AGENDA ITEM
NO. 2

CITY OF MORGAN HILL

MEMORANDUM

To: PLANNING COMMISSION

Date: September 12, 2006

From: COMMUNITY DEVELOPMENT DEPARTMENT

Subject: ZONING AMENDMENT, SUBDIVISION & DEVELOPMENT AGREEMENT APPLICATIONS ZA 05-015, SD 05-15 & DA 05-10: Barrett-Syncon Homes

REQUEST

A request for approval of a precise development plan for a 52-unit single family development proposed on a 13.5 acre site located between San Pedro Ave. and Barrett Ave. immediately south of San Ramon Dr. Also requested is the approval of a 32 lot subdivision map and development agreement. (APNs 817-59-060 and 817-57-001)

RECOMMENDATION

Environmental Assessment:	Adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
Application ZA-05-15	Recommend City Council approval, subject to the findings and conditions contained in attached Resolution.
Application SD 05-15	Approval, subject to the findings and conditions contained in attached Resolution.
Application DA 05-10	Recommend City Council approval, subject to the findings and conditions contained in attached Resolution
Processing Deadline:	January 14, 2007

SITE DESCRIPTION

Location:	South side of San Pedro Ave., north of Barrett Ave. at the westerly termination of San Vicente Dr. and San Ramon Dr.
Site Area:	13.49 acres

Zoning: R-1(7,000)
General Plan: Single-Family Medium

BACKGROUND

The proposed project, referred to as the Rose Garden, received 18 building allotments in the 2004 Measure C competition. The project received thirteen allotments for Fiscal Year 2007-08 and five allotments for Fiscal Year 2008-09. In April 2005 the applicant applied for a cultural resources designation on the existing residence and water pump located at 620 San Pedro. On July 26, the City Council awarded 14, 2009-2010 allocations to the project. This project was originally scheduled for consideration at the August 8 Planning Commission meeting however, the applicant requested a continuance to the September 12 agenda to allow incorporation of the 14 additional allocations into the proposed tentative map and redefine the project phasing.

PROJECT ASSESSMENT

The project site is approximately 13.5 acres and is located between San Pedro Ave. and Barrett Ave., south of San Ramon Dr. The site is flat and is surrounded with recently developed two story homes on the north, east and a portion of the western boundary. The north and the remaining portion of the western boundary are adjacent to fallow fields or abandoned greenhouses.

The existing historic residence and water tower on the project site will be relocated closer to San Pedro Ave. as part of the proposed project. The project will also renovate the historic residence and the water tower and construct a rear addition to the historic residence, including an attached garage. The other existing outbuildings will be removed.

The project will consist of 52 single-family (mostly 2 story) detached residences on lots ranging in size from 4,000 to 13,645 sq. ft. The project also includes .87 acre park and a .21 acre park/open space area on the northern portion of the project site. The park sites will also accommodate the project's on-site detention. Access to the project will be through the extension of San Gabriel Ave., San Vicente Dr. and San Ramon Dr.

Environmental Assessment: Due to the existing and proposed development on the site, an expanded initial study was completed to evaluate the potential impacts that may result from development of the site. The initial study identified the following as potential impacts.

Biological: Due to the number of existing non-significant trees on the site a pre-construction survey for nesting raptors is required prior to any tree removal. A preconstruction burrowing owl survey is required as part of the City's Habitat Conservation plan. A pre demolition survey is also required for removal of the outbuilding structures to determine the presence of bats.

An Arborist's review of construction plans is required to specify protection measures for the three significant trees on-site.

Cultural Resources: As mentioned earlier, the site currently contains a designated historic residence and water tower built in 1908. The other structures on the site were determined to be less than 50 years old and were not considered historically significant by the Historic Survey prepared for the site. The project is proposing to relocate and renovate the existing historic residence and the water tower. The plans for the relocation, renovation and addition to the historic residence and water tower were reviewed by an architectural historian using the Secretary of the Interior's Standards for Rehabilitation. The historian determined that the applicant's proposal generally met the Interior's Standards for Rehabilitation projects if the overall intent of Standard 6 is fulfilled by the project. Standard 6 of the Secretary of the Interior's Standards for Rehabilitation states, "Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, substantiated by documentary and physical evidence."

To assure compliance with the Standard 6 of the Interior's Standards for Rehabilitation a historic rehabilitation construction monitoring plan must be submitted to the City prior to the issuance of a building permit. The plan will require monitoring by a qualified historic architect or conformance with the Secretary of the Interior's standards. The monitoring architect must provide a compliance report to the City prior to the occupancy of the structure.

Noise: The future exterior noise levels in the rear yards of the western most residences will exceed maximum outdoor levels. Once the adjacent property to the west along Butterfield develops, noise barriers would no longer be required. To mitigate the noise exposure from Butterfield Blvd., the project is required to install a 6 ft. noise barrier fence that would provide a 5 db reduction in the rear yards along the western boundary of the project.

Traffic: A trip generation comparison was completed for the project which estimated 47 new A.M peak-hour trips and 61 new P.M. peak hour trips. The distribution of these peak hour trips through the surrounding intersections was low (11 trips or less) with the exception of the San Pedro Butterfield Blvd. intersection with a projected maximum of 19 trips. The City's Transportation Impact Analysis Guidelines requires additional traffic analysis if a project adds 50 to 100 new peak hour trips to a near by intersection. The level of service at each of the five surrounding intersection evaluated will not be degraded to below a C- during the AM or PM peak hours.

A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program have been prepared which contains mitigation measures which should reduce both long and short term impacts to less than significant levels.

Zoning: This Zoning Amendment would establish a precise development plan for a 52 unit residential development on lots which range in size from 4,000 to 13,645 sq. ft. The minimum lot size within the R-1 7,000 zoning district is 7,000 sq. ft. for single family detached and 3,500 sq. ft. for single family attached dwellings. None of the BMR or moderate lots fall below 3,500 sq. ft. and only 7 of the market rate lots fall below 7000 sq. ft. but are each of the seven is greater

than 6000 sq. ft. The reduction in the minimum lot size allows for the creation of a .87 acre park within the center of the project and a .21 acre park near the entrance on San Ramon Dr. and Barrett. The proposed parks will contain the project recreational amenities which include 2 tot lots and a sport court. The majority of the units meet the R-1 setback and all meet the building height requirement for single family homes. The front setbacks on lots 1, 3, 8. 10, 12, 16, & 28 are 2-5 ft. below the 20 ft. minimum front setback. The rear yards on lots 2, 45 and 50 are 2-5 ft. less than the 20ft. min. The side yard setbacks vary from generally 7 ft. to 12 5 ft. which is in excess of the minimum R-1 7,000 requirement. The only variation to the side setbacks is the inclusion of the modified detached units. As previously mentioned, 16 units are proposed as modified detached units. The ordinance allowing for the modified detached units will sunset on June 30, 2008. Unless the Modified setback ordinance is extended, future phases of the project will need to provide attached units.

Phase one of the project includes the creation of 15 lots to be access off of San Vicente and three more lots facing onto Barrett Ave. Phase II includes 14 lots to be created on a westerly extension of San Gabriel Ave. and additional lots on the north and south sides of the central .87 acre park. Also included within phase one is the creation of the .87 acre park and the installation of the park landscaping.

The precise development plan as proposed for phases I & II and future phases meets the RDCS commitments for alternative garage configurations, single story units (plan 1) and moderate rate units however, Phase I needs to include an additional median BMR. The 52 unit project committed to a total of 8 BMRs (3 lows/5 meds) and 6 moderate (non BMR) units. The project's 15 percent BMR commitment requires 3 BMRs in phase I, 2 BMRs in phase II and 3 in the future unallocated portion of the project. The site plan submitted with RDCs application showed a duet unit on what is currently lot 16 with 4 adjacent single family lots to the south (6 lots total between the corner and the park). Staff recommends as a condition of approval that lots 16 and 17 within Phase I be adjusted to accommodate a duet unit and lots18 thru 21 be adjusted accordingly to maintain a total of 6 lots between the corner and the park.

Tentative Map: The proposed vesting tentative map shows 32 lots but the existing home will be on a new lot which is not currently numbered on the tentative map. As a condition of the tentative map approval, the 23,459 sq. ft. lot on San Pedro Ave. would be lot 33 and the .87 acre park site would be lot 34. The remaining 20 units have not yet received allocations and a separate tentative map approval will need to be filed once allocations are awarded for future phases. The recommended changes for the proposed subdivision include, the Public Works Department's requests for the connection of San Gabriel Ave. as part of the Phase I improvements and the adjustment of lots 16 thru 21 to provide a corner BMR unit as discussed above.

Development Agreement: The applicant is requesting approval of the project Development Agreement. Project development agreements are required as a formal contract between the developer and the City. The Development Agreement formalizes the commitments made during the Measure C process and establishes the development schedule for the project. The project specific commitments are identified in Paragraph 14 of the Development Agreement, and the development schedule is contained in Exhibit B.

The project Development Agreement has been prepared and is attached as Exhibit A of the approval resolution. The Measure C commitments and development schedule have been included within the agreement.

Attachments:
1. Mitigated Negative Declaration and
   Mitigation Monitoring and Reporting Program
2. Resolution approving zoning
3. Resolution approving subdivision
4. Resolution approving development agreement
5. Project Plans
6. Vicinity Map

R:\PLANNING\WP51\Zoning Amendment\2005\ZA0515 Barrett-SynconHomes\ZA0515 mlp doc

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING TO THE CITY COUNCIL THE ESTABLISHMENT OF AN R-1 7,000/RESIDENTIAL PLANNED DEVELOPMENT ON A 13.5 ACRE SITE BETWEEN SAN PEDRO AVE. AND BARRETT AVE. IMMEDIATELY SOUTH OF SAN RAMON DR. (APNS 817-59-060 & 817-57-001)

WHEREAS, such request was considered by the Planning Commission at their regular meeting of August 8, 2006 and September 12, 2006 at which time the Planning Commission recommended approval of application ZA-05-15: Barrett-Syncon Homes; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.

SECTION 4. The Planning Commission finds that the proposed Residential Planned Development zoning district is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.

SECTION 5. The Planning Commission recommends amendment to the City Zoning Map as shown in attached Exhibit "A".

SECTION 6. The Planning Commission hereby recommends approval of a precise development plan as contained in that certain series of documents dated September 1, 2006 (date of receipt by the Community Development Department) on file in the Community Development Department, entitled "Rose Garden" prepared by Hanna & Brunetti and as amended as follows:

(1) All floor plans & elevation shall be reviewed by the Architectural and Site Review Board (ARB) prior to final map approval.

(2) The total Below Market Rate and moderate rate unit commitments for the project includes 3 low income units, 4 median income units and 6 moderate rate units. Each project phase shall have a proportionate share of BMR and moderate rate units. Phase I (18 units) of the precise development plan shall be amended to include a total of 1 low income BMR, 2 median income BMRs and 2 moderate units. Lots 16-21 within Phase I shall be adjusted to accommodate an additional low income BMR within Phase I.

SECTION 7: These documents, as further amended by site and architectural review, show the exact location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

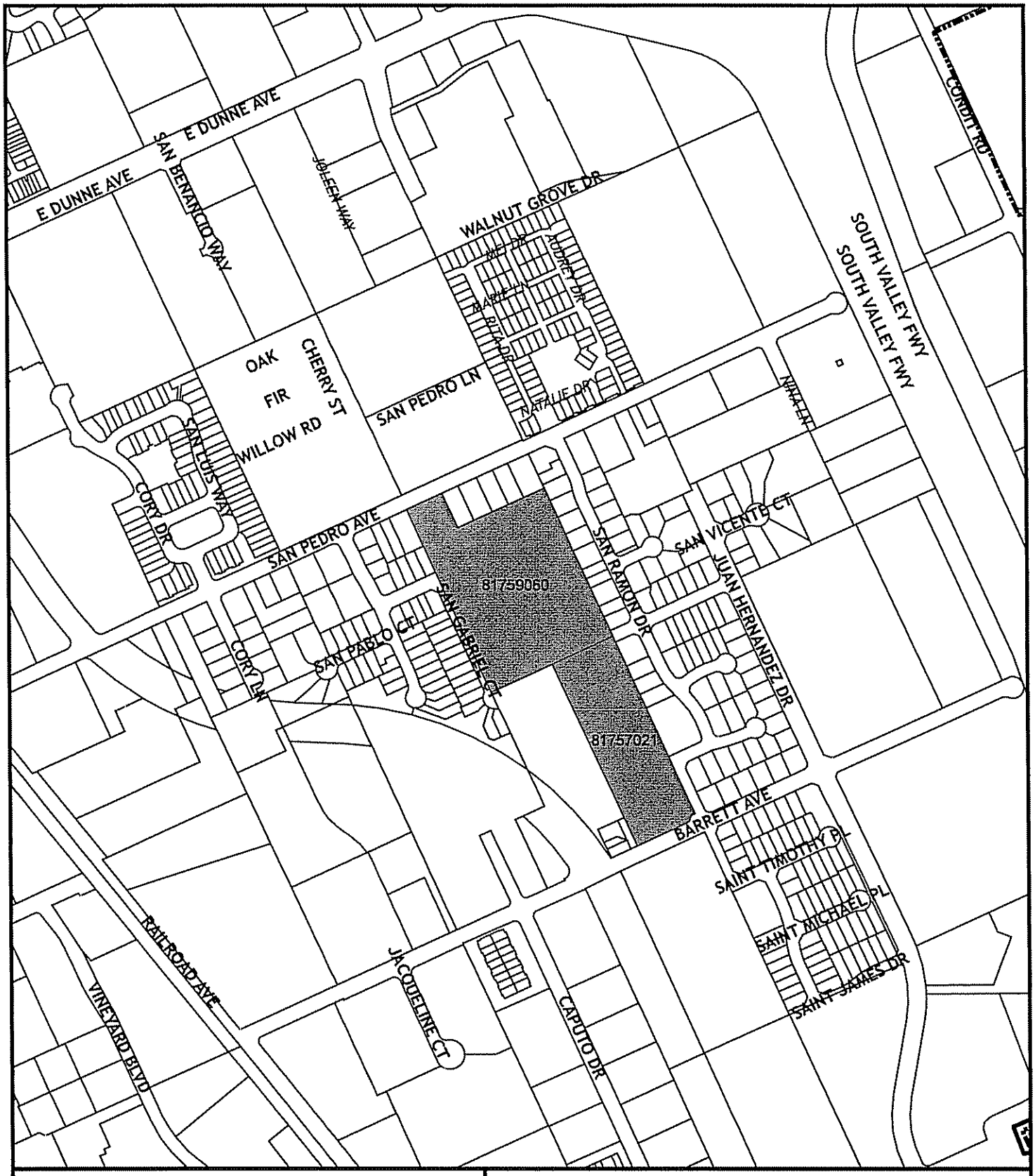
PASSED AND ADOPTED THIS 12TH DAY OF SEPTEMBER, 2006, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST: **APPROVED:**

FRANCES O. SMITH, Deputy City Clerk **ROBERT J. BENICH, Chair**

R:\PLANNING\WP51\Zoning Amendment\2005\ZA0515 Barrett-SynconHomes\ZA0515 r1p doc



0 210 420 840 1,260 1,680 Feet

ZA 05-15: Barrett-Syncon Homes
Exhibit A
Rezone parcels from R-1 7,000 to R-1 7,000 RPD

CITY OF MORGAN HILL

R:\PLANNING\GIS\Maps\Applications\ZA0515\ZA0515.pdf

© 2006

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL APPROVING A TENTATIVE MAP FOR A 32-LOT SUBDIVISION OF A 13.5-ACRE SITE LOCATED BETWEEN SAN PEDRO AVE. AND BARRETT AVE. IMMEDIATELY SOUTH OF SAN RAMON DR. (APNS 817-59-060 & 817-57-001)

WHEREAS, such request was considered by the Planning Commission at their regular meeting of August 8, 2006 and September 12, 2006, at which time the Planning Commission approved application SD-05-15: Barrett-Syncon; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The proposed subdivision is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The approval of this subdivision is contingent upon the City Council approval of a Residential Planned Development zoning designation as contained in Zoning Amendment application ZA 05-15: Barrett-Syncon.

SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.

SECTION 4. The proposed subdivision will not result in a violation of the requirements established by the Regional Water Quality Control Board.

SECTION 5. The approved project shall be subject to the conditions as identified in exhibit "A", and by this reference incorporated herein.

PASSED AND ADOPTED THIS 12th DAY OF SEPTEMBER 2006, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST: **APPROVED:**

FRANCES O. SMITH, Deputy City Clerk **ROBERT J. BENICH, Chair**

A F F I D A V I T

I, , applicant, hereby agree to accept and abide by the terms and conditions specified in this resolution.

_____
, Applicant

Date: _____

Revised: May 23, 2006

EXHIBIT " A"

STANDARD CONDITIONS

APPLICATION: SD05-15: Barrett - Syncon Homes

THE FOLLOWING CONDITIONS SHALL BE MET PRIOR TO THE ISSUANCE OF BUILDING AND/OR SITE DEVELOPMENT PERMITS EXCEPT AS OTHERWISE SPECIFIED IN THE CONDITIONS. APPROVAL REQUIREMENTS ARE NOT LIMITED TO THE ITEMS LISTED BELOW AND NOT ALL OF THE STANDARD CONDITIONS ARE APPLICABLE TO THE SITE OF A SPECIFIC PLANNING APPLICATION.

THOSE CONDITIONS MARKED BY AN "X" ARE APPLICABLE TO THE PROJECT APPLICATION REFERENCED ABOVE.

COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

I. TIME LIMITS

___A. The Site and Architectural approval granted under this Resolution shall remain in effect for one year to _____, 200___ . Failure to obtain building permits within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to expiration date. **(MHMC 18.74.250)**

X B. The Tentative Subdivision/Parcel Map approval granted under this Resolution shall remain in effect for two years to September 12, 2008 Failure to apply for Final Map approval with the City Engineer within this term shall result in expiration of approval unless an extension of time is granted by the Community Development Department (parcel map)/Planning Commission (tentative map) prior to the expiration date. **(MHMC 17.20.170; 17.24.110)**

___C. The Conditional Use Permit approval granted under this Resolution shall remain in effect for twelve (12) months to _____. Failure to commence the use within this term shall result in termination of approval unless an extension of time is granted with a showing of just cause prior to the expiration date.**(MHMC 18.54.070 A)**

___D. In accordance with Section 18.54.090 of the Municipal Code, the Community Development Department shall conduct an annual review of the approved use for compliance with specified conditions. The Department may initiate corrective action as specified in the aforementioned Code Section if necessary to ensure compliance with said conditions. **(MHMC 18.54.090)**

___E Prior to approval and recordation of the final map, written certification from the Morgan Hill Unified School District shall be submitted to the Community Development Department which states that adequate school facilities are or will be capable of accommodating students generated by this project. Such letter of certification must have been issued by the School District within 90 days prior to the final map approval.

II. SITE DEVELOPMENT

X A. Prior to on-site grading, the applicant shall enter into an agreement with the City of Morgan Hill for consultant services. The City shall retain the services of a professional arborist to evaluate the condition of any on-site specimen tree(s) affected by construction activity, and recommend appropriate written specifications which will preserve such trees during and after construction. The City shall provide copies of said written specifications to the applicant, who shall assume responsibility for implementing all recommended actions contained in that document.

___B. The applicant shall provide a set of Covenants, Conditions and Restrictions, Bylaws and Articles of Incorporation, for review and approval by the City Attorney prior to final occupancy or recordation of the final map. All such CC&Rs shall include the following text:

1. Common Areas/Right of Ways:

a. The Owners recognize that the use, modification and proper maintenance of the Common Area and public right-of-way(s)* are for the benefit of all citizens of the City of Morgan Hill (City) and that the City is an intended third party beneficiary of these covenants, conditions and restrictions and may, upon notice of hearing as set forth below, exercise the same powers of enforcement as the Association.

*Public right-of-way: Exclusive of streets dedicated to and accepted by the City of Morgan Hill

b. The City may, by mail or personal delivery, give written notice of the breach of any maintenance obligation to the Association with a demand that such breach be remedied. If such breach is not remedied within thirty (30) days of the mailing or delivery of such notice, the City shall have standing and the right (but not the obligation) to bring a court action against the Association and Owners to enforce such provision. In addition, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.

c. The Notice may also contain a date for a hearing on the matter before a City employee designated by the City (which hearing shall be held no sooner than fifteen (15) days after mailing of such notice), and if after such hearing the City determines that there has been inadequate maintenance, the City shall have the right (but not the obligation) to undertake the maintenance of the Common Area or public right-of-way in question. Any and all costs incurred by the City in so maintaining the Common Area or public right-of-way shall be a lien against all the properties included with the Project and shall be the personal responsibility of the Owners and the Association

d. The entire Project and all of the properties located thereon shall be subject to the conditions and restrictions of all subdivision and other Project approvals by the City, with respect to the Project. Any changes and/or modifications to the Project and/or any Unit, including but not limited to changes to the exterior of any Unit, may be subject to review and approval of the City of Morgan Hill as may be determined by review of the Project approvals by the City of Morgan Hill.

e. This section may not be amended without the prior written consent of the Director of Community Development for the City. Nothing contained in this section shall limit any other right or remedy which the City may have under its ordinances or state law.

f. For the purposes of this section, the question of whether there has been a breach of a maintenance obligation or adequate maintenance shall be determined by the provisions of the original Declaration as first recorded with the County Recorder for Santa Clara County and by any amendment thereto, but only to the extent that such maintenance

obligation or duty of maintenance is increased by such amendment.

2. Tree and Landscape Preservation: The Owners of the Units and Association shall preserve and maintain all trees and landscape on the property originally required by the approved landscape plan and shall not remove or alter any such trees or landscape from the Property without the approval of the Director of Community Development of the City of Morgan Hill.

3 Compliance with the City of Morgan Hill Conditions of Approval: It shall be the responsibility of each Owner and the Association to insure that any changes or modifications to the Project or any Unit are in compliance with the original City conditions of approval of the Project, which are hereby incorporated herein as if set forth in full.

__C. Final site development plans shall be reviewed and approved by the Community Development Department prior to issuance of a building permit. All such plans shall include:

1. Detail depicting all concrete curbs as full formed.

2. Provision of catalogue drawings depicting the proposed parking area lighting fixtures. Exterior lighting of the building and site shall be designed so that lighting is not directed onto adjacent properties and light source is shielded from direct off-site viewing. **(MHMC 18.74.370)**

3. Ramps, special parking spaces, signing and other physical features for the disabled, shall be provided throughout the site for all publicly used facilities. **(MHMC 18.50.110; 18.74.470)**

4. Trash enclosures shall be constructed of a sturdy, opaque material, minimum 6 feet in height with solid view obstructing gates and shall be designed in harmony with the architecture of the building(s). In residential areas, trash enclosure areas shall require an overhead shade structure. Trash enclosures shall be required in all commercial and industrial projects and in residential projects containing four or more dwelling units. **(MHMC 18.74.505)**

5. All mechanical equipment, including electrical and gas meters, post indicator valve, backflow prevention devices, etc., shall be architecturally screened from view or located interior to the building. All ground mounted utility appurtenances such as transformers shall not be visible from any public right-of-way and shall be adequately screened through the use or combination of concrete or masonry walls, berming, and landscaping. **(MHMC 18.74.320)** For additional screening, backflow preventers shall be painted dark green, except the fire connection which shall be painted yellow.

6. All existing on-site overhead utilities shall be placed underground in an approved conduit from the service connection at the street or at the property line to the service connection at the building.

X D. Recordation of a final map shall be in accordance with the number of building allotments granted through the Residential Development Control System (RDCS) for this project. Should a portion of the project's building allotment expire prior to final map approval, the number of lots on the final map shall be reduced to correspond to the remaining allotment. **(MHMC 18.78.020)**

X E. Prior to recordation of the final map, the owner shall submit to the Community Development Director for his approval, a management plan detailing strategies for control of noise, dust and vibration, and storage of hazardous materials during construction of the project. The intent of this condition is to minimize construction related disturbance of residents of the nearby or adjacent properties.

X F. Street names, private or otherwise, used to identify building locations shall be submitted to the Planning Division for approval.

III BUILDING DESIGN

___A. All roof mounted mechanical equipment shall be placed within a screened roof top enclosure depicted on the elevation drawings or located below the parapet level and shall not be visible from the ground at any distance from the building. Cross section roof drawings shall be provided at the building permit stage indicating the relative height of the screen wall or parapet. Minimum screen height or parapet depth shall be 5 ft. or greater to match the height of any proposed equipment. **(MHMC 18.74.320)**

___B. Roof top lighting is not approved for any building within the project. Any ground mounted lighting projecting onto the building or site will be subject to the review and approval of the Director of Community Development. Adjustment to the lighting intensity may be required after the commencement of the use. All parking lot lighting shall be high pressure sodium.

___C. All vents, gutters, downspouts, flashing, electrical conduits, etc. shall be painted to match the color of the adjacent surface or otherwise designed in harmony with the building exterior. **(MHMC 18.74.360)**

___D. Soffits and other architectural elements visible from view but not detailed on the plans shall be finished in a material in harmony with the exterior of the building. **(MHMC 18.74.340)**

IV. PARKING & VEHICULAR ACCESS

___A. The interior of any parking area shall be landscaped with planter areas measuring a minimum five feet in width, minimum inside dimension. Additional planters shall be provided at both ends of a row of spaces with the planter area length equal to the adjoining parking spaces. Such planters shall contain an 18" walk adjacent to parking stall (including curb width). (MHMC 18.74.550 C)

___B. Textured pedestrian pathways across circulation aisles shall be provided throughout the development to connect dwellings or commercial/industrial buildings with parking areas, open spaces and recreational uses.

___C. All units shall be provided with automatic garage door openers if driveway is less than 18 feet in depth from back of sidewalk.

___D. Prior to final map approval or issuance of a building permit, the owner shall record an appropriate deed restriction and covenant running with the land subject to review and approval by the City Attorney for reciprocal ingress/egress easements along the common driveway.

V. LANDSCAPING

___A. The applicant shall enter into a two-year landscape maintenance agreement effective upon acceptance of landscaping improvements and provide an appropriate bond as required by Section 18.74.560(d) of the Design Review Ordinance. Bond amount shall be equal to 100 percent of the value of the landscaping and irrigation improvements for the development project. **(MHMC 18.74.560)**

X B. Detailed landscape planting and irrigation working drawings shall be submitted to the Community Development Department for approval prior to issuance of building permits. Landscape plans for streets and landscape easements shall be part of the improvement plan submittal.

___C. Special landscape features such as mounding, field stones, specimen size trees, meandering sidewalks and landscaping, minimum _____ feet in width, shall be required along _____.

X D. Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this tract area shall be continuously maintained by ~~(the property owner~~/Homeowner's Association) _____ as part of the common area improvements.

___E. All trees within approved landscape plans shall be of a minimum fifteen gallon size. All shrubs shall be minimum 5 gallon size unless otherwise approved by the Community Development Director.

___F. A soils report shall be provided with landscape plan at the building permit stage indicating agricultural suitability and soil fertility.

___G. The balance of a building site not developed as part of this project approval shall be placed in landscaping acceptable to the Planning Division.

___H. A note shall be placed on the final map which shall indicate that lot(s) _____ shall be used for no purpose other than for on-site storm drainage facilities and recreational amenities. All proposed trails, private open space and associated facilities shall be permanently secured with appropriate documentation [i.e., Deeds; Easements; Covenants, Conditions and Restrictions (CC&Rs), Dedication, Homeowners Association; etc.).

___I. The landscaping installed and accepted with this project shall be maintained on the site as per the approved plans. Any alteration or modification to the landscaping shall be permitted with the approval of the Director of Community Development.

VI. SIGNS

___A. The applicants shall obtain Planning Division approval of a sign program prior to issuance of building permits. The terms of said sign program shall be included as a disclosure in all future leasing agreements affecting this parcel.

____B. The signs indicated on the plan set drawings are not approved with the subject site review application. Signs proposed for this development shall be designed in conformance with the Sign Ordinance and shall require separate application and approval by the Planning Division prior to installation of any signs.

___C. Directory monument sign(s) and location map(s) shall be provided for apartment, condominium, or townhouse projects prior to occupancy. Directory signs may also be provided for any multi-tenant commercial or industrial building. Location of the sign(s) shall be interior to the project and design of the directory sign(s) shall be approved by the Planning Division and Fire Department prior to issuance of building permits.

VII. OTHER CONDITIONS

___A. It is recognized that the subject structure is proposed as speculative and the ultimate use is unknown at this time. Future commercial/industrial users of this site are subject to the City's commercial/industrial performance standards and may require use permit approval.

___B. The applicant for land use approval has received notice that the issuance of a building permit to implement such land use action may be suspended, conditioned or denied where the City Council has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of Morgan Hill or to meet discharge standards imposed by the California Regional Water Quality Control Board.

___C. The City of Morgan Hill currently may not have the sewage treatment capacity necessary to serve this project. Building permit issuance will not be allowed until and unless sewer capacity has been obtained for the project.

___D. Prior to development of the subject property, the applicant shall follow the recommendations of the Northwest Information Center, Sonoma State University, regarding the investigation of potentially-significant archeological resources on the site, and shall follow recommended actions for the preservation and protection of any resources discovered during such investigation before and during construction activity.

_X_E. Defense and indemnity. Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of this conditional use permit. In addition, applicant shall pay all pre-

tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.

X F. Submit two (2) signed copies of ~~Approval Certificate~~/Resolution No. 06-____ to the Planning Division prior to issuance of building permits.

X G. Prior to approval of the final map (or issuance of a building permit where no map is required), the property owner shall submit to the Planning Division two (2) signed notarized copies of the Development Agreement for the proposed project.

X H. The applicant shall be subject to compliance with the mitigation measures of the project environmental assessment.

X I. 1. After project approval the applicant shall conduct a preconstruction survey to avoid the take of individual burrowing owls. The preconstruction survey shall be conducted not more than 30 days prior to construction to assure take avoidance of burrowing owls. If owls are observed during the preconstruction survey, no impacts to the owls or their habitat will be allowed during the nesting season (February 1 to August 31).

a. If there are construction activities during the breeding season, and if burrowing owls are observed on, or within 250 feet of the project site during preconstruction surveys, a 250 foot protective buffer shall be established and monitored.

b. If preconstruction surveys are conducted during the non-breeding season and burrowing owls are observed on the site, the owls may be relocated upon approval of the CDFG once mitigation has been provided (PLNG).

HOUSING DIVISION

VIII. GENERAL REQUIREMENTS

___A. Relocation assistance in the form of a list of available rental units of similar price and in the same general area shall be provided each tenant, together with a relocation allowance equal to three (3) months rent at the tenant's rate in effect at the time final approval is granted. The rental list shall be updated weekly by the applicant until residences are vacated. A copy of all assistance plans shall be forwarded to the Housing Division for approval. Payment shall be made when relocation expenses are incurred or no later than the time the tenant vacates the premises. **(MHMC 15.30.050)**

X B. The Property Owner shall enter into agreement with the City to provide at least ~~10~~% of the for sale homes for participation in a below market rate (BMR) sales program approved by the Planning Division. The BMR participation agreement shall run with the land, and the provisions thereof shall be subject to review by City Attorney prior to recordation. Also must produce 6 Moderate Rate non BMR units.

5% Low BMRS
8% Med. BMRS

The BMR participation agreement shall include the following provisions:

- Family size shall be considered when a home is offered through the BMR program. No distinction shall be made between adults and children;
- BMR units must be affordable to families at or below the county's current median income as defined by the United States Department of Housing and Urban Development;
- The monthly housing cost shall include:
- unit purchase price
- current lending rates
- estimated taxes
- estimated insurance
- homeowner's association fee
- other expenses as determined by the lender
- Units shall be available only to first time home buyers as defined -by the BMR program and who currently reside within the County of Santa Clara.
- BMR units shall be subject to resale restrictions under individual agreements which shall be binding for a minimum of 45 years.

___C. The Property Owner shall enter into agreement with the City to provide at least ___ of the units for participation in a below market rate (BMR) rental program approved by the Planning Division. The BMR participation agreement shall run with the land, and the provisions thereof shall be subject to review by City Attorney prior to recordation.

The BMR participation agreement shall include the following provisions:

Family size shall be considered when a rental unit is offered through the BMR program. No distinction shall be made between adults and children;

-_____of the BMR units upon the issuance of the certificate of occupancy must be affordable to families at very low or below the County's current median income as defined by the United States Department of Housing and Urban Development and the remaining _____ BMR units must be affordable to families at low or below the County's current median income.

-Property Owner agrees not to convert units to condominiums for a period of twenty (30) years.

-Tenants will be selected from the City's waiting list.

-Property owner shall abide by the Program Guidelines incorporated herein by this reference.

___D. The project is located in the Central Commercial-Residential (CC-R) zoning district and therefore must comply with the provisions of the Downtown Replacement Housing Program (DRHP). Those provisions may require that relocation assistance and/or on-site replacement housing be provided to current or past residents of the property. The applicable provisions of the DRHP must be satisfied prior to issuance of building permits for the subject project. **(MC 15.30.050; 15.330.060)**

___E. Property Owner agrees to pay double the standard Housing mitigation fee.

BUILDING DIVISION

IX. EXISTING STRUCTURES

___A. Existing building(s) where an occupancy change or use occurs, shall be made to comply with current Building Code for the intended use. **(UBC 3045)**

___B. Removal of existing sewage disposal facilities and connection to city services shall be required prior to final inspection. **(MHMC 13.24)**

___C. Additions to structures and or a change in occupancy of use are required to install fire sprinklers. **(MHMC 15.08.070)**

X. GRADING

X A. Prior to issuance of building permits, the applicant shall provide contract documents for on-site improvements including comprehensive site grading and drainage plan. Said plan shall provide for exportation of excess soil material as necessary. **(UBC, Appendix Chapter 33)**

___B. Prior to issuance of building permits, the applicant shall provide contract documents for on-site improvements including:

1) Comprehensive site grading and drainage plan. Said plan shall provide for exportation of excess soil material as necessary and controlled drainage of storm water away from building.

2) Comprehensive erosion control plan, including hydromulching or hand-seeding methods to be used in all graded or cleared areas. Said plan shall meet the minimum standards and specifications of the Loma Prieta Resource Conservation District.

3) All cuts and fills shall be at a 2:1 slope or less unless stabilized by a retaining wall or cribbing as approved by the City Engineer. Retaining walls that retain four feet or more measured from immediate grade shall be of concrete or masonry. **(MHMC 15.08.050)**

XI. SITE DEVELOPMENT

X A. Prior to issuance of building permits, the applicant shall provide two copies of a soils (Geotechnical) engineering report prepared by a registered Civil (Geotechnical) Engineer. The report shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading criteria for corrective measures, and opinion on adequacy for the intended use of sites to be developed by the proposed grading as affected by soils engineering factors, including the stability of slopes, per UBC Appendix Chapter 70. The report shall also include soil classification and foundation investigation as required by UBC Chapter 29. **(UBC, Appendix 33)**

X B. Prior to issuance of building permits, the applicant shall provide two copies of an engineering geology report, prepared by a registered Engineer Geologist. The report shall include an adequate description of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, and opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geologic factors. **(UBC Appendix Chapter 33)**

X C. Record of survey required. Lot stakes to be set by registered Civil Engineer or licensed Land Surveyor prior to issuance of building permits. **(UBC 108.1)**

X D. Plans for all septic tank sewer systems shall be submitted to the Santa Clara County Environmental Health Department for review and issuance of a septic tank permit. Location of the approved septic tank leach field and expansion area shall be depicted on the revised site plan as part of a final submittal. **(MHMC 13.24)**

XII. OTHER CONDITIONS

X A. The applicant shall have an acoustical analysis prepared by a

licensed professional, specifying the manner in which interior noise levels will be reduced to the required forty-five (45) dB(A). The details of noise attenuation recommended in the report will be subject to review and approval of the Chief Building Official prior to issuance of the building permit. **(UBC Appendix 1208)**

X B. Submit minimum six (6) complete sets of working drawings and specifications. Building plans shall be drawn at a minimum 1/4" scale. Minimum sheet size shall be 18" x 24". Submit minimum - six (6) complete sets of drawings for all commercial and or industrial buildings. **(UBC 106.3.3)**

___ C. A demolition permit from the Building Division of the City of Morgan Hill is required prior to the demolition of any structure. All structures which are 50 years old or older must complete a 15 day posting requirement. All structures must obtain a permit from the Bay Area Air Quality Control Board prior to demolition. **(MHMC 15.60)**

X D. Permits for new structures or additions will require compliance with the Building Security Ordinance. Requirements such as the installation of dead bolts on doors, protection methods for windows, garage door security, commercial roof opening security, lighting at all exit doors, etc. may be required. **(MHMC 15.40)**

___ E. Permits for new structures or additions to existing structures will require the installation of fire sprinklers. **(MHMC 15.08.070)**

X F. All copper tube for water piping shall have a weight of not less than type "L" . **(MHMC 15.20.050)**

PUBLIC WORK DEPARTMENT

ENGINEERING DIVISION

XII GENERAL

X A. The applicant shall cause the construction of all public and private improvements in accordance with the latest City Standard Drawings and Specifications. Should the applicant propose the use of development and/or construction standards for any improvement and/or land uses, which are different than those presently set forth in the City's codes and ordinances, such alternative standards must be presented and approved by the Director of Public Works. The applicant shall cause Standard Specifications and Standard Drawings to be prepared in a format to be approved by the Director of Public Works. **(MHMC 17.32.080)**

X B. The applicant shall have a Final Map prepared by a registered engineer or licensed land surveyor delineating all parcels and easements created. There shall be concurrence in writing by PG & E, Telephone, Cable TV and any other affected agencies to all improvements and easements which are applicable to them. The number and locations of monuments shall be as required by the Public Works Department. **(MHMC 17.20.200)**

X C. The applicant shall submit as part of the improvement drawings for the project, profiles of all improvements in the subdivision and typical cross-sections of all streets and details of curbs, gutters, and sidewalks, to be accomplished to the satisfaction of the Director of Public Works prior to submittal of Final Map. **(MHMC Sec 17.32.080)**

X D. Obtain necessary encroachment permits from City of Morgan Hill/County of Santa Clara/ State of California/ Santa Clara Valley Water District, and provide guarantee covering off-site improvements. **(MHMC 12.08.040 A)**

___ E. Modification of existing map to show (Storm Drain System) (Pavement widths) (Curve Radius) (Existing Utilities) on _____ (MHMC 17.20.040)

X F. Enter into a Subdivision Improvement Agreement with the City of Morgan Hill to cover required improvements. **(MHMC 17.32.160)**

X G. Reciprocal access easements and maintenance agreements ensuring access to all parcels and joint maintenance of all common roads, drives or parking areas shall be provided by CC&R's and by deed and shall be recorded concurrent with the map, or prior to issuance of building permit where no map is involved. **(MHMC 17.20.340; 17.20.350)**

___ H. The applicant shall submit a complete traffic study of the area affected by the proposed project. This study shall be subject to review and approval by the Public Works Director prior to the issuance of any City permits. All mitigating improvements outlined in the study shall be installed by the applicant at his expense. **(MHMC 17.32.090)**

___ I. Prior to final map approval or issuance of a building permit, the applicant shall pay ½ the cost of an improved median on _____ for that portion covering the project frontage. Said cost shall be determined by the City Engineer. **(MHMC 3.44.020)**

___ J. A map for assessment district reapportionment and reassessment spread shall be prepared and submitted to the City Engineer for review, approval and City submittal to the County Assessor. Said map shall be recorded concurrent with subdivision/parcel map. **(MHMC 17.20.350)**

___ K. Pursuant to City Ordinance 982, the subject property will have reimbursement obligation to the City for lands acquired for street purposes and streets improved should those lands/street improvements abut or be included within subject property. (MHMC 12.02.120 B).

X L. **IMPACT FEE INCREASE**-The City of Morgan Hill, pursuant

to City Code Chapter 3.56 has established ten specific categories of impact fees to finance the cost of improvements required by new development. The City Council has chosen to implement certain fees, withhold implementation of certain fees, and stage the implementation of certain fees. City Code Chapter 3.56.050 provides for automatic annual (July 1) adjustment of those fees in existence utilizing the Engineering News Record Index for the preceding twelve months. Those fees which a developer elects to defer shall be subject to the fees in effect at the time of development of a lot (issuance of building permit). The City Public Works Department maintains historical records on the Engineering News Record Index. These records are available for inspection during normal business hours.

XIII. STREET IMPROVEMENTS

X A. The applicant shall cause the design and construction of all new public and private streets serving the project. The design of all new public and private streets shall be consistent with both the General Plan Land Use and Circulation Element as well as the Street Standard Details as contained within the Public Works Standards Details. The construction of the streets shall be undertaken to the lines and grades and in a manner satisfactory to the Director of Public Works. All street improvements shall be constructed to the satisfaction of the Director of Public Works. The timing of the improvements will be determined by the City. **(MHMC 17.32.060)**

X B. Installation and dedication of street improvement including, but not limited to, curb and gutter, sidewalk, compaction, street paving, oiling, storm drainage facilities, sewer and water, fire protection, undergrounding of utilities and street lighting on Site, San Pedro Ave, San Gabriel Ct, San Ramon Dr. and Barrett Ave in conformance with City of Morgan Hill requirements. **(MHMC 17.32.060)**

X C. Dedication of a total of 32 feet from center line of public right-of-way on Barrett Ave. **(MHMC 17.28.010)**

__ D. Dedication of the required corner cutoff at the intersection of _____. **(MHMC 17.28.010)**

XIV. SANITARY SEWER SYSTEM

X A. The applicant, at his or her expense, shall have a registered civil engineer prepare a complete sewer system capacity study of the on- and off-site sewer system which will service the project (both upstream and downstream). The study shall meet the approval of the Director of Public Works. All needed improvements shall be installed by the applicant. No downstream overloading of existing sewer system will be permitted. **(MHMC 17.32.090)**

X B. The applicant shall cause to be undertaken the design and construction of sanitary sewer improvements including, but not limited to installation of sewer line extension on Site. Collection system shall include, but not be limited to manholes with manhole frames and covers, cleanouts, wye branches and laterals, and separate sewer taps to each lot. These are to be installed by the developer. **(MHMC 17.32.020 C)**

__ C. All existing and future sewer lines shall be tied into the City's system and existing septic systems shall be abandoned in accordance with City requirements. **(MHMC 13.24.080)**

XV. STORM DRAIN SYSTEM

X A. A complete storm drainage study of the proposed development must be submitted showing amount of run-off, and existing and proposed drainage structure capacities. This study shall be subject to review and approval by the Director of Public Works. All needed improvements will be made by the applicant. No overloading of the existing system will be permitted. **(MHMC 17.32.090)**

X B. The applicant shall cause the design and construction to be undertaken for a storm drainage collection system shown on the Tentative Map. All storm drain improvements shall be constructed to the satisfaction of the Director of Public Works. **(MHMC 17.32.020 B)**

X C. Collection system shall be designed to be capable of handling a 10 year storm without local flooding. On-site detention facilities shall be designed to a 25-year storm capacity. Whereas, on-site

retention facilities shall be designed to a 100 year storm capacity. Items of construction shall include, but not be limited to Installation of storm line extension on site surface and subsurface storm drain facilities, manholes with manhole frames and covers, catch basins and laterals. **(MHMC 17.32.080)**

X D. Prior to final map approval the applicant shall complete the following to the satisfaction of the Santa Clara Valley Water District and Director of Public Works.

1. Storm drain calculations to determine detention pond sizing and operations.
2. Plan describing how material excavated during construction will be controlled to prevent this material from entering the storm drain system.3
3. Storm Water Pollution Prevention Plan.

X E. Since the developed portion of this site encompasses more than 1 acres, a Storm Water Pollution Prevention Plan (SWPPP) will be required as a provision of the state's General National Pollutant Discharge Elimination System Storm Water Permit for Construction Activities. The SCVWD requests a copy of the SWPPP for their information (SCVWD).

__F. Current Federal Emergency Management Agency Flood Insurance Maps show the site is located in Zone X, an area subject to less than 1 foot of flooding. SCVWD recommends that the lowest floor of any building be constructed a minimum of one foot above the potential depth of flooding or two feet above existing ground level to be free from flooding (SCVWD).

__G. Land use for the hydrology of the PL-566 channel improvement project for this site is single family. Land use of greater intensity, as proposed, will require mitigation of the increased runoff due to development. Mitigation measures, such as a detention facility, will need to remain in place indefinitely after the PL-566 channel improvements are completed, or until a regional detention facility or additional channel improvements are constructed. Calculations for the sizing of the proposed detention facility and an analysis of the impacts in the event of a one percent flood should be provided for review of the SCVWD (SCVWD).

XVI. WATER SYSTEM

X A.. The applicant shall cause the design and construction to be undertaken of a domestic water system to the satisfaction of the Director of Public Works. The water system improvements shall be constructed within public easements or street rights-of-way to the satisfaction of the Director of Public Works and dedicated to the City. **(MHMC 17.32.090)**

__B. Abandonment of any existing water well shall be in conformance with Santa Clara Valley Water District Ordinance 90-1. Location and disposition to be shown on the plan. Well(s) shall be properly registered with the SCVWD and either be maintained or abandoned in accordance with District standards.

X C. Installation of water line extension on site **(MHMC3.44.010)**

X D. Provide separate water services and meters for each lot. These are to be installed by developer. **(MHMC 17.32.020 D)**

__E. Should the City determine that additional water storage capacity is required, the applicant shall pay a share of any necessary improvement costs. The timing and amount of payment (developer's proportionate share) may be based on City-wide usage) shall be determined by the Public Works Director. **(MHMC 3.44.010)**

XVII. OTHER CONDITIONS

X A. The owner shall dedicate all necessary utility easements. Each requirement shall be determined by the Director of Public Works, and shall be accompanied by appropriate legal descriptions. **(MHMC 17.28.010)**

X B. The applicant shall cause the design and construction required to underground all electric, gas, Cable TV and communication lines within the development. Such design and construction shall be to the satisfaction of the affected utilities and the Director of Public Works. **(MHMC 17.32.020 E.1)**

X C. The final map on all major subdivision (5 or more lots) shall be approved by the City Council prior to issuance of a grading

permit. For minor subdivision (4 lots or less), the final map shall be signed by the City Engineer and the Planning Commission Secretary prior to issuance of a grading permit. **(MHMC 17.20.380; 17.24.210)**

X D. Landscaping and irrigation systems serving common areas that are required to be installed in the public right-of-way on the perimeter of this tract area shall be continuously maintained by the Homeowner's Association.

X E. Final landscape plans shall be submitted with and included as part of the improvement plans for the subdivision. **(MHMC 17.08.090)**

OFFICE OF JOINT POWERS PRETREATMENT

XVIII. COMMERCIAL AND INDUSTRIAL BUILDINGS

___A. Restaurants and food preparation facilities shall install grease interceptors. The type, size and location of said interceptors shall be to the approval of the Public Works Director and the Pretreatment Office.

___B. Installation of a sewer test manhole in lieu of a property line clean-out, shall be provided for each building, in accordance with standard city specifications. **(MHMC 13.20.270)**

___C. Where a septic tank system is proposed, a copy of the approval permit from the Santa Clara County Environmental Health Department shall be filed with the Office of Joint Powers Pretreatment prior to issuance of a building permit.

FIRE DEPARTMENT

XIX. SITE DEVELOPMENT

X A. Required Fire Flow. Required fire flow for this project is 1750 GPM at 20 psi residual pressure. The required fire flow _____ available from area water mains and fire hydrant(s) which are spaced at the required spacing. **(UFC Appendix III-A)**

X B. Fire Hydrant Location Identifier: Prior to project final inspection, the general contractor shall ensure that an approved ("Blue Dot") fire hydrant location identifier has been placed in the roadway, as directed by the fire department.

___C. Automatic Fire Sprinkler System Required. Buildings requiring a fire flow in excess of 2,000 GPM shall be equipped throughout with an approved automatic fire sprinkler system. The fire sprinkler system shall be hydraulically designed per National Fire Protection Association (NFPA) Standard #13, 1994 Edition. **(UFC 1003.2.2 as amended by MHMC 15.44.040)**

___D. Final Required Fire Flow. Required fire flow may be reduced up to 50% in buildings equipped with automatic fire sprinkler systems but, can be no less than 1,500 GPM. Therefore, the final required fire flow is _____ GPM at 20 psi residual pressure. This flow shall be taken from any two fire hydrants, on or near the site so long as they are spaced at a minimum spacing at 250 feet. **(UFC Appendix III-A, Section 5)**

X E. Public Fire Hydrant(s) required. Provide _____ public fire hydrant(s) at location(s) to be determined jointly by the Fire Department and the Morgan Hill Public Works Dept. ~~Water Company~~. Maximum hydrant spacing shall be 500 feet and the minimum single flow hydrant shall be 1,000 GPM at 20 psi residual pressure. If fire hydrants _____ are already in place, include civil drawings showing location of all hydrants with the building permit submittal. **(UFC 903.2)**

___F Private Fire Hydrant(s) Required. Provide _____ private on-site fire hydrant(s) installed per NFPA Std. #24, at location(s) to be determined by the Fire Department. Maximum hydrant flow hydrant shall be _____ GPM at 20 psi residual pressure. Prior to design, the project civil engineer shall meet with the fire department water supply officer to jointly spot the hydrant locations. **(UFC 903.2)**

___G. Required Fire Flow Option (Single Family Dwellings). Provide required fire flow from fire hydrants spaced at a maximum of 500 feet **OR** provide an approved fire sprinkler system throughout all portions of the building. The fire sprinkler system shall conform to National Fire Protection Association Standard #13D, 1994 Edition, and local ordinance requirements. **(UFC 903.2)**

___H. Water Supply for Fire Protection (Single Family Dwelling). Provide a water tank of _____,000 Gallons capacity and one _____ fire hydrant. Installations shall conform with Fire Department Standard Details and Specifications W-1. **(UFC 903.2)**

___I. Required Hydrant Installation(s). Hydrants shall be installed and spaced along the new or replacement water main installation(s) at a maximum spacing of _____ feet. Provide hydraulic calculations to show that required fire flow can be provided. **(General Order 103)**

___J. Private on-site Fire Service Mains and Hydrants. Installations shall conform to National Fire Protection Association Standard #24, and Fire Department Standard Details and Specifications W-2. **(UFC 903.2)** A separate installation permit from the Fire Department is required.

X K Timing of Required Water Supply Installations. Prior to the commencement of combustible construction, the required Fire Hydrant and Water Supply installations shall be in place, inspected, tested and accepted by the Fire Department unless otherwise approved in writing by the Fire Marshal. Bulk construction materials may not be delivered to the construction site until installations are completed as stated above. Clearance for building permits may be held until installations are completed. **(UFC 901.3)**

___L. Location of Required Fire Protection System(s) Equipment. Location of Fire Hydrants, Fire Sprinkler System(s) Control

Valves (PIV / OS&Y), Fire Department Connections (FDC) and Fire Alarm Equipment shall be coordinated with the Fire Department and the Project Planners. **(UFC 1001.7.1; 1001.8)**

X M. Review of this Development proposal is limited to acceptability of site access and water supply as they pertain to fire department operations, and shall not be construed as a substitute for formal plan review to determine compliance with adopted model codes. Prior to performing any work, the applicant shall make application to, and receive from, the Building Department all applicable construction permits.

X N. Review of these plans does not release the developer, architect, or contractor of the responsibility for the corrections of mistakes, errors or omissions contained therein.

__O. This record contains standard wording for developmental review comments. The section(s) may be copied and pasted into other documents to save time and improve accuracy. Use of a standard format and standard wording has been requested by the cities and recommended by their respective city/town attorneys. **PARTS ARE LOCATED AT 97-0001-0004.**

__P. Fire Apparatus (Engine) Access Roads Required. Prior to the commencement of combustible construction, an access roadways with a paved all weather surface and a minimum unobstructed width of 20 feet, vertical clearance of 13 feet, 6 inches shall be provided, with minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%, unless otherwise approved in writing by the Fire Marshal. Installations shall conform with Fire Department Standard Details and Specifications A-1. **(UFC 902.2.2)**

__Q. Fire Department (Engine) Roadway Turn-around Required. Prior to the commencement of combustible construction the applicant shall provide an approved fire department engine roadway turn-around with a minimum radius of 36 feet outside and 23 feet inside unless otherwise approved in writing by the Fire Marshal. Installations shall conform with Fire Department Standard Details and Specifications A-1. Cul-de-sac diameters shall be no less than 72 feet. **(UFC 902.2.2.4)**

__R. Emergency Gate/Access Gate Requirements. Open gates shall not obstruct any portion of the required access roadway or driveway width. If provided, all locks shall be fire department approved. Installations shall conform with Fire Department Standard Details and Specifications G-1. **(UFC 902.2.4.1)**

X S. Fire Lane Marking Required. Provide marking for all roadways within the project. Markings shall be per fire department specifications. Installations shall also conform to Local Government Standards and Fire Department Standard Details and Specifications A-6. **(UFC 901.4.2)**

X T. Parking Along Roadways. The required width of fire access roadways shall not be obstructed in any manner. Parking shall not be allowed along roadways less than 28 feet in width. Parking will be allowed along one side of the street for roadways 28-35 feet in width. For roadways equal to or greater than 36 feet, parking will be allowed on both sides of the roadway. Roadway widths shall be measured face to face of curb. Parking spaces are based on an 8 foot wide space. **(UFC 902.2.4.1)**

__U. Required Plans and Permits. Plans for fire apparatus access roads and fire hydrant systems shall be submitted to the Fire Department for review and approval prior to construction. Permits are required for the installation of all Private Water Supply, Tank, and Hydrant systems and must be issued to contractors prior to the start of installation of such systems. **(UFC 901.2.2.1, 902.2.2.2)**

__V. Required Access to Water Supply Hydrants)Unless otherwise approved in writing by the Fire Marshal prior the issuance of building permit, Portions of the structure(s) are greater than 150 feet of travel distance from the centerline of the roadway containing public fire hydrants. Provide an on-site fire hydrant **OR** provide an approved residential fire sprinkler system throughout all portions of the building. **(UFC 903.2)**

__W. Required Access to Buildings. Portions of the structure(s) are greater than 150 feet of travel distance along an accessible travel path from an approved fire apparatus access roadway or driveway. Provide an approved fire apparatus roadway/driveway and approved turn-around **OR** provide an approved type residential fire sprinkler system throughout all portions of the building. **(UFC 902.2.1, 902.2.2.4)**

___X. Fire Department Key Box Required. The building shall be equipped with a permanently installed emergency access key lock box (Knox), conforming to Fire Department Standard Detail and Specification sheet K-1. At time of final inspection, access keys shall be provided to the fire department. **(UFC 902.4)**

___Y. Fire Apparatus (Engine) Access Driveway Required. Provide an access driveway with a paved all weather surface and a minimum unobstructed width of _____ feet, vertical clearance of 13 feet, 6 inches, minimum circulating turning radius of 36 feet outside and 23 feet inside, and a maximum slope of 15%. Installations shall conform to Fire Department Standard Details and Specifications D-1. **(UFC 902.2.2)**

___Z. Fire Department (Engine) Driveway Turn-around Required. Provide an approved fire department engine driveway turn-around with a minimum radius of 36 feet outside and 23 feet inside. Installations shall conform with Fire Department Standard Details and Specifications D-1. **(UFC 902.2.2.4)**

___AA. Location of Required Fire Protection System(s) Equipment. Location of Fire Hydrants, Fire Sprinkler System(s) Post Indicator Valves (PIV), Fire Department Connections (FDC) and Fire Alarm Equipment shall be coordinated with the Fire Department and the Project Planners. **(UFC 1001.7.1, 1008.1)**

___BB. Access to Buildings/Landscaping Requirements. Landscaping shall not obstruct Fire Department ladder access to buildings. Building Permit submittals shall include a landscape drawing which reflects the location of all landscaping. The plan shall show how Fire Department ladder access will be provided around all buildings. Provide approved walkways on all sides of the building(s) leading from the fire access roadway to the exterior openings of the building(s). **(UFC 902.3.1)**

X CC. Timing of Required Roadway/Driveway Installations. Prior to the commencement of combustible construction, the required roadway/driveway installations, up through first lift of asphalt, shall be in place, inspected, and accepted by the Fire Department unless otherwise approved in writing by the Fire Marshal. Bulk combustible construction materials shall not be delivered to the construction site until installations are completed as stated above. During construction, emergency access roads shall be maintained clear and unimpeded. Issuance of building permits may be withheld until installations are completed. **(UFC 901.3)**

___DD. Flagged Lots. Flagged lots shall conform with all access and water supply requirements in accordance with Fire Code Article 9. Contract Fire Department for applicable means of compliance. **(District Policy)**

___EE. Timing of Required Driveway Installations. Prior to the commencement of combustible construction the required driveway installations shall be in place, inspected, and accepted by the Fire Department unless otherwise approved in writing by the Fire Marshal. Bulk combustible construction materials may not be delivered to the construction site until installations are completed as stated above. Clearance for building permits also may be held until installations are completed. **(UFC 901.3)**

___FF. Fire Apparatus (Ladder Truck) Access Roads Required. Provide access roadways with a paved all weather surface and a minimum unobstructed width of 30 feet, vertical clearance of 13 feet, 6 inches, minimum circulating turning radius of _____ feet outside and _____ feet inside, a maximum slope of 10% and vehicle loading of _____,000 pounds. **(UFC 902.2.2.1)**

___GG. Fire Ladder Truck Set Up Area(s) Option. Provide Fire Department Ladder Truck Set Up Areas with a minimum unobstructed width of 30 feet and minimum length of 60 feet. Area shall support 75,000 pounds of gross vehicle weight. Area shall be paved or other engineered surfaces may be used with Fire Department approval. **(UFC 902.2.2.1)**

___HH. Secondary Access Required. Provide a secondary access point. Installation and Design of Secondary Access shall conform to Fire Department Standard Details and Specifications A-4. **(UFC 902.2.1)**

___II. Bridges (Driveways). The bridge shall be designed for a live load of 40,000 pounds as stated in Fire Department Standard Details and Specifications D-1 and in accordance with Article 90 of the Fire Code. **(UFC 902.2.2.5)**

X JJ. Premises Identification. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting

the property. Numbers shall contrast with their background and be a minimum of four inches in height. **(UFC 901.4.4)**

___KK. Building Code Review. Building Code review will be conducted upon receipt of a plans submittal and Building Permit Application from the local building department having jurisdiction.

___LL. Hazardous Materials Compliance Review. Hazardous Materials Compliance review is not completed in the Development Review Process. Questions regarding Hazardous Materials may be directed to (408)378-4010 ext. 20.

___MM. Review of Street Improvement Plans for _____ Approved or Disapproved (as applicable). State reason for disapproval.

___NN. The proposal presented under this application is acceptable to the Fire Department. Prior to performing any grading, demolition, construction or building modifications, the applicant shall make an application to, and obtain from the Building and Fire Department all necessary permits. The requirements or conditions, if stated above, shall be incorporated into the project drawings submitted for Building and Fire Department review.

___OO. No Fire Department Requirements or Conditions. For the application submitted. Subsequent submittals will be reviewed for Fire Department compliance upon receipt.

X PP. Preliminary Review Only. The requirements and conditions stated in this review are preliminary and are intended to be used for the purposes of project planning. An official Fire Department review of the project will be conducted upon receipt of a complete Building Permit Application and Plan Submittal that clearly shows all intended grading, demolition, construction or building modifications.

___QQ. To prevent plan review and inspection delays, the Fire Department Developmental Review Conditions contained within this standard conditions checklist shall be restated as "notes" on all pending and future plan submittals, and any referenced diagrams shall be reproduced onto the future plan submittal.

___RR. All new commercial building shall comply with standard specification SI-7 for construction site fire safety.

___SS. All comments from review _____ are still in effect.

POLICE DEPARTMENT

XX. SITE DEVELOPMENT

___A. The applicant shall comply with applicable provisions of the City's building security ordinance. Exterior lighting shall comply with criteria specified in the Design Review Ordinance. **(MHMC 18.74.370)**

___B. The common main entrance door to a multi-family residential building shall be coupled with a voice intercom and electric door controls for each living unit to monitor control of visitor access to the building's interior. There shall be no master keying of residential units.

___C. On directories used in a multiple family dwelling, the residents listed shall be by alphabetical listing only and shall not correspond to numbering of dwelling unit. **(MHMC 15.40.410)**

___D. Where electronic security gates are provided to a development, a voice intercom or phone and electric gate control shall be provided. Gate location shall be designed to provide adequate area for turn around of vehicles.

XXI. BUILDING DESIGN

___A. Building shall be pre-wired to provide a hard wire burglar alarm system. This shall include any windows or doors at ground level and including any windows capable of being reached without ladders from the building's exterior. The wire shall be laid in conduit. This condition does not include the actual alarm system, but only the pre-wiring for desired hookup at a later date.

___B. All exterior transoms, glass skylights, and other openings of glass which are accessible from any surface on the premises shall be constructed of burglary- resistant glass or equally resistant glasslike material or secured on the inside with the following protective devices:

- Iron bars of at least one-half (½) inch round or one (1) inch x one-quarter (1/4) inch flat steel material no more than five (5) inches apart and securely fastened; or
- Iron or steel grills of at least one-eighth (1/8) inch thickness with mesh not to exceed two (2) inches secured with non-removable type screws. **(MHMC 15.40.250)**

___C. All hatchway openings shall be secured with the following protective devices:

- If the hatchway is of wooden material, it shall be covered on the inside with at least sixteen (16) gauge sheet steel, or its equivalent, attached with screws.
- The hatchway shall be secured from the outside with a slide bar or slide bolt with a minimum of one (1) inch throw. The use of a crossbar or padlock must be approved by the Fire Department.
- Outside hinges on all hatchway openings shall be provided with non-removable pins using pin-type hinges. **(MHMC 15.40.280)**

___D. All air duct or air vent openings exceeding eight (8) inches x twelve (12) inches on the roof or exterior walls of any building shall be secured by covering the same with either of the following:

- Iron bars of at least one-half (½) inch round or one (1) inch x one-quarter (1/4) inch flat steel material, spaced no more than five (5) inches apart and securely fastened; or
- Iron or steel grills of at least one-eighth (1/8) inch thickness with mesh not to exceed two (2) inches and secured with non-removable type screws.
- If the barrier is on the outside, it shall be secured with galvanized round-head through bolts of at least three-eighths (3/8) inch diameter on the outside. **(MHMC 15.40.290)**

PACIFIC GAS & ELECTRIC (PG&E)

XXII. UTILITY ACCESS

X A. Development plans shall provide for unrestricted utility access and avoid encroachments that might impair the safe and reliable maintenance and operation of PG&E's facilities. Examples of activities which could have an impact on PG&E facilities include permanent/temporary changes in grade over or under the facilities; construction of structures within or adjacent to PG&E easements; and planting of certain types of vegetation over or underneath gas and electric facilities respectively. Developers shall be responsible for the costs associated with the relocation of existing PG&E facilities to accommodate the proposed development **(PG&E)**.

XXIII. OTHER CONDITIONS:

X A. Project shall comply with all Measure C commitments.

X B. Prior to final map approval, site, architectural and preliminary landscape plans shall be reviewed and approved by the Architectural and Site Review Board. **(Planning)**

X C. Install full city standard street improvements across lot frontage on San Pedro Ave. Street improvements shall include, but not limited to curb and gutter sidewalk, street lights, street paving, etc. **(Public Works)**

X D. Provide a separate landscape water meter for common areas. Landscape water service shall be equipped with a backflow preventer per city standard detail W-3. **(Public Works)**

X E. Dedicate and construct all public streets. New streets shall adjoin existing streets per City standards, including grind and overlay to create keyed joint. **(Public Works)**

X F Calculations supporting ponding basin design shall be submitted to Public Works for review. **(Public Works)**

X G. Obtain encroachment permit prior to doing any work in the City s right of way or in connection with the City's utility system. **(Public Works)**

X H. Phase I shall include San Gabriel Ave. street extension from San Gabriel Ct. to the propose street within phase I. **(Public Works)**

X I. Applicant shall install landscaped median and entry statement an main entrance form Barrett Ave. Project shall coordinate with the Villas at San Marcos subdivision for the Barrett Ave. entry design. **(Public Works)**

X J. Building plans will be reviewed by an acoustical specialist to identify any necessary measures that would be required to maintain interior average (Ldn) and maximum noise at acceptable levels prior to issuance of building permits. **(Planning)**

X K. Prior to final map approval, the developer must receive approval from the Post Office for the type and location of the mailbox(es). The locations shall be shown on the project improvement plans. **(Planning)**

X L. Post-construction water quality mitigation should be implemented The design of the site should incorporate water quality Mitigation measures such as shown in "Start of the Source, Design Guidance Manual for Storm water Quality Protection , Prepared for the Bay Area Storm water Management Agencies Association. **(SCVWD)**

X M. Pollution Prevention Plan (SWPPP) will be required as a provision of the State's General National Pollutant Discharge Elimination System storm water permit for construction activities. A copy of the WDID identification number, a SWPPP and a WDID are required prior to the issuance of a grading permit. **(Public Works)**

OTHER CONDITIONS CONTINUED:

_X_ N. Public Works fees are required for this project and must be paid prior to the issuance of Building Permit. **(Public Works)**

_X_ O. The developed portion of this site encompasses more than 1 acre, there fore a Notice of Intent must be filed with the State Water Resources Control Board **(SWRCB).**

_X_ P. The project detention facility may need to be lined due to the projects proximity to the Joleen Way contamination plume. The detention pond requirements shall be coordinated between the Santa Clara Valley Water District and the City of Morgan Hill Public Works Department.

_X_ Q. Lots 16 and 17 within Phase I shall be adjusted to accommodate a duet unit and lots18 thru 21 shall be adjusted accordingly. **(Planning)**

_X_ R. The 23,459 sq. ft. lot on San Pedro Ave. shall be labeled as lot 33 and the .87 acre park site shall be lot 34. **(Planning)**

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF DEVELOPMENT AGREEMENT APPLICATION DA-05-10 FOR APPLICATION MP 04-21: BARRETT-SYNCON HOMES (APNs 817-59-060 & 817-57-001)

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 18 building allotments for application MP 04-21: Barrett- Syncon; and

WHEREAS, said development agreement request was considered by the Planning Commission at their meeting of August 8, 2006 and September 12, 2006, at which time the Planning Commission recommended approval of development agreement application DA 05-10: Barrett-Syncon.

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. ADOPTION OF DEVELOPMENT AGREEMENT. The Planning Commission hereby recommends to the City Council, adoption of the Development Agreement for DA 05-10: Barrett-Syncon attached to this Resolution as Exhibit A.

PASSED AND ADOPTED THIS 12th DAY OF SEPTEMBER 2006, AT A REGULAR MEETING OF THE MORGAN HILL PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

ATTEST: **APPROVED:**

FRANCES O. SMITH
Deputy City Clerk

ROBERT R. BENICH, Chair

RECORD AT NO FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

EXHIBIT A

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2006, by and between SYNCON HOMES, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On , 2006, the City Council of the City of Morgan Hill adopted Ordinance No. _____, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on _____, 2006.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

(a) "City" is the City of Morgan Hill.

(b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.

(c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.

(d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

Exhibit "A" - Development Allotment Evaluation

Exhibit "B" - Development Review and Approval Schedule

Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On April 6, 2005 the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MC-04-21: Barrett-Syncon, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of 32 single family homes
as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars ($1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family Medium and zoning classification of R-1 7,000/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Site and Architectural Review Process.

(d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

(g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

(h) Property Owner agrees to include the following **School** features in the development:

(i) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(ii) Property owner will install off-site pedestrian safety improvements or traffic safety improvements near a MHUSD school to the satisfaction of the MHUD. Any proposed pedestrian and traffic safety improvements cannot be redundant of improvements committed to in other categories. The cost of the improvements must be valued at $3,300 per unit to be determined by the MHUSD.

(i) Property Owner agrees to include the following **Open Space** improvements in the development:

(i) All parks and open space within the project will be maintained by a neighborhood homeowners association.

(ii) Project provides a 7 ft. wide (minimum), paved (or other durable surface) bicycle and pedestrian pathway within a landscaped area. The bicycle and pedestrian path shall be within an open space area which is a minimum of 20 ft. wide with an average width of 30 ft. (for the entire length of the path). The proposed openspace adjacent to Rose Haven Park shall have 7 ft. wide paths tying/leading to adjacent street and cul-de-sac.

(iii) Project will provide the following improvements for the historical 1906 farmhouse and adjacent valley oak:

- Submit a rehabilitation and restoration plan to be reviewed and implemented through Site Review and Building Permits. The plan shall be consistent with the Secretary of Interior's Standards for the treatment of Historic Properties, shall be prepared by a qualified Architectural Historian, and shall address structural improvements to the residence and water tower as well as the landscaping. The plan shall be of sufficient detail to make the property eligible for listing on the California Register, should such a listing be feasible.

- When the existing parcel is subdivided for future home sites, the newly created parcel containing the existing residence and water tower shall be sufficiently large enough to maintain the character of the site, as determined by the consulting architectural historian.

- Future development affecting the residence, water tower and immediate surroundings shall be consistent with the Secretary of Interior's Standards.

- A marker identifying the property and associated historical designations shall be displayed on the property in a form and location visible and legible from the public right of way. The design and location of the marker shall be subject to the approval of the Community Development Director.

- A façade easement shall be recorded stipulating that any exterior alteration to the designated structures shall require prior written approval of the Planning Commission as set forth in Section 18.75.065 of the Morgan Hill Municipal Code.

(iv) The project shall purchase transferable development credits at a ratio of one TDC for every 25 units. The overall project contains 52 units and is required to purchase a total of **2.08** TDC's. The 2.08 TDC's shall be purchased as a per unit payment which shall be collected on a per

unit basis at the time of building permit issuance. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council. The TDC in-lieu fee shall be adjusted annually in accordance with the annual percentage increase or decrease in the median price of a single-family detached home in Santa Clara County. The base year from which the annual percentage change is determined shall be January 1, 2005.

(j) Property Owner agrees to include the following **Public Facility** features in the development:

(i) The project shall grids water mains from San Gabriel Ave., San Gabriel Ct., San Vicente Dr., San Ramon Ct. San Ramon Dr. and Barrett Ave. into the existing water system.

(ii) The project drainage shall be consistent with the City's storm drain system.

(iii) Project storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works.

(iv) The project storm water detention pond serving the proposed project shall be increased to accommodate future development of San Ramon Court.

(v) Applicant will contribute $1,100 per unit to the Local Drainage Non-AB1600 fund for off-site storm drainage improvements, in addition to payment of standard fees.

(vi) Property owner will install Del Monte Ave. on the Joseph Faris property between Cosmo Ave. and Spring Ave. Complete frontage improvements including AC, curb, gutter and sidewalk will be provided. This project commits to improvements outside of project boundaries, or as directed/designated by the City of Morgan Hill at a cost of $4,400 over and above, other commitments per allocated unit.

(vii) Applicant will contribute $1,100 per unit to the Capital Improvements Program Fund.

(k) The Property Owner agrees to provide the following **Park and Recreation** improvements:

(i) In addition to payment of standard park fees, the applicant will pay the lesser of double the required in lieu park fees up to $ 3300 per unit.

(ii) The park area provided within the project shall exceed the dedicated land requirements stated in Chapter 17.28 of the Morgan Hill Municipal Code by 50%.

(iii) The project will install the following pedestrian and bicycle improvements beyond the project frontage:

A Class I bicycle pathway is proposed to be installed along the Butterfield Blvd. frontage along the eastside of the channel. If the City, at its discretion prefers Class II bike lanes, the developer agrees to provide one-

quarter mile of Class II bike lane improvements along Butterfield blvd. for every 10 units. The development shall comply with the Bicycle Master Plan for type of bike lane treatment and location.

(v) The overall project shall provide the following park amenities within the proposed 1.08 acre park(s): 2 Tot Lots and Sports Court. With the completion of phases I consisting of a total of 18 units, the project shall dedicate the .87 acre park and install the landscaping within the park area. Phase II consisting of 14 units, shall install one tot lot and sports court within the .87 acre park. Future project phases shall be responsible dedication and landscaping of the smaller park and the installation of the tot lot within the smaller park.

(l) Property Owner agrees to include the following **Housing Types & Housing Needs** in the development:

(i) Project shall provide the following housing types:

Phase I (18units)
2 Moderate Rate*: 4 bedroom, 3 bath and approx. 2,000 sq. ft.
1 Low income BMR: 4 bedroom, 2.5 bath and approx. 1,800 sq. ft.
2 Median income BMR: 4 bedroom, 3 bath and approx. 2,000 sq. ft.
2 Single story unit
5 Units (25%) shall have porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project
5 Units (25%) shall have side-loading, detached, rear garages, or two car garages with tandem parking space. to accommodate a third vehicle inside the garage.

Phase II (14 units)
2 Moderate Rate*: 4 bedroom, 3 bath and approx. 2,000 sq. ft.
1 Low income BMR: 4 bedroom, 2.5 bath and approx. 1,800 sq. ft.
1 Median income BMR: 4 bedroom, 3 bath and approx. 2,000 sq. ft.
1 Single story unit
4 Units (25%) shall have porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project
4 Units (25%) shall have side-loading, detached, rear garages, or two car garages with tandem parking space. to accommodate a third vehicle inside the garage.

*The final sales price (at close of escrow) for the four moderate rate units will be based on HUD income limits for a family of 4 at the closing date.

*The final sales price (at close of escrow) for the four moderate rate units will be based on HUD income limits for a family of 4 at the closing date.

(ii) The Property Owner shall provide at least three (3) of the units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. Three (3) of the BMR units shall be under construction and the framing inspection passed prior to the issuance of any of the 14, FY 2009-10 building permits.

(iii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.

(iv) Property Owner will provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes.

(v) Property Owner will provide the same level of customer service to the BMR buyer as the market rate buyer.

(vi) The Below Market Rate (BMR) Program Guidelines are hereby incorporated herein in full by this reference.

(vii) All BMRs will be processed using the guidelines, requirements, and pricing in effect at the time they are released for sale."

(viii) Exterior trim entry door hardware, and finish to the same standard as the Market Rate.

(ix) Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed shall be of good quality. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the area. The below listed items must be installed as a basic feature of each BMR home.

Minimum Interior standard finishes will be as follows:

- All closets shall have doors
- Interior doors to be raised panel type or same as market rate
- Door hardware to be brass finish or the equivalent
- Appliances shall be major brand name
- Microwave with an exhaust vent shall be installed over the range.
- Kitchen counters shall be white ceramic tile
- Kitchen cabinets shall be stained wood with white melamine interiors
- Units will be roughed in for AC including electrical and line set.
- Basic alarm system to secure all accessible openings to the home
- Carpet in bedrooms, hallways, family rooms
- Linoleum or tile in entry, bathrooms kitchens
- Laminate flooring may be substituted for carpet or linoleum
- Electric garage door opener

(m) Property Owner agrees to include the following **Quality of Construction** features in the development:

(i) All homes will have EPA "Energy Star" labeled windows with low-e coatings and vinyl or metal frames,

(ii) Installation of a high efficiency gas furnace of 90 percent efficiency rating or greater in all dwelling units.

(iii) Installation of air conditioning units with high efficiency condensing unit with a SEER rating of 12 or higher. Must be installed in more than 60 percent of the dwelling units in the project.

(iv) Installation of a high efficiency gas furnace with an efficiency rating of 90 percent or greater, in all units.

(v) Recirculating hot water system with demand pumping. Pipes will be insulated to reduce heat loss.

(vi) Installation of cast-iron drainage pipe and piping insulation between floors for sound reduction of plumbing.

(vii) Installation of future ready wiring concepts such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and high speed computer access, and CAT5R or equivalent for telephone lines.

(viii) Class A roof covering

(ix) Glued and screwed sub-floors, insulation (R-11) of interior walls for sound.

(x) Pre-plumb gas lines to dryer along with 220 volt outlet.

(xi) Use at least two different roof lines and two different pitches throughout the project, i.e. gable, hipped, dormers, Mansard, etc.

(xii) Each standard trim and base color must represent no more than 15% of the project

(n) The Property Owner agrees to provide the following **Circulation** improvements:

(i) The project shall install a landscaped median and entry statement at main entrance from Barrett Avenue.

(ii) The project provides R.O.W. dedication along Del Monte Ave on the Joseph Faris property between Cosmo Ave and Spring Ave. or pay and in-lieu fee of $2,200/unit.

(o) The Property Owner agrees to provide the following **Safety and Security** improvements:

(i) Provides fire escape ladders for upper floor bedrooms and one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, and one additional extinguisher for each additional 1,500 square feet of floor space or fraction thereof.

(ii) Provides a first aid kit with a poison control document to be installed in the kitchen area of the home.

(iii) Provide outdoor lighting to meet all police department specifications.

(iv) Install illuminated address numbers for each unit and painted reflective curb numbers where possible.

(v) Noncombustible siding is used on at least 75 percent of the total units and comprises at least 50 percent of the siding of an individual unit.

(vi) Installation of an intrusion, fire alarm and heat detector system, monitored by a central station, or to include auto dialer which meets City ordinance.

(vii) Neighborhood Emergency Preparedness Program administered through a homeowners association.

(viii) Hardwired carbon monoxide detection device or devices with battery backup. The installation of the devices are to be located per manufacturer's requirement with at least one detector per floor of the residence.

(ix) The developer shall include provisions in the Convents, Conditions and Restrictions (CC&R's) of the Homeowner's Association which directs a Board representative to the City of Morgan Hill Police Department's Community Service Officer to enact a neighborhood watch program to be established as part of the first phase of the development. For rental projects, neighborhood watch programs shall be administered through a central property management.

(p) The Property Owner agrees to provide the following **Landscaping** improvements:

(i) Twenty-four inch box-size trees from a city approved list, with a minimum height of nine feet and a spread of three to four feet. The box-size trees will be provided within the development at a ratio of one box-size tree per ten trees provided with the landscape area to be installed by the developer. The one box size tree per ten trees calculation does not include street trees.

(ii) Varied front yard landscaping plans are installed by the developer.

(iii) Deciduous trees will be planted along the south facing side of homes or buildings.

(iv) All street trees are twenty-four inch box trees from the city approved list. Two street trees shall be installed per lot with three installed on corner lots

(v) Project provides street trees consistent with the Street Tree Master Plan that addresses tree selection, location of trees on each lot, proper tree spacing, and preservation of any existing trees.

(vi) Drought tolerant grasses are used for lawn areas and no more than twenty-five percent of the landscape area is covered with lawn. The twenty-five percent lawn coverage calculation is exclusive of landscape area within parks.

(vii) Automatic irrigation systems utilize separate valves and circuits for trees; shrubs and ground covers; and lawn areas. Minimum of three separate valves required. A separate valve shall be provided for the following areas: front lawn, rear lawn, and for trees, shrubs and groundcover (combined) where viable. If trees, shrubs, and groundcover cannot be combined under 1 valve, a separate valve for trees shall be provided, resulting in a minimum of 4 separate valves required. Water conserving irrigation system is also used within the development, i.e., drip irrigation.

(viii) The landscape to be installed by the developer will include hardscape coverage such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area. Pedestrian walkways across circulation aisles are not included in this item.

(ix) For at least 75% of all plant material, uses water conserving plants contained on the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide.

(x) Project provides a separate water source (e.g., well, import or recycled water) to irrigate common area landscape areas and front yard areas that are maintained by a homeowners association.

(xi) Landscaping shall be installed on all areas visible from public and private rights-of-way.

(q) The Property Owner agrees to provide the following **Natural and Environmental** improvements:

(i) Minimal grading is required which is considered a fill or excavation of less than two feet in depth (three feet is acceptable for detention ponds).

(ii) Preserves existing tree and natural settings by locating park or open space areas around the significant tree.

(iii) Dry wall is source separated and recycled.

(iv) Wood waste is source separated for recycling or composting.

(v) Cardboard containers and boxes are source separated and recycled.

(r) The Property Owner agrees to provide the following **Livable Community** improvements:

(i) Provides low-maintenance on-site walkways and on-site bike paths throughout the development. Installation of city standard sidewalks, or

pathways which are redundant of city standard sidewalks do not fulfill this requirement.

(ii) Project will install curb, gutter and sidewalk along San Pedro Ave connecting to the future extension at Nina Lane. The cost of the sidewalk improvements shall be equal to or greater than $1100 per unit.

(iii) Project shall install bicycle paths, bike lanes or bicycle route improvements as identified in the January 2001 City of Morgan Hill Bikeways Master Plan along Butterfield Avenue, Barrett Avenue, San Ramon and San Pedro Avenue or as directed/designated by the City at a cost of a minimum of $2200, over and above other commitments.

(s) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(t) The project shall provide the following information, by address for each unit, to the Community Development Department:

(i) Date of sale
(ii) The number of bedrooms
(iii) The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17 Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

(i) Punitive damages;

(ii) Damages for lost profits;

(iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance.

The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:	Community Development Department City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
With a copy to:	City Clerk City of Morgan Hill 17555 Peak Avenue Morgan Hill, CA 95037
Property Owner:	SYNCON HOMES 1508 Eureka Road Suite 230 Roseville, CA 95661

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefore, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

_____
JANET KERN, City Attorney

CITY OF MORGAN HILL

_____
J. EDWARD TEWES, City Manager

Attest:

_____
IRMA TORREZ, City Clerk

PROPERTY OWNER(S)

_____

_____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE ACKNOWLEDGED BY A NOTARY)

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MC-04-21: Barrett-Syncon Homes

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

DEVELOPMENT SCHEDULE MC-04-21: Barrett-Syncon Homes
FY 2007-08, 13 allocations/FY 2008-09, 5 allocations/FY 2009-2010, 14 allocations.

I.	**SUBDIVISION AND ZONING APPLICATIONS**	
	Applications Filed:	11-05-05
II.	**SITE REVIEW APPLICATION**	
	Application Filed:	12-01-06
III.	**FINAL MAP SUBMITTAL**	
	Map, Improvements Agreement and Bonds:	
	FY 2007-08 (13 units)	02-01-07
	FY 2008-09 (5 units)	02-01-08
	FY 2009-10 (14 units)	02-01-09
IV.	**BUILDING PERMIT SUBMITTAL**	
	Submit plans to Building Division for plan check:	
	FY 2007-08 (13units)	06-30-07
	FY 2008-09 (5 units)	06-30-08
	FY 2009-10 (14 units)	06-01-09
V.	**BUILDING PERMITS**	
	Obtain Building Permits:	
	FY 2007-08 (13 units)	09-01-07
	FY 2008-09 (5 units)	09-01-08
	FY 2009-10 (14 units)	09-01-09
	Commence Construction:	
	FY 2007-08 (13 units)	04-30-08
	FY 2008-09 (5 units)	04-30-09
	FY 2009-10 (14 units)	04-30-09

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit ~~six (6)~~ **two (2)** or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 9 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

LEGAL DESCRIPTION
MC-04-21: Barrett-Syncon Homes

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

All of lot 64, as shown upon that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 5", which Map was filed for record in the office of the Recorder of the County of Santa Clara. State of California, on April 5, 1897 in book 1 of Maps, page 59.

EXCEPTING THREREFROM that certain parcel of land described in the Deed from Clarence F. Bronner and Anna S. Bronner, husband and wife, to Roy L Hatch and Alma R Hatch, husband and wife, dated March 7, 1946, recorded March 13, 1946 in Book 1331 of Official Records, Page 469, described as follows:

PORTION OF LOT 64, as shown upon the certain Map entitled, "CATHERINE DUNNE RANCH MAP NO 5", which map was filed for recordation in the office of the Recorder of the County of Santa Clara, State of California, on April 5, 1897 in Book 1 of Maps, Page 59 and more particularly described as follow:

BEGINNING at a point in the center line of San Pedro Avenue, distant thereon North 64 31' East, 147.79 feet from the common corner to lots 56, 57, 63 and 64, as said LOTS are shown upon the Map above referred to, thence along the center line of said San Pedro Ave., North 64° 31'East, 60.00 feet to a point distant hereon South 64° 31' West, 320.21 feet from the common corner to LOTS 55, 56, 64 and 65, as said lots are shown upon the Map above referred to thence South 25° 29' East, 180.00 feet to an iron pipe, (at 30.00 feet on the course and in the Southerly line of San Pedro Avenue is a iron pipe);thence South 64° 31"West, 60.00 feet to an iron pipe; thence North 25° 29' West, 180.00 feet to the point of beginning, (back 30.00 feet on this course is an iron pipe in the Southerly line of San Pedro Avenue), and containing therein 2.25 acres, (10,800 square feet), more or less of said LOT 64

ALSO EXCEPTING THEREFROM that certain parcel of land described in the Deed from Albert F. Brown, at ux, to Arthur Clifford, et ux, dated August 10, 1951, recorded August 16, 1951 in Book 2268 of Official Records, Page 334, as follows:

BEGINNING at the common corner for LOTS 55, 56, 64, and 65 of Catherine in Dunne Ranch Map NO. 5, in the center line of San Pedro Avenue, as shown upon the Map hereinafter referred to; thence running along the line common to LOTS 64 and 65, South 25° 29"' East, 180.00 feet, thence South 64° 31" West and parallel with the center line of San Pedro Avenue, 90.00 feet, thence parallel to the line common to said LOTS 64 and 65, North 25° 29' West, 180.00 feet to a point in the center line of San Pedro Avenue; thence running along the center line of San Pedro Avenue, North 64° 31' East, 90.00 feet to the point of beginning, and being a portion of LOT 64, as shown upon that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO. 5", which said Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on April 5, 1897 in Book 1 of Maps, page 59.

ALSO EXCEPTING THEREFROM that portion thereof conveyed by Andrew Haaff, et ux, to H D Magnuson, et ux, by Deed dated October 25, 1952, recorded October 28, 1952 in Book 2515 of Official Records, Page 337, and more particularly described as follows:

PORTION OF LOT 64, as shown upon that certain Map entitled, "CATHERINE DUNNE RANCH MAP NO 5", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on April 5, 1897 in Book 1 of Maps, Page 59, and more particularly described as follows:

BEGINNING at a point in the center line of San Pedro Avenue, distant thereon North 64° 31' East, 207.79 feet from the common corner to LOTS 56, 57, 63 and 64, as said Avenue and Lots are shown upon the Map above referred to, thence along the center line of said San Pedro Avenue, North 64° 31' East, 15.00 feet to a point distant thereon South 64° 31' West, 305.21 feet from the common corner to LOTS 55, 56, 64 and 65, as said LOTS are shown upon the Map above referred to; thence South 26° 29' East, 180.00 feet to an iron pipe (at 20.00 feet on the course and in the southerly line of San Pedro Avenue is an iron pipe), thence South 64° 31' West, 15.00 feet to an iron pipe; thence North 25° 29' West, 180.00 feet to the point of beginning, (back 30.00 feet on this course is an iron pipe in the southerly line of San Pedro Avenue), and being a strip of land 15.00 feet wide. Lying Easterly and contiguous to the parcel of land conveyed by Roy L. Hatch, et ux, to H. D. Magnuson, et ux, by Deed recorded November 8, 1948 in Book 1700 of Official Records, Page 184.

ALSO EXCEPING THEREFROM PARCELS A, B and C, as said PARCELS are shown upon that certain Record of Survey Map, filed for record on February 27, 1964 in Book 174, Page 18 of Maps, Santa Clara County Records.

APN 817-59-017

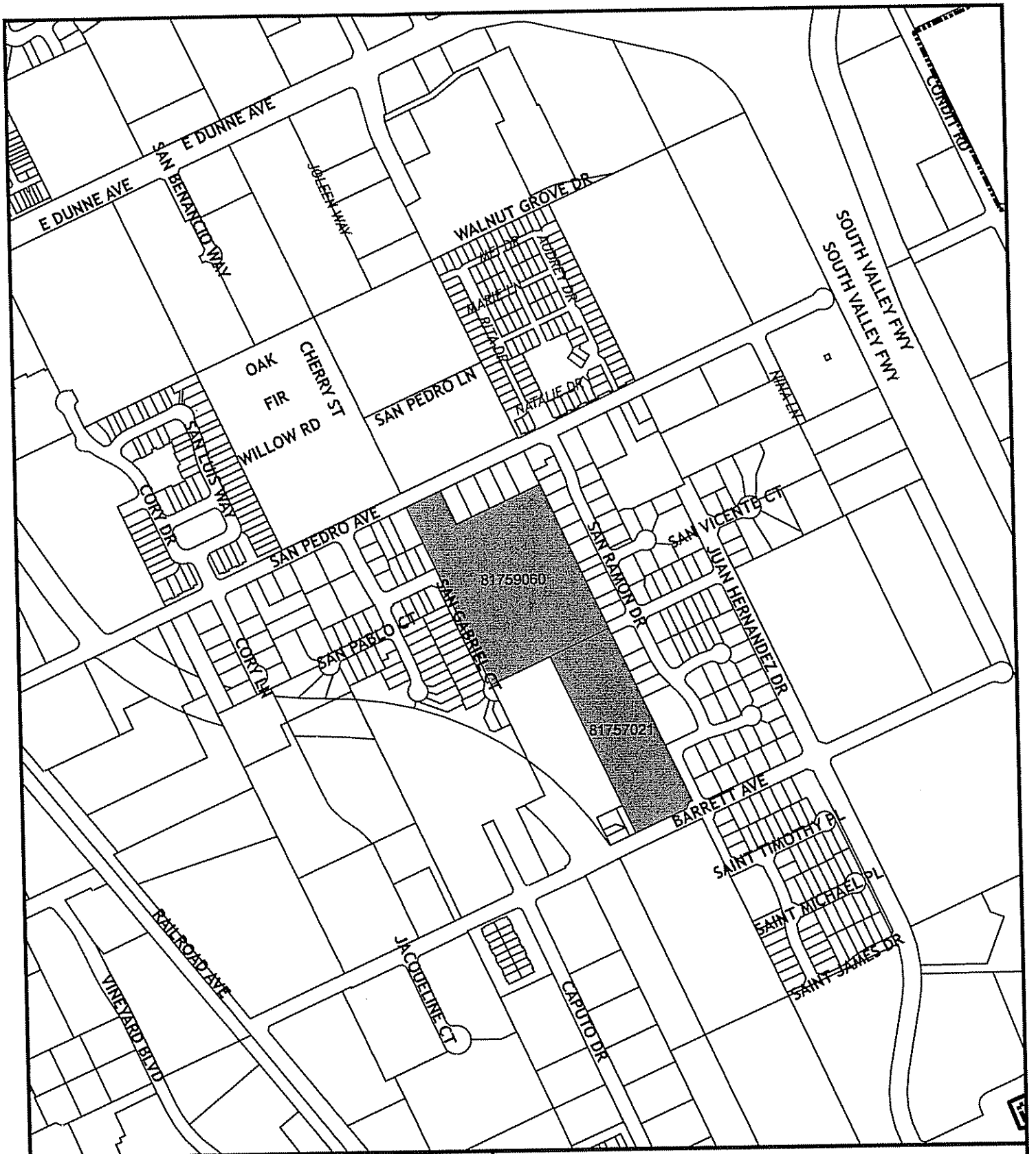
AND

Being the Northeasterly 5 acres of Lot 16, as shown upon the Map entitled "CATHERINE DUNNE RANCH MAP NO. 7, being a subdivision of part of the Ranch Ojo De Agua de la Coche and part of the Rancho San Francisco de Las Llagas", said Map being recorded in Book "L" particularly described as follows:

Beginning at the common corner to Lots 15, 16, 23 and 24 in the centerline or Barrett Avenue as shown upon the above mentioned Map; thence along the line between Lots 16 and 23 in the centerline of Barrett Avenue S. 64 31'W., 264.00 feet; thence at right angles and parallel to the line between Lots 15, and 16 N. 25 29' W., 825.00 feet to a buried pipe); thence along the Northwesterly line of Lot 16, N. 64 31' E., 264.00 feet to a buried pipe at the common corner to Lots 15 and 16 ; thence along the line between lots 15 and 16 S. 25 29'E., to the point of beginning (back 30.00 feet on this course in the Northwesterly line of Barrett Avenue is a buried pipe).

EXCEPTING the Northwesterly half of Barrett Avenue.

Assessor's Parcel No. 817-57-001



0 210 420 840 1,260 1,680 Feet

ZA 05-15: Barrett-Syncon Homes

Vicinity Map

CITY OF MORGAN HILL

© 2006

R:\PLANNING\GIS\Maps\Applications\ZA0515\ZA0515.pdf