



# COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: March 20, 2007

Staff Report #: 07-046

Agenda Item #: F-1

**REGULAR BUSINESS: Consideration of an Alternative Below Market Rate (BMR) Housing Agreement for the Approved Residential Development Located at 75 Willow Road.**

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## RECOMMENDATION

Staff recommends that the City Council approve an alternative BMR housing agreement for the approved residential development project at 75 Willow Road. The alternative agreement would provide two on-site BMR housing units and the payment of in-lieu fees to be dedicated to the Peninsula Habitat for Humanity (Habitat) project proposed at 297 Terminal Avenue or to be used for low- and very-low income housing projects.

## BACKGROUND

The project at 75 Willow Road includes the demolition of an existing office building and construction of 33 single-family residences. The BMR Guidelines specify that in residential developments of 20 or more units, the developer shall provide not less than 15 percent of the units at below market rates to very low-, low- or moderate-income households. To meet the BMR requirement, the applicant would need to provide 4.95 BMR units. For this project, the applicant proposed to provide five on-site BMR units.

The applicant appeared before the Housing Commission at four meetings: October 5, 2005, April 5, 2006, July 5, 2006 and September 6, 2006. At the September meeting, the Commission acted to recommend approval of a BMR agreement for five on-site units.

During the Commission's review of the BMR agreement, the applicant presented an alternative concept for meeting the BMR housing requirement. They proposed dedicating funds and/or expertise to the Habitat project proposed on Terminal Avenue. In exchange, fewer, if any, BMR units would be constructed at the 75 Willow Road project site. The basis for the alternative approach is a combination of a strong need for very-low and low-income BMR units in the City and the difficulties of developing the Terminal Avenue site. The Housing

Commission generally supported the concept and recommended that the applicant continue to determine its feasibility.

On November 14, 2006, the City Council introduced an ordinance to rezone the project site to residential use and approve the related applications for the development of the property. On November 28, 2006, the Council acted to complete the rezoning and approved the development project (3-2, with Council Members Fergusson and Cohen opposed). The action included approval of a BMR housing agreement for five on-site BMR units. As part of the approval, the City Council included a condition to allow consideration of an alternative BMR agreement for the project. The condition is as follows:

5.1.6 Prior to building permit issuance for the first house, the applicant may propose an alternative approach to meeting the BMR requirements. The alternative approach would include dedicated funds and/or expertise equal to or greater than the value of the on-site BMR units to assist in and help ensure the feasibility of the Habitat for Humanity project proposed on Terminal Avenue. An alternative BMR agreement is subject to review and recommendation by the Housing Commission and review and approval of the City Council and would be in-lieu of some or all on-site BMR units and, if approved, would supersede the BMR agreement, dated November 14, 2007.

In December 2006, the adjacent neighborhood filed a lawsuit opposing the approval of the residential development project at 75 Willow Road. Although the lawsuit is under review, the Council may consider an alternative BMR agreement for the project. The action before the City Council is separate from the lawsuit. The case is expected to go to court this summer.

On February 7, 2007, the applicant returned to the Housing Commission with a proposal for an alternative BMR agreement. The minutes to the Housing Commission are provided as Attachment E. At the meeting, the Commission generally supported the concept of an alternative BMR program that would help leverage more below market rate units, particularly low and very-low income units, in the City. The Commission noted that without the proposed payment and dedication of funds from the SummerHill Homes project at 75 Willow Road, the Habitat project at 297 Terminal Avenue might not be financially feasible. The Commission generally agreed that the proposed alternative BMR agreement would benefit both development projects by continuing to provide on-site BMR units as well as leverage more units elsewhere.

## **ANALYSIS**

In a letter provided in Attachment B, the applicant indicates that they are pursuing an alternative BMR agreement. The letter describes that since the Council's approval of the project at 75 Willow Road in November 2006,

SummerHill has been working with Habitat, as well as with consultants, to determine the feasibility of the project at Terminal Avenue. SummerHill reiterates that by donating time and consultant services and by dedicating funds from the sale of some BMR units at market rates, the City would benefit from the increase in the number of affordable homes. SummerHill and Habitat have indicated that without the additional funding and pro bono services, the project at Terminal Avenue may not be feasible. The funding gap for the Habitat project is described below.

It should be noted that consideration of the alternative BMR agreement shall not be construed as City approval of the proposed Habitat project, nor shall the City be committed to approve the Habitat project. In the event the funds are not used to assist the Habitat project, the funds would be directed toward providing other housing opportunities to very-low and low-income housing at the City's discretion. This language is also included in the draft alternative BMR agreement.

#### Summary of Costs for the Peninsula Habitat for Humanity Project

The City has been discussing the potential development project on City-owned property at 297 Terminal Avenue with Habitat since 2001. Habitat is proposing to build an affordable housing development project of 22 units for low- and very low-income families.

Since the Habitat project would be for low- and very-low income households in the redevelopment agency area, the project would count towards the State's requirement that the Redevelopment Agency meet its Low and Moderate Income (LMI) Housing Fund regulations as well as towards the City's regional housing needs allocation with the update of the Housing Element.

Before development can occur on the Terminal site, the City must complete an environmental clean up from evidence of ground water contamination on the property. The cost of the remediation is estimated at \$1.6 million to the City, which includes site investigation, preparation of a remediation plan, and the complete remediation of the property. The remediation is expected to be complete in 2007.

The Habitat site is approximately 1.5 acres in size. As part of the discussions with Habitat, the City would give the property to Habitat at no cost. The estimated value of the property is \$2 million. The City's total contribution to the Habitat project is estimated at \$3.6 million for its costs associated with the remediation and the value of the property.

SummerHill has been working with Habitat to refine its budget for the project. Staff reviewed a preliminary budget for the project with Habitat. There are several large and some extraordinary costs associated with the project, including

environmental review, development fees and site improvements to address noise and flood plane issues.

The total cost of the project for Habitat is estimated at \$8.3 million. Currently, Habitat has funding of \$6.1 million, calculated from mortgage revenue of approximately \$278,802 per unit with zero percent interest (zero percent interest is standard for Habitat homes). The remaining need for the project is approximately \$2.2 million. In conversations with Habitat staff, they emphasized that these are estimates, and as the project proceeds through the development review phase, the budget will be checked and revised as needed.

#### Draft Alternative BMR Housing Agreement

The applicant has submitted a draft alternative BMR housing agreement (Attachment A) for review by the Council. The proposed alternative would retain two BMR units in the project at 75 Willow Road and would establish the payment of in-lieu fees for the remaining three required BMR units. The in-lieu fees collected would be for low- and very low- income housing, and earmarked for the Habitat project proposed on Terminal Avenue. Fees that are not used in the Habitat project would be set-aside in a fund for low- and very low- income housing projects.

The agreement specifies that the in-lieu fees would be determined by calculating the base sales price (that is, a standard unit with no upgrades or options) of the market rate units (formerly identified as BMR units), less the sales price of the unit as a BMR and less broker commissions, marketing fees and additional insurance premiums. The final sales price of the BMR units has not been determined. The City will calculate this price when the units are ready to be marketed for sale. SummerHill has prepared an example proforma to estimate the amount of in-lieu fees that will be paid to the City (Attachment C). Based on the example proforma, the estimated contribution would be over \$2.5 million.

Habitat's current need is approximately \$2.2 million. With the proposed revenue from the alternative BMR agreement, there will be a small buffer to allow for changes to the project budget.

The project at 75 Willow Road would have two on-site BMR units. These units are identified on a revised site plan (Attachment D). They represent two product types and are distributed throughout the project site. No other changes have been proposed to the BMR units. Staff believes that the size, location, exterior appearance, design, materials and appliances are consistent with requirements outlined in Chapter 5 of the BMR Guidelines.

The proposed alternative BMR agreement would provide the gap funding needed for the Habitat project to proceed through the development review process. Without this funding, additional low- and very low-income units would not have

the potential to be developed without seeking substantial funding from other sources. The City will have contributed \$3.6 million in subsidy for the project, or approximately \$163,600 per unit for the project. The alternative plan would provide an additional \$2.5 million to the project, or approximately \$113,600 per unit in subsidy, for a total subsidy of \$277,200 per unit.

Based on the potential increase in the number of affordable units to be provided in the City at 75 Willow Road and at 297 Terminal Avenue, and on the fact that the City would be closer to meeting State low- and moderate- income housing requirements, staff is recommending that the Council approve the alternative BMR agreement as presented.

### Correspondence

A letter from Christopher Mohr, Executive Director of the Housing Leadership Council, was submitted on March 14, 2007 (Attachment F). The letter indicates support for the alternative BMR agreement.

### **IMPACT ON CITY RESOURCES**

The in-lieu fees from the project, estimated at \$2.5 million dollars, would be deposited in the City's Housing Reserve Fund for use on the Habitat for Humanity project at 297 Terminal Avenue. In the event that the Habitat project does not go forward, this money would be earmarked for low- and very low-income housing in the City. Should the latter occur, the item would return to the City Council for direction use of the funds.

### **POLICY ISSUES**

If the recommended action is taken, the City would be establishing a precedent for consideration of alternative ways to meet the City's below market rate housing needs, especially to make more opportunities for housing for low- and very low-income families.

### **ENVIRONMENTAL REVIEW**

Environmental review is not required for the agenda item.

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Tracy Cramer  
Housing Manager  
Report Author

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Arlinda Heineck  
Interim Assistant City Manager

**PUBLIC NOTICE:** Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

### **ATTACHMENTS**

- A. Draft Alternative BMR Agreement for 75 Willow Road
- B. Letter from Elaine Breeze, SummerHill Homes, dated March 13, 2007
- C. SummerHill Example Proforma
- D. 75 Willow Road Site Plan, revised with BMR unit locations
- E. Housing Commission Minutes, February 7, 2007
- F. Letter from Chris Mohr, Housing Leadership Council, March 14, 2007

**REVISED DRAFT- ALTERNATIVE**

**BELOW MARKET RATE FOR-SALE AGREEMENT**

This "Agreement" is made as of this \_\_\_\_ day of \_\_\_\_\_ 2007 by and between THE CITY OF MENLO PARK, a California municipality ("City") and \_\_\_\_\_ ("Owner"), with respect to the following:

**RECITALS**

A. Owner is the owner of certain real property located in the City of Menlo Park, County of San Mateo, State of California (the "Property"), more particularly described in Exhibit "A" attached hereto. The Property is commonly known as 75 Willow Road and consists of assessor's parcel number(s) 062-422-130.

B. Pursuant to City Municipal Code Chapter 16.96, the City's BMR Housing Ordinance ("BMR Ordinance"), and the BMR Housing Program Guidelines ("Guidelines"), attached as Exhibit B, Owner is required to enter into this Agreement for the benefit of the City to insure compliance with the City's BMR Ordinance and Guidelines, which is a prerequisite to obtaining final development approvals and "Final Inspection" of the units from the Building Division.

C. As required by, and in full compliance with the City's BMR Ordinance and Guidelines, Owner plans to demolish the existing office building of approximately 40,000 square feet and construct thirty three (33) residential units of which two (2) shall be detached below market rate ("BMR Units"). In addition, Owner shall pay in-lieu BMR fees to the City for three market rate units as provided herein.

D. Whereas the City desires to provide below market rate homeownership to all income ranges, including very low and low income families; and whereas the City entered into an Exclusive Negotiation Rights Agreement with Peninsula Habitat for Humanity ("Habitat") in November 2001 to acquire City-owned property to pursue a proposed residential development which would provide home ownership to very low and low income families in the City but for which additional costs for the project have made Habitat unable to proceed in the environmental review process, the in-lieu fees from the 75 Willow Road project shall be directed, in order of priority and at the discretion of the City, toward the proposed Habitat development at 297 Terminal Avenue, if such project receives all discretionary approvals from the City. In the event the Terminal Avenue project does not proceed or all of the in-lieu fees are not allocated to the Habitat project, the in-lieu fees would be directed toward providing other housing opportunities to very low and low income families at the City's discretion. Nothing herein shall be construed as City approval of the proposed Habitat project, nor shall the City be committed to approve the Habitat project.

E. Whereas it has been determined that Habitat will need initial additional funds in order to proceed with the environmental review, entitlement, and project design process, and whereas Owner shall pay a \$300,000 lump sum fee (the "In Lieu Fee Advance") to

the City upon Final Map approval of the 75 Willow Road project to facilitate this process. This amount shall be deducted from in-lieu payments on future units.

F. Whereas it has been determined that the proposed Terminal Avenue development will require entitlement and design expertise based on the site's physical and land use complexity, and whereas Owner shall provide pro bono professional expertise to Habitat through the proposed tentative map and environmental review process so long as Habitat is pursuing the project with the City.

G. The BMR Units shall be sold to third parties who meet the eligibility requirements set forth in the BMR Ordinance and Guidelines, and with prices determined in accordance with this Agreement.

H. This Agreement is for the benefit of Owner and the City. The deeds to the BMR Units shall contain restrictions that limit the sales price of the BMR Units in accordance with the BMR Ordinance and Guidelines. These deed restrictions relating to the two (2) BMR Units shall be binding on the future owners of those units.

NOW, THEREFORE, the parties agree as follows:

1. The two (2) on-site detached BMR units are to be completed and sold in accordance with the BMR Ordinance and Guidelines with the appropriate deed restrictions.
2. For the purposes of Section 7 of the Guidelines, a unit shall be deemed "available for purchase" when the City has issued a letter that states that the BMR unit meets the BMR Program's requirement and satisfies the BMR Agreement's provisions. The letter will be issued when the BMR Unit is substantially ready for occupancy as reasonably determined by the Housing and Redevelopment staff, and when a unit has passed Final Inspection by the Building Division.
3. The locations of the two (2) on-site BMR units are shown as BMR Unit #'s 4 and 14 on Exhibit "C" attached hereto. The floor plans showing the approximate size and layout of the BMR Units are shown on Exhibit D attached hereto.
4. Owner shall pay in-lieu BMR fees to the City for three market rate units. The locations of the three (3) units which would have been BMR units if Owner did not pay in lieu fees are shown as Units # 10, 19, and 32 on Exhibit C attached hereto ("In-Lieu Units"). The in lieu fees to be paid for the In-Lieu Units shall be set as the difference between the market rate sales price (less (i) any related actual out of pocket sales commissions paid to outside agents/brokers, (ii) in-house sales and marketing expenses equal to 5% of the market rate sales price, (iii) insurance costs equal to 1% of the amount equal to the difference between the market rate sales price and the Sales Price (define below) that would be obtained if the unit were a BMR unit, and (iv) any options or upgrades paid for by the buyer of the market rate unit) and the BMR sales price established in accordance with Paragraph 7. Payment of in lieu fees shall be paid through

escrow, as set forth in Exhibit E and Section 4.3 of the Guidelines. The obligation to pay such in lieu fees shall constitute a lien against the title to such In-Lieu Units, enforceable against the units for which such fees are due together with interest at the rate of ten percent (10%) per annum accruing from the close of escrow until paid, if not paid at the closing. Upon payment of an in-lieu BMR fee for an In-Lieu Unit, the lien for such unit shall be deemed removed.

Owner shall pay the In Lieu Fee Advance to the City upon Final Map approval of the 75 Willow Road project to facilitate the environmental review, entitlement, and project design process. The In Lieu Fee Advance shall be deducted from in-lieu fee payments first owing by Owner until the In Lieu Fee Advance has been fully applied.

5. The streetscape elevations of the BMR Units will be as approved by the Planning Commission.

6. The exterior materials used in construction of the BMR Units will be similar and indistinguishable from those to be used on the market rate units. The interior finishes of the BMR Units shall be similar to those of the market rate units, except for upgrades purchased by individual buyers.

7. Each BMR Unit shall be affordable to households which are income eligible, as described in the Guidelines and are of the smallest household size eligible for the BMR Unit on the BMR Waiting List maintained by the City on the date that the Sales Price is set, as more particularly described below. The BMR Sales Price shall be calculated according to the following formula by reference to the definitions and standards set forth in Sections 7.1 and 7.2, below.

7.1 The “**Sales Price**” shall be calculated by adding the cash down payment, defined in 7.2.10., below, to the Maximum Mortgage Amount, defined in Section 7.1.6, below, less lender and escrow fees and costs incurred by the Buyer. The Sales Price shall be set before the commencement of the sale process for the BMR Units.

7.1.1 Calculate the “**Smallest Household Size**”: The household with the smallest number of persons eligible for the BMR Unit, as shown in Table C (Occupancy Standards) of the BMR Guidelines.

7.1.2. Identify the current “**Maximum Eligible Income**”, as shown in the Guidelines at Section 11, Table A, for the Smallest Household Size in the column titled “110% of Median.”

7.1.3. Calculate the “**Maximum Allowable Monthly Housing Expenses**.” Multiply the Maximum Eligible Income by thirty three percent (33%) and divide by twelve (12).

7.1.4. Calculate the “**Actual Monthly Housing Expenses**.” Add the following costs associated with a particular BMR Unit, as more particularly described in Paragraph 7.2 below, and divide by twelve (12): a) any loan fees, escrow fees and other closing costs (amortized over 360 months) and/or private mortgage insurance associated therewith; b) property taxes and assessments; c) fire,

casualty insurance and flood insurance, if required; d) property maintenance and repairs, deemed to be One Hundred Dollars (\$100) per month; e) a reasonable allowance for utilities as set forth in the Guidelines, not including telephones, and f) homeowners association fees, if applicable.

7.1.5. Calculate the **“Maximum Monthly Mortgage Payment Amount:”** Subtract the Actual Monthly Housing Expenses from the Maximum Allowable Monthly Housing Expenses.

7.1.6. Determine the **“Maximum Mortgage Amount:”** Determine the amount of mortgage that a lender would loan, based upon the Maximum Monthly Mortgage Payment Amount and based upon the down payment found to be the lowest that lenders are willing to accept in a survey of lenders as described below. Survey and take the average of at least three local lenders who regularly make home loans at a typical housing expense ratio to first-time buyers in the price range of the BMR home on the day that the price is set. The mortgage amount shall be for a 30-year fixed rate mortgage with standard fees, closing costs and no points, and shall be less than or equal to the Maximum Monthly Mortgage Amount.

7.2. The calculation of the Sales Price shall be based upon the factors defined below. These definitions conform to the eligibility and underwriting standards established by the major secondary mortgage market investors, such as the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”).

7.2.1. Mortgage Interest Rate. The mean average of contract interest rates on the date that the Sales Price is set, for fixed rate, 30-year "Conforming" mortgages (presently \$359,650 or less, as such amount may be adjusted from time to time as the maximum amount of FHA Conforming mortgages), or for jumbo mortgages if applicable, as quoted by three local retail lenders. The three local retail lenders shall be selected at random by the City from the list of lenders certified by San Mateo County to make first mortgage loans with Mortgage Credit Certificates.

7.2. Points. The mean average of points quoted by three local lenders that make mortgage loans to first time home buyers in Menlo Park on the date that the Sales Price is set for fixed rate, 30 year mortgages of \$359,650 or less, or for jumbo mortgages if applicable, which lenders are selected on a random basis by the City. Points are a one-time fee paid to a lender for making a loan. One point is equal to one percent of the loan amount.

7.2.3. Lender/Escrow Fees. The mean average of fees charged by three local lenders that make mortgage loans to homebuyers, which lenders are selected on a random basis by the City, plus escrow company fees, for such items as title insurance, appraisal, escrow fees, document preparation and recording fees.

7.2.4. Loan to Value Ratio. The maximum ratio of the dollar amount of a Conforming mortgage to the sales price of a home which a lender is willing to approve at a given point in time. For purposes of this Agreement, the Loan to Value Ratio shall be calculated as the mean average of the maximum Loan to Value

Ratios as quoted by three local lenders selected on a random basis by the City from a list of lenders who actively make loans to homebuyers and who participate in the Mortgage Credit Certificate program.

7.2.5. Housing Expense Ratio. The mean average of the housing expense ratio as reported on the date that the sales price is set, for fixed rate, 30-year mortgages of \$359,650 or less, or for jumbo mortgages if applicable, by three local lenders that make mortgage loans to homebuyers in Menlo Park, which lenders are selected on a random basis by the City. Housing expense is defined as the sum of the annual mortgage payment (including principal and interest), and annual payments for taxes, homeowners' dues, insurance, property maintenance and repairs, a reasonable allowance for utilities according to the San Mateo County Housing Authority Utility Financial Allowance Chart which is periodically updated and amended, and any secondary financing. To determine the ratio, this sum is divided by gross annual income.

7.2.6. Homeowners Insurance. Calculated as the mean average of the annual cost of insurance quoted by two or three local brokers, based on their experience, for a housing unit of the price, room configuration, location, construction material and structure type of the subject BMR Unit. Flood insurance costs, if required shall be calculated by this same method.

7.2.7. Private Mortgage Insurance. The mean average of the annual cost of private mortgage insurance quoted by two or three local lenders, based on their experience, for a housing unit of the price, location, and structure type of the subject BMR Unit.

7.2.8. Taxes. The tax rate as reported by the San Mateo County Assessor's Office.

7.2.9. Homeowners' Dues. Reported by the developer and as set forth in the Public Report issued by the California Department of Real Estate for the project.

7.2.10. Down Payment. Cash portion paid by a buyer from his own funds, as opposed to that portion of the purchase price which is financed. For the purpose of calculating the BMR Price, the down payment will be defined as the mean average of the smallest down payment required by the two or three local lenders surveyed.

7.3. The Sales Price shall be agreed upon in writing by Owner and the Housing and Redevelopment Manager no later than the date of the Final Inspection, or at an earlier date agreed to by the Developer and the Housing and Redevelopment Manager, and before the process begins to find a buyer.

8. As a condition precedent to a Final Inspection of any market rate unit at least one (1) BMR Unit shall have passed Final Inspection, and no more than nine (9) market rate units shall have passed Final Inspection until a second BMR unit passes Final Inspection. In any event, the last BMR unit must pass Final Inspection before the last market rate unit passes Final Inspection.

9. If there is a standard pre-sale requirement by the BMR applicant's lender for a certain percentage of units in the project to be sold before the BMR applicant's lender will close escrow on the loan, then the time for the City's purchase or the buyer's purchase will be extended until that requisite number of units has closed.

10. This Agreement shall be binding on and inure to the benefit of the parties hereto and any respective assigns and or owners of the property. Either party may freely assign this Agreement without the consent of the other. However, to be valid, an assignment of this Agreement must be in writing.

11. This Agreement is a covenant running with the land for the benefit of the City and all lands owned by the City within the limits of the City.

12. If any legal action is commenced to interpret or enforce this Agreement or to collect damages as a result of any breach of this Agreement, the party prevailing shall be entitled to recover all reasonable attorney's fees and costs incurred in such action from the other party.

13. Owner shall record this Agreement in the Office of the County Recorder of San Mateo prior to the recording of a final subdivision map for any portion of the Property and shall provide a copy of such recorded agreement to the City.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

16. The exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

17. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof.

18. If any portion of this Agreement as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way effect the validity or enforceability of the remaining portions of this Agreement.

19. Any and all obligations or responsibilities of Owner under this Agreement shall terminate upon the recording of the grant deeds conveying the BMR Units to qualified third party purchasers in accordance with the terms and provisions of this Agreement, the recording of the deed restrictions against such BMR Units, and/or the payment of the in lieu fees, if applicable, to be paid through escrow, as set forth in Section 4.3 of the Guidelines.

20. The execution and delivery of this Agreement shall not be deemed to be for the benefit of the third party purchasers of the BMR units or any other third party and any

and all obligations and responsibilities of Owner under this Agreement are to the City for whose benefit this Agreement has been entered into. No third party purchaser of a BMR or market rate unit, homeowners' association or any other third party shall obtain any rights or standing to complain that the BMR units were not constructed, designed, sold or conveyed in accordance with this Agreement, or the BMR Ordinance and Guidelines as a result of this Agreement. Furthermore, the acceptance of this Agreement by the City, the acceptance of the interior specifications for the BMR units and the conveyance of the BMR units to qualified third parties shall conclusively indicate that Owner has complied with this Agreement and the BMR Ordinance and Guidelines.

21. To the extent of any conflict between the terms and provisions of the Guidelines attached hereto as Exhibit B and the terms and provisions of the Agreement, the terms and provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

|                    |           |
|--------------------|-----------|
| City of Menlo Park |           |
| By: _____          | By: _____ |
| Its: City Manager  | Its:      |

List of Exhibits

- Exhibit A: Property Description
- Exhibit B: BMR Guidelines
- Exhibit C: BMR Unit Locations
- Exhibit D: BMR Floor Plans
- Exhibit E: In-Lieu Fee Payment Schedule (Proforma Example)

# SummerHill Homes

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777 California Avenue  
Palo Alto, CA 94304  
Tel: 650 857 0122  
Fax: 650 857 1077

March 13, 2007

City Council  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA 94025

Re: 75 Willow Road – Affordable Housing Agreement -SummerHill Homes

Dear Mayor Fergusson and City Councilmembers:

As you are aware, last November, the Menlo Park City Council approved a new 33 single family home community on the 75 Willow Road property. Part of these approvals included a Below Market Rate Housing Agreement that provided five onsite below market rate units for moderate income families. This was the same agreement that the Housing Commission recommended for approval at its September 2006 meeting.

However, last July, SummerHill Homes, along with Peninsula Habitat for Humanity broached the idea with the Housing Commission of an alternative program that would potentially create more affordable housing for even lower income families. Over the last several months, SummerHill has been working with Habitat, our consultants and their consultants, City of Menlo Park staff, and Clarum Homes to help Habitat develop and refine their conceptual plans; and identify and better understand their constraints, potential solutions, and costs associated with them.

In our November 8, 2006 letter to the Menlo Park City Council, SummerHill reiterated its interest in pursuing an BMR alternative program, stating:

“SummerHill’s alternative BMR proposal aims to do more. The City has been working with Peninsula Habitat for Humanity on the Terminal Avenue site since 2001. The site is physically challenging, and it has not been financially feasible for Habitat to move forward. Under the proposed alternative BMR program, SummerHill will provide “gap” funds and pro bono expertise to make the Habitat for Humanity Terminal Avenue site feasible to provide up to 22 single family homes to very low and low income family, and provide some

## SummerHill Homes

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additional onsite homes for moderate families at Willow Road. We are committed to pursuing this alternative, working with the City staff, and hope to go before the Housing Commission in February to present the plan. This solution would amortize the affordable housing dollars for the City into more units with deeper affordability, and puts a vacant site to use.”

As a result of SummerHill’s commitment, the following Condition of Approval was included for the project as follows:

**5.16** Prior to building permit issuance for the first house, the applicant may propose an alternative approach to meeting the BMR requirements. The alternative approach would include dedicated funds and/or expertise equal to or greater than the value of the on-site BMR units to assist in and help ensure the feasibility of the Habitat for Humanity project proposed on Terminal Avenue. An alternative BMR agreement is subject to review and recommendation by the Housing Commission and review and approval of the City Council and would be in-lieu of some or all on-site BMR units and, if approved, would supersede the BMR agreement, dated November 14, 2006.

At its February 7, 2007 meeting, the Housing Commission reviewed and unanimously approved SummerHill’s alternative BMR program. We are very excited about creating a SummerHill Community of Distinction at 75 Willow Road and, at the same time, the potential of providing a greater impact on addressing affordable housing in Menlo Park. We look forward to the City Council meeting on March 20th to discuss this opportunity in greater detail and would appreciate your support.

In the meantime, I can be reached at (650) 842-2306 or feel free to e-mail me at [ebreeze@shhomes.com](mailto:ebreeze@shhomes.com) should you have any questions.

Sincerely,



Elaine Breeze  
Senior Vice President

Cc: Tracy Cramer, City of Menlo Park Housing Department

EXHIBIT E

IN LIEU FEE PAYMENT SCHEDULE  
(PRO FORMA EXAMPLE)

| Lot No.<br>Plan Type<br>Mix<br>House Size<br>Lot Size (Approx.)          | Lot 10<br>4<br>4x2.5<br>1,713<br>3,182 | Lot 19<br>4<br>4x2.5<br>1,713<br>4,863 | Lot 32<br>1<br>3x2.5<br>2,070<br>3,549 |
|--|--|--|--|
| Sales Price (Projected)  | \$ 1,220,000                           | \$ 1,190,000                           | \$ 1,490,000                           |
| Less 3% broker commission ( if applicable)                               | \$ (36,600)                            | \$ (35,700)                            | \$ (44,700)                            |
| Less in-house sales and marketing costs (5% of gross sales price)        | \$ (61,000)                            | \$ (59,500)                            | \$ (74,500)                            |
| Less buyer-paid options and upgrades                                     | tbd                                    | tbd                                    | tbd                                    |
| Less additional insurance premium (\$10 per \$1000 of gross sales price) | \$ (10,479)                            | \$ (10,119)                            | \$ (14,173)                            |
| Net Market Revenue   | \$ 1,111,921                           | \$ 1,084,681                           | \$ 1,356,627                           |
| Less Estimated BMR Price*  | \$ (346,783)                           | \$ (346,783)                           | \$ (308,913)                           |
| <b>Estimated In-lieu fee due to City per unit</b>                        | <b>\$ 765,138</b>                      | <b>\$ 737,898</b>                      | <b>\$ 1,047,714</b>                    |
| Less Fees paid prior at Final Map  | \$ (300,000)                           |  |  |
| <b>Estimated net fee due to City at COE</b>                              | <b>\$ 465,138</b>                      | <b>\$ 737,898</b>                      | <b>\$ 1,047,714</b>                    |
|  |  |  | Verify prices with City                |
|  |  |  | <b>\$ 2,550,751</b>                    |
|  |  |  | <b>\$ 2,250,751</b>                    |

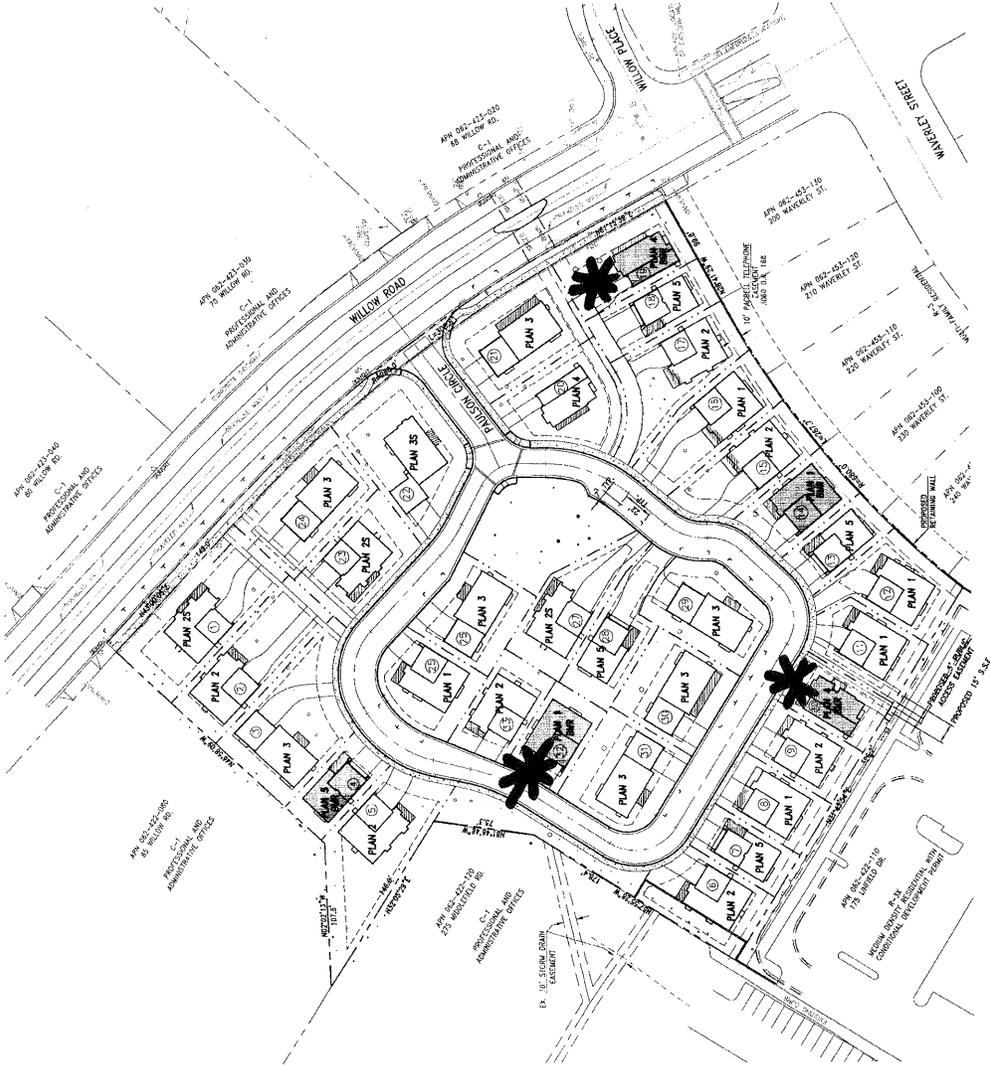
\*Price calculated by SummerHill Homes is based on interest rates on 11/07/2006. City has not verified or approved estimated BMR price.

**LEGEND**

- PROJECT BOUNDARY
- ADJACENT BOUNDARY
- PROPOSED RIGHT OF WAY
- PROPOSED LOT
- ADJACENT LOT
- EXISTING
- SETBACKS
- PROPOSED RETAINING WALL
- PERMITS/STREET ACCESS EASEMENT
- SANITARY SEWER EASEMENT
- PARKING SPACES
- STREET LIGHT
- BELOW MARKET RATE UNIT
- PORCH

**\*In-Lieu Unit**

| UNIT SIZE | NUMBER OF UNITS |
|-----------|-----------------|
| PLAN 1    | 7               |
| PLAN 2    | 1               |
| PLAN 3    | 3               |
| PLAN 4    | 1               |
| PLAN 5    | 5               |
| TOTAL     | 17              |



777 California Ave. Palo Alto, CA 94304

75 WILLOW ROAD  
TENTATIVE MAP  
BELOW MARKET RATE UNIT EXHIBIT

Summerhill Homes  
777 California Ave. Palo Alto, CA 94304

San Mateo County  
Menlo Park  
C-11  
OF 14  
PROJ. NO. 200508  
DATE: OCT. 3, 2005

WILSEY HAM ENGINEERING & PLANNING ■ PLANNING ■ SURVEYING  
2888 BRANDSPRING SUITE 300  
SAN MATEO, CA 94403  
TEL: 650.778.9770 FAX: 650.778.9777

PROFESSIONAL SEAL  
CIVIL ENGINEER  
No. 23572  
Exp. 12/31/2005

| NO. | DATE    | ISSUE/REVISION DESCRIPTION | BY  |
|-----|---------|----------------------------|-----|
| 1   | 10/3/05 | ISSUE FOR PERMITS          | WJH |
| 2   | 10/3/05 | ISSUE FOR PERMITS          | WJH |
| 3   | 10/3/05 | ISSUE FOR PERMITS          | WJH |
| 4   | 10/3/05 | ISSUE FOR PERMITS          | WJH |
| 5   | 10/3/05 | ISSUE FOR PERMITS          | WJH |



**EXCERPT  
HOUSING COMMISSION MINUTES**

**Regular Meeting**

**February 7, 2007**

**5:30 p.m.**

**Administrative Building Conference Room, First Floor  
701 Laurel Street, Menlo Park, CA 94025-3483**

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**CALL TO ORDER**

Chairperson Patty Boyle called the meeting to order at 5:30 p.m. in the Administrative Building City Council Conference Room.

**ROLL CALL**

**Housing Commission Members Present:** Patricia Boyle (Chair); Elizabeth Lasensky (Vice Chair); Carol Louchheim; Anne Moser; Clarice O'Neal.

**Housing Commission Members Absent:** Elza Keet.

**Staff Present:** Arlinda Heineck, Community Development Director; Tracy Cramer, Housing Manager; Megan Norwood, Management Analyst.

**A. PUBLIC COMMENT** – None.

**B. BUSINESS ITEMS**

1. Approval of January 3, 2007 Minutes.

M/S Moser/Louchheim to approve the January 3, 2007 minutes as amended; 5-0.

2. Approval of Alternative Below Market Rate Housing Agreement for New Residential Development at 75 Willow Road.

Elaine Breeze of SummerHill introduced the item, in which SummerHill is requesting approval of an alternative BMR Agreement for 75 Willow Road that would provide two on-site BMR housing units and the payment of in-lieu fees to be dedicated to the Peninsula Habitat for Humanity (Habitat) project proposed at 297 Terminal Avenue. A staff report from Manager Cramer detailing the proposed alternative agreement, including attachments, had been included in the Commissioner's agenda packets that they received prior to the meeting. Ms. Breeze explained that SummerHill had appeared before the Housing Commission at four prior meetings.

Ms. Breeze introduced Mary Boughton, the Executive Director of Peninsula Habitat for Humanity, as well as Scott Woodman, a Project Manager for Habitat. She also introduced Joe Head, President of SummerHill Homes. Ms. Boughton said that Habitat has made an application for the development of 22 homes at 297 Terminal Avenue. She said that the project still under review. She said that Habitat hopes to

serve Menlo Park families. She continued that the project requires additional funding to cover extraordinary costs and would greatly appreciate the support from SummerHill. She said that it would allow Habitat to bridge the financing gap and make the project feasible. She explained that Habitat doesn't intend that SummerHill's contribution would replace the help that Habitat normally solicits as donations; rather the funds would be used to pay for additional costs such as sound barriers and flood plane mitigations that are not typical costs in Habitat projects. She concluded that Habitat is committed to building a project in Menlo Park and hopes SummerHill's proposal will be approved because it is a great model and would help serve Menlo Park families.

Commissioner Moser asked Ms. Breeze why SummerHill is proposing to continue to provide two on-site BMR housing units at 75 Willow Road. Ms. Breeze responded that they would like to continue to support the City's BMR on-site program to provide a wide range of affordable housing opportunities in the community. Commissioner Moser also asked if it would be possible to include in their proposal that only persons who live or work in Menlo Park could apply for the Habitat homes. Ms. Boughton replied that they were already planning to use Menlo Park's BMR program guidelines to find homeowners for the project.

Vice-Chair Lasensky asked what the mortgages would be for the Habitat homes. Ms. Boughton explained that they would be based on the cost to build the homes as well as the cost of living for the buyers' income range. She said that the incomes will range from very low and low-income. She said an estimated price of a three-bedroom home would be \$284,000. She also explained that Habitat provides its buyers with 30-year, zero percent interest mortgages that cover the entire cost of the homes.

Commissioner Louchheim inquired about the status of the environmental clean-up at 297 Terminal Avenue. Manager Cramer responded that the clean-up is the responsibility of the City and would begin shortly. She said that it is estimated to take several months to one year to complete it. Following clean-up, she said, the site would be ready for development. She reminded the Commission that the City continues to own the property. The Commissioners also inquired about the status of the sound wall and CalTrain. Ms. Boughton explained that Habitat is factoring in costs for a sound wall if needed and looking for the best, affordable solution to the need to mitigate impacts from the proposed rail road activation. She said that there are significant costs associated with mitigating potential sound and vibration impacts. Chair Boyle inquired if Clarum Homes is sharing its experiences on this (from the Hamilton Park project) and Ms. Breeze replied that yes, SummerHill has brought them "to the table." Director Heineck commented that the sound wall required for the Habitat project would be similar to the sound wall required for the Clarum/Hamilton Park project.

Chair Moser asked staff to summarize the Commission's task this evening regarding the proposed Habitat and SummerHill projects. Director Heineck explained that the Commission would not be making any decisions about Habitat at this point. She explained that the Commission is however being asked to consider the alternative BMR proposal for 75 Willow Road, which includes the payment of in-

lieu fees to be dedicated to Habitat for the Terminal Avenue project. She said that the provision for payment of in-lieu fees is flexible such that if the Habitat project is not approved, the fees could be used for something else. She explained that the steps for the Habitat project could include the City entering into a new Exclusive Negotiating Rights Agreement, called an ENRA, with Habitat once the financial piece is in place. She said that an updated traffic study and a new EIR would probably be required. Then, she said, the project would move into the normal realm of being reviewed by various commissions and the City Council. Commissioner Louchheim commented that all this depends on the lawsuit against the 75 Willow Road development. Director Heineck replied yes but that SummerHill is taking a risk and continuing to move forward with the development. Commissioner Louchheim asked how long the lawsuit might take and Director Heineck said that it varies tremendously but that the best-case scenario is that it will be concluded within six to eight months. Mr. Head told the Commission that he expects the case to go before the court by this summer.

M/S Moser/Louchheim to recommend approval of the alternative Below Market Rate Housing Agreement for new residential development at 75 Willow Road; 5-0.

**E. ADJOURNMENT:** The meeting was adjourned by consensus at 6:45 pm.

Respectfully submitted,

Megan Norwood  
Management Analyst



**Housing Leadership Council  
of San Mateo County**

139 Mitchell Avenue, Suite 108  
South San Francisco, CA 94080  
T: (650) 872-4444 / F: (650) 872-4411  
[www.hlcsmc.org](http://www.hlcsmc.org)

March 14, 2007

Mayor Kelly Fergusson and  
Members of the Menlo Park City Council  
701 Laurel Street  
Menlo Park, CA 94025

Dear Mayor Fergusson and Members of the City Council:

The Housing Leadership Council has endorsed the proposed development for homes on Terminal Avenue by Peninsula Habitat for Humanity. This development will provide much-needed opportunities for homeownership that low-wage-earning families can afford. Their own “sweat equity” investment of hours worked to build the homes will provide them with valuable experience alongside community volunteers.

In addition, Housing Leadership Council supports the “Alternative Below Market Rate Housing Agreement for New Residential Development at 75 Willow Road.” This alternative agreement, which was approved by the city’s Housing Commission, would provide the city with additional funds that could be used to close funding gaps in the Habitat development. We encourage you to approve the alternative agreement, as well as the Terminal Avenue proposal.

Thank you for your consideration.

Sincerely yours,

Christopher Mohr  
Executive Director