

**RECORD WITHOUT FEE
PURSUANT TO GOV'T CODE § 6103**

Recording Requested by:
Office of the City Attorney
City of Santa Clara, California

When Recorded, Mail to:
Office of the City Clerk
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code § 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

**AGREEMENT AND COVENANT RUNNING WITH THE LAND
TO INSTALL AND MAINTAIN PRIVATE STREET LIGHTS, PRIVATE
IRRIGATION FACILITIES, AND PRIVATE SEATING WITHIN
THE PUBLIC RIGHT-OF-WAY**

[Restriction on 3505 Kifer Road, Santa Clara, CA]

This Agreement and Covenant Running with the Land ("Covenant") is made and entered into on this ____ day of _____, 2019 ("Effective Date"), by SUMMERHILL LAWRENCE STATION LLC, a California limited liability company ("SummerHill"), SHAC LS Apartments I LLC, a Delaware limited liability company ("SHAC I"), SHAC LS Apartments II LLC, a Delaware limited liability company ("SHAC II"), Toll West Coast LLC, a Delaware limited liability company ("Toll"), and the City of Santa Clara, California, a chartered California municipal corporation ("City"). SummerHill, SHAC I, SHAC II and Toll shall be the "Owner" under this Covenant as to the real property described below that is owned by each such party.

RECITALS

- a. WHEREAS, SummerHill is the sole and exclusive owner of real property commonly known as 3505 Kifer Road in the City of Santa Clara, California, and is shown on the 2019-20 Santa Clara County Property Tax Roll as Assessor's Parcel No. 216-59-004 thru 041, and 043, 216-60-001 thru 043, and 045, 216-61-001 thru 048, and 216-62-001 thru 058, also known as Lots 4 thru 82, and A thru T, except B, C, E, L, M, U and 015, as shown on Tract 10400, which map was filed for record in Book 910 of Maps, at Pages 27 thru 36, Santa Clara County Records (said Tract 10400 being the "Final Map").
- b. WHEREAS, SHAC I is the sole and exclusive owner of real property commonly known as Lot 3 of the Final Map (APN: 216-59-003), SHAC II is the sole and exclusive owner of real property commonly known as Lot 1 of the Final Map (APN: 216-59-001) and Toll is the sole and exclusive owner of real property commonly known as Lot 2 of the Final Map (APN: 216-59-002). The real property described in Recitals A and B are known as the "Property".
- c. WHEREAS, City is the owner of Copper Road, Feliz Road, and La Rambla Avenue, public right-of-ways.

- d. WHEREAS, SummerHill wishes to install and maintain private street lights, private irrigation facilities, and private wood chaises with planter, wood benches, and metal benches within said public right-of-way.
- d. WHEREFORE, the Parties enter into the following Covenant:

COVENANT

- 1. SummerHill proposes to install and maintain and City agrees to permit certain existing private improvements ("Improvements") in the street right-of-way described and limited to the following:

Twenty seven (27) private street lights, including wiring from fixtures to street light pull boxes, private wood chaises with planter, wood benches, and metal benches installed within the public right-of-ways, and private irrigation facilities (sleeves and conduits) crossing Copper Road at three (3) locations as shown on Record Drawing Tracing No. 12,182-D. The boundaries of Improvements encroachment are shown on Exhibit "A", attached hereto and incorporated herein by this reference.

- 2. Owner shall maintain, at Owner's expense, Improvements in a safe condition in compliance with City ordinances, rules, regulations, and such terms and conditions as all of the aforesaid are required by City from time to time. City approval of Improvements does not constitute approval on behalf of public utility companies. Approval of public utility companies shall be obtained separately by Owner. If, in the future, Improvements are removed, the area they are removed from shall be left in a safe condition. Removal shall be at Owner's expense and performed under an Encroachment Permit issued by City. Upon removal of Improvements, confirmation by City that the site has been returned to its original or better condition, and payment of applicable processing fee, City shall release Owner's obligations under this agreement by recording a Release of Interest at the County of Santa Clara Recorder's Office.
- 3. Owner shall permit public utility companies, the City, and their respective officers, employees, and agents to enter upon Property so that there is access to the street right-of-way for the purpose of installation, modification, repair, maintenance, removal or replacement of utility companies and City owned public improvements, facilities or properties situated in the street right-of-way. Owner waives any and all claims for damages or liabilities in connection therewith for property damages incurred as a result of City operations.
- 4. Owner shall pay City for any damages to City owned facilities caused by the construction or maintenance done by Owner in the street right-of-way. Payment to City shall be made within sixty (60) calendar days of said demand.
- 5. Owner shall modify, maintain, repair, or remove within sixty (60) days of a written demand of the City Engineer (or designee) at no cost to the City, Improvements (or portion thereof) which prohibits or interferes with the City's ability to maintain, repair, or replace its public facilities located in the street right-of-way. If owner fails to modify, maintain, repair, or remove Improvements (or portion thereof) within the time frame stated in the written demand of City,

City shall cause the work to be done and bill Owner for any and all costs, fees, and expenses related to said work. Payment to City shall be made within sixty (60) calendar days of said demand for payment.

6. If Owner fails to pay City for damage to City facilities or for City caused work the Owner failed to perform upon City demand, City may enforce this Covenant in any manner allowed by law including a levy against the Property owned by the Owner who so damaged City facilities or for City caused work the particular Owner failed to perform. No breach of this agreement shall defeat or render invalid the lien of any deed of trust or mortgage recorded against all or any portion of the Property owned by an Owner.
7. In the event of an emergency, as determined by City, City shall temporarily or permanently correct the private street light pole installation required for public safety reasons at Owner's sole expense. City shall make commercially reasonable efforts to notify Owner of the emergency prior to the work. In cases of said emergencies, Owner requests that City call (800) 383-2900.
8. Owner shall defend, indemnify and hold harmless the City, its council, officers, employees, agents, successors and assign from any claims, demands, loss, liability, injury, damage, expense or cost (including reasonable attorney's fees) however same may be caused, which may be sustained, incurred, or asserted against City because of and/or arising from this Agreement, including but not limited to claims for design defect and/or dangerous condition of public property. Provided, however, that in no event shall Owner's obligations in this Section apply to any such claims, demands, losses, liabilities, injuries, damages, expenses, or costs to the extent arising out of City's sole negligence or willful misconduct.
9. As used herein, street right-of-way includes not only the roadway traveled by vehicles but the curb and gutter, sidewalk and area between and beyond the sidewalk, if any, to the private property lines or exterior line of right-of-way easements.
10. This Covenant and the covenants and agreements contained herein shall run with the title to the land. Owner further agrees whenever the Property is held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Covenant which shall apply to, bind and be obligatory to all present and subsequent Owner(s) of the Property described herein. SummerHill intends to create an Association, as defined in Civil Code Section 4080, to govern the portion of the Property owned by SummerHill and to record a Declaration, as defined in Civil Code Section 4135, which obligates the Association to perform all covenants, stipulations, agreements and provisions of this Covenant pertaining to the Property owned by SummerHill. Commencing as of the date the Association is required by the terms of the Declaration to perform all such covenants, stipulations, agreements and provisions of this Covenant, SummerHill shall be released from all covenants, stipulations, agreements and provisions of this Agreement which arise after such commencement date. SHAC I, SHAC II and Toll are parties to the Nuevo Maintenance Association Declaration of Restrictions recorded on November 14, 2018 as Document No. 24063819 in the Official Records, Santa Clara County ("Maintenance Declaration") which obligates the Maintenance Association referenced in the Master Declaration to perform all covenants, stipulations, agreements and provisions of this Covenant pertaining to the Property owned by SHAC I, SHAC II and Toll. Commencing as of the date the Maintenance Association formed pursuant to the Maintenance Declaration is required by the terms of the Maintenance Declaration to perform all of the covenants,

stipulations, agreements and provisions of this Covenant, SHAC I, SHAC II and Toll shall be released from all covenants, stipulations, agreements and provisions of this Covenant which arise after such commencement date.

11. The lands of Owner which are burdened by this Covenant and which will have the responsibility and burden for the modification, maintenance, repair, or removal of the Improvements is the above mentioned Property.
12. The lands of City which are benefited by the covenants included in this Agreement are Copper Road, Feliz Road, and La Rambla Avenue, public streets owned by City.
13. Enforcement, either to restrain violation or to recover damages, shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant created through this Agreement.
14. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
15. Owner represents and warrants to City that they are the owner(s) of the Property at the time of their signature hereto, and have the authority to enter into this Covenant and the covenants contained herein, and grant such interests as are necessary to effectuate this Covenant.
16. Wherever the term "Owner" is used, it shall refer to the Owner(s) signing this Covenant, and/or Owner's assigns and successors in interest but each Owner is only obligated hereunder as to that portion of the Property owned by such Owner. City and Owner may be referred to herein collectively as the "Parties" or individually as a "Party". It is the express intent of the Parties hereto to have the benefits and burdens of this covenant run with the land.
17. This Covenant shall be recorded by City in the Office of the County Recorder of Santa Clara County.

[SIGNATURES ON FOLLOWING PAGE]

The Parties acknowledge and accept the terms and conditions of this Covenant as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Covenant shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered municipal corporation

SUMMERHILL LAWRENCE STATION LLC,
a California limited liability company

DEANNA J. SANTANA
City Manager

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: 408/615-2210
Fax Number: 408/241-6771

APPROVED AS TO FORM:

BRIAN DOYLE
City Attorney

ATTEST:

NORA PIMENTEL, MMC
Assistant City Clerk

"CITY"

By: 

Name: Katia Kamangar
Title: Executive Vice President

By: 

Name: Jason Biggs
Title: Secretary

Mailing Address: 3000 Executive Parkway, Suite 450
San Ramon, CA 94583

"OWNER" [APN 216-59-004 thru 041, and 043, 216-60-001 thru 043, and 045, 216-61-001 thru 048, and 216-62-001 thru 058 (2019-20)]

SHAC I:

SHAC LS APARTMENTS I LLC,
a Delaware limited liability company

By: SHAC LS Apartments I Venture LLC,
a Delaware limited liability company,
its manager

By: SHAC LS Apartments I Manager LLC,
a Delaware limited liability company,
its manager

By: SummerHill Apartment Communities,
a California corporation,
its managing member

By: 
Name: **Katia Kamangar**
Title: **Executive Vice President**

By: 
Name: **Jason Biggs**
Title: **Secretary**

Mailing Address: 3000 Executive Parkway, Suite 450
San Ramon, CA 94583

APN: 216-59-003

SHAC II:

SHAC LS APARTMENTS II LLC,
a Delaware limited liability company

By: SHAC LS Apartments II Venture LLC,
a Delaware limited liability company,
its manager

By: SHAC LS Apartments II Manager LLC,
a Delaware limited liability company,
its manager

By: SummerHill Apartment Communities,
a California corporation,
its managing member

By: 
Name: **Katia Kamangar**
Title: **Executive Vice President**

By: 
Name: **Jason Biggs**
Title: **Secretary**

Mailing Address: 3000 Executive Parkway, Suite 450
San Ramon, CA 94583

APN: 216-59-001

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On 10/29/19 before me, Judy Lepulu, Notary Public
(insert name and title of the officer)

personally appeared Katia Kamangar and Jason Biggs,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



TOLL:

TOLL WEST COAST LLC,
a Delaware limited liability company

By: 

Name: 1900 QUESTWAY

Title: SVP

Mailing Address:

APN: 216-59-002

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda)

On October 29, 2019 before me, Rosana Haydee Martinez Sedano, Notary Public
(insert name and title of the officer)

personally appeared Todd Callahan,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

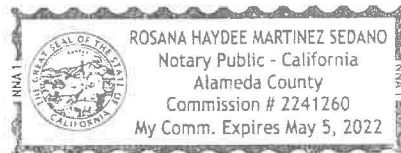
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

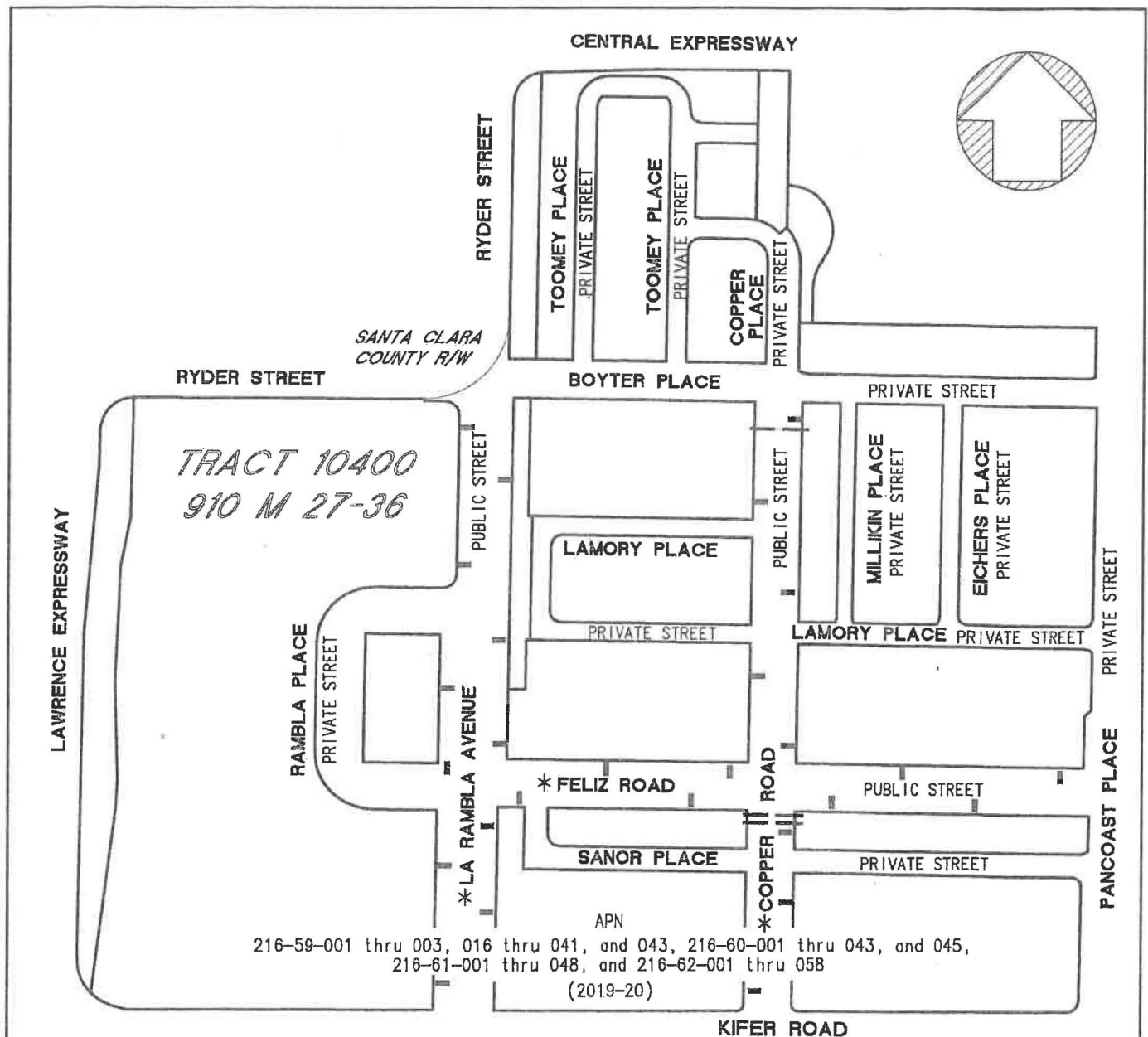


(Seal)



ALL LEGAL OWNER(S) OF PROPERTY MUST SIGN THIS DOCUMENT. IF OWNER(S) IS A CORPORATION, THE COMPLETE LEGAL NAME AND CORPORATE SEAL OF THE CORPORATION AND CORPORATE TITLES OF THE PERSONS SIGNING FOR THE CORPORATION SHALL APPEAR ABOVE. WRITTEN EVIDENCE OF AUTHORITY OF PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF CORPORATION, PARTNERSHIP, OR JOINT VENTURE, OR ANY OTHER ORGANIZATION OTHER THAN A SOLE PROPRIETORSHIP SHALL BE ATTACHED.

ATTACH THE ALL-PURPOSE NOTARY ACKNOWLEDGMENT FORM FOR THE PERSON OR PERSONS EXECUTING THIS DOCUMENT ON BEHALF OF THE OWNER(S).



LEGEND (PRIVATE IMPROVEMENTS ENCRANCHING AT VARIOUS LOCATIONS WITHIN COPPER ROAD, FELIZ ROAD, AND LA RAMBLA AVENUE RIGHT-OF-WAYS AS SHOWN ON CITY RECORD DRAWING TRACING NO.12,182-D)

- PRIVATE STREET LIGHTS (27 TOTAL)
- PRIVATE IRRIGATION FACILITIES, ONE 6-INCH SLEEVE AND ONE 2-INCH CONDUIT, CROSSING COPPER ROAD AT THREE (3) LOCATIONS
- * PRIVATE WOOD CHAISES WITH PLANTER, WOOD BENCHES, AND METAL BENCHES WITHIN COPPER ROAD, FELIZ ROAD, AND LA RAMBLA AVENUE AS SHOWN ON CITY RECORD DRAWING TRACING NO. 12,182-D

EXHIBIT A

K:\...\AUTOCAD\LPD\NELSON\SC19015 RW ENC.DWG			CITY OF SANTA CLARA		Scale
Revised	ND	10-02-19			1" = 200'
Drawn By	ND	6-08-18	AGREEMENT AND COVENANT RUNNING WITH THE LAND (PRIVATE IMPROVEMENT WITHIN THE PUBLIC RIGHT-OF-WAY) 3505 KIFER ROAD		Ref.
Checked By	JD	10-03-19			SC 19,015
Approved By	G. Gomez	10-7-2019			Tracing No.
MICHAEL JACK LIW ASSISTANT DIRECTOR OF PUBLIC WORKS/CITY ENGINEER					12,254-A