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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Executive Secretary
No. 81/74

July 7, 1981

TO COUNTY ASSESSORS:

VALUATION OF SINGLE-FAMILY RESIDENTIAL PROPERTY
SUBJECT TO AGREEMENT BETWEEN CALTRANS AND BUYER

On September 27, 1979 the Governor signed Senate Bill 86, Chapter 1116, which requires state agencies to dispose of surplus residential property, as defined, in accordance with certain priorities and procedures. (Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, Article 8.5 Sections 54235, 54236, 54237, and 54238.)

1. The California Legislature has declared in Government Code Section 54235 that sales of state-owned surplus residential property which result in displacement and/or a loss of low and moderate income housing cause a significant environmental effect.
2. Government Code Section 54235 and following sections require that in order to mitigate such environmental effect, all surplus single-family residences must be offered to eligible current occupants at an affordable price, which may be less than market value.
3. Government Code Section 54237 requires that when state-owned surplus single-family residences are sold to present occupants for less than market value, the selling agency must impose such terms, conditions and restrictions as will assure that such housing will remain available to persons and families of low or moderate income and households with incomes no greater than the incomes of present occupants in proportion to the area median income.

Consequently, certain qualified buyers of such surplus property will be given the opportunity to purchase single-family residential property at a price that is below the current market value of said property provided the buyer covenants and agrees to encumber said property to a thirty (30) year continuing pre-emptive right to purchase the property vested in Caltrans and others (public entities or their designees).

The Board's legal staff has reviewed this Right to Purchase Agreement Between Caltrans and Buyer and is of the opinion that such sales will be subject to land use restrictions within the meaning of Revenue and Taxation Code, Section 402.1.

July 7, 1981

The section specifically includes: (b) recorded contracts with governmental agencies other than those provided in Section 422. Since the latter applies only to open-space land and the document on its face, as well as in substance, is an agreement between Caltrans and the buyer, it certainly falls within the statute.

The valuation of properties subject to this agreement should be based upon the individual property's purchase price. This will become apparent if you refer to Government Code Section 54236 which defines the following terms:

- Part A "Offer"
- B "Affordable Price"
- C "Single-Family Residence"
- D "Surplus Residential Property"
- E "Displacement"
- F "Fair Market Value"
- G "Affordable Rent"
- H "Area Median Income"
- I "Persons and Families of Low or Moderate Income"
- J "Lower Income Households"

Based upon the economic status of the buyer, a selling price for the property is established. Thus, two identical properties, side by side, sold at the same time could in fact sell for different prices, thus precluding the use of market comparables.

In any subsequent resale of the property, an increase in the value that accrues to the buyer is strictly regulated by the Caltrans agreement. Additionally, changes-in-ownership (other than a sale) and new construction are addressed in this agreement.

A copy is enclosed for your information and review.

Sincerely,



Verne Walton, Chief
Assessment Standards Division

VW:hlo
Enclosure

STATE OF CALIFORNIA



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC:82)
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BURTON W. OLIVER
Executive Director

December 13, 1993

Honorable Dick Frank
San Luis Obispo County Assessor
County Government Center, Room 100
San Luis Obispo, CA 93408

Re: Villa Rosa Townhomes

Dear Mr. Frank:

This is in response to your letter of September 10, 1993 to Mr. Verne Walton in which you request advice as to the proper procedure to follow in assessing townhomes acquired by low to moderate income individuals under the following facts.

In 1991, the City of San Luis Obispo adopted Ordinance No. 1197 which approved a preliminary development plan for Villa Rosa, an 85 unit planned residential development and rezoning of the site from M to R-3-PD. The ordinance conditioned approval of the preliminary development plan upon the developer selling the units in Villa Rosa following the affordability provisions described below and upon the developer administering the sale and resale of affordable units (at least 41 of the 85 Villa Rosa units) through the San Luis Obispo Housing Authority (the City). The ordinance also made the affordability provisions enforceable by the City as a condition of Planned Development rezoning.

Under the affordability provisions, at least 41 of the Villa Rosa condominium units are to be sold at prices ranging from 65 percent to 95 percent of market value. The amount of the discount is determined by a formula taking into account the number of persons in the household and the percentage their income bears to their the median income for the area.

By agreement with the City, there will be resale controls on the discounted units in order to maintain availability of affordable homes. The resale controls limit the resale price based on the amount of the discount and the number of years of ownership. The greater the discount, the longer the resale

controls remain in effect. During the term of the resale controls, 20 percent of the net profit from the resale is to be paid to the City to further its affordable housing program. While the resale controls are in effect, there are additional conditions regarding the household income of persons interested in purchasing a unit originally sold at a discount. The permissible maximum income of the "second buyer's" household depends on the amount of the discount to and the period of ownership of the original buyer. See Exhibit A attached hereto for a summary of the foregoing provisions.

In order to receive the discount the buyer must:

1. Agree to occupy the property as his or her sole and exclusive residence.
2. Agree to sell the property for no more than the maximum resale price (See Exhibit A).
3. Sign a promissory note for the amount of the difference between the original and discounted prices. The note is secured by a deed of trust with the City as beneficiary.
4. Pay the City 20 percent of the Net Appreciated Value (as defined) on resale or failure to occupy the property.

According to the agreement, if the buyer does not adhere to these terms, all amounts owed under the note payable to the City become due and payable immediately. If the buyer attempts to sell the property outside the terms of the agreement, the City has a Right of First Refusal and can buy the property under the terms of the proposed sale. The effect of the agreement is that on resale, the buyer will receive an amount less than the fair market value of the property while the restrictions are in effect.

You have asked our advice as to the proper procedure to follow in assessing the townhome units acquired by low or moderate individuals under the circumstances described above.

Revenue and Taxation Code¹ section 401 requires every assessor to "assess all property subject to general property taxation at its full value." The term "full value" is synonymous

¹All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

with "full cash value" or "fair market value" as defined in section 110. (Property Tax Rule 2.)

The definition of market value contained in section 110 contemplates a buyer and seller "with knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes."

Section 402.1 requires the assessor, in the assessment of land, to "consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected." The section then lists seven nonexclusive enforceable restrictions all of which are restrictions imposed by government. In our view, only governmental restrictions are contemplated by section 402.1.

The issue here is whether the affordability provisions described above constitute enforceable restrictions within the meaning of section 402.1.

The Board has concluded in Letter to County Assessors dated July 7, 1981 (LTA 81/74) that very similar affordability provisions did constitute enforceable restrictions for purposes of section 402.1. A copy of LTA 81/74 is enclosed for your easy reference.

Under the facts considered in LTA 81/74, low or moderate income individuals were given the opportunity to purchase surplus single-family residences owned by Caltrans at prices below the current fair market value provided such buyer agreed to give Caltrans or its designee 30 year pre-emptive rights to purchase the property in order to assure that such housing would remain available to persons or families of low or moderate income.

LTA 81/74 considered a situation under which the Legislature, by statute, had determined that sales of state-owned surplus residential property which resulted in displacement and/or a loss of low and moderate income housing caused a significant environmental effect. Further statutory provisions required that, in order to mitigate such environmental effect, all surplus single family residences must be offered to eligible current occupants at an affordable price which may be less than market value. When that occurred, the law required the selling agency to impose such terms, conditions and restrictions necessary to assure that such housing would remain available to persons and families of low or moderate income and households with incomes no greater than the incomes of present occupants in proportion to the area median income.

Through contract restrictions, a seller of such housing was essentially limited to receiving sales proceeds equal to the original purchase price adjusted by the percentage increase in the county median income for a family of four less the unpaid balance of the purchase loan, fix-up costs, other liens or encumbrances and the cost to cover administration of the program (1% of the adjusted original purchase price). LTA 81/74 found that these contract provisions fell within section 402.1, which expressly references recorded contracts with governmental agencies other than those provided in section 422, relating to open space land.

In our view, there is no basis for distinguishing the affordability provisions in this case from those considered in LTA 81/74 for purposes of section 402.1. In both cases, the low income buyer can purchase a residence at a discount from market value and is precluded by contract restrictions by a government entity from realizing the full benefits of a resale at market value while the restrictions are in effect. Accordingly, we are of the opinion that the affordability provisions in this case constitute governmental enforceable restrictions for purposes of section 402.1, assuming that the contracts are recorded.

*Thomast.
Re. LTA 81/74
See if it
includes
thought.*

Therefore, as in LTA 81/74, the valuation of units subject to the agreement between the buyers and the City should be based upon the sales price of the restricted unit rather than the sales prices of comparable units which are not subject to restriction.

Very truly yours,

Eric F. Eisenlauer

Eric F. Eisenlauer
Staff Counsel III

EFE:jd
precednt/astandiv/93012.efe
Att.

cc: Mr. John Hagerty -- MIC:63
Mr. Verne Walton -- MIC:64

SPACE ABOVE THIS LINE FOR RECORDER'S USE

| DISTRICT | COUNTY | ROUTE | POST MILE | NUMBER |
|----------|--------|-------|-----------|--------|
| | | | | |

RIGHT TO PURCHASE AGREEMENT BETWEEN CALTRANS AND BUYER

THIS AGREEMENT, dated _____, is entered into between the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (Caltrans) _____

[Insert address of District Office]

and _____

[Insert name of BUYER]

(BUYER).

1. The California Legislature has declared in Government Code Section 54235 that sales of state-owned surplus residential property which result in displacement and/or a loss of low and moderate income housing cause a significant environmental effect.

2. Government Code Section 54235 and following sections require that in order to mitigate such environmental effect, all surplus single family residences must be offered to eligible current occupants at an affordable price, which may be less than market value.

3. Government Code Section 54237 requires that when state-owned surplus single family residences are sold to present occupants for less than market value, the selling agency must impose such terms, conditions and restrictions as will assure that such housing will remain available to persons and families of low or moderate income and households with incomes no greater than the incomes of present occupants in proportion to the area median income.

4. BUYER has been given the opportunity to purchase the single family residence located at _____
[Insert address]

(the PROPERTY)

for \$ _____ (the "base price") although the market value of the PROPERTY has been estimated to be \$ _____.

5. In return for that opportunity, BUYER hereby covenants and agrees that:

A. The interest in the PROPERTY to be conveyed to BUYER will be subject to a thirty (30) year continuing pre-emptive right to purchase (RIGHT TO PURCHASE) the PROPERTY vested in Caltrans.

B. Caltrans shall exercise the RIGHT TO PURCHASE only for the purpose of making the PROPERTY available to a person or family of low or moderate income or household with an income no greater than the income of the present occupants in proportion to the area median income.

C. Caltrans may designate a governmental or nonprofit organization (hereinafter DESIGNEE) to exercise its RIGHT TO PURCHASE. BUYER shall be given written notice of the name and address of any DESIGNEE.

D. The RIGHT TO PURCHASE may be assigned to an individual private buyer (hereinafter ASSIGNEE) who qualifies as a low or moderate income person or family or a household with an income no greater than the income of the present occupants in proportion to the area median income.

E. BUYER will not lease or sublease the PROPERTY, or any part thereof, or allow parties other than BUYER to live in the PROPERTY, without the prior express written consent of Caltrans or if there is a DESIGNEE, the prior written consent of that DESIGNEE.

F. Except for purposes of repairing or maintaining the PROPERTY, BUYER shall not encumber the PROPERTY or any interest therein, in whole or in part, without the prior express written consent of Caltrans or if there is a DESIGNEE, the prior written consent of that DESIGNEE.

G. BUYER shall not add any substantial improvements to the PROPERTY without the prior express written consent of Caltrans or if there is a DESIGNEE, the prior written consent of that DESIGNEE.

"Substantial improvements" are those improvements which materially add to the value of the PROPERTY or adapts it to new uses. Examples of such improvements are: putting a

recreation room in an unfinished basement, adding another bathroom or bedroom, adding a swimming pool, enlarging a garage, installing a fireplace, or constructing a patio.

"Substantial improvements" do not include emergency repairs, maintenance or work required by applicable building or housing codes.

In order to assure that the PROPERTY will remain affordable to persons and families of low or moderate income and households with incomes no greater than the income of the BUYER in proportion to the area median income, Caltrans will minimize substantial improvements to the PROPERTY.

H. BUYER shall not sell, transfer or assign the PROPERTY, or any interest therein, in whole or in part, or agree to do so, except for transfers to the BUYER's spouse or children occasioned by the death or divorce of BUYER, without first complying with the procedures set out in Paragraph 6 below.

In addition, at the time of transfer to BUYER'S spouse or children, the spouse or children taking the PROPERTY shall execute an agreement with CALTRANS renewing the RIGHT TO PURCHASE.

I. BUYER shall at all times maintain insurance on the PROPERTY at a level of at least 80 percent of replacement cost and shall provide that such insurance policy names Caltrans as an additional insured.

J. BUYER shall secure financing to buy the PROPERTY and shall cause the lender to include in the deed of trust securing the note a provision that any power of sale is subject to the RIGHT TO PURCHASE.

6. In the event that BUYER, BUYER'S spouse or children who have title pursuant to subparagraph H of Paragraph 5 above, or any owner who has title derived through foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise desire to sell, transfer or assign the PROPERTY, they shall comply with the following procedures:

A. Simultaneously notify Caltrans and its DESIGNEES (if any) of the intent to sell, transfer or assign, in writing by certified mail (hereinafter "NOTICE OF INTENT"). Caltrans or if there is a DESIGNEE, that DESIGNEE shall then have a RIGHT TO PURCHASE the PROPERTY for the price and terms set out below, which RIGHT TO PURCHASE shall be exercisable, by delivery of written notice (hereinafter "NOTICE OF ACCEPTANCE") to BUYER by personal delivery or certified mail, within sixty (60) calendar days from the date of receipt of the NOTICE OF INTENT. (Hereinafter all references to days shall refer to calendar days.)

B. If BUYER fails to comply with the provisions of subparagraphs E, F, G, or H of Paragraph 5 above, then Caltrans, or if there is a DESIGNEE, that DESIGNEE may deem, at its election, that BUYER had delivered a NOTICE OF INTENT and the RIGHT TO PURCHASE may be exercised pursuant to Paragraph 6 herein. Failure to exercise the RIGHT TO PURCHASE under the circumstances described in this paragraph shall not result in the expiration of the RIGHT TO PURCHASE, shall not give BUYER the right to sell

the PROPERTY at market value pursuant to subparagraph H of Paragraph 6 below and shall not bar Caltrans from taking other action to enforce this Attachment to Grant Deed.

C. If the RIGHT TO PURCHASE is exercised, sales escrow shall be opened within fifteen (15) days after NOTICE OF ACCEPTANCE is delivered, and closed as soon as practicable after opening.

D. Following receipt of the NOTICE OF INTENT, the entity exercising the RIGHT TO PURCHASE will inspect the PROPERTY to determine whether in its judgment repairs, rehabilitation, or replacements ("fix-up costs"), beyond the requirements of normal maintenance are necessary in order to put the unit into saleable condition. If any such is deemed to be necessary, they shall either be provided by BUYER before close of escrow or the entity exercising the RIGHT TO PURCHASE will determine the cost thereof which shall be the "fix-up costs."

E. In the event the RIGHT TO PURCHASE is exercised, the "gross option price" shall be:

(1) The "base price" for the PROPERTY, as shown in Paragraph 4 above, adjusted by a percentage which is the same as the percentage by which the median household income for a family of four in _____ County increased between the date that BUYER took title to the PROPERTY and the date that the NOTICE OF ACCEPTANCE was delivered. Median income shall be determined on the basis of county median income figures published by the United States Department of Housing and Urban Development (HUD) or if HUD does not publish such figures, on the basis of figures published by the STATE OF CALIFORNIA, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) and was \$ _____ in _____ County on the date that BUYER took title to the PROPERTY. (For example, the base price is \$52,000 for a unit and the median income the date BUYER takes title is \$20,000 and the median income on the date the NOTICE OF ACCEPTANCE is delivered is \$25,000, the percentage increase is 25 percent. Therefore, the base price by BUYER will be increased by 25 percent from \$52,000 to \$65,000).

plus (2) The current value of any substantial improvements as determined by the entity exercising the RIGHT TO PURCHASE if such improvements had the prior written approval as required by subparagraph G of Paragraph 5 above.

The "net option price" to be paid to BUYER at close of escrow will be the "gross option price," less the total of:

(i) The unpaid balance of the First Deed of Trust at close of escrow, including any costs that may be incurred as a result of a default by BUYER; and

(ii) The fix-up costs unless fix-up work is provided by BUYER;

(iii) Any other liens or encumbrances at close of escrow and prorated current real estate taxes; and

(iv) One percent of the "gross option price" which amount will be paid to the entity exercising the RIGHT TO PURCHASE to cover the cost of administration.

F. BUYER shall pay all escrow, title policy and closing costs, except for costs which the lender or applicable law require to be paid by the party acquiring the PROPERTY.

G. The "net option price" will be paid in cash at the close of escrow or as otherwise provided by mutual agreement.

H. In the event the BUYER provides the notices required in subparagraph A of Paragraph 6 above and the RIGHT TO PURCHASE is not exercised within the time limits set forth in this Agreement, BUYER shall be free to sell the PROPERTY, at its then market value, in an arm's length transaction. Caltrans may offer assistance to BUYER in conducting a market value sale and BUYER shall not unreasonably refuse to accept a market value offer for the PROPERTY. The proceeds of the sale shall be divided between Caltrans and BUYER as follows:

To BUYER: Up to, but not to exceed, the net amount BUYER would have received under subparagraph F of Paragraph 6 above had the RIGHT TO PURCHASE been exercised on the date of the sale of the PROPERTY.

To Caltrans: The balance of the proceeds of the sale. Normal real estate brokerage commissions, if paid, shall be taken from Caltrans' share of the proceeds.

7. A. BUYER agrees to cause to be filed for record in the Office of the Recorder of the County of _____ a request for a copy of any Notice of Default and of any Notice of Sale under any deed of trust or mortgage with power of sale encumbering the PROPERTY pursuant to Section 2924(b) of the Civil Code of the State of California. Such request shall specify that any such notice shall be mailed to Caltrans. Any Notice of Sale given pursuant to Civil Code Section 2924(f) shall constitute a NOTICE OF INTENT giving rise to the RIGHT TO PURCHASE under this Agreement. The RIGHT TO PURCHASE shall take priority over any trustee's sale or foreclosure.

B. If the RIGHT TO PURCHASE is not exercised within the time limits specified in Paragraph 6, and the PROPERTY is sold at trustee's sale or foreclosure or by deed in lieu of foreclosure, the party who acquires the PROPERTY shall take subject to the RIGHT TO PURCHASE and all surplus proceeds will be distributed as follows:

To BUYERS: Up to, but not to exceed, the net amount BUYER would have received under subparagraph F of Paragraph 6 had the RIGHT TO PURCHASE been exercised on the date of the foreclosure.

To Caltrans: The balance of the surplus.

C. If BUYER cures any default and the RIGHT TO PURCHASE is not exercised within the time limits specified in Paragraph 6, the RIGHT TO PURCHASE will continue in existence.

8. This Agreement shall be recorded at close of escrow, so as to put all later parties on notice of the RIGHT TO PURCHASE under this Agreement.

9. In the event the PROPERTY is damaged and the insurance proceeds are not to be used to rebuild, the PROPERTY will be sold at market value by BUYER. In that event, or in the event of acquisition for a public use, the proceeds from the insurance and sale or from the acquisition shall be distributed as follows:

To BUYER: Up to, but not to exceed the net amount BUYER would have received under subparagraph F of Paragraph 6 above had the RIGHT TO PURCHASE been exercised on the date of damage or acquisition.

To Caltrans: The balance, if any.

10. Should it become necessary to commence legal proceedings to enforce any of the provisions of this Agreement, the parties hereto agree that the prevailing party shall be entitled to all legal costs incurred in connection therewith including a reasonable sum for attorney's fees.

11. The notices required herein shall be delivered to the addresses set out in this Agreement unless and until the person or persons entitled to such notices indicate in writing to the other parties hereto of a different address to which any notice or notices should be delivered.

12. Should BUYER fail to comply with the terms, conditions and restrictions imposed by this Agreement, Caltrans reserves the right to require BUYER to pay to Caltrans the difference between the actual price paid by BUYER and the fair market value of the PROPERTY at the time of noncompliance plus six percent (6%) interest on such amount for the period of time the property has been held by BUYER.

13. Caltrans shall not become liable to BUYER nor become obligated in any manner to BUYER by reason of any assignment of the RIGHT TO PURCHASE, nor shall Caltrans be in any way obligated or liable to BUYER for any failure of any DESIGNEE or ASSIGNEE to consummate a purchase of the PROPERTY or to comply with the terms of any Agreement for the sale of the PROPERTY.

14. If any provision or application of this Agreement is held invalid by a court of law, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

15. This Agreement shall automatically terminate 30 years from its date. Until then, this Agreement shall inure to the benefit of and bind Caltrans and BUYER, and their respective heirs, successors, designees and assignees. All obligations hereby imposed shall be deemed to be covenants running with the land.

16. The provisions of this Agreement shall become permanently void upon acquisition of PROPERTY title by the Secretary of HUD.

_____ BUYER

Caltrans

By _____

(Notary acknowledgments must be attached per Civil Code Section 1180 et seq.)