

RESOLUTION NO. 2002-120

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE APPROVING A SUPPLEMENTAL DRAINAGE FEE CREDIT AGREEMENT AND LAND ACQUISITION AGREEMENT WITH ARCHES PLACE, LLC, FOR A DRAINAGE RIGHT OF WAY AND ADJOINING PARKWAY CORRIDOR

WHEREAS, development in the Laguna Ridge and East Franklin Specific Plan ("Specific Plan") areas necessitates the acquisition of property for the construction of a drainage channel across Sacramento County Assessor's Parcel No. 132-0020-037; and

WHEREAS, Chapter 16.83 of the City of Elk Grove's City Code permits the City to apply credits against supplemental drainage fees otherwise required of the builders/developers of property within a Specific Plan area, as compensation for the acquisition by the City of the drainage channel right of way; and

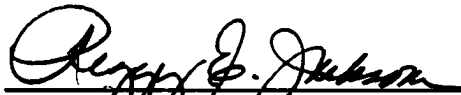
WHEREAS, the City Council desires to acquire property for a drainage channel and adjoining parkway corridor from Arches Place, LLC and to enter into a supplemental drainage fee credit agreement with Arches Place, LLC.

THEREFORE, IT IS HEREBY RESOLVED THAT the City Council of the City of Elk Grove approves the Sale and Purchase Agreement and Supplemental Drainage Fee Credit Agreement with Arches Place, LLC, substantially in the form presented herewith, subject to any modifications approved by the City Attorney, and hereby authorizes and directs the City Manager to execute the same.

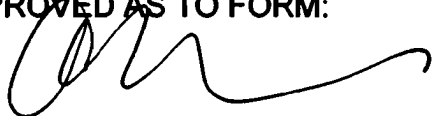
PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 17th day of July 2002.



MICHAEL P. LEARY, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI,
CITY ATTORNEY

- AYES:** Leary, Cooper, Scherman, Briggs, Soares
- NOES:** None
- ABSTAIN:** None
- ABSENT:** None

CITY OF ELK GROVE

SUPPLEMENTAL DRAINAGE FEE CREDIT AGREEMENT LAGUNA SOUTH PUBLIC FACILITIES FEE PROGRAM

East Franklin Central Shed Drainage Right of Way 132-0020-037

THIS AGREEMENT is made and entered into this 9th day of July, 2002, by and between the **City of Elk Grove, a California municipal corporation** (the "CITY") and **Arche's Place LLC, a California limited liability company** (the "OWNER").

WHEREAS, the County of Sacramento (the "COUNTY"), prior to the incorporation of the CITY, approved the EAST FRANKLIN SPECIFIC PLAN (the "SPECIFIC PLAN"), the subject property of which is now within the jurisdictional boundaries of the CITY in an area generally known as Laguna South;

WHEREAS, the SPECIFIC PLAN describes the anticipated development within the SPECIFIC PLAN area and the public facilities that will be needed to serve the development;

WHEREAS, the CITY has adopted the LAGUNA SOUTH FACILITIES FEE PROGRAM (the "LSFFP") codified as Chapter 16.83 of the Elk Grove City Code, which authorized public facilities fees for Laguna South, including the SPECIFIC PLAN area;

WHEREAS, the LSFFP includes a supplemental fee for the acquisition of drainage rights-of-way;

WHEREAS, the CITY has adopted resolutions setting the specific fees pursuant to the LSFFP, including the supplemental drainage fees, which fees are to be collected prior to building permit;

WHEREAS, said supplemental fees are to be used for acquisition of drainage rights-of-way;

WHEREAS, Chapter 16.83 provides that the City shall expend the supplemental fee for the acquisition of drainage rights-of-way;

WHEREAS, the CITY's LSFFP allows the CITY to provide credits to the OWNER to be applied against supplemental fees owed by the OWNER, in an amount equal to the value of the acreage granted to the CITY by OWNER;

WHEREAS, credits allocated to OWNER for supplemental drainage fees will be applied to the OWNER in regard to OWNER's real property described in Exhibit "B" to this Agreement;

WHEREAS, the CITY's engineer requires the construction of MAJOR FACILITIES as shown on the improvement plans entitled "East Franklin Central Drainage Channel" (the "PLANS"), and further described in Exhibit "A", attached hereto and incorporated herein by this reference;

WHEREAS, the OWNER has agreed to provide to the CITY, in lieu of and under threat of condemnation, fee title to the drainage right of way on Sacramento County Assessor's Parcel No. 132-0020-037, comprising a total of 11.298 (+/-) acres, as more particularly described in Exhibit "B", attached hereto and incorporated herein by this reference (the "DRAINAGE RIGHT-OF-WAY LEGAL DESCRIPTION"), for the purpose of construction of the drainage channel and adjoining greenbelt, pursuant to the East Franklin and Laguna Ridge Master Drainage Study, which DRAINAGE RIGHT-OF-WAY will serve the MAJOR FACILITIES. The agreement between the OWNER and the CITY is memorialized in that certain "Sale and Purchase Agreement" between them by the terms of which CITY agrees to acquire the land over which the drainage right-of-way will be located. A true copy of the Sale and Purchase Agreement is attached as Exhibit "C";

WHEREAS, the value of the DRAINAGE RIGHT-OF-WAY has been determined by an independent MAI appraiser and agreed to by CITY, and a true copy of the appraisal report is attached as an Appendix hereto; and

WHEREAS, the City Public Works Director will accept the conveyance of the DRAINAGE RIGHT-OF-WAY on behalf of the CITY;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the CITY and the OWNER agree as follows:

Section 1. The OWNER shall execute a grant deed transferring to the CITY fee title to the DRAINAGE RIGHT-OF-WAY, title to which shall be clear of any liens or encumbrances save and except only those exceptions to title evidenced by the Preliminary Title Report referred to in ¶¶ 2(b) and 2(f)(1)(a) of the “Sale and Purchase Agreement” between the CITY and OWNER.

Section 2. The CITY shall accept and record fee title to the DRAINAGE RIGHT-OF-WAY at the agreed upon and appraised value of Nine Hundred and Three Thousand, Eight Hundred and Forty Dollars (\$903,840.00). Upon the satisfactory transfer of title, the CITY shall allocate credits in the amount of \$903,840.00 (the “Fee Credits”) as set forth herein to the OWNER’S real property identified in Exhibit “B” hereto. Notwithstanding the allocation, the Fee Credits can be sold and assigned by OWNER to any other landowners in connection with those landowners’ development of real property within and subject to the jurisdiction of the CITY.

Section 3. In the event that OWNER, or OWNER’S assignee, is entitled to credits in excess of supplemental drainage fees owed to CITY for development of real property within and subject to the jurisdiction of the CITY, then OWNER, or OWNER’S assignee, shall be entitled to reimbursement of the excess credits. Any reimbursement of excess credits shall be made pursuant to a reimbursement agreement under the authority of Chapter 16.83.

Section 4. The OWNER, by execution of this Agreement, specifically agrees to assume the defense of, indemnify and hold harmless, the CITY, its officers, employees, and agents from and against all actions, damages, claims, losses, or expenses of every type and description to which they may be subjected or put, by reason of or resulting from any false or materially inaccurate statement(s) made by the SELLER in regard to this agreement and to the conveyance of the DRAINAGE RIGHT-OF-WAY.

Section 5. Any notice or other communication to be given to any party pursuant to this Agreement shall be given by delivering same in writing to the parties at the addresses set forth below:

OWNER: Arches Place, LLC, c/o Stuart C. Gilliam, Manager 306 Skyview Drive Pleasant Hill, CA 94523	CITY: City of Elk Grove Public Works 8400 Laguna Palms Way Elk Grove, CA 95758 ATTENTION: Bob Lee, City Engineer
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Such notice shall be deemed given three (3) days after deposit into the United States mail, postage prepaid, addressed to the parties at the addresses above. Nothing shall preclude the giving of personal notice.

Section 6. The term of this Agreement shall start on the day and year first above written and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied.

Section 7. Modifications or amendments to this Agreement shall be in writing and executed by all parties.

Section 8. This Agreement and all of the terms and conditions contained herein shall inure to the benefit of and bind the successors and assigns of the CITY and the OWNER.

Section 9. This instrument, Exhibits A, B and C, and the Appendix constitute the entire Agreement between the CITY and the OWNER concerning the subject matter hereof.

[Continued on next page]

Section 10. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement. This Agreement represents the entire Agreement of the parties and may not be amended except in writing, signed by each party hereto. Except as otherwise expressly provided herein, the obligations and remedies set forth in this Agreement shall not merge with transfer of title but shall remain in effect until fulfilled and shall survive Close of Escrow. This Agreement shall be governed by the laws of the State of California. Venue for any action or proceeding between the parties hereto shall be, and may be required to be transferred to, the California Superior Court in and for the County of Sacramento and/or the U.S. District Court for the Eastern District of California. In any action or proceeding to enforce this AGREEMENT, or arising from or out of this AGREEMENT, the prevailing party shall recover its attorney's fees and experts' fees in addition to its costs of suit.

IN WITNESS THEREOF, the parties have executed this Agreement on the day and year first above written.

<p>SELLER:</p> <p>Arche's Place, LLC, a California limited liability company</p> <p>By: _____ Stuart C. Gilliam Managing Member</p>	<p>BUYER:</p> <p>City of Elk Grove, a California municipal corporation</p> <p>By: _____ John Danielson City Manager</p>
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ATTEST:

By: _____

[insert name & title]

(Please provide two original signed copies, acknowledged by a notary public.)

**EXHIBIT A
DRAINAGE FACILITY**

EXHIBIT A
DRAINAGE FACILITY

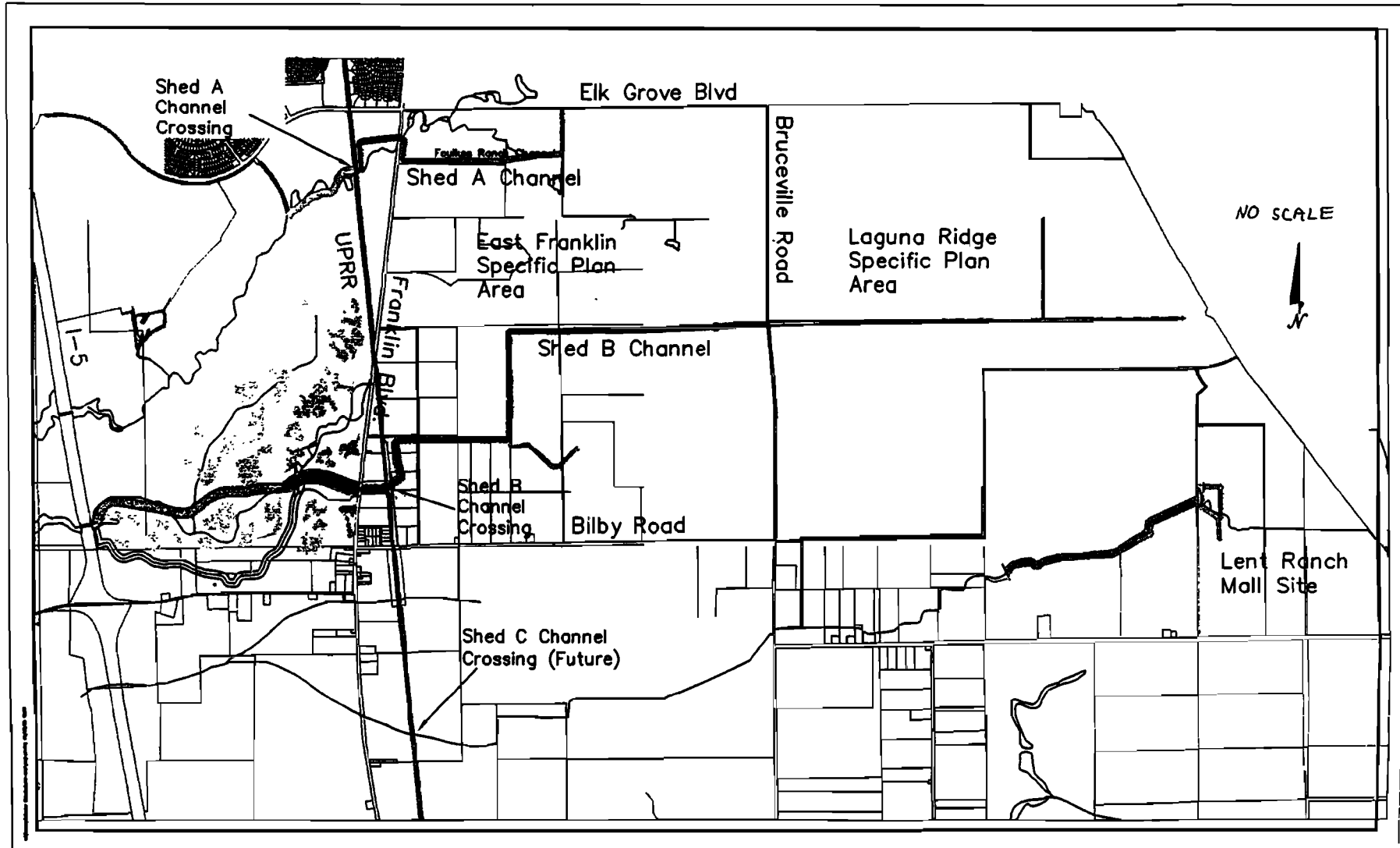
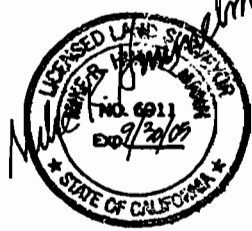
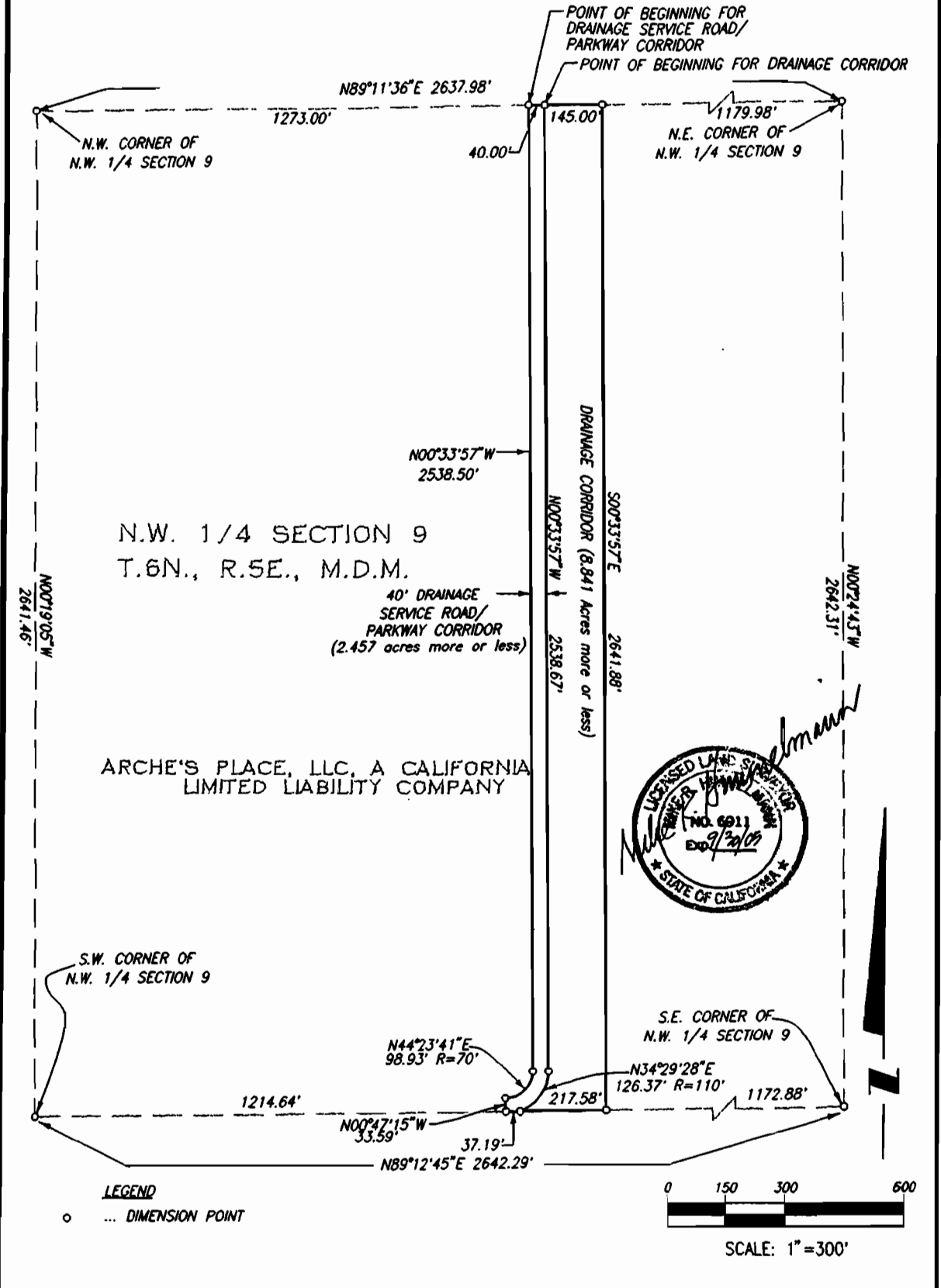


EXHIBIT "B"

DRAINAGE RIGHT-OF-WAY MAP AND LEGAL DESCRIPTION

[Murray Smith & Associates: Map dated June 10, 2002; Legal Description dated July 7, 2002]

EXHIBIT 'B'



CALC: VH DRN: VH CKD: MH APRVD: MH	EXHIBIT MAP FOR DRAINAGE EASEMENT ACROSS A PORTION OF THE N.W. 1/4 SECTION 9, T.6N., R.5E., M.D.M. COUNTY OF SACRAMENTO, CALIFORNIA	DATE: 06.10.02 SCALE: 1" = 300' FB: WO: 02-034
	MURRAY SMITH & ASSOCIATES, ENGINEERING RANCHO CORDOVA, CALIFORNIA	

**LEGAL DESCRIPTION FOR DRAINAGE CORRIDOR
ACROSS A PORTION OF THE N.W. ¼
SECTION 9, T. 6N., R. 5E., M.D.M.**

All that portion of the Northwest one-quarter of Section 9, T. 6N., R. 5E., M.D.M., situate in the County of Sacramento, State of California more particularly described as follows:

Beginning at a point on the North line of said Northwest one-quarter of Section 9, which point bears North 89°11'36" East 1,313.00 feet from the northwest corner of said Northwest one-quarter of Section 9; thence from said Point of beginning along said North line North 89°11'36" East 145.00 feet; thence South 00°33'57" East 2,641.88 feet to a point on the South line of said Northwest one-quarter of Section 9; thence along said South line, South 89°12'45" West 217.58 feet; thence along the arc of a non-tangent curve to the left having a radius of 110.00 feet, said Arc being subtended by a chord bearing North 34°29'28" East 126.37 feet; thence North 00°33'57" West 2,538.67 feet to the point of beginning. Containing an area of 8.841 Acres more or less.

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Murray Smith & Associates
Engineering, Inc.

June 6, 2002
02-034



**LEGAL DESCRIPTION FOR DRAINAGE SERVICE ROAD/PARKWAY CORRIDOR
ACROSS A PORTION OF THE N.W. ¼ SECTION 9, T. 6N., R. 5E., M.D.M.
COUNTY OF SACRAMENTO, CALIFORNIA**

All that portion of the Northwest one-quarter of Section 9, T. 6N., R. 5E., M.D.M. situate in the County of Sacramento more particularly described as follows:

Beginning at a point on the North line of said Northwest one-quarter of Section 9, which point bears North 89°11'36" East 1,273.00 feet from the northwest corner of said Northwest one-quarter of Section 9; thence from said Point of beginning along said North line, North 89°11'36" East 40.00 feet; thence South 00°33'57" East 2,538.67 feet; thence along the arc of a curve to the right having a radius of 110.00 feet, said Arc being subtended by a chord bearing South 34°29'28" East 126.37 feet to a point on the South line of said Northwest one-quarter of Section 9; thence along said South line, South 89°12'45" West 37.19 feet; thence North 00°47'15" West 33.59 feet; thence along the arc of a curve to the left having a radius of 70.00 feet, said Arc being subtended by a chord bearing North 44°23'41" East 98.93 feet; thence North 00°33'57" West 2,538.50 feet to the point of beginning. Containing an area of 2.457 Acres more or less.

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Murray Smith & Associates
Engineering, Inc.

June 10, 2002
02-034



EXHIBIT C

**SALE AND PURCHASE AGREEMENT
BETWEEN ARCHE'S PLACE, LLC
AND THE CITY OF ELK GROVE**

**SALE AND PURCHASE AGREEMENT
BETWEEN
ARCHES PLACE, LLC
AND
THE CITY OF ELK GROVE**

This Sale and Purchase Agreement (AGREEMENT) dated for convenience as of July 9, 2002 (AGREEMENT DATE) is made by and between Arches Place LLC (SELLER) and the CITY OF ELK GROVE, a municipal corporation (CITY), in consideration of the mutual covenants and agreements herein contained, and is subject to the conditions set forth below.

SELLER hereby agrees to sell and convey, and CITY agrees to purchase, fee title to that certain real property (PROPERTY) located in Elk Grove, Sacramento County, California, containing a total of 11.298 (+/-) acres, which includes 8.841 acres representing a 145' drainage corridor and 2.457 acres for a 40' drainage service road/parkway corridor, as described in Exhibit "A" hereto, together with all improvements thereon, and all rights, hereditaments, easements, appurtenances thereto belonging; reserving, however, to the Seller, and to its successors, assigns, and personal representatives, such easements for cable, telephone, utilities, and related purposes as are necessary and incidental to residential development.

TERMS AND CONDITIONS

1. PURCHASE PRICE. The purchase price for the PROPERTY shall be Nine Hundred and Three Thousand, Eight Hundred and Forty Dollars (\$903,840.00) (PURCHASE PRICE), payable at Close of Escrow in immediately available credits against Laguna South Public Facilities Finance Plan Supplemental Drainage fees.

2. ESCROW INSTRUCTIONS. A fully executed copy of this AGREEMENT shall be deposited with First American Title Company (ESCROW HOLDER) and such delivery shall constitute the opening of an escrow under ESCROW HOLDER's file number 909452CH with respect to the sale of the PROPERTY pursuant to this AGREEMENT. ESCROW HOLDER shall be concerned only with the provisions of this Paragraph 2. Said escrow shall be on the following terms and conditions:

a. Payment of the Purchase Price. Prior to closing, CITY shall cause a Supplemental Drainage Fee Agreement in the amount of the Purchase Price to be deposited in Escrow.

b. Title. At close of escrow, SELLER shall execute and deliver to ESCROW HOLDER a Grant Deed conveying title to the PROPERTY to CITY; reserving, however, to the Seller, and to its successors, assigns, and personal representatives, such easements for cable, telephone, utilities, and related purposes as are necessary and incidental to residential development. When all of the conditions to closing herein contained have

been either satisfied or waived by the parties and so confirmed in writing, and escrow is ready to close, ESCROW HOLDER shall cause the Grant Deed to be recorded and evidence of the CITY's acceptance thereof executed by CITY's Director of Public Works. ESCROW HOLDER shall also deliver to CITY a CLTA Policy of Title Insurance showing title to the PROPERTY vested in CITY, subject only to those exceptions numbered _____, as shown on that Preliminary Title Report (PRELIMINARY REPORT), Order No. ____, dated _____, 200__, issued by First American Title Company.

c. **Prorations.** ESCROW HOLDER is hereby instructed to segregate and prorate real estate taxes, assessments and similar charges and segregate and prorate bonded indebtedness as of the Close of Escrow. Segregations and prorations of real estate taxes, assessments and similar charges shall be done based upon the most currently available information at the Close of Escrow. SELLER shall be responsible for applying for any refund due for property taxes prepaid beyond CLOSE OF ESCROW.

d. **Costs.** The cost of any escrow fees, the charge for preparation of escrow documents, recording costs, if any, the CLTA Policy of Title Insurance as described above, and all other costs of escrow and closing are to be shared equally between CITY and SELLER, except those costs associated with any increase in costs by reason of any ALTA title insurance policy or associated survey. CITY is exempt from payment of recording fees and transfer taxes.

e. **Close of Escrow.** Upon the satisfaction or waiver of all conditions precedent hereto by not later than August 16, 2002, SELLER and CITY instruct ESCROW HOLDER to close escrow (Close of Escrow) within sixty (60) days from the date this agreement is fully executed. If escrow cannot close within said sixty (60) days, the closing date may be extended by mutual agreement of the parties. Both SELLER and CITY agree that time is of the essence in this matter and agree to take whatever steps are necessary to ensure that all conditions of this escrow are satisfied in a timely manner.

f. **Conditions Precedent.** The Close of Escrow is expressly conditioned upon the occurrence of the following events:

(i) **To CITY's Obligation.** The following shall be conditions precedent to CITY's obligation to acquire the PROPERTY:

(a) ESCROW HOLDER is ready to issue as of the Close of Escrow the title policy required by Paragraph 2.b. hereof, showing title subject only to those exceptions herein authorized and such easements for cable, telephone, utilities, and related purposes as are necessary and incidental to residential development.

(b) SELLER's compliance with each of SELLER's agreements herein, and the accuracy in all material respects of each of SELLER's representations and warranties as of the Close of Escrow.

(c) No administrative or judicial proceeding shall have commenced as of the Close of Escrow seeking to prevent or restrain the consummation of the transaction contemplated by the AGREEMENT or which would materially and adversely affect the PROPERTY or its use.

(d) CITY's determination that the physical and environmental condition of the PROPERTY, which is being acquired in an "as-is" condition, is suitable for the CITY's intended use.

(e) The City Council of the City of Elk Grove's approval of the terms hereof.

(f) Except as disclosed by the terms of Exhibit "C" to this agreement: SELLER agrees that any and all existing leases to which the PROPERTY may be subject shall be terminated prior to the closing date; and if any such lease is not terminated or removed, CITY shall have the right to terminate this agreement.

(ii) To SELLER's Obligation. The following shall be conditions precedent to the SELLER's obligation to convey the PROPERTY at Close of Escrow.

(a) CITY's compliance with each of its agreements herein as of the closing date.

(b) CITY's adoption of a resolution approving this AGREEMENT and the SUPPLEMENTAL DRAINAGE FEE CREDIT AGREEMENT for the LAGUNA SOUTH PUBLIC FACILITIES FEE PROGRAM.

(c) CITY's written satisfaction or waiver of any and all environmental inspections conducted pursuant to paragraph 5 of this AGREEMENT. If the CITY finds the results of its environmental inspections unsatisfactory and chooses to terminate this AGREEMENT, CITY shall provide SELLER copies of all its inspection reports, at no cost to SELLER.

(iii) Failure of Condition to Close of Escrow. Except as provided in this AGREEMENT, in the event any of the conditions set forth herein are not timely satisfied or waived by the appropriate benefited party, for a reason other than the default of CITY or SELLER, this AGREEMENT shall be terminable at the option of the affected Party and, except as otherwise provided herein, the parties shall

have no further obligations hereunder.

g. Commission. There is no real estate, finder's or other commission due or payable by reason of this transaction. Each party shall indemnify the other for any actions which may cause the other party to be liable for a real estate brokerage commission.

h. Standard Escrow Instructions. For those escrow matters not specifically addressed herein, ESCROW HOLDER's standard escrow instructions entitled "General Provisions," a copy of which is attached hereto as Exhibit "B", shall be applicable. Where there is a conflict between the provisions of this AGREEMENT and the provisions of ESCROW HOLDER's standard escrow instructions, the provisions of this AGREEMENT shall control.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER.

a. To the best of SELLER's knowledge and belief, and except as otherwise provided in the "Disclosure" attached as Exhibit "C" hereto, SELLER represents, warrants and covenants to CITY that the following are true as of the AGREEMENT DATE and shall be true as of the Close of Escrow:

(i) SELLER has not received notice of any material violation of any federal, state, county or other governmental or quasi-governmental statute, ordinance, regulation or administrative or judicial order with respect to the PROPERTY.

(ii) There is no action, suit or proceeding, which is pending or threatened against the PROPERTY or any portion thereof relating to or arising out of the ownership or use of the PROPERTY, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency or other governmental instrumentality.

(iii) Except for such matters of record as may be disclosed in the PRELIMINARY REPORT, or any amendment thereto issued prior to Close of Escrow, (i) there are no leases, licenses, prescriptive easements or other third party rights to use or occupy any portion of the PROPERTY; (ii) there are no adverse parties in possession of any portion of the PROPERTY; and (iii) there are no rights to purchase the property or any portion thereof prior to those set forth herein which are held or claimed by any third party.

(iv) As of the Close of Escrow, there shall be no unpaid bills or claims by SELLER in connection with any work on the PROPERTY.

(v) During the period of SELLER's ownership of the PROPERTY, there has been no litigation or governmental administrative action or proceeding maintained or threatened against SELLER, nor any settlements reached by SELLER with any party or parties, alleging the presence, disposal, release or threatened release of any hazardous waste or hazardous substance on, from or under the PROPERTY. The PROPERTY is not subject to any "Superfund" or similar lien, or any claim by any government regulatory agency or third party related to the release or threatened release of any toxic or hazardous substance, material or waste.

(vi) Any storage or septic tanks located on the PROPERTY, have been disclosed to CITY, and have been properly registered with all appropriate environmental authorities, and are in full compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release of any hazardous or toxic substance, material or waste to the environment.

(vii) Notwithstanding anything in the AGREEMENT to the contrary, in the event either party becomes aware, between the AGREEMENT DATE and the Close of Escrow, of any substantive matter which would make any of SELLER's representations or warranties untrue, the parties shall have the right, within fifteen (15) days following their discovery of such matter or their receipt of notice of such matter, as appropriate, (i) to proceed to close this transaction with a mutually-acceptable indemnity from SELLER or CITY, as applicable, as to any liability arising out of the matter discovered, or (ii) to treat such matter as a failure of a condition and terminate this AGREEMENT.

4. RISK OF LOSS.

In the event that any loss or damage to the PROPERTY, which materially and adversely affects the CITY's intended use of the PROPERTY or the value of the PROPERTY, occurs prior to closing, CITY may, without liability, terminate this AGREEMENT or it alternatively may elect to accept the conveyance of title to such PROPERTY, or a portion thereof, in which case there shall be an equitable adjustment of the PURCHASE PRICE based on the change in circumstance.

5. ENVIRONMENTAL INSPECTION; SELLER'S COOPERATION. For a period of thirty (30) days following the execution of this AGREEMENT, CITY, its employees, agents and contractors shall have the right to enter upon the PROPERTY at reasonable times to perform such inspection of its physical and environmental condition (which may include, but shall not be limited to, obtaining soil and water samples on and beneath the surface of the PROPERTY, and conducting analyses of such samples) as it deems necessary, and for any other reasonable purpose related to this transaction. CITY hereby agrees to defend, protect, indemnify and hold SELLER harmless from any and all liens imposed against the PROPERTY and from all claims, demands, liabilities and costs, including reasonable attorney's fees, arising out of any injury to

the PROPERTY or to any person caused directly by CITY's activities on the PROPERTY. In the event that the closing does not occur for any reason, CITY shall deliver to SELLER without demand, and at no cost to SELLER, all reports prepared by or for the CITY. If the CITY finds the results of its environmental inspections unsatisfactory and chooses to terminate this AGREEMENT, CITY shall keep such information confidential to the extent permitted by law.

6. **PRESERVATION OF PROPERTY.** SELLER agrees that the PROPERTY herein described shall remain as it now is until closing, and that SELLER will prevent and refrain from any use of the PROPERTY for any purpose or in any manner which would adversely affect the value of the PROPERTY. Except as otherwise provided in paragraph 2.b. above, SELLER shall not, from and after execution of this AGREEMENT, transfer, lease or encumber any interest in the PROPERTY prior to the Close of Escrow. In the event of such actions, the CITY may, without liability, refuse to accept the conveyance of title.

7. **POSSESSION.** SELLER will deliver possession of the PROPERTY to CITY at the Close of Escrow.

8. **BINDING.** The terms and conditions of this AGREEMENT shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

9. **TIME.** Time is of the essence of this AGREEMENT and the obligations of the parties to perform hereunder.

10. **AS IS TRANSFER.** CITY acknowledges that, except as expressly contained in this AGREEMENT, neither SELLER nor anyone acting for or on behalf of the SELLER has made any representation, warranty or promise to CITY concerning the physical aspects or condition of the PROPERTY, the feasibility or desirability of the PROPERTY for any particular use; the conditions of soils, subsoils, groundwater and surface waters, or the presence or absence of any other physical aspect of the PROPERTY, and that in entering into the AGREEMENT, CITY has not relied on any representation, statement or warranty of SELLER or anyone acting for or on behalf of SELLER, other than as may be expressly contained in this AGREEMENT, and that all matters concerning the PROPERTY shall be independently verified by CITY and that CITY shall purchase the PROPERTY on CITY's own examination thereof, and that if CITY elects to acquire the PROPERTY, is purchasing the PROPERTY and personal property in its "as is" condition and its "as is" state of repair as of the Close of Escrow.

11. **POWER OF EMINENT DOMAIN.** The CITY has the power to acquire the PROPERTY (as that term has been herein defined) through its power of eminent domain. SELLER, after first demanding that the CITY acquire the PROPERTY, if at all, by exercise of its power of eminent domain, has consented to sell the PROPERTY to CITY in lieu of and under threat of an action to take the PROPERTY in eminent domain.

12. CONSTRUCTION AND INTERPRETATION. It is agreed and acknowledged by the parties hereto that the provisions of this AGREEMENT have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this AGREEMENT and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this AGREEMENT.

13. CONFIDENTIALITY. To the extent permitted by law, information relating to the property learned by CITY and its agents and employees before Close of Escrow shall be considered confidential information and shall not be disclosed to third parties.

14. MISCELLANEOUS. Any provision of this AGREEMENT found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this AGREEMENT. This AGREEMENT represents the entire AGREEMENT of the parties and may not be amended except in writing, signed by each party hereto. Each party to this AGREEMENT warrants to the other that it is duly organized and existing and each signatory hereto represents to the other party that it has full right and authority to enter into and consummate this AGREEMENT and all related documents. Except as otherwise expressly provided herein, the obligations, covenants, representations, warranties, and remedies set forth in this AGREEMENT shall not merge with transfer of title but shall remain in effect until fulfilled and shall survive Close of Escrow. This AGREEMENT shall be governed by the laws of the State of California. Venue for any action or proceeding between the parties hereto shall be, and may be required to be transferred to, the California Superior Court in and for the County of Sacramento and/or the U.S. District Court for the Eastern District of California. In any action or proceeding to enforce this AGREEMENT, or arising from or out of this AGREEMENT, the prevailing party shall recover its attorney's fees and experts' fees in addition to its costs of suit.

IN WITNESS WHEREOF, the parties have executed the AGREEMENT the day and year first above written.

[signatures follow on next page]

<p>SELLER:</p> <p>Arche's Place, LLC, a California limited liability company</p> <p>By: _____ Stuart C. Gilliam, Manager</p> <p>Send Notices To:</p> <p>Arche's Place, LLC, c/o Stuart C. Gilliam, Manager 306 Skyview Drive Pleasant Hill, CA 94523</p>	<p>BUYER:</p> <p>City of Elk Grove, a California municipal corporation</p> <p>By: _____ John Danielson City Manager</p> <p>APPROVED AS TO FORM:</p> <p>By: _____ City Attorney</p>
--	--

ATTEST:

By: _____

[insert name & title]

EXHIBIT “A”
DRAINAGE RIGHT-OF-WAY MAP AND LEGAL DESCRIPTION
[Murray Smith & Associates, dated June 10, 2002]

Exhibit not received by the City Clerk’s office at the time of agenda duplication.

EXHIBIT "B"

[Escrow Instructions // General Provisions]

Exhibit not received by the City Clerk's office at the time of agenda duplication.

EXHIBIT “C”

DISCLOSURE OF CONDITIONS LIMITING SCOPE OF REPRESENTATIONS & WARRANTIES (Paragraph 3 of Agreement)

SELLER hereby discloses the following matters in regard to the PROPERTY:

1. Claim by U.S. Dept. of Fish & Wildlife: Historically, the PROPERTY was bounded by a ditch along its northern and western boundaries which served its agricultural purposes. The ditch was abandoned after many years. In about 1993, as part of agricultural practice, the ditch line along those boundaries was re-established. The U.S. Dept. of Fish and Wildlife (“F&W”) considered the re-establishment of the ditch line as a violation of federal law and issued a notice of violation. The prior owner [the Gilliam Family Land Trust (“Trust”)] negotiated an agreement with F&W pursuant to which the ditch line along the western boundary was filled in, and the Trust was allowed to maintain the northern boundary ditch line. All claims and notices of violation were dropped and/or dismissed.

To the best of the SELLER’s knowledge, F&W closed its file on this matter and has no further claim or interest adverse to SELLER.

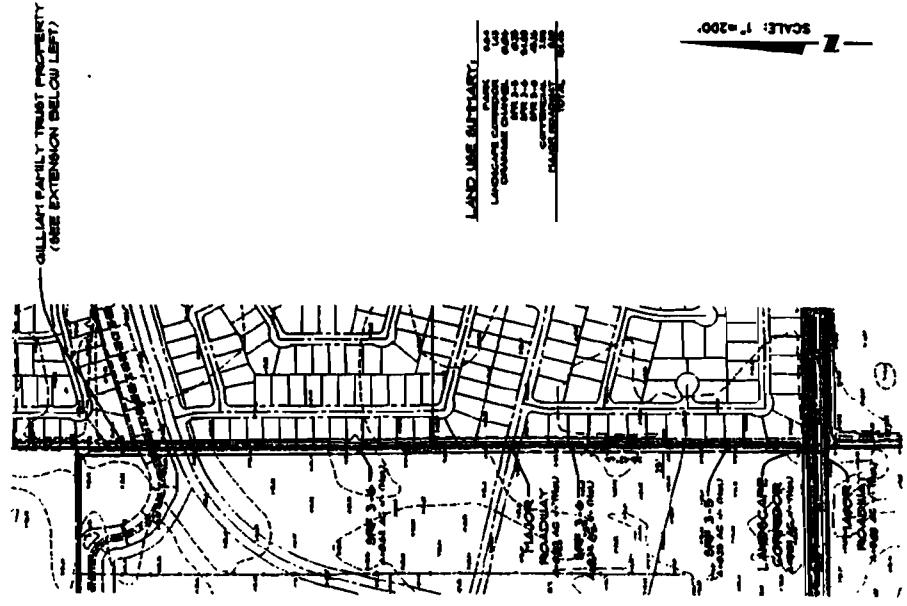
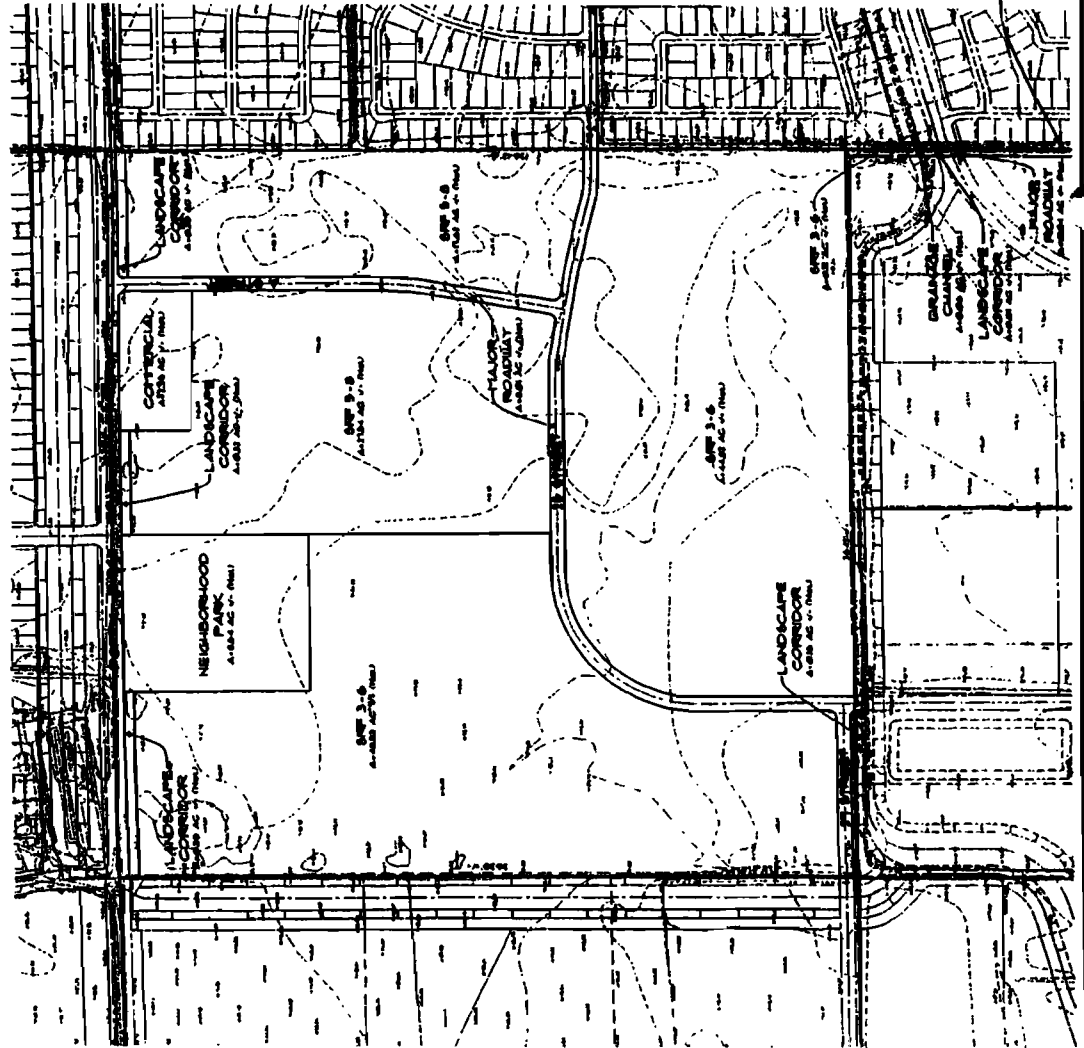
2. Oil & Gas Lease: On February 22, 1974, CHARLES B. GILLIAM (a prior owner of the PROPERTY), as Landlord, and WESTATES PETROLEUM COMPANY, a corporation, as Tenant, executed an Oil and Gas Lease (the “Lease”) which allowed Tenant to explore and mine oil, gas and casinghead gas and other hydrocarbon substances. The term was three (3) years from the Lease date and automatically continued so long as the Tenant continued operations and produced oil and gas from the PROPERTY.

To the best of SELLER’s knowledge, certain preliminary tests were performed in about 1974, but no oil, gas or other substances have ever been mined or produced from the PROPERTY pursuant to the Lease; furthermore, the Tenant is no longer an active corporation. To the best of SELLER’s knowledge, the Lease has expired of its own terms; however, SELLER has no knowledge or information whether any party claiming to be the Tenant or its successor(s) in interest might make any claim to rights pursuant to the Lease.

City Contract Purchase Land — Revised 2002.07.03

PLANNING EXHIBIT for:
Lands of Gilliam Family Trust

APN: 132-0020-037



LAND USE BOUNDARY:

100	RESIDENTIAL
200	COMMERCIAL
300	INDUSTRIAL
400	AGRICULTURE
500	RECREATION
600	LANDSCAPE CORRIDOR
700	THAIOR ROADWAY
800	NEIGHBORHOOD PARK
900	LANDSCAPE CORRIDOR
1000	LANDSCAPE CORRIDOR

SCALE: 1" = 200'

THE SEAL OF THE COUNTY OF SAN DIEGO
 COUNTY CLERK
 1000 G STREET, SAN DIEGO, CA 92101
 TEL: 619-441-2200
 FAX: 619-441-2201

APPENDIX
COPY OF APPRAISAL REPORT
BY MAI APPRAISER

arche's place llc\City Fee Credits Agreement -- Revised 2002.07.03

SUMMARY APPRAISAL REPORT:
Gilliam Family Land Trust property
Bilby Road
Elk Grove, Ca. 95758

APPRAISAL SUMMARY		<u>CONFIDENTIAL</u>	
APN: 132-0020-037		File No. Con: 01-32	
Owner: The Gilliam Family			
Property Address: None		Locale: Elk Grove 95758	
Zone: AG-80	Present Use: Oat and Vetch Production	Best Use: Single Family Residence	
Entire Property: Land: \$12,860,000	Improvements: Not Appraised	Total: \$12,860,000	
Possible Hazardous Waste (Inc. underground tanks) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Date Acquired: 1856			
Total Property Area: 160.76 acres	<input type="checkbox"/> Full <input checked="" type="checkbox"/> Part		Inc. Access Rights <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Market Value of Required Property:			
Land: 10 acres x \$80,000 per acre =	\$800,000		
Improvements: None.			
Damages and Benefits: None.			
Construction Cost Work: Replace lateral fencing as part of project.			
Total (Rounded)	\$800,000		
Inspection Date: February 4, 2002		By: Cydney G. Bender, MAI	

Owner's Representative: Robert "Jim" Claus, Stuart Gilliam
(503) 625-5365, (925) ~~370-0282~~

Interest Appraised: Fee Simple

Date of Value: February 4, 2002



**WALLACE • KUHL
& ASSOCIATES INC.**

Geotechnical Engineering

Engineering Geology

Environmental Consulting

Remediation Services

Construction Inspection

Materials Testing

April 30, 2002

Mr. Robert Howse
K. Hovnanian Forecast Homes, Inc.
1796 Tribute Road, Suite 100
Sacramento, CA 95815

*Reliance Letter and
Focused Environmental Site Assessment Update*
GILLIAM PROPERTY, THRU-CORRIDOR
City of Elk Grove (Sacramento County), California
APN: 132-0020-037
WKA No. 5128.01

Dear Bob,

This letter will serve as the consent of Wallace • Kuhl & Associates, Inc. and acknowledgment that K. Hovnanian Forecast Homes, Inc. may rely upon the information presented in our August 1995 *Preliminary Phase I Environmental Site Assessment*, and addressed to the East Franklin Ownership Group. K. Hovnanian Forecast Homes, Inc. may assume the same rights as the East Franklin Ownership Group for errors and omissions, and Wallace • Kuhl & Associates, Inc. agrees to be bound to K. Hovnanian Forecast Homes, Inc. by the same workscope, liability, limitation of liability and indemnity provisions as set forth in the proposal and contract with the East Franklin Ownership Group.

Additionally, and based on the innocuous findings of our referenced report, in our opinion site assessment updating activities beyond what we discuss below are not justified. The American Society for Testing and Materials (ASTM) site assessment standard contains provision for use of a prior assessment even if the prior assessment is older than 180 days (reference sections 4.7 thru 4.7.5 of *Standard E 1527-00*). In the case of the subject property, it is appropriate to invoke provisions 4.7 thru 4.7.5 of the site assessment standard.

We completed an updating field reconnaissance on April 29, 2002. As mentioned above, the subject property is located within the East Franklin Specific Plan area. Our earliest, referenced report was already reviewed and approved by the Sacramento County Hazardous Materials Division as part of the EIR/Specific Planning process. "Subject property" as that term is used in this updating letter refers to a north/south-trending land area approximately 125-foot wide that will serve as a drainage easement. The subject property is generally located on the central area of the Gilliam parcel.

We observed no significant changes on the subject property relative to our previous report. The subject property currently has a lush green vegetative growth up to about two-feet high; no livestock was grazing on the property at the time of our updating

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ROCKLIN OFFICE
500 Menlo Drive,
Suite 100
Rocklin, CA 95765
Tel 916.435.9722
Fax 916.435.9822

GILLIAM PARCEL
WKA No. 5128.01
April 30, 2002
Page 2

field reconnaissance. The green growth appears to be a dry-farmed hay or grain crop. No water supply wells, dairy wastewater sumps, irrigation tailwater ponds, underground or aboveground storage tanks, agricultural chemical mixing or storage facilities, or man-made objects were observed on the property. The Gilliam parcel history as presented in our previous report for the Specific Plan area already documents that the property has not had a cultivated rowcrop or orchard history wherein the potential could exist for significant concentrations of persistent pesticide residuals to occur in existing site soils. Therefore, in our opinion sampling and testing for persistent pesticide residuals is not warranted.

We reviewed current versions of all the agency databases shown in our previous Specific Plan report. No changes have occurred on the reviewed agency databases with the potential to impact the subject property from the hazardous materials perspective. The subject and adjacent properties do not appear on any of the reviewed agency databases. In summary, this site assessment update has revealed no evidence of Recognized Environmental Conditions in connection with the subject property (reference ASTM environmental site assessment *Standard E 1527-00*).

This updating letter shall be subject to our standard project limitations, which were included in our previous, referenced report, and/or are available upon request. Please call if you have any questions or require additional information. Thanks for this opportunity to have provided updating site assessment services.

Wallace • Kuhl & Associates, Inc.



David Von Aspern
 Director, Site Assessment Group

DVA

II:Dept7\Archives\5128-01\Lupd



WALLACE • KUHL
 & ASSOCIATES, INC.