executed Agreement, or executed counterparts of this Agreement. As used in this Agreement, the phrases “Closing Date” and “Close of Escrow” shall mean the date a grant deed(s) in the form of **Exhibit B (“Grant Deed”)** is recorded in the Office of the Recorder of Alameda County (the “Official Records”).

2.2 Escrow Fees and Other Charges. In connection with Close of Escrow, Buyer shall pay: (a) the premium cost of Buyer’s Title Policy (as defined in **Section 4.2**), if any; (b) any City of Pleasanton transfer tax; and (c) one-half (1/2) of Escrow Holder’s fees, if any. In connection with Close of Escrow, Seller shall pay: (A) recording fees in recording the Grant Deed in the Official Records of the County; (B) the cost of all endorsements to Buyer’s Title Policy issued to ameliorate or cure title objections as provided in **Section 4.2**; (C) any County transfer tax; and (D) one-half (1/2) of Escrow Holder’s fees, if any. All other costs related to this transaction shall be paid by the parties in the manner consistent with common practice in commercial land transactions in Alameda County, California.

2.3 Close of Escrow; Outside Closing Date.

(a) **Close of Escrow.** Subject to **Section 2.3(b)**, Close of Escrow shall occur not later than thirty (30) days after the date as of which all of the following conditions have occurred (the “Closing Date”):

(i) The Property has been subdivided into a legal parcel pursuant to **Section 3**; and

(ii) The Funding and Improvement Agreement attached as **Exhibit C** has been executed by all parties to the Funding and Improvement Agreement, and all conditions and requirements in the Funding and Improvement Agreement have been satisfied no later than the Outside Closing Date (defined in **Section 2.3(b)**) as provided in the Funding and Improvement Agreement, including, without limitation, the recordation in the Official Records of County of any instruments required by the Funding and Improvement Agreement.

If the conditions in this **Section 2.3(a)** have not been satisfied as of the Outside Closing Date, this Agreement shall terminate, in which event the parties shall be relieved of further rights and obligations under this Agreement except for Surviving Obligations (as defined in this paragraph). The conditions in this **Section 2.3(a)** cannot be waived by either party. The phrase “**Surviving Obligations**” refers to those rights and obligations of the parties that have arisen prior to the termination of this Agreement.

(b) **Outside Closing Date.** The provisions of **Section 2.3(a)** to the contrary notwithstanding, if Close of Escrow has not occurred by April 15, 2011 (the “**Outside Closing Date**”) either party may terminate this Agreement, in which event the parties shall be relieved of further rights and obligations under this Agreement except for Surviving Obligations.

2.4 Closing Documents. The parties shall deposit the documents and matters with Escrow Holder prior to Close of Escrow as provided in this Section.

(a) **Buyer's Deliveries.** Buyer shall deposit:

(i) The cash portion of the Purchase Price which is a sum of money equal to the amounts the various parties are to pay toward their Proportionate Shares of the Detention Basin Purchase Price pursuant to Section 1.2 of the Funding and Improvement Agreement;

(ii) A completed and executed promissory note in the form and content of **Exhibit D ("Promissory Note")** for payment of the balance of the Purchase Price, which shall be the sole obligation of Buyer;

(iii) Any documents and instruments required by the Funding and Improvement Agreement; and

(iv) An additional sum to pay Buyer's share of closing costs and prorations as provided in this Agreement;

(b) **Seller's Deliveries.** Seller shall deposit the Grant Deed(s) conveying fee title to the Property, subject only to Permitted Exceptions (as defined in **Section 4.2**), and shall deposit any documents and instruments required by the Funding and Improvement Agreement.

(c) **Additional Instruments.** Seller and Buyer shall each deposit such other escrow instructions, documents, and/or instruments as are reasonably required by Escrow Holder or otherwise required to proceed to Close of Escrow and consummate the sale and purchase of the Property in accordance with the terms of this Agreement.

2.5 Closing.

(a) **Actions by Escrow Holder.** On the Closing Date, provided all of the conditions to the parties' obligations have been satisfied or waived as provided in this Agreement, Escrow Holder shall undertake and perform the following acts in the following order:

(i) Record the Final Subdivision or Parcel Map, if applicable, for the subdivision of the Property in the Official Records and obtain conformed copies thereof for delivery to the parties;

(ii) Record the Grant Deed in the Official Records (with transfer tax information to be affixed after recording, if applicable) and obtain conformed copies thereof for delivery to the parties;

(iii) Record in the Official Records any instruments required to be recorded pursuant to the Funding and Improvement Agreement;

(iv) Pay any required transfer taxes;

(v) Instruct the County Recorder to return the original Grant Deed to Buyer;

(vi) Distribute to Seller, or as Seller may instruct, the cash portion of the Purchase Price less Seller's share of closing costs and prorations as provided in this Agreement;

(vii) Deliver to Seller the executed Promissory Note; and

(viii) Deliver Buyer's Title Policy, if any, to Buyer.

(b) **Possession.** Upon Close of Escrow, exclusive possession of the Property shall be delivered to Buyer, and title to the Property shall be conveyed to Buyer, subject only to the Permitted Exceptions.

2.6 Failure to Close; Cancellation of Charges. In the event Close of Escrow fails due to the default of one of the parties, the defaulting party shall bear the sole and full liability for paying any escrow and title cancellation fees and charges. Otherwise, each party shall pay fifty percent (50%) of such fees and charges.

3. COMPLIANCE WITH SUBDIVISION MAP ACT. Prior to Close of Escrow, Seller, at Seller's sole cost and expense, shall cause the Property to be subdivided into a separate legal parcel in compliance with the applicable provisions of the California Subdivision Map Act. The parties agree that the boundaries and configuration of the Property shall be substantially as shown on **Exhibit A** (or as otherwise configured as agreed upon by the parties in their respective sole discretion). The subdivision map subdividing the Property is referred to as the "**Final Subdivision or Parcel Map.**"

4. STATE OF TITLE.

4.1 State of Title. Seller shall convey title to the Property to Buyer, and deliver possession of the Property to Buyer, on Close of Escrow subject only to Permitted Exceptions (defined in **Section 4.2**).

4.2 Permitted Exceptions. Subject to **Section 4.3**, the phrase "**Permitted Exceptions**" shall mean: (a) the exceptions to title that affect the Property set forth on that Preliminary Report dated August 17, 2007, bearing Title No. 07-58201-054-A-MG issued by Escrow Holder and attached to this Agreement as **Exhibit E**; (b) any general and special real property taxes and assessments, a lien not yet delinquent; (c) any matters of record consented to by Buyer, and/or caused by the acts or omissions of Buyer and its Authorized Representatives (which is defined as the directors, officers, employees, agents, and/or contractors of a specified party to this Agreement); (d) any matters in connection with the Final Subdivision or Parcel Map pursuant to **Section 3**; (e) all standard printed exceptions which appear on the Title Policy; and (f) any matters approved or deemed approved pursuant to **Section 4.3**.

In the event there is any matter of record that is not a Permitted Exception but that Escrow Holder will endorse over (and endorsing over is reasonably acceptable to Buyer), Seller shall pay the premium cost for any such endorsement(s).

4.3 New Encumbrances. The provisions of **Section 4.2** to the contrary notwithstanding, if any supplemental title reports or updates to any previous title reports disclose any New Encumbrances (as defined in the second to last paragraph of this **Section 4.3**) on title which are not acceptable to Buyer, Buyer shall give written notice to Seller that it disapproves such New Encumbrances (the “**New Encumbrances Title Objection**”) on or before ten (10) days after receipt of written notice of any New Encumbrances. If Buyer delivers a New Encumbrances Title Objection, Seller shall have five (5) days after receipt thereof to notify Buyer that either (a) Seller will take all action necessary to attempt to eliminate, cure or remove such New Encumbrances, or make arrangements to have such New Encumbrances eliminated, cured or removed from title, or (b) Seller elects not to cause such New Encumbrances to be removed. If Seller gives Buyer notice under clause (b) or fails to respond to Buyer’s New Encumbrances Title Objection within the five (5) day period, Buyer shall have ten (10) days in which to notify Seller that Buyer will either proceed with the purchase and take title to the Property subject to such New Encumbrances, in which event the New Encumbrances shall constitute Permitted Exceptions, or that Buyer will terminate this Agreement. If this Agreement is terminated as provided in this paragraph, the parties shall be relieved of further rights and obligations under this Agreement except for Surviving Obligations.

If Seller notifies Buyer that Seller shall take all action necessary to attempt to eliminate, cure, or remove from title any New Encumbrances as provided in item (a) of the preceding paragraph, Seller shall attempt to eliminate, cure, or remove from title such New Encumbrances within sixty (60) days following the date Seller notifies Buyer that it shall attempt to eliminate, cure, or remove from title such New Encumbrances. At the end of the sixty (60) day period, Seller shall notify Buyer of any New Encumbrances that Seller is unable to eliminate, cure, or remove from title (such notice referred to as “**Seller’s New Encumbrances Notice**”).

Buyer shall have the election on or before ten (10) business days after Buyer’s receipt of Seller’s New Encumbrances Notice, to deliver written notice to Seller either: (i) disapproving Seller’s New Encumbrances Notice, which can only be disapproved if Seller has been unable to eliminate, cure, or remove such New Encumbrances, in which case this Agreement shall terminate; or (ii) approving Seller’s New Encumbrances Notice (Buyer’s approval shall be conclusively deemed made if Seller has eliminated, cured, or removed from title all such New Encumbrances). If Buyer terminates this Agreement as provided in this paragraph, the parties shall be relieved of further rights and obligations under this Agreement except for Surviving Obligations.

The phrase “**New Encumbrances**” refers to any matters of record not listed on **Exhibit E** affecting title to the Property that will prevent the construction of the Detention Basin and Neighborhood Park on the Property pursuant to the provisions of the Funding and Improvement Agreement. New Encumbrances does not include any matters consented to and/or approved by Buyer (including matters pursuant to **Section 3.1** in connection with the subdivision of the Property), and/or caused by the acts or omissions of Buyer and its Authorized Representatives.

Anything contained in this **Section 4.3** to the contrary notwithstanding, any monetary encumbrances affecting title to the Property caused by Seller or its Authorized Representatives (other than a lien for current real property taxes and assessments not then delinquent), shall be discharged by Seller on or before Close of Escrow, and need not be formally disapproved by Buyer and shall not be considered a Permitted Exception or a New Encumbrance.

The Outside Closing Date shall be extended, if necessary, for a period of time equal to period of time the parties have to satisfy the provisions of this **Section 4.3** plus fifteen (15) days.

4.4 Title Policy. At Close of Escrow, Escrow Holder shall issue to Buyer, at Buyer's election in its sole discretion, an ALTA Owner's Extended Policy Form B (1970) (or a Form B (1990) if Escrow Holder will not issue a Form B (1970)) of Title Insurance ("**Buyer's Title Policy**") insuring fee title to the Property vested in Buyer with liability equal to the Purchase Price, subject only to the Permitted Exceptions. At least three (3) business days prior to the date of Close of Escrow, Escrow Holder shall furnish both Seller and Buyer with a pro forma of Buyer's Title Policy substantially as Escrow Holder is prepared to bind itself to issue as Buyer's Title Policy (subject to events occurring after the date of time of such pro forma and prior to Close of Escrow).

5. "AS IS" PHYSICAL CONDITION OF THE PROPERTY.

5.1 "As Is" Condition. Buyer acknowledges and agrees that the Property is to be sold and conveyed to and accepted by Buyer in an "as is" "where is" condition with all faults including the presence of any Hazardous Substances located on or about the Property. Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or any of such related matters. The provisions of this Section shall survive Close of Escrow.

Buyer acknowledges that prior to the Effective Date Buyer and its Authorized Representatives have (a) had an opportunity to physically inspect the Property and conduct any studies and/or testing required by Buyer, and (b) reviewed to their satisfaction the Environmental Reports listed on **Exhibit F**.

"**Hazardous Substances**" shall mean any toxic or hazardous wastes, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; hazardous materials identified in or pursuant to the Hazardous Materials Transportation Act, 49 U. S.C. §1802 et seq.; hazardous wastes identified in or pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; any chemical, substance or mixture regulated under the Toxic Substance Control Act of 1976, 15 U.S.C. §2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §466 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §7401 et seq., each as hereafter amended from time to time; and any other substance or pollutant which is present at, on or under the Property in a form and quantity which is regulated

under any applicable present or future Environmental Laws (as defined in the following paragraph).

“Environmental Laws” means any and all present and future federal, state and local laws, ordinances, regulations, policies and any other requirements of governmental agencies relating to health, safety, the environment or to any Hazardous Substances, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“**CERCLA**”), the Resource Conservation Recovery Act (“**RCRA**”), the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Endangered Species Act, the Clean Water Act, the Occupational Safety and Health Act, the California Environmental Quality Act and the applicable provisions of the California Health and Safety Code, California Labor Code and the California Water Code, each as hereafter amended from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing.

5.2 Release. Effective as of Close of Escrow, Buyer, for itself, its successors and assigns, hereby waives, releases, acquits and forever discharges Seller and its Authorized Representatives, of and from, any claims, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, at any time on account of or in any way arising out of or in connection with the known or unknown physical, environmental or other condition of the Property. Buyer expressly waives the provisions of California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

6. GENERAL PROVISIONS.

6.1 Counterparts; Facsimile or Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. A signed copy of this Agreement transmitted by facsimile or other electronic means to the other parties shall be binding on the signatory thereto.

6.2 Entire Agreement. This Agreement, together with all Exhibits and the Funding and Improvement Agreement, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached.

6.3 Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision

that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

6.4 Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with the laws of the State of California.

6.5 Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement.

6.6 Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

6.7 Time of the Essence. Time shall be of the essence as to all dates and times of performance.

6.8 Attorneys' Fees. In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations under this Agreement, whether or not suit is filed or prosecuted to final judgment, the nondefaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred in addition to any other damages or relief awarded.

6.9 Notices. Each notice, request, demand, instruction or other document required, or permitted to be given hereunder ("**Notice**") shall be in writing and shall be delivered personally (including messenger or courier service with evidence of receipt) or sent by depositing the same with the United States Postal Service, certified or registered mail, return receipt requested, with proper postage prepaid, addressed to the parties at the respective addresses set forth in this Section and marked to the designated individual's attention. Each Notice shall be effective upon being so deposited, but the time period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of actual receipt of the Notice by the addressee thereof. Rejection of the acceptance of a Notice, refusal by the addressee to accept a Notice, or the inability of any messenger, courier or the United States Postal Service to deliver a Notice because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Either party shall have the right from time to time to change the address to which a Notice to it shall be sent to another address in the continental United States (but not a post office box) by giving Notice to the other party of the changed address at least ten (10) days prior to such changes.

Initial addresses of the parties are:

If to Seller: Surplus Property Authority of Alameda County
224 West Winton Avenue, Room 110
Hayward, California 94544
Attn.: Director of Community Development

With a copy to: Surplus Property Authority of Alameda County
224 West Winton Avenue, Room 110
Hayward, California 94544
Attn.: Stuart Cook

With an additional copy to: Wendel, Rosen, Black & Dean, LLP
1111 Broadway, Suite 2400
Oakland, California 94607
Attn.: Michael A. Dean

If to Buyer: City of Pleasanton
123 Main Street
Pleasanton, California 94566
Attn: City Manager

6.10 Agreement Survives Close of Escrow. All obligations referred to or required to be performed at a time or times after Close of Escrow shall survive Close of Escrow.

EXECUTED as of the Agreement Date.

SELLER:

SURPLUS PROPERTY AUTHORITY
ALAMEDA COUNTY, a public corporation

By:
Name: Chris Bazar
Title: Manager

BUYER:

CITY OF PLEASANTON,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Jonathan Lowell, City Attorney

ATTEST:

Karen Diaz, City Clerk

ACCEPTANCE BY ESCROW HOLDER

Escrow Holder hereby acknowledges that it has received a fully executed counterpart of the foregoing Agreement for Purchase and Sale of Real Property and Escrow Instructions and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms there of as such terms apply to Escrow Holder.

CHICAGO TITLE COMPANY

Dated: _____, _____

By: _____
Name: _____
Title: _____

EXHIBIT A

DRAFT TENTATIVE MAP

EXHIBIT B

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO,
AND MAIL TAX STATEMENTS TO:

(Above Space for Recorder's Use Only)

GRANT DEED

The undersigned grantor declares:

Documentary Transfer Tax not shown pursuant to Section 11932 of the California Revenue and Taxation Code

City of Pleasanton, County of Alameda, State of California

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SURPLUS PROPERTY AUTHORITY OF ALAMEDA COUNTY, a public corporation, hereby grants to CITY OF PLEASANTON, a municipal corporation, the following described real property located in the City of Pleasanton, County of Alameda, State of California:

See **Exhibit A** attached hereto and incorporated herein by this reference.

DATED: _____

SURPLUS PROPERTY AUTHORITY OF
ALAMEDA COUNTY, a public corporation

By: _____
Name: _____
Title: _____

EXHIBIT C
FUNDING AND IMPROVEMENT AGREEMENT

EXHIBIT D

PROMISSORY NOTE

\$ _____ (1) _____ Oakland, California _____ (2) _____

FOR VALUE RECEIVED, the undersigned, City of Pleasanton, a municipal corporation (“**Payor**”), promises to pay to the order of Surplus Property Authority of Alameda County, a public corporation (“**Payee**”), at the times and in the manner set forth in this Promissory Note, the principal sum of _____ (1) _____ Dollars (\$ _____ (1) _____). This Promissory Note is referred to as the “**Note.**”

1. Repayment of Note.

(a) **Repayment of Note.** Payor shall repay the principal sum of this Note, together with all accrued and unpaid interest to the date of such principal payment, as follows:

(i) The principal sum of _____ (3) _____ Dollars (\$ _____ (3) _____), or more, on or before _____ (4) _____ and on or before each _____ (5) _____ thereafter (such dates referred to singularly as a “**Payment Date**” and collectively as “**Payment Dates**”); and

(ii) The entire unpaid amount of principal and accrued and unpaid interest on or before _____ (6) _____ (the “**Maturity Date**”).

Each of the annual installments shall be applied first to the payment of interest then accrued and due on the unpaid principal balance, and the remainder of each installment shall be applied to the reduction of the unpaid principal.

(b) **Variable Interest.**

(i) **Initial Interest Rate.** From and after the date of this Note, interest shall accrue on the outstanding principal balance of this Note at the rate of _____ (7) _____ percent _____ (7) _____ per annum, subject to adjustment pursuant to **Section 1(b)(ii)**.

(ii) **Interest Rate Adjustment.** On the first Payment Date and on each subsequent Payment Date, the rate at which interest shall accrue and be payable under this Note for the subsequent one (1) year period shall be adjusted to be equivalent to the highest Local Agency Investment Fund apportionment rate for the three (3) month period prior to the Payment Date in question.

(c) **Place of Payment.** All payments under this Note shall be made to Payee at the address stated in **Section 2(b)**, or at such other place as Payee or other holder of this Note may otherwise from time to time designate in writing.

(d) **Computation of Interest and Fees.** All computations of interest shall be calculated on the basis of a year consisting of three hundred sixty (360) days.

(e) **Voluntary Prepayments.** Payor shall have the right to prepay at any time all or any portion of the principal amount of the indebtedness evidenced by this Note without premium or penalty, provided no such prepayment shall change the amount and the Payment Dates, except for the last payment due under this Note. Any such prepayment shall be applied against the last installments required to be paid under this Note and no interest shall accrue thereon after such prepayment.

(f) **Holidays.** If any payment to be made by Payor would otherwise become due on a day other than a Business Day, such payment shall be due on the next succeeding Business Day. A “**Business Day**” means each day except Saturdays, Sundays, or any holiday for which banks in Alameda County are closed.

(g) **Default Rate.** If any installment of principal and interest, or other sum that may be payable from Payor to Payee, is not paid within ten (10) days from a Payment Date, such delinquent amount shall bear interest at the rate of ten percent (10%) per annum from the date due until paid in full.

(h) **Late Payment.** If Payor shall fail to make any payment of principal or interest on or before ten (10) days after the Payment Date, a late charge by way of damages shall be immediately due and payable. Payor recognizes that default by Payor in making the payments under this Note when due will result in Payee or other holder incurring additional expense in servicing the debt evidenced by this Note, in loss to Payee or other holder of the use of the money due, and will result in other costs and expenses as a result of such failure. By placing its initials in this paragraph, Payor agrees that, if for any reason Payor fails to pay the amounts due under this Note within ten (10) days of a Payment Date, Payee or other holder shall be entitled to damages for the detriment caused thereby, but that it is extremely difficult and impractical to ascertain the extent of such damages. Payor therefore agrees that a sum equal to ten percent (10%) of each payment ten (10) days in arrears is a reasonable estimate of the damages to Payee or other holder which sum Payor agrees to pay on demand.

Initials

(i) **Usury.** Notwithstanding any provisions of this Note to the contrary, it is the intent of Payor and Payee that Payee shall never be entitled to receive, collect or apply, as interest on principal of the indebtedness, any amount in excess of the maximum rate of interest permitted to be charged by applicable California law; and if under any circumstance whatsoever, fulfillment of any provision of this Note, at the time performance of such provision shall be due, shall involve exceeding the limit of applicable California law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and in the event Payee ever receives, collects or applies as interest any such excess, such amount which would be excess interest shall be deemed a permitted partial prepayment of principal and treated hereunder as such; and if the principal of the indebtedness secured hereby is paid in full, any remaining excess funds shall immediately be paid to Payor.

(j) **Acceleration.** If Payor defaults in the payment of any installment or other sum due under this Note (that remains uncured for more than ten (10) days), Payee shall have the

election at any time thereafter to declare the entire unpaid principal and interest due and payable together with any other charges and sums payable under this Note.

(k) Waiver by Payee. If any default shall occur under the terms of this Note, the failure of Payee or other holder promptly to exercise its right to declare the indebtedness remaining unpaid under this Note to be immediately due and payable or the acceptance of one or more installments from any person thereafter, shall not constitute a waiver of such right while any default continues, nor a waiver of such right in connection with any future default.

(l) Waiver of Notice. To the extent permitted by law, Payor hereby waives diligence, demand, presentment for payment, and notice of whatever kind or nature. Without discharging or in any way affecting the liability of Payor, Payor consents to any and all extensions of this Note as Payee may in its sole discretion grant from time to time, to the release of all or any part of the security for the payment hereof, and to the release of any party liable for repayment of the obligations hereunder. To the extent permitted by law, Payor further waives exhaustion of legal remedies and the right to plead any and all statutes of limitations as a defense to any demand on this Note, or to any agreement to pay the same.

2. Miscellaneous.

(a) Successors and Assigns. This Note shall be binding on Payor, and shall inure to the benefit of Payee, in each case, together with their respective successors and permitted assigns.

(b) Notices, Requests, Demands. All notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been given or made (i) in the case of notice by mail, when personally delivered or sent by certified mail, return receipt requested, (ii) in the case of telecopier notice sent over a telecopier machine owned or operated by a party hereto, when received, provided that a printed confirmation of successful transmission is received by the sending party, in each case addressed to Payor or Payee, as the case may be, at their respective addresses shown below or at such other address as such party may hereafter specify in writing to the others. No other method of giving notice is hereby precluded.

Payee: Surplus Property Authority of Alameda County
224 West Winton Avenue, Room 110
Hayward, California 94544
Attn: Director of Community Development

With a copy to: Surplus Property Authority of Alameda County
224 West Winton Avenue, Room 110
Hayward, California 94544
Attn: Stuart Cook

With an additional copy to: Wendel, Rosen, Black & Dean LLP
Attention: Michael A. Dean
1111 Broadway, 24th Floor
Oakland, California 94507

If to Payor: City of Pleasanton
123 Main Street
Pleasanton, California 94566
Attn: City Manager

(c) **Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of California.

(d) **Repayment.** Upon the timely repayment by Payor of all principal, interest and other sums and charges due and payable under this Note, the holder of this Note shall return the original of this Note to Payor marked "Canceled", and shall execute, acknowledge and deliver to Payor any instruments as are reasonably necessary in order to evidence such repayment and satisfaction in full of the Payor's obligations under this Note.

EXECUTED on the above stated date.

PAYOR:

CITY OF PLEASANTON,
a municipal corporation

By: _____
Name: _____
Title: _____

INSTRUCTIONS TO COMPLETE NOTE:

- (1) Insert an amount arrived at by subtracting from the Purchase Price the cash amount of the Purchase Price paid to Payee on Close of Escrow.
- (2) Insert date of Close of Escrow.
- (3) An amount equal to one-tenth (1/10) of the principal amount of this Note.
- (4) The month, day, and year of the first anniversary of the date of this Note.
- (5) The month and day of the date of this Note.
- (6) The tenth (10th) anniversary of the date of this Note.
- (7) The interest rate is equivalent to the highest Local Agency Investment Fund apportionment rate for the three (3) month period immediately prior to Close of Escrow.

EXHIBIT E
TITLE EXCEPTIONS

EXHIBIT F

ENVIRONMENTAL REPORTS

- Environmental Science & Engineering, Inc.; Site Assessment Report (AGT-5), Staples Ranch Property; June 15, 1994.
- Environmental Science & Engineering, Inc.; UST/AGT Closure Report (UST-2, AGT-4, AGT-5), Staples Ranch Site; June 24, 1994.
- Environmental Science & Engineering, Inc.; AGT Closure Report (AGT-1), Staples Ranch Site; November 30, 1994.
- Environmental Science & Engineering, Inc.; Report of Additional Site Assessment (AGT-5); February 13, 1995.
- Environmental Science & Engineering, Inc.; Report of Groundwater Monitoring, First Quarter 1995 (AGT-5); May 25, 1995.
- Environmental Science & Engineering; Inc.; Report of Groundwater Monitoring, Second Quarter 1995(AGT-5); July, 1995.
- Environmental Science & Engineering, Inc.; Report of Groundwater Monitoring, Third Quarter 1995 (AGT-5); October 5, 1995.
- PSI; Report for the Abandonment of Four Monitoring Wells, Staples Ranch; March 20, 1996.
- Harza Kaldveer; Phase I Preliminary Site Assessment for Proposed Community Park Site; November 9, 1993.
- Harza Consulting Engineers and Scientists; Phase I Preliminary Site Assessment for California Summerset E; November 9, 1993.
- Harza Kaldveer; Phase I Preliminary Site Assessment for Proposed Retail and Service Commercial Site; November 17, 1993.
- Harm Consulting Engineers and Scientists; Soil Quality Assessment Results, Fill Stockpile at Staples Ranch, Phase II; May 16, 1996.

**FUNDING AND IMPROVEMENT AGREEMENT
(STAPLES RANCH NEIGHBORHOOD PARK/DETENTION BASIN)**

AMONG

**SURPLUS PROPERTY AUTHORITY
OF ALAMEDA COUNTY**

CITY OF PLEASANTON

HENDRICK AUTOMOTIVE GROUP

CONTINUING LIFE COMMUNITIES PLEASANTON, LLC

DATED _____, 2010

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**FUNDING AND IMPROVEMENT AGREEMENT
(Staples Ranch Neighborhood Park/Detention Basin)**

THIS FUNDING AND IMPROVEMENT AGREEMENT (“**Agreement**”) is entered into as of _____, 2010 (“**Effective Date**”) among the following parties:

1. Surplus Property Authority of Alameda County, a public corporation (“**County**”);
2. City of Pleasanton, a municipal corporation (“**City**”);
3. Continuing Life Communities Pleasanton, LLC, a Delaware limited liability company (“**CLC**”); and
4. Hendrick Automotive Group, a New York general partnership (“**Hendrick**”).

Hendrick and CLC are sometimes referred to in this Agreement collectively as “**Developers**.”

RECITALS

This Agreement is entered into with reference to the following facts and objectives.

A. County presently owns all of that certain unimproved real property located in Alameda County, California consisting of approximately one hundred twenty-four (124) acres, which property is sometimes commonly referred to as “**Staples Ranch**.” City is processing a vesting tentative tract map that would subdivide Staples Ranch into seven (7) lots and dedicate public rights-of-way for Stoneridge Drive and Street A. The proposed subdivision is shown on **Exhibit A** (the “**Draft Tentative Map**”).

B. On _____, 2010, County and City entered into that certain “Agreement for Purchase and Sale of Real Property and Escrow Instructions” (the “**City PSA**”) whereby County agrees to sell to City, and City agrees to purchase from County, Lot 4 (titled “Neighborhood Park”) as approximately shown on the Draft Tentative Map (such property referred to in this Agreement as the “**Property**”).

C. On March 22, 2005, County and CLC entered into that certain “Agreement for Purchase and Sale of Real Property and Escrow Instructions,” as subsequently amended (the “**CLC PSA**”) whereby County agrees to sell to CLC, and CLC agrees to purchase from County, Lots 5, 6 and 7 (titled “Continuing Care Communities”) as approximately shown on the Draft Tentative Map Lots 5, 6 and 7, as well as all of the adjoining Street A, shall be referred to in the singular as the “**CLC Parcel**”).

D. On October 17, 2006, County and Hendrick entered into that certain “Agreement for Purchase and Sale of Real Property and Escrow Instructions,” as subsequently amended (the “**Hendrick PSA**”) whereby County agrees to sell to Hendrick, and Hendrick agrees to purchase from County, Lot 1 (titled “Auto Mall”) as approximately shown on the Draft Tentative Map (such property referred to in this Agreement as the “**Hendrick Parcel**”).

E. As of the Effective Date, County has not entered into any agreement with a third party to sell Lot 2 (titled “Retail Commercial”) as approximately shown on the Draft Tentative Map (such property referred to in this Agreement as the “**Commercial Parcel**”). The owner of the Commercial Parcel (be it County or a subsequent third party) shall be referred to in this Agreement as “**Commercial Parcel Owner**.”

F. In connection with the proposed developments on Staples Ranch, it is contemplated that County will dedicate and convey to City Lot 3 (titled “Community Park”) as approximately shown on the Draft Tentative Map.

G. City is presently processing PUD development plans for the Developers’ proposed developments on Staples Ranch, and is processing a Vesting Tentative Tract Map 8020 for Staples Ranch pursuant to the California Subdivision Map Act to create the Lots as approximately shown on the Draft Tentative Map as separate legal parcels.

H. It is the intent of the parties that some of the provisions of this Agreement be binding on the successors and assigns of the parties and become covenants that run with the land and bind the parcels that comprise Staples Ranch pursuant to the Declaration as provided in **Section 4.1**.

AGREEMENT

ARTICLE 1

DETENTION BASIN DESIGN, FUNDING, AND CONSTRUCTION

1.1 Detention Basin Specifications. Attached to this Agreement is **Exhibit B** (the “**Detention Basin Specifications**”) which are the design specifications for a 2.65 acre storm water detention basin (the “**Detention Basin**”) on the Property that will meet the California Regional Water Quality Control Board’s hydromodification requirements for the proposed development of Staples Ranch and is consistent with the PUD development plans for the Property.

1.2 Parties’ Proportionate Shares. Attached to this Agreement is **Exhibit C** that sets forth the proportionate shares of the parties for the purpose of calculating the parties’ respective shares of the Detention Basin Purchase Price and the Detention Basin Construction Costs (as defined in **Section 1.4(b)(iii)(A)**). Such proportionate shares on **Exhibit C** are referred to in the singular as “**Proportionate Share**” and collectively as “**Proportionate Shares**.” The Proportionate Shares are based upon the acreage of impervious surface of each Parcel’s improvements compared to the total acreage of all impervious surface improvements within Staples Ranch, including all planned public improvements (except for El Charro Road) within Staples Ranch, as established by the PUD development plans for Staples Ranch and the Draft Tentative Map; except the impervious surface of the Commercial Parcel is based upon the parties’ estimate and not based on PUD development plans. For purposes of this Section, the impervious surface within the right of way of Street A and the impervious surface within the Property (other than within the Detention Basin itself) is used in calculating CLC’s Proportionate Share, and the imperious surface within the right of way of Stoneridge Drive as shown on the Draft Tentative Map and the impervious surface within the Detention Basin, as shown in the

Detention Basin Specifications, is used to calculate County's Proportionate Share. No deduction or credits are given for on-site storage of storm water.

1.3 Detention Basin Purchase Price; Payment Provisions.

(a) **Detention Basin Purchase Price.** The Detention Basin Specifications include a calculation by the licensed civil engineer that prepared the Detention Basin Specifications of the total square footage of the Detention Basin, including the associated outflow and weir structures located within the Property, utilizing the Detention Basin's highest design water level of three hundred forty-seven (347) feet to delineate the boundary of the Detention Basin. The total square footage of the Detention Basin is one hundred fifteen thousand four hundred (115,400) square feet. The "**Detention Basin Purchase Price**" is Two Million Six Hundred Forty-Eight Thousand Four Hundred Thirty Dollars (\$2,648,430), which is calculated by multiplying the total square footage of the Detention Basin by Twenty-Two and 95/100 Dollars (\$22.95).

(b) Payment of Parties' Proportionate Shares.

(i) **CLC.** CLC shall pay its respective Proportionate Share of the Detention Basin Purchase Price to City no later than fifteen (15) days following receipt of a payment demand from City, which shall be no earlier than the date(s) on which CLC becomes the owner of its project property and provided City shall not demand such payment sooner than one (1) day prior to the scheduled Close of Escrow pursuant to the City PSA.

(ii) **Hendrick.** The provisions of **Sections 1.2 and 1.3** to the contrary notwithstanding, Hendrick shall pay to the City the sum of Three Hundred Fifty Thousand Dollars (\$350,000) toward Hendrick's Proportionate Share of the Detention Basin Purchase Price no later than fifteen (15) days following receipt of a payment demand from City, provided City shall not demand such payment sooner than one (1) day prior to the scheduled Close of Escrow pursuant to the City PSA.

(iii) **County.** The provisions of **Sections 1.2 and 1.3** to the contrary notwithstanding, County is not required to pay its Proportionate Share of the Detention Basin Purchase Price; provided, however, if prior to Close of Escrow under the City PSA, County enters into an agreement with a third party to sell the Commercial Parcel, then such third party shall pay its Proportionate Share of the Detention Basin Purchase Price allocated to the Commercial Parcel. Such amount payable by the third party as provided in the preceding sentence shall be paid no later than fifteen (15) days following receipt of a payment demand from City, provided City shall not demand such payment sooner than one (1) day prior to the scheduled Close of Escrow pursuant to the City PSA.

1.4 Detention Basin Improvements.

(a) **Detention Basin Improvements Final Plans.** As part of the first Final Subdivision Map plan check submittal to the City from County for Staples Ranch, County shall cause to be prepared and submitted to City and CLC for their review and approval Detention

Basin Improvements Final Plans (defined in the following paragraph), along with preliminary estimated costs of construction of the Detention Basin Improvements.

The “**Detention Basin Improvements Final Plans**” are construction plans and specifications for the construction of the Detention Basin Improvements consistent with the Detention Basin Specifications including, without limitation, a landscape plan that utilizes plant materials suitable for storm water detention purposes. The Detention Basin Improvements Final Plans shall be consistent with the overall Neighborhood Park PUD Plan referenced in **Section 3.1**.

(b) Construction of Detention Basin Improvements.

(i) Bids; Construction Contract. Prior to approval of the Final Subdivision Map by City, CLC shall request bids from a minimum of three (3) licensed contractors who are qualified to construct the Detention Basin Improvements. Any bids shall include proposed construction schedules. CLC’s request for bids shall require bids to be submitted no later than thirty (30) days following the date of the request. Any bids may contain a contingency not to exceed fifteen percent (15%) of the other construction costs.

Subject to the following paragraph, CLC shall select the lowest responsible bid no later than ten (10) days following CLC’s receipt of the last submitted bid and immediately thereafter provide the other parties with a copy of the bid selected by CLC, and copies of the bids not selected by CLC.

Within five (5) days after receipt of copies of the bids, the parties shall submit to CLC any written comments and/or objections to the bid selected by CLC. CLC and the other parties shall meet as soon as practical after CLC’s receipt of the last comments to discuss and attempt to resolve any comments and/or objections. Upon resolution of any comments and/or objections, CLC shall promptly thereafter enter into a construction contract with the selected contractor consistent with the accepted bid and other matters agreed upon by the parties, subject to approval of the Final Subdivision Map.

(ii) Construction of Detention Basin Improvements. CLC shall cause the Detention Basin Improvements to be constructed pursuant and subject to the provisions of this Agreement. City shall inspect construction of the Detention Basin Improvements and accept same upon completion of construction of the Detention Basin Improvements. No certificate of occupancy for any development at Staples Ranch shall be issued by City until construction of the Detention Basin Improvements have been completed and accepted by City.

(iii) Detention Basin Construction Costs; Parties’ Proportionate Shares.

(A) Detention Basin Construction Costs; Change Orders. Subject to the following sentence, the phrase “**Detention Basin Construction Costs**” includes only the following: (1) all costs charged by contractors, subcontractors, and suppliers for construction of the Detention Basin Improvements; (2) fees, assessments and costs associated with securing approvals, permits and licenses for the construction of the Detention Basin Improvements; (3) City inspection (including any specialty inspection) and project management

costs; (4) costs of construction insurance (including, without limitation, casualty, liability, theft and workers' compensation insurance); (5) premiums for any bonds required to be provided by the general contractor; (6) a construction management fee payable to CLC in an amount equal to five percent (5%) of the construction costs charged by the general contractor or by contractors reporting to CLC and not to the general contractor; and (7) the costs and expenses incurred by County in preparing the Detention Basin Specifications and the Detention Basin Improvements Final Plans but excluding any salaries, benefits or overhead incurred by or attributable to County employees. The preceding sentence to the contrary notwithstanding, Detention Basin Construction Costs may include the cost of excavating and loading of soils and other excavated materials, but shall not include costs of transporting and/or placing of soils and other excavated materials from the Property to the CLC Parcel.

CLC shall not, without the prior written consent of the parties, (a) agree to any change orders in connection with the construction of the Detention Basin Improvements that exceed in the aggregate more than ten percent (10%) of the original amount of the construction price payable under the construction contract with the general contractor, or (b) if CLC is the general contractor, agree to any change orders that increase the construction price payable under the construction contract in an amount that exceeds in the aggregate more than ten percent (10%) of the original amount of the construction price payable under the construction contract.

(B) Parties' Proportionate Shares of the Detention Basin Construction Costs; Payments. Within ten (10) days following the date the Final Subdivision Map is recorded in the Official Records of Alameda County, each party shall deposit its Proportionate Share of the Detention Basin Construction Costs with Chicago Title Company pursuant to the provisions of the Disbursement Agreement attached to this Agreement as **Exhibit D** (the "**Disbursement Agreement**").

During the course of construction of the Detention Basin Improvements, in the event of any approved change orders and/or construction price increases pursuant to **Section 1.4(b)(iii)(A)** that result in increases in the Detention Basin Construction Costs, each party shall deposit with Chicago Title Company pursuant to the Disbursement Agreement its Proportionate Share of the increases no later than ten (10) days following receipt of CLC's notice of the change order and/or construction price increases.

The preceding provisions of this **Section 1.4(b)(iii)(B)** to the contrary notwithstanding:

(1) County shall deduct from its Proportionate Share of the initial Detention Basin Construction Costs the costs and expenses incurred by County in preparing the Detention Basin Specifications and the Detention Basin Improvement Plans and Specifications but shall not deduct any salaries, benefits or overhead incurred by or attributable to County employees.

(2) CLC shall be responsible for and pay Hendrick's Proportionate Share of the Detention Basin Construction Costs (including any payment required by **Section 1.4(b)(iv)**).

(3) City shall be responsible for and pay the Community Park's Share of the Detention Basin Construction Costs.

(iv) **Final Accounting of Detention Basin Construction Costs.** No later than ten (10) days following City's acceptance of the Detention Basin Improvements, CLC shall provide to each of the parties a detailed accounting of all of the Detention Basin Construction Costs, each party's Proportionate Share of such costs, and the amount(s) each party paid toward its Proportionate Share. If any party overpaid its Proportionate Share of such costs, Chicago Title Company shall pay out of funds it is holding under the Disbursement Agreement any overpayments made by a party. If any party underpaid its Proportionate Share of such costs, such party shall deposit such underpayment no later than ten (10) days following receipt of the final accounting with Chicago Title Company pursuant to the provisions of the Disbursement Agreement. Any dispute under this **Section 1.4(b)(iv)** shall be resolved by binding arbitration pursuant to **Article 5**.

1.5 Default. If a party defaults in its obligations pursuant to this **Article 1**, the nondefaulting parties shall have the rights and remedies pursuant to this Agreement and pursuant to the applicable provisions of the Declaration.

1.6 Maintenance of Detention Basin Improvements. City shall maintain and operate the Detention Basin Improvements and the parties shall contribute to the Detention Basin Maintenance Costs pursuant and subject to the applicable provisions of the Declaration in proportion to each party's Proportionate Share. Nothing in this Section, the attached Declaration nor in this Agreement precludes the City from establishing a maintenance or assessment district in order to maintain and/or fund the maintenance of the Detention Basin Improvements.

ARTICLE 2 OFF-SITE IMPROVEMENTS

CLC shall solely be responsible for the design and construction (subject to City approval) of Street A, including any utilities located within the street right of way.

County shall be solely responsible for the design and construction (subject to City approval) of all improvements within the Stoneridge Drive right of way, as shown on the Draft Tentative Map, including street improvements to back of curb and all utilities (e.g., sewer, water, storm drain, electrical, gas and conduit for fiber optics) necessary to serve all of the proposed developments at Staples Ranch, including the Property. Utility stub outs will be provided to the Property as determined by City. Utilities shall include a storm water conveyance system within the Stoneridge Drive right of way from the property line of each parcel abutting the Stoneridge Drive right of way created by the first Final Subdivision Map to the Property, as well as from the Property to the Arroyo Mocho outfall structure located in the southwest corner of Staples Ranch. If any permits other than City issued permits are required for these improvements, County shall obtain such permits at no cost to the City or to Developers.

ARTICLE 3
NEIGHBORHOOD PARK DESIGN, FUNDING, AND CONSTRUCTION

3.1 Neighborhood Park PUD Plan. Attached to this Agreement is **Exhibit E** (the “**Neighborhood Park PUD Plan**”) which are the design and planning standards for the Property that integrates the Detention Basin with the public’s use of the remainder of the Property as a neighborhood park. That portion of the Property not located within the Detention Basin shall be referred to as the “**Neighborhood Park.**”

3.2 Neighborhood Park Improvements.

(a) **Neighborhood Park Improvement Plans.** No later than sixty (60) days following the date County submits to City and CLC the Detention Basin Improvements Final Plans pursuant to **Section 1.4(a)**, CLC shall cause to be prepared and submitted to City for City’s review and approval final plans and specifications covering the Neighborhood Park Improvements consistent with the Neighborhood Park PUD Plan (the “**Neighborhood Park Improvements Final Plans**”). The Neighborhood Park Improvements Final Plans shall include a construction warranty, a grow-in/maintenance period for the turf and other vegetation, and shall be consistent with City park construction specifications.

(b) **Construction of Neighborhood Park Improvements.** CLC shall, at its sole expense, cause construction of the Neighborhood Park Improvements pursuant to the approved Neighborhood Park Improvements Final Plans. Construction of the Neighborhood Park Improvements shall be coordinated with the construction of the Detention Basin Improvements to the extent possible. City shall inspect and accept the Neighborhood Park Improvements, and will allow the Neighborhood Park to open for public use, when completed to City’s satisfaction and after any grow-in/maintenance period (concerning lawn/turf/trees) has passed and areas/plant material covered by the grow-in/maintenance is found acceptable by City.

3.3 Credits Against City Fees. For CLC’s designing and constructing the Neighborhood Park Improvements, agreeing to assume Hendrick’s Proportionate Share of the Detention Basin Improvements, acquiring and improving Street A, and agreeing to construct a “Good Neighbor” fence as set forth in the conditions of approval for PUD 68, City shall provide CLC with a credit of \$1,754,830 against the City’s Public Facilities Fees then in effect at the time CLC obtains building permits for the development of the CLC Parcel, provided, however that if the amount of the Public Facilities Fees to be charged is less than the amount of the credit, then City shall apply the credit against the City’s Traffic Development Fees. For purposes of determining the amount of the fees to which the credit will be applied, the following will apply: All Villas will be calculated at the Multi-family rate; the Central Plant will be calculated at the Warehouse and Office rate based on final identified uses; in the common areas, only the office space will be assessed and calculated at the Office rate; rooms in the Health Center will be calculated at the Service rate; and the Gatehouse will not be assessed.

3.4 Payments as Amenity. City acknowledges that CLC’s payment for the design and construction of the Neighborhood Park Improvements, CLC’s payment for acquiring and improving Street A, and CLC’s constructing a “Good Neighbor” fence exceeds the credit provided in Section 3.3 and therefore such payments shall constitute an amenity under the City’s

General Plan to justify CLC's receiving increased density for commercial uses above the allowable density range as shown on Table II-4 of the Land Use Element of the City's 2005-2025 General Plan.

3.5 Maintenance. City, at its sole cost, shall maintain the Neighborhood Park Improvements pursuant to the applicable provisions of the Declaration.

ARTICLE 4 DECLARATION; CERTAIN OBLIGATIONS OF COUNTY

4.1 Declaration. In order to implement and enforce certain provisions of this Agreement such that the provisions are binding upon the successors and assigns of the parties to this Agreement and run with the land that comprises all of the parcels described in the Recitals of this Agreement, prior to the first close of escrow under one of the purchase and sale agreements referenced in the Recitals of this Agreement (including close of escrow under a subsequent purchase and sale agreement covering the Commercial Parcel), County shall complete and record in the Official Records of the County of Alameda, California, the Declaration of Covenants, Conditions, and Restrictions in the form and content of **Exhibit F** (the "**Declaration**"). Hendrick, CLC, and City agree that notwithstanding anything to the contrary in their purchase and sale agreements, such parties shall take title to the parcel(s) to be conveyed to them subject to the Declaration.

4.2 Certain Obligations of County and City. In the event a purchase and sale agreement between County and Hendrick, and/or CLC shall terminate prior to the satisfaction of all conditions and obligations under this Agreement, County shall succeed to the rights and obligations of any such Developer under this Agreement but without prejudice to any rights and remedies County may have against any such Developer, either under this Agreement, the Declaration, and/or the purchase and sale agreement between County and any such Developer.

ARTICLE 5 ARBITRATION OF DISPUTES

5.1 Disputes Subject to Arbitration. Only those disputes arising out of **Section 1.4(b)(iv)** are subject to arbitration pursuant to this **Article 5**, and shall be settled by neutral binding arbitration before a single arbitrator to be held in accordance with the rules of the American arbitration association applicable to the nature of the dispute in question, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall be a licensed practicing attorney in California with a minimum of twenty (20) years' substantial experience in real estate and land use law. Hearings shall be held in Oakland, California or such other venue as the parties may determine by mutual agreement.

5.2 Demand and Limitations on Claims. Any demand for arbitration must be made in writing to the other party(ies) and to the American Arbitration Association. In no event shall any demand for arbitration be made after the date that the institution of legal

proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.

5.3 Provisional Remedies. The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order and/or appointment of a receiver, if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief, or if there is not other adequate remedy. Any such application shall not act as a waiver of a party's arbitration rights hereunder.

5.4 Powers, Duties and Limitations of the Arbitrator. The arbitrator shall have the power to grant such legal and equitable remedies and award such damages as may be granted or awarded by a judge of the superior court of the state of California. The arbitrator shall prepare and provide to the parties a written decision on all matters which are the subject of the arbitration, including factual findings and the reasons which form the basis of the arbitrator's decision. The arbitrator shall not have the power to commit errors of law or legal reasoning and the award may be vacated or corrected pursuant to California code of civil procedure section 1286.2 or 1286.6 for any such error. The award of the arbitrator shall be mailed to the parties no later than thirty (30) days after the close of the arbitration hearing. The arbitration proceedings shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties upon any party's request.

5.5 Discovery. The parties shall have the right to discovery in accordance with California code of civil procedure sections 1283.05 and 1283.1; provided, however, that the arbitrator's permission shall not be required to take a discovery deposition. All discovery disputes shall be resolved by the arbitrator.

5.6 Costs and Fees of the Arbitrator. Costs and fees of the arbitrator shall be borne by the non-prevailing party(ies) unless the arbitrator, for good cause, determines otherwise.

Notice: by initialing in the space below you are agreeing to have any dispute arising out of the matters included in the "arbitration of disputes" provision decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in the "arbitration of disputes" provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of The California code of civil procedure. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the “arbitration of disputes” provision to neutral arbitration.

HENDRICK’S INITIALS: _____ CLC’S INITIALS: _____

COUNTY INITIALS: _____

CITY INITIALS: _____

**ARTICLE 6
TERM OF AGREEMENT**

The Term of this Agreement shall commence on the Effective Date and expire upon satisfaction of all conditions, obligations, and requirements of this Agreement, unless earlier terminated as provided in this Agreement.

**ARTICLE 7
GENERAL PROVISIONS**

7.1 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. A signed copy of this Agreement transmitted by facsimile or other electronic means to the other parties shall be binding on the signatory thereto.

7.2 Entire Agreement; Incorporation of Recitals. This Agreement, together with all Exhibits and the Declaration, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached. The Recitals contained in this Agreement are part of the substance provisions of this Agreement.

7.3 Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

7.4 Choice of Law. This Agreement and each and every related document are to be governed by, and construed in accordance with the laws of the State of California.

7.5 Waiver of Covenants, Conditions or Provisions. The waiver by one party of the performance of any covenant, condition or provisions, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered

a waiver by such party of any other covenant, condition or provision, or of the time for performing any other act required, under this Agreement.

7.6 Legal Advice. Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

7.7 Time of the Essence. Time shall be of the essence as to all dates and times of performance.

7.8 Attorneys' Fees. In the event that any party hereto institutes an action or proceeding (including arbitration) for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations under this Agreement, whether or not suit is filed or prosecuted to final judgment, the nondefaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred in addition to any other damages or relief awarded.

7.9 Notices. Each notice, request, demand, instruction or other document required, or permitted to be given hereunder ("**Notice**") shall be in writing and shall be delivered personally (including messenger or courier service with evidence of receipt) or sent by depositing the same with the United States Postal Service, certified or registered mail, return receipt requested, with proper postage prepaid, addressed to the parties at the respective addresses set forth in this Section and marked to any designated individual's attention. Each Notice shall be effective upon being so deposited, but the time period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of actual receipt of the Notice by the addressee thereof. Rejection of the acceptance of a Notice, refusal by the addressee to accept a Notice, or the inability of any messenger, courier or the United States Postal Service to deliver a Notice because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Any party shall have the right from time to time to change the address to which a Notice to it shall be sent to another address in the continental United States (but not a post office box) by giving Notice to the other parties of the changed address at least ten (10) days prior to such changes.

Initial addresses of the parties are:

If to County:

Surplus Property Authority of Alameda County
224 West Winton Avenue, Room 110
Hayward, California 94544
Attn.: Director of Community Development

With a copy to: Surplus Property Authority of Alameda County
224 West Winton Avenue, Room 110
Hayward, California 94544
Attn.: Stuart Cook, Assistant Director

With an additional copy to: Wendel, Rosen, Black & Dean, LLP
1111 Broadway, Suite 2400
Oakland, California 94607
Attn.: Michael A. Dean

If to City: City of Pleasanton
123 Main Street
Pleasanton, California 94566
Attn.: City Manager

If to Hendrick: Hendrick Automotive Group
6000 Monroe Road, Suite 100
Charlotte, North Carolina 28212
Attn.: James F. Huzl

and
Hendrick Automotive Group
4345 Rosewood Road
Pleasanton, California 94588
Attn.: Kirk R. Heppler

With a copy to: Gach Law Firm, PLLC
6000 Monroe Road, Suite 350
Charlotte, North Carolina 28212
Attn.: Gregory H. Gach

With a copy to: Moore & Van Allen PLLC
100 N. Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Attn.: Miriam A. Dixon

If to CLC: Continuing Life Communities Pleasanton, LLC
1940 Levante Street
Carlsbad, California 92009
Attn.: Richard D. Aschenbrenner

and

Continuing Life Communities Pleasanton, LLC
c/o Spieker Partners
2180 Sand Hill Road, Suite 100
Menlo Park, California 94025
Attn.: Tobias Mellows

With a copy to:

Palmieri, Tyler, Wiener, Wilhelm and Waldron LLP
2603 Main Street
East Tower – Suite 1300
P.O. Box 1972
Irvine, California 92614
Attn.: Robert C. Ihrke

7.10 Agreement Survives Termination of this Agreement. All obligations referring to or required to be performed at a time or times after termination of this Agreement, shall survive termination of this Agreement.

7.11 Further Assurances. Each party shall make, execute, and deliver such documents and undertake such other and further acts as may be reasonably necessary to carry out the intent of the parties to this Agreement and the goals of this Agreement.

(Signature Pages to Follow)

EXECUTED as of the Effective Date.

COUNTY:

SURPLUS PROPERTY AUTHORITY
ALAMEDA COUNTY, a public corporation

By:
Name: Chris Bazar
Title: Manager

CITY:

CITY OF PLEASANTON,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

ATTEST:

Karen Diaz, City Clerk

CLC:

CONTINUING LIFE COMMUNITIES
PLEASANTON, LLC,
a Delaware limited liability company

By: _____
Richard D. Aschenbrenner
Chief Executive Officer

HENDRICK:

HENDRICK AUTOMOTIVE GROUP,
a New York general partnership

By: Hendrick Management Company
Limited Partnership, a North Carolina
limited partnership, Managing General
Partner of Hendrick Automotive Group

By: Hendrick Management
Corporation, a North Carolina
corporation, a general partner of
Hendrick Management
Company Limited Partnership

By: _____

Name

Title

ACKNOWLEDGEMENT AND AGREEMENT BY CHICAGO TITLE COMPANY

Chicago Title Company agrees to execute the Disbursement Agreement attached to this Agreement in substantially the same form and substance as **Exhibit D** attached to this Agreement.

CHICAGO TITLE COMPANY,

A _____

By: _____

Name: _____

Title: _____

EXHIBIT A
DRAFT TENTATIVE MAP

EXHIBIT B
DETENTION BASIN SPECIFICATIONS

EXHIBIT C

PROPORTIONATE SHARES DETENTION BASIN PURCHASE PRICE DETENTION BASIN CONSTRUCTION COSTS

Party/Parcel	Impervious Surface (acres)	Proportionate Share
Hendrick	31.77	38.5%
CLC ⁽¹⁾	28.36	34.3%
Commercial Parcel	9.50	11.5%
Community Park	7.42	9.0%
County ⁽²⁾	5.56	6.7%
Total	82.61	100.0%

Notes

(1) CLC consists of:

CLC site 27.20 ac.
Street A 0.62 ac.
Neighborhood Park 0.54 ac.
Total CLC 28.36 ac.

(2) County consists of:

Stoneridge Drive 5.50 ac.
Detention Basin 0.06 ac.
Total County 5.56 ac.

EXHIBIT D

DISBURSEMENT AGREEMENT

THIS DISBURSEMENT AGREEMENT (“**Agreement**”) is entered into as of _____, 200__ (“**Effective Date**”) among the following parties:

1. Surplus Property Authority of Alameda County, a public corporation (“**County**”);
2. City of Pleasanton, a municipal corporation (“**City**”);
3. Continuing Life Communities Pleasanton, LLC, a Delaware limited liability company (“**CLC**”);
4. Hendrick Automotive Group, a New York general partnership (“**Hendrick**”); and
5. Chicago Title Company, a _____ (“**Escrow Holder**”).

RECITALS

This Agreement is entered into with reference to the following facts and objectives.

I. Effective _____, 2010, County, City, CLC and Hendrick entered into that agreement titled “Funding and Improvement Agreement,” a copy of which is attached to this Agreement as **Exhibit A** (the “**Funding and Improvement Agreement**”).

J. Escrow Holder is acting as the escrow agent under Section 1.4(b)(iii)(B) and (iv) of the Funding and Improvement Agreement.

K. County, City, CLC andHendrickdesire that Escrow Holder receive, hold and disburse the Detention Basin Construction Costs (including any increases in the Detention Basin Construction Costs) in accordance with terms, conditions and provisions of the Funding and Improvement Agreement and this Agreement, and Escrow Holder is willing to do so.

AGREEMENT

1. Capitalized Terms. Capitalized terms not otherwise defined in this Agreement shall have the same meanings given such terms in the Funding and Improvement Agreement.

2. Appointment of Escrow Holder. Escrow Holder is hereby appointed by County, City, CLC andHendrick as the escrow agent to receive, hold and disburse the Detention Basin Construction Costs in accordance with the terms and conditions of this Agreement.

3. Acceptance by Escrow Holder. Subject to the terms and conditions of this Agreement, Escrow Holder agrees to hold and disburse the Detention Basin Construction Costs pursuant to this Agreement.

4. Detention Basin Construction Costs. Upon execution of this Agreement the parties have deposited with Escrow Holder the initial Detention Basin Construction Costs in the sum of _____ Dollars (\$_____) to be held and disbursed in accordance with the terms and conditions of this Agreement.

5. Investment of Detention Basin Construction Costs. Escrow Holder is hereby instructed by County, City, CLC and Hendrick to invest the Detention Basin Construction Costs throughout the term of the escrow established under this Agreement at the written direction of County, City, CLC and Hendrick. All interest earned on the Detention Basin Construction Costs shall be added to, and shall become part of the Detention Basin Construction Costs. Escrow Holder hereby acknowledges that it does not have and will not have any interest in the Detention Basin Construction Costs or any interest earned thereon, and is serving only as an escrow agent for County, City, CLC and Hendrick, and will have only possession of the Detention Basin Construction Costs without any right, title or interest therein, including, without limitation, any setoff or other such rights.

6. Release of Detention Basin Construction Costs.

6.1 Periodic Releases of Portions of Detention Basin Construction Costs. Within three (3) business days following Escrow Holder's receipt from County, City, CLC and Hendrick of written instructions signed by such parties, Escrow Holder shall disburse to CLC or to a third party or parties designated by the signed instructions from the Detention Basin Construction Costs, funds in the amount or amounts pursuant to the signed instructions.

6.2 Final Release of Detention Basin Construction Costs. Within three (3) business days following Escrow Holder's receipt from County, City, CLC and Hendrick of written instructions signed by such parties, Escrow Holder shall promptly disburse the balance of the Detention Basin Construction Costs, plus all remaining interest accrued thereon, in amounts and to the parties designated in the final instructions.

7. Certain Rights, Duties, Liabilities, Privileges and Immunities of Escrow Holder.

7.1 Disagreements Between Parties. In the event of any disagreement between any of the parties to this Agreement, or between them or any of them or any other person or entity resulting in adverse claims or demands being made in connection with the subject matter of the escrow established under this Agreement, or in the event that Escrow Holder, in good faith, is in doubt as to what action it should take under this Agreement, Escrow Holder may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action, so long as such disagreement continues or such doubt exists, and, in any such event, Escrow Holder shall not be or become liable in any way or to any person or entity for its failure or refusal to act, and Escrow Holder shall be entitled either to: (a) continue to refrain from action until: (i) the rights of all parties have been determined by final arbitration and/or a final and unappealable decision of a court of competent jurisdiction; or, (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons or entities, and Escrow Holder shall have been notified thereof in writing signed by all such persons or entities; or, (b) file an interpleader action in any court of competent jurisdiction, in which

event those parties (except Escrow Holder) named in any interpleader action shall share and pay equally all of the costs and expenses of Escrow Holder incurred in connection with such interpleader action, including, without limitation, all reasonable attorneys' fees and court costs.

7.2 No Offset Rights. Escrow Holder shall not offset, withhold from disbursement, or otherwise seek to use any of the Detention Basin Construction Costs for its own benefit, whether or not a debt is owed to Escrow Holder by any party to this Agreement.

8. Notices. Any notice, consent, waiver or demand pursuant to or in connection with this Agreement shall be in writing and delivered in accordance with the terms of Section 7.9 of the Funding and Improvement Agreement. Escrow Holder's address is: One Kaiser Plaza, Suite 745, Oakland, California 94612.

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10. Attorneys' Fees; Escrow Costs. In any proceedings hereunder for declaratory relief or to enforce or interpret the provisions of this Agreement, or in any action at law or in equity, or arbitration, the prevailing party or parties shall be entitled to recover reasonable costs and attorneys' fees from the other party (other than Escrow Holder). Such costs and attorneys' fees may be apportioned among the parties as may be appropriate and shall be in addition to any other relief that may be awarded. The reasonable charges, fees and costs charged by Escrow Holder for establishing and maintaining the escrow established under this Agreement shall be paid equally by County, City, CLC and Hendrick.

11. Counterparts; Facsimile Signatures. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed an original, and all of which constitute, collectively, one agreement. A signed copy of this Agreement transmitted by facsimile or other electronic means to the other parties shall be binding on the signatory thereto.

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

13. Conflicts. This Agreement does not supercede the provisions of the Funding and Improvement Agreement; however, if a specific provision of this Agreement conflicts with a provision or provisions in the Funding and Improvement Agreement, the specific provision in this Agreement shall govern.

(Signature Pages to Follow)

EXECUTED on the Effective Date.

COUNTY:

SURPLUS PROPERTY AUTHORITY
ALAMEDA COUNTY, a public corporation

By: _____
Name: _____
Title: _____

CITY:

CITY OF PLEASANTON,
a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

ATTEST:

Karen Diaz, City Clerk

CLC:

CONTINUING LIFE COMMUNITIES
PLEASANTON, LLC,
a Delaware limited liability company

By: _____
Richard D. Aschenbrenner
Chief Executive Officer

HENDRICK:

HENDRICK AUTOMOTIVE GROUP,
a New York general partnership

By: Hendrick Management Company
Limited Partnership, a North Carolina
limited partnership, Managing General
Partner of Hendrick Automotive Group

By: Hendrick Management
Corporation, a North Carolina
corporation, a general partner of
Hendrick Management
Company Limited Partnership

By: _____

Name

Title

ESCROW HOLDER:

CHICAGO TITLE COMPANY

By: _____

Name: _____

Title: _____

EXHIBIT E
NEIGHBORHOOD PARK PUD PLAN

EXHIBIT F

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

RECORDING REQUESTED
BY AND RETURN TO:

Wendel, Rosen, Black & Dean LLP
1111 Broadway, Suite 2400
Oakland, California 94607
Attention: Michael A. Dean

(Above Space for Recorder's Use)
APN Nos: _____

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (“**Declaration**”) is made _____, 200__, (“**Effective Date**”) by and among SURPLUS PROPERTY AUTHORITY OF ALAMEDA COUNTY, a public corporation (“**County**”), and the CITY OF PLEASANTON, a municipal corporation (“**City**”).

RECITALS

This Declaration is made with reference to the following facts and objectives:

A. As of the Effective Date, County owns that certain real property located in Alameda County, California consisting of approximately one hundred twenty-four (124) acres which is subdivided into Lots 1, 2, 3, 4, 5, 6 and 7 as legally described on **Exhibit A-1** and outlined on **Exhibit A-2** (each Lot referred to in the singular as a “**Lot**” and collectively as the “**Lots**”). The Lots are sometimes referred to in this Declaration as the “**Staples Ranch Property**.”

B. On _____, 2010, County and City entered into that certain “Agreement for Purchase and Sale of Real Property and Escrow Instructions” whereby County agrees to sell Lot 4 to City, and City agrees to purchase Lot 4 from County.

C. On March 22, 2005, County and Continuing Life Communities Management, LLC, a Delaware limited liability company (“**CLC**”) entered into that certain “Agreement for Purchase and Sale of Real Property and Escrow Instructions,” as subsequently amended, whereby County agrees to sell Lots 5, 6 and 7 (sometimes referred to singularly as the “**CLC Parcel**” and collectively as the “**CLC Parcels**”) to CLC, and CLC agrees to purchase Lots 5, 6 and 7 from County. The CLC Parcel includes all of adjoining Street A.

D. On October 17, 2006, County and Hendrick Automotive Group, a New York general partnership (“**Hendrick**”) entered into that certain “Agreement for Purchase and Sale of Real Property and Escrow Instructions,” as subsequently amended, whereby County agrees to sell Lot 1 to Hendrick, and Hendrick agrees to purchase Lot 1 from County. Lot 1 is sometimes referred to as the “**Hendrick Parcel**.”

E. County presently owns Lot 2 (sometimes referred to as the “**Commercial Parcel**”). [Note: Change this Recital if Lot 2 is to be sold to a third party as of the Effective Date].

F. In connection with the proposed developments on Staples Ranch Property, it is contemplated that County will dedicate and convey Lot 3 to City. Lot 3 is sometimes referred to as the Community Park.

G. On _____, 2010, County, City, CLC and Hendrick entered into that certain agreement titled “Funding and Improvement Agreement (Staples Ranch Neighborhood Park/Detention Basin)” [the “**Funding and Improvement Agreement**”]. The provisions of the Funding and Improvement Agreement are incorporated into this Declaration.

H. It is the intent of the parties to the Funding and Improvement Agreement that some of the provisions of the Funding and Improvement Agreement be binding on the successors and assigns of the parties to the Funding and Improvement Agreement, and become covenants that run with the land and bind the Lots that comprise the Staples Ranch Property pursuant to this Declaration as more particularly provided in this Declaration.

ARTICLE 1 DEFINITIONS

In addition to defined words and phrases in other parts of this Declaration and in the Funding and Improvement Agreement (which defined words and phrases are incorporated into this Declaration), the following defined words and phrases have the meanings set forth in this Article.

i) Default Interest Rate. The term “**Default Interest Rate**” shall mean five percent (5%) per annum in excess of the “Prime Rate.” The “Prime Rate” shall be the reference rate, or equivalent rate, announced as such from time to time by Bank of America or its successor.

ii) Late Charge. The term “**Late Charge**” is an amount equal to five percent (5%) of the sum or amount to which the Late Charge applies as provided in this Declaration.

iii) Laws. The word “**Laws**” refers to present and future laws, statutes, ordinances, and regulations of all governmental authorities having jurisdiction over Staples Ranch Property.

iv) Mortgage. The term “**Mortgage**” shall mean any deed of trust, mortgage, and/or other security instrument, creating a lien on a Lot.

v) **Mortgagee.** The term “**Mortgagee**” shall mean a mortgagee, beneficiary, and/or secured party under a Mortgage.

vi) **Owner and Owners.** The term “**Owner**” or “**Owners**” shall refer to County, City, and all successor fee title owners to all or any portion of Staples Ranch Property and their successors in interest, including, without limitation, CLC, and Hendrick. In the event a Lot is divided into one or more legal lots, each of such separate legal lots shall thereafter be considered to be a Lot and the Owners of each such legal lot shall be an Owner.

(A) If a Lot is owned by more than one person or entity, the person(s) or entity(ies) holding at least fifty-one percent (51%) of the ownership interest in the Lot shall designate one of their number to represent all Owners of the Lot and such designated person or entity shall be deemed the Owner of such Lot for the purpose of this Declaration.

(B) The lessee of a Lot or portion of a Lot under a ground lease or other lease agreement shall be deemed to be the Owner of such Lot or portion thereof for the purposes of this Declaration so long as such lessee is designated as the “Owner” in writing and a copy of such designation is delivered to the then current Owners at the time of the designation.

ARTICLE 2

STAPLES RANCH PROPERTY SUBJECT TO DECLARATION

Subject to the following paragraph, County does hereby establish and declare that Staples Ranch Property and every portion thereof (including Lots 1 through 7, Street A, and Stoneridge Drive) shall be owned, held, conveyed, transferred, divided, sold, leased, rented, encumbered, developed, improved, maintained, repaired, occupied and used subject to the covenants, conditions, restrictions, rights, liens, charges and other provisions set forth in this Declaration, which, to the extent imposed on the Lots, Street A, and Stoneridge Drive: (a) are mutual, beneficial and equitable servitudes in favor of and for the mutual use and benefit of Staples Ranch Property and each portion thereof; and (b) are hereby expressly declared to be binding upon Staples Ranch Property and each portion thereof (including Lots 1 through 7, Street A, and Stoneridge Drive) and shall run with the land and each and every part thereof, inure to the benefit of and be a burden upon Staples Ranch Property and each portion thereof and shall bind the respective heirs, successors, representatives, and assigns of the Owners of Staples Ranch Property and any portions thereof. Upon recordation of this Declaration in the Official Records of Alameda County, California, any conveyance, transfer, sale, hypothecation, assignment, lease or sublease made by County and by any Owner of any portion of Staples Ranch Property, shall be and hereby is deemed to incorporate by reference the provisions of this Declaration, as the same may from time to time be amended.

The provisions of the preceding paragraph to the contrary notwithstanding, this Declaration shall not encumber those portions of Lots 5 and 6 indicated on **Exhibit B** as “Areas Not Subject to Declaration” after the date such portions are conveyed to owners of properties adjacent to Vermont Place, Pleasanton, California.

**ARTICLE 3
DETENTION BASIN**

3.1 Detention Basin Purchase Price. Sections 1.2 and 1.3 of the Funding and Improvement Agreement establish the obligations of the Owners to pay their Proportionate Shares of the Detention Basin Purchase Price.

3.2 Construction Costs of Detention Basin Improvements. Section 1.4(b)(iii)(B) of the Funding and Improvement Agreement establishes the obligations of the Owners to pay their Proportionate Share of Detention Basin Construction Costs.

3.3 Maintenance of Detention Basin Improvements; Payment of Proportionate Shares of Detention Basin Maintenance Costs.

(a) **Maintenance of Detention Basin Improvements.** Following City's acceptance of the Detention Basin Improvements, City, and its successors and assigns as to Lot 4, shall at all times maintain in good and operating condition the Detention Basin Improvements, which maintenance obligations shall include, without limitation, removing debris from the Detention Basin and any appurtenances thereto, making replacements to parts of the Detention Basin Improvements, including both capital and noncapital improvements necessary to maintain the initial use, and complying with the requirements of all governmental regulations and other Laws applicable to the operation and maintenance of the Detention Basin Improvements.

(b) **Detention Basin Maintenance Costs.** The phrase "**Detention Basin Maintenance Costs**" refers to all necessary and reasonable costs and expenses of any nature and kind as may be actually paid or incurred by City, or its successors and assigns as to Lot 4, to maintain, repair and/or replace the Detention Basin Improvements as required by **Section 3.3(a)**, including any utility costs in operating the Detention Basin Improvements.

(c) **Payment of Proportionate Shares of Detention Basin Maintenance Costs.**

(i) **Proportionate Shares of Detention Basin Maintenance Costs.** Attached to this Declaration is **Exhibit C** that sets forth the proportionate shares of the Lots and the Owners of the Lots for the purpose of calculating the Owners' respective shares of the Detention Basin Maintenance Costs. Such proportionate shares on **Exhibit C** are referred to in the singular as "**Proportionate Share**" and collectively as "**Proportionate Shares.**"

(ii) **Payment Obligations.** Each Owner shall pay to City such Owner's Proportionate Share of Detention Basin Maintenance Costs as provided in this **Section 3.3(c)**.

(iii) **Budget.** City (including its successors and assigns as to Lot 4) shall use its reasonable efforts to provide approximately sixty (60) days prior to the beginning of each calendar year to each Owner, an estimated budget for the Detention Basin Maintenance Costs (the "**Budget**") for the following calendar year; provided, the first Budget shall be provided no later than sixty (60) days following the date City accepts the Detention Basin

Improvements. City shall use its good faith efforts to maintain the Detention Basin Improvements in accordance with the Budget. Except for the first Budget, each Budget shall be based on the prior year's expenses, taking into account the anticipated increases to such amounts.

(iv) **Payment.** Each Owner shall pay to City in equal quarterly payments on or before the first day of each calendar quarter, its Proportionate Share of the Detention Basin Maintenance Costs allocable to such Owner's Lot based upon the amount set forth in the current Budget. Within approximately ninety (90) days after the end of each calendar year, City shall provide each Owner with a statement certified by an appropriate representative of City, setting forth the actual Detention Basin Maintenance Costs paid by each Owner, and such Owner's Proportionate Share of the aggregate thereof. If the amount paid by an Owner for such calendar year shall have exceeded its Proportionate Share, City shall refund the excess to such Owner on delivery of such annual statement, or if the amount paid by an Owner for such calendar year shall be less than its Proportionate Share, such Owner shall pay the balance of its Proportionate Share to City within thirty (30) days after receipt of such annual statement. If any Owner fails to pay such amounts when due, such amounts shall bear interest at the Default Interest Rate.

ARTICLE 4 MAINTENANCE OF NEIGHBORHOOD PARK

From and after City's acceptance of the Neighborhood Park Improvements, City (including its successors and assigns as to Lot 4), shall maintain, or cause to be maintained, at City's sole cost and expense, the Neighborhood Park Improvements in good and operating condition consistent with the City's park maintenance standards.

City's maintenance obligations pursuant to this **Article 4**, without limitation, is to maintain the Neighborhood Park in a manner that does not impede the operation of the Detention Basin Improvements. This obligation shall include the prevention and removal of any debris from gaining access into any drainage system or storm water runoff system.

ARTICLE 5 OWNERS' DEFAULT; REMEDIES ON DEFAULT

5.1 Defaults Under Sections 3.1 and 3.2; County's Rights and Remedies. If any Owner (a "**Defaulting Owner**") fails to pay when due any amount(s) pursuant to **Sections 3.1** and/or **3.2** of this Declaration, then in addition to any other remedy provided for in this Declaration and provided by California law, County shall demand by written notice (the "**County Default Notice**") that the default be cured. If the Defaulting Owner does not cure the default within thirty (30) days after receipt of the County Default Notice, County shall pay any sum owed by the Defaulting Owner. The Defaulting Owner shall, within ten (10) days of written demand by County, reimburse County for the sum or sums paid by County, together with the Late Charge and interest thereon at the rate equal to the Default Interest Rate, from the date such sums were advanced by County. County is considered as a "Creditor Owner" for the purposes of **Section 6.3**.

5.2 Defaults Under Section 3.3(c); City's Rights and Remedies. If any Owner (a "Defaulting Owner") fails to pay when due any amount pursuant to **Section 3.3(c)** of this Declaration, then in addition to any other remedy provided for in this Declaration and provided by California law, City may demand by written notice (the "**City Default Notice**") that the default be cured. If the Defaulting Owner does not cure the default within thirty (30) days after receipt of the City Default Notice, City shall have the right to institute legal action to collect the amount(s) in default, together with the Late Charge and interest thereon at the rate equal to the Default Interest Rate, from the date such sum(s) is/are due. City is considered as a "Creditor Owner" for the purposes of **Section 5.3**.

5.3 Liens.

(a) **Creation.** Any Creditor Owner shall be entitled to a lien against the Lot owned by a Defaulting Owner, which lien shall be created in accordance with this **Section 5.3**. A lien authorized by this **Section 5.3** shall be created by recording a written instrument (the "**Claim of Lien**") in the Official Records of Alameda County, California, which (i) references this Declaration by recording number, (ii) alleges the specific default of this Declaration, (iii) states the amount owed by the Defaulting Owner through the recording date of the Claim of Lien, (iv) contains a legal description of the Lot of the Defaulting Owner, and (v) is executed and acknowledged by the Creditor Owner.

(b) **Amount.** A lien created pursuant to this **Section 5.3** shall include (i) the amount stated in the Claim of Lien, (ii) all costs and expenses incurred in creating and foreclosing such lien (including attorneys' fees), (iii) all amounts which become due from the Defaulting Owner (or its successors or assigns) to the Creditor Owner after the date the Claim of Lien is recorded, whether such amounts arise from a continuation of the default alleged in the Claim of Lien or from some other default under this Declaration, and (iv) the Late Charge and interest on all of the foregoing at the Default Interest Rate.

(c) **Priority.** The priority of a lien created pursuant to this **Section 5.3** shall be established solely by reference to the date the Claim of Lien is recorded; provided, that such lien shall, in all instances, be subject to and junior to, and shall in no way impair or defeat the lien or charge of any Mortgagee holding any Mortgage recorded prior to the date of the lien.

(d) **Extinguishment.** If a Defaulting Owner cures its default, and pays all amounts secured by a lien created pursuant to this **Section 5.3**, the Creditor Owner shall record an instrument sufficient in form and content to clear title to the Lot of the Defaulting Owner from the Creditor Owner's lien.

(e) **Notice of Lien.** No action shall be brought to foreclose a lien or to proceed under the power of sale pursuant to **Section 5.3(f)** until thirty (30) days after the date a Claim of Lien is deposited in the United States mail, certified, postage prepaid, to the Defaulting Owner of the Lot.

(f) **Foreclosure Sale.** Any lien may be enforced by sale by a Creditor Owner after failure of the Defaulting Owner to make the payments specified in the Claim of Lien within the thirty (30) day period pursuant to **Section 5.3(e)**. Any such sale is to be conducted in

successors and assigns of the respective Owners. This Declaration and all the covenants, conditions, and provisions contained in this Declaration shall be enforceable as equitable servitudes in favor of the Lots and any portions thereof. Every person or entity that now or in the future owns or acquires any right, title or interest in or to any Lot or portion thereof shall be conclusively deemed to have consented to and agreed to every covenant, condition, and provision contained in this Declaration, whether or not the instrument conveying such interest refers to this Declaration.

6.4 Attorneys' Fees. In the event of any action between all or part of the Owners for breach of or to enforce any provision or right under this Declaration, the nonprevailing Owner or Owners in such action shall pay to the prevailing Owner or Owners all costs and expenses expressly including, without limitation, reasonable attorneys' fees incurred by the prevailing Owner or Owners in connection with such action.

6.5 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, and such limitations shall not affect in any manner any of the rights or remedies which the Owners may have by reason of any breach of this Declaration.

6.6 Breach - Effect on Mortgagee and Right to Cure. Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith, but all of the covenants, conditions, and provisions of this Declaration shall be binding and effective against any Owner of a Lot, or any part thereof, who acquires title by foreclosure or trustee's sale or by deed in lieu of foreclosure.

6.7 Severability. In the event any covenant, condition, or provision contained in this Declaration is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity of enforceability of any other covenant, condition, or provision contained in this Declaration.

6.8 Governing Law. This Declaration shall be interpreted, construed, and enforced in accordance with the internal laws of the State of California without regard to conflict of law rules.

6.9 Captions. Article and Section titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Declaration.

6.10 Estoppel Certificates. Each Owner agrees that within fifteen (15) days of receipt of a written request of any other Owner it will issue to such other Owner or to any prospective Mortgagee, lessee, or purchaser of such requesting Owner's Lot an estoppel certificate stating: (a) whether the Owner to whom the request has been directed knows of any default under this Declaration and/or the Funding and Improvement Agreement, and if there are known defaults specifying the nature thereof, (b) whether to its knowledge this Declaration and/or the Funding and Improvement Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (c) whether to the Owner's knowledge this Declaration and/or the Funding and Improvement Agreement as of that date is in full force and effect.

6.11 Personal Obligations; Release. The obligations of an Owner pursuant to the provisions of this Declaration are the personal obligations of an Owner, and an Owner shall not be released from such obligations except as provided in the following paragraph.

If an Owner shall sell, transfer or assign its entire Lot or its interest therein, it shall, except as provided otherwise in this Declaration, be released from its unaccrued obligations under this Declaration from and after the date of such sale, transfer or assignment; provided, it shall be a condition precedent to the release that the transferee shall acknowledge in writing addressed to the other Owners of its obligations under this Declaration, and agrees to be bound by this Declaration and perform all obligations under this Declaration in accordance with the provisions of this Declaration. Failure to deliver any such written statement shall not affect the running of any covenants, conditions, and provisions in this Declaration with the land, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Declaration.

6.12 Time of Essence. Time is of the essence with respect to the performance of the obligations contained in this Declaration.

6.13 Entire Declaration. This Declaration (including the Recitals which are part of the substantive provisions of this Declaration) and the Exhibits contain the entire agreement between the Owners with respect to the subject matter of this Declaration. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

6.14 Duration. This Declaration and each covenant, condition, and provision of this Declaration will remain in effect for a term of ninety-nine (99) years from the Effective Date and will automatically be renewed for successive ten (10) year periods unless all of the Owners who are subject to this Declaration elect by written notice to so renew.

(Signature Page to Follow)

EXECUTED as of the Effective Date.

COUNTY:

CITY:

SURPLUS PROPERTY AUTHORITY
ALAMEDA COUNTY, a public corporation

CITY OF PLEASANTON,
a municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

ATTEST:

Karen Diaz, City Clerk

State of California

County of Alameda

On _____, 20__ before me, _____, Notary Public, personally appeared _____, 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.

Notary Public

State of California

County of Alameda

On _____, 20__ before me, _____, Notary Public, personally appeared _____, 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.

Notary Public

EXHIBIT A-1

LEGAL DESCRIPTION OF LOTS

EXHIBIT A-2
PLAT OF LOTS

EXHIBIT B

AREAS NOT SUBJECT TO DECLARATION

Exhibit C

**Proportionate Shares of
Detention Basin Maintenance Costs**

Party/Parcel	Impervious Surface (acres)	Proportionate Share
Hendrick/Lot 1	31.77	38.5%
CLC/Lots 5, 6 and 7	27.20	32.9%
Commercial Parcel/Lot 2	9.50	11.5%
Community Park/Lot 3	7.42	9.0%
City/Lot 4, Street A, Stoneridge Drive	6.72	8.1%
TOTAL	82.61	100.0%

GROWTH MANAGEMENT AGREEMENT

THIS GROWTH MANAGEMENT AGREEMENT is made and entered into on the ___ day of _____, 2010, between **CONTINUING LIFE COMMUNITIES PLEASANTON, LLC**, (“Developer”), and the **CITY OF PLEASANTON**, a municipal corporation (“City”).

RECITALS:

- A. Developer will own real property (“the Subject Property”) in the City of Pleasanton.
- B. The City has granted to Developer development plan approval for a residential care facility for the elderly and a skilled nursing facility (“the Project”).
- C. Units within a facility such as the Project are generally not considered residential units but based on the Project’s potential impacts on community services and infrastructure, the City may designate a percentage of the units as residential for purposes of the City’s Growth Management Ordinance
- D. The City has designated 241 units of the Project as residential units for purposes of the City’s Growth Management Program.
- E. City may enter into growth management agreements with project developers under the City’s Growth Management Ordinance.
- F. City and Developer wish to enter into a growth management agreement in order to achieve the benefits of the Project to City and its residents and in accordance with the purposes of the City’s Growth Management Ordinance.

NOW, THEREFORE, in consideration of the mutual promises expressed herein, City and Developer hereby agree as follows:

I. GROWTH MANAGEMENT APPROVAL

- A. City hereby grants growth management approval to the Project for 241 units in 2011. If Developer does not pull building permits for all 241 units in 2011, Developer may pull building permits in the year or years following 2011 until Developer has pulled all 241 building permits.
- B. Developer will use its best efforts to project the year or years in which it will obtain building permits as provided in this Agreement and will keep the City informed of the year or years in which Developer estimates that it will obtain such building permits so that the City may allocate growth management approvals for other developers in order to accommodate Developer’s development schedule.

II. PROJECT CONDITION

Nothing herein shall reduce any obligation of Developer required as a condition of any other approvals granted by the City.

III. SUCCESSORS IN INTEREST

This Agreement shall run with the land and be binding upon Developer and its heirs, assigns, and successors in interest that have an interest in the Subject Property, except for the purchasers of units within the Project.

THIS AGREEMENT is entered into as of the day and year first above written.

DEVELOPER:

**CONTINUING LIFE COMMUNITIES
PLEASANTON, LLC**

By:_____

CITY:

**CITY OF PLEASANTON,
a Municipal Corporation**

By:_____
Nelson Fialho, City Manager

ATTEST:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

(aj:mydocs\agmts\10\conlifcomgrwthmgt)

Recorded at the request of:
City of Pleasanton

When recorded, return to:
City of Pleasanton
P.O. Box 520
Pleasanton, CA 94566

AGREEMENT CONCERNING INDEPENDENT LIVING UNITS

This **AGREEMENT** is made this ____ day of _____, 200____, by the City of Pleasanton, a municipal corporation (“City”), and Continuing Life Communities Pleasanton, LLC and/or its assignee acquiring title to the underlying land (“Developer”).

Recitals

- A. Developer is the owner of Lots 4, 5 and 6, Tract _____, recorded _____, 201_, in Book ___of Maps, Page___, Alameda County Records (“the Property”).
- B. Developer has obtained City approval (PUD) to develop the Property into a Residential Care Facility for the Elderly (RCFE) that includes 635 independent living units (“Independent Living Units”) and a health center planned for assisted living/Alzheimer’s units and skilled nursing beds (“the Project”).
- C. Developer intends to phase Project construction based on demand for units, including the demand for the Independent Living Units.
- D. The City’s Inclusionary Zoning Ordinance is designed to address rents (in the case of an affordable rental housing project) and purchase price (in the case of an affordable for sale housing project) and does not specifically identify affordable housing requirements for an RCFE which rather than monthly rent and/or sales price charges an entrance fee and monthly maintenance fees based predominantly on services.
- E. Due to the nature of the Project, Developer will use its best efforts, consistent with the intent of the City’s Inclusionary Zoning Ordinance, to provide a certain number of Independent Living Units that will be affordable to households with incomes of 100%, 80% and 50% of the Area Median Income, as set forth herein.
- F. Area Median Income (“AMI”) shall mean the area median income for the Oakland Primary Metropolitan Statistical Area adjusted for family size in accordance with the adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development (HUD) pursuant to Section 8 of the United States Housing Act of 1937 or any successor statute.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions contained herein, City and Developer agree as follows:

1. Developer shall use its best efforts to market and offer fifteen percent (15%) of the total number of Independent Living Units, such that households with an annual income in the following income categories will occupy the Independent Living Units:

5% at 100% of the AMI
5% at 80% of the AMI
5% at 50% of the AMI

2. Developer shall establish an annuity for the purpose of providing ongoing subsidies to households with incomes less than 80% of the AMI. The Developer will fund the annuity by depositing into a separate account established solely for this purpose \$3,055 for each Independent Living Unit, deposited at the time a building permit is obtained for each Independent Living Unit. City and Developer shall determine the specific application of the annuity prior to the issuance of the first building permit but the general application of the annuity will be as follows:

- Will be used to provide financial support to households below 80% of the AMI with an emphasis on attracting and maintaining households with annual incomes below 60% of the AMI.
- Special emphasis will be placed on attracting low (60% AMI) and very low (50% AMI) income households that would not otherwise have the financial means to live in the Project.
- Maximum monthly subsidy per household will be \$400.
- Will be managed to assure that the subsidy will be available for a minimum of twenty (20) years from the first deposit of the \$3055 into the annuity account.
- Shall be used for approximately 31 Independent Living Units within the Project if Developer constructs the proposed number of Independent Living Units (635), and shall be used for a proportionately lower number if the actual number of Independent Living Units constructed is less than 635.
- The annuity will retain any accrued interest. Developer shall use best business practices in investment funding of the annuity funds.
- Developer will provide City an annual financial report detailing the use and accounting of the annuity.
- City and Developer shall establish prior to Project occupancy specific administrative guidelines covering the use and investment of the annuity.

3. The Independent Living Units described in this Agreement shall (a) be located randomly throughout the Project as reasonably determined by the Developer so as not to cluster such units, (b) not to be fixed in a particular building or buildings and their location will be expected to change depending on vacancies and (c) have the same interior standards of quality (e.g., appliances, interior features/amenities, services, etc.) as the other Independent Living Units not subject to this Agreement.

4. Annually, Developer shall provide City a report detailing the number of Independent Living Units subject to this Agreement that the Developer has provided during the previous year and the annual incomes of the households occupying such Independent Living Units. In the event the Developer fails to meet the target set forth in Section 1, the Developer shall provide to City a written plan for meeting such targets in the future.
5. The Developer, with City's cooperation, shall assume all responsibility to market the Independent Living Units subject to this Agreement. Marketing shall be in accordance with income guidelines and Developer shall grant certain preferences to applicants as follows:
 - a. Households then currently residing in the City of Pleasanton;
 - b. Households no longer residing in the City of Pleasanton but that (a) did reside in Pleasanton less than six months prior to the time of application and (b) did reside in the City of Pleasanton continuously for at least ten (10) years immediately prior to no longer residing in the City of Pleasanton;
 - c. Households with a Principal Care Giver, or with a child, stepchild, grandchild, parent, sibling, spouse or domestic partner, then currently residing in the City of Pleasanton;
 - d. Households with a Principal Care Giver, or with a child, stepchild, grandchild, parent, sibling, spouse or domestic partner, then currently working in the City of Pleasanton;
 - e. All other households
6. City may elect to utilize its Lower Income Housing Fund (or other funding sources) to extend or increase the annuity to make additional Independent Living Units be subject to this Agreement and/or to reduce the payment to the Developer that a household living in one of the Independent Living Units subject to this Agreement would otherwise be required to make. Developer and City shall cooperate reasonably in these efforts.
7. This Agreement shall be recorded in Alameda County and shall run with the land.

AGREEMENT executed the date and year first above written.

DEVELOPER:

By: _____
Continuing Life Communities Pleasanton,
LLC

CITY:

CITY OF PLEASANTON,
a Municipal Corporation

By: _____
Nelson Fialho, City Manager

ATTEST:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Jonathan P. Lowell, City Attorney

**AGREEMENT BETWEEN THE COUNTY OF ALAMEDA AND
THE CITY OF PLEASANTON REGARDING TRANSFER OF PROPERTY TAX
REVENUES IN CONNECTION WITH ANNEXATION NO.**

This Agreement is made pursuant to the provisions of Revenue and Taxation Code Section 99 and shall constitute the agreement for exchange of property tax revenues required by the Revenue and Taxation Code Section 99(b)(6). Furthermore, Revenue and Taxation Code Section 99(b)(5) provides that if a jurisdictional change will alter the service area or service responsibility of a special district, the Board of Supervisors of the county in which the special district is located shall negotiate any exchange of property tax revenues on behalf of the special district.

The parties agree that for annexation of parcels bordered by the City of Dublin on the north, the City of Livermore on the east, the Arroyo Mocho channel on the south and the California Somerset residential development on the west, as shown on the attached Exhibit A and incorporated herein listing all applicable parcel numbers, the Auditor-Controller of the County of Alameda is directed to cause an exchange of property tax revenue as follows:

- A. The City is entitled to receive an allocation of computed property tax revenue equivalent to the share of property tax revenue it receives on a weighted average citywide. The weighted citywide average shall be computed annually as follows: multiply the City's current AB8 factor in each tax rate area within the city by the current secured assessed valuation in each tax rate area to arrive at a product for each tax rate area. The sum of those products is divided by the total secured assessed valuation within the city to arrive at a weighted citywide average. The secured tax roll is used here to establish the weighted citywide average. However, the factors resulting from application of the formula will apply to all tax rolls.
- B. In the event that the City currently provides a service within its incorporated city limits such as Fire or Library, and if that service is currently being provided by a County taxing agency or special district in the territory proposed for annexation, the County shall receive an allocation of computed property tax revenue equivalent to the share of property tax revenue received by the county taxing agency or special district in the territory proposed for annexation. The County's receipt of that allocation shall not diminish the City's receipt of its allocation calculated under A above.
- C. In the event that the City assumes full responsibility for a service not currently being provided by the City within its incorporated City limits, but being provided by a separate County taxing agency or special district within the territory proposed for annexation, pursuant to Revenue and Taxation Code 99(b), the City shall receive, in addition to the allocation determined in A above, an allocation of computed property tax revenue equivalent to the share

of property tax revenue received by the County taxing agency or special district in the territory proposed for annexation.

- D. The County shall receive an allocation of computed property tax revenue equivalent to its current share of property tax revenue in the territory proposed for annexation plus the share of shares of property tax revenue allocated to it in section B above, less the share of computed property tax revenue allocated to the City in section A above, and in section C above as applicable.

This exchange of property tax revenues will be effective as to each property annexed within the subject annexation area for the fiscal year following the filing of the State Board of Equalization of the Certificate of Completion for such property providing the filing occurs prior to December 31 of the preceding year.

Dated: CITY OF PLEASANTON

Jennifer Hosterman, Mayor

APPROVED AS TO FORM: ATTEST:

Jonathan Lowell, City Attorney

Karen Diaz, City Clerk

DATE: COUNTY OF ALAMEDA

President, Board of Supervisors

APPROVED AS TO FORM:
Richard E. Winnie, County Counsel

By: _____

EXHIBIT A

Parcels Subject to This Tax Sharing Agreement
Upon Annexation:

Assessor's Parcel Number

EXHIBIT A