

WHEN RECORDED RETURN TO:

City of Pleasanton  
200 Bernal Avenue  
Pleasanton, CA 94566  
ATTN: Peter D. MacDonald  
City Attorney

CERTIFIED A TRUE COPY OF THE ORIGINAL  
RECORDED IN THE OFFICIAL RECORDS OF  
ALAMEDA COUNTY ON 1/19/84

Under Recorder's Serial No. 84-4109

PIONEER TITLE CO. OF CALIFORNIA, INC.

BY *M. Krause*

**DEVELOPMENT AGREEMENT**

Between

**CITY OF PLEASANTON**

and

**CALLAHAN-PENTZ PROPERTIES, PLEASANTON**

# DEVELOPMENT AGREEMENT

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EXHIBITS

- Exhibit 1 - Property
- Exhibit 2 - PT&T Property
- Exhibit 3 - Prudential Property
- Exhibit 4 - Prior Agreements

RECORDING REQUESTED BY:

FOR RECORDER'S USE ONLY:

City of Pleasanton  
200 Bernal Avenue  
Pleasanton, California 94566  
Attn: Peter D. MacDonald,  
City Attorney

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered as of this 30th day of December, 1983, by and between **THE CITY OF PLEASANTON** ("City"), a municipal corporation of the State of California, and **CALLAHAN-PENTZ PROPERTIES, PLEASANTON** ("Developer"), a California general partnership.

**THE PARTIES ENTER THIS AGREEMENT** on the basis of the following facts, understandings and intentions:

A. Hacienda Business Park is the kind of project the California State Legislature had in mind when it authorized development agreements (California Government Code §§ 65864 et. seq.). Since Hacienda Business Park is a large scale project, major investments in public facilities are required in the first several years of the development. The ultimate payback to the City and particularly to the

Developer occurs gradually over a period of twenty-five (25) years or more.

The Developer cannot justify extensive front-end investment in public facilities without some assurance that Hacienda Business Park can be completed. The City cannot be assured of the benefits of a large scale, master planned project like Hacienda Business Park without giving that assurance.

In approving Hacienda Business Park the City has protected the interests of its citizens in the quality of their community and environment through the Planned Unit Development ("PUD") and the 110 Conditions of Approval. As an example, Condition No. 2 provides that, if traffic levels are projected to exceed ninety-one percent (91%) of capacity at any affected intersection, then development of Hacienda Business Park must stop until traffic levels are returned to at least eighty-six percent (86%) of capacity at the affected intersections. Under this Agreement, the City retains the authority to require additional mitigation measures as deemed necessary if any unexpected problems arise.

B. City wishes to (i) eliminate uncertainty in the comprehensive development planning of large scale industrial and commercial projects, (ii) secure orderly development and progressive fiscal benefits for public services planning and (iii) ensure attainment of the goal of

maximum effective utilization of resources at the least economic cost to the public.

C. Developer owns certain real property ("Property") located in the City, County of Alameda, State of California which together with contiguous property of Pacific Telephone & Telegraph Company ("PT&T Property") and contiguous property of The Prudential Insurance Company of America ("Prudential Property") comprise the Hacienda Business Park ("Project"), an industrial and commercial project of approximately five hundred seventy (570) acres. The Property, PT&T Property and Prudential Property are more particularly described in Exhibit 1, Exhibit 2, and Exhibit 3, attached hereto.

D. City desires Developer to develop the Property in accordance with this Agreement and the PUD because the long term orderly development of the Project will provide many public benefits to City including, but not limited to, the following:

(1) Increased Tax Base. The Project will provide the City with increased tax revenues (including real property taxes, sales, business license, and hotel revenues) from tenants and owners of businesses within the Project. These fiscal benefits will make possible improvements in City services, including particularly police, fire and recreational services.

(2) Public Improvements. Development of the Project will facilitate completion of public improvements ("Public Improvements"). The Public Improvements described in Recital E will bring benefits to existing residents of Pleasanton, including improvements in traffic conditions, improvements in attractiveness of community, improvements in liveability of many residences along arterial streets, better fire protection and emergency water supplies, reduction of potential flooding, and street and utility connections between northeast and northwest sections of the City.

(3) Urban Infill. The Project is a logical geographical area for development, providing an urban infill between surrounding properties which have been developed. The Project lies within the intersection of two major freeways, Interstate 580 and Interstate 680. The Project is serviced by major local thoroughfares and lies within a planned expansion of the Bay Area Rapid Transit System. The Project is already separated from open space areas within the City.

(4) Local and Regional Balance. Pleasanton and the Tri-Valley area have far more workers than jobs, making this area a "bedroom" community. The Project contributes to making Pleasanton a full service community with a balance of shopping, jobs, services and homes available to its residents.

(5) Creation of Job Opportunities. The development of the Project will provide a significant number of construction jobs and permanent employment opportunities for the residents of Pleasanton and the Tri-Valley. On balance these will be skilled jobs which will be compatible with the present and future workforce of Pleasanton.

E. Developer and Prudential have committed over Thirty-Two Million Dollars (\$32,000,000.00) in the construction of certain improvements ("Public Improvements") located within the vicinity of the Property including, but not limited to the following:

(1) Off-Site Street Improvements.

(a) Hopyard Road, Arroyo Mocho Bridge, Owens Drive Intersection and Owens Court. The improvements include: (i) widening of Hopyard Road to six through lanes with dual left turn lanes and right hand turn lanes from Owens Drive to Valley Avenue, (ii) construction of a northbound lanes bridge over the Arroyo Mocho, (iii) widening and realignment of Owens Drive (formerly Johnson Drive) east and west of Hopyard Road, (iv) realignment of Owens Court, (v) undergrounding of utilities and (vi) installation of extensive landscaping, sidewalks, street lighting, bus turnouts and shelters and signalization of all intersections.

(b) Santa Rita Road and Arroyo Mocho

Bridge. The improvements include: (i) widening of Santa Rita Road to six through lanes with dual left turn lanes and right hand turn lanes from I-580 to Sutter Gate Avenue, (ii) construction of a south-bound lanes bridge over the Arroyo Mocho, (iii) construction of a new at grade crossing with signalization over the Southern Pacific Railroad tracks, (iv) undergrounding of utilities and (v) installation of extensive landscaping, sidewalks, street lighting, bus turnouts and shelters and signalization of major intersections.

(c) Stoneridge Drive and West Las

Positas Boulevard. The improvements include: (i) widening of Stoneridge Drive to six through lanes with left and right hand turn lanes from Hopyard Road to Johnson Drive, (ii) widening of West Las Positas Boulevard to six through lanes with left and right hand turn lanes from Santa Rita Road to the Southern Pacific Railroad tracks, (iii) construction of an at grade crossing with signalization at the Southern Pacific tracks, (iv) undergrounding of utilities and (v) installation of extensive landscaping, sidewalks, street lighting, bus turnouts and shelters and signalization of major intersections.

(d) Old Santa Rita Road. The improvements include: (i) widening of Old Santa Rita Road to two through lanes with a dual left hand turn lane from Santa Rita Road to I-580, (ii) undergrounding of utilities and (iii) installation of landscaping, sidewalks, street lighting and signalization at the intersection with Santa Rita Road.

(e) Traffic Monitor Computer. Developer and Prudential have financed installation of traffic monitor computer and expansion of City Hall to accommodate same.

(f) Shell Station. Developer and Prudential have agreed to relocate the Shell service station located at the southeast corner of Hopyard Road and Owens Drive.

(2) Soundwalls. Soundwalls to shield residences along arterial streets from traffic noise have been constructed in residential areas along the west side of Hopyard Road between Stoneridge Drive and Valley Avenue, along the east side of Santa Rita Road between Pimlico Drive and West Las Positas Boulevard and along the south side of West Las Positas Boulevard between Santa Rita Road and the Southern Pacific Railroad tracks.

(3) North Pleasanton Water Improvement District ("NPWID"). Developer and Prudential have agreed to pay for all costs associated with the construction of an eight million (8,000,000) gallon emergency water storage reservoir located west of Foothill Boulevard including design costs, right-of-way and site acquisition costs, engineering costs, site construction and environmental assessment and reservoir construction. Developer and Prudential have also agreed to pay for preliminary design and engineering costs associated with the construction of a seven and one-half million (7,500,000) gallon emergency water storage reservoir to be located east of Tassajara Road north of I-580.

(4) Drainage Improvements. Developer and Prudential have improved through deepening, widening, bank reconstruction and revegetation the Hewlett Canal along the south side of I-580, the Chabot Canal from the Hewlett Canal to the Arroyo Mocho and the Tassajara Creek from I-580 to the Arroyo Mocho. Developer and Prudential are in the process of improving through deepening, widening and revegetation the Arroyo de la Laguna from I-680 to Bernal Avenue.

(5) Sewer.

(a) DSRSD Master Plan. Developer and Prudential have agreed to pay for the Master

Planning for the North Pleasanton Sanitary Sewer System for DSRSD.

(b) DSRSD Stage 3A and LAVWMA Expansion. Developer and Prudential have assumed City's share of the cost of the DSRSD and LAVWMA facilities 500,000 gallons per day expansion.

F. The City has agreed to cooperate with Developer and Prudential in the formation of improvement districts for traffic, water and fire improvements that will allocate the out-of-pocket expenses of Public Improvements for traffic, water and fire improvements already constructed by Developer at the time the improvement districts are formed fairly amongst all north Pleasanton commercial and industrial developments. In addition, the improvement districts are expected to finance additional public improvements to include: (i) environmental assessment, design and construction of freeway interchanges at Stoneridge Drive/I-680, Santa Rita Road/I-580, Hacienda Drive/I-580 and West Las Positas Boulevard/I-680, and Hopyard Road/I-580, (ii) the final design, environmental assessment, site work and construction of a seven and one-half million (7,500,000) gallon emergency water storage reservoir east of Tassajara Road north of I-580 and (iii) design and construction of a fire station and fire personnel training center at Stoneridge Drive and Stoneridge Mall Road.

G. Developer and Prudential have constructed the Public Improvements and committed to perform other obligations as contained in certain agreements ("Prior Agreements") between Developer and City and listed in Exhibit 4.

H. On November 21, 1983, the City Planning Commission held a noticed public hearing on this Agreement and (i) determined that this Agreement is consistent with the City's General Plan and (ii) voted to recommend that the City Council approve this Agreement.

I. On November 22, 1983, the City Council held a noticed public hearing on this Agreement, found this Agreement consistent with the City's General Plan and introduced Ordinance No. 1113 approving this Agreement.

J. On December 6, 1983, the City Council adopted Ordinance No. 1113 approving this Agreement.

**NOW, THEREFORE**, pursuant to the authority contained in Section 65864, et seq., of the California Government Code and in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. DEVELOPMENT OF THE PROPERTY.

1.1 PUD. City shall have the right to control development of the Property and Developer shall have the right to

develop the Property in accordance with the provisions of PUD-81-30 adopted as Ordinance 1109 on November 22, 1983.

1.2 General Plan. City shall have the right to control development of the Property and Developer shall have the right to develop the Property in accordance with the general plan ("General Plan") land use designation for the Property (Industrial/Commercial and Offices) as set forth in the General Plan on November 22, 1983.

1.3 Design Review. City and Developer agree that City does not give up its right, by entering into this Agreement, to subsequently exercise discretionary design review approval of site plans as provided in the PUD, including the right to require mitigations reasonably related to the particular site approval. However, City shall not exercise such discretion in a manner which will materially interfere with the development of the Property for the uses and to the density and intensity set forth in the PUD or arbitrarily increase the cost of development.

1.4 Additional Mitigations. City and Developer agree that City shall have discretion to reasonably and in good faith determine that the effects of the Project require additional mitigation measures ("Additional Mitigations") than those required by the PUD, and to impose these Additional Mitigations upon the entire Project. City shall exercise such discretion in a fair and evenhanded manner between all North Pleasanton developers. If such

determination is made, Developer will cooperate in the funding of the Additional Mitigations, to the extent the Project is benefitted by the Additional Mitigations, by cooperating in the formation of assessment districts or other types of funding mechanisms to provide funding for the Additional Mitigations. City and Developer agree to cooperate in the formation of such assessment districts or funding mechanisms to provide funding for the Additional Mitigations. City further agrees that it shall not exercise such discretion in a manner which will materially interfere with the development of the Property for the uses and to the density and intensity set forth in the PUD.

## 2. EFFECT OF AGREEMENT.

2.1 Local Rules. The Property shall be subject to all the rules, regulations, and official policies and fees (e.g., General Plan, zoning code, subdivision code, building code (collectively "Local Rules")) of City governing uses, density, height, design, public improvements and construction standards which are in effect at the time the Agreement is executed and any (i) changes to the Local Rules or (ii) new Local Rules; provided, however, such changes or new Local Rules shall not apply if they materially interfere with development of the Property for the uses and to the height, density and intensity set forth in the PUD or with the rate of development selected by the Developer.

2.2 Prior Agreements. This Agreement shall not be construed to modify or supersede any of the Prior Agreements, and the Prior Agreements shall not be construed to be part of this Agreement. Both parties hereby reaffirm all of the Prior Agreements.

2.3 Supersedure By Subsequent State or Federal Laws or Regulations. In the event that state or federal laws or regulations, enacted after this Agreement has been entered into, prevent or preclude compliance with one or more provisions of the Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding the foregoing, Developer shall have the right to challenge the law or regulation preventing compliance with the terms of this Agreement and, in the event such challenge is successful, the Agreement shall remain unmodified and in full force and effect.

3. TERM.

The term of this Agreement shall commence on the effective date of the ordinance adopting this Agreement and shall terminate December 31, 1996, unless sooner terminated or extended as hereinafter provided.

4. USES.

The permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes shall be as provided in the PUD.

5. STANDARD OF REVIEW OF PERMITS.

All permits ("Permits") required by Developer to develop the Property, including without limitation, (i) road construction permits; (ii) grading permits; (iii) building permits; (iv) sewer connection permits (subject to availability); and (v) certificates of occupancy, shall be expeditiously issued by City upon application by Developer, so long as the following conditions are met:

(a) Compliance With This Agreement and PUD.

Developer is in good faith compliance with all terms and conditions contained in either this Agreement or the PUD; and

(b) Compliance With Other City Regulations.

Developer has complied with the applicable Local Rules as defined in this Agreement.

6. DISPUTES, ANNUAL REVIEW, DEFAULT.

6.1 Annual Review. City and Developer shall annually review this Agreement and all actions taken pursuant to the terms of this Agreement.

6.2 Developer's Submission. Not less than thirty (30) days nor more than sixty (60) days prior to September first of each year, Developer shall submit a letter to the City Council demonstrating Developer's good faith compliance with the terms and conditions of this Agreement and shall include in such letter a statement that such letter is being submitted to City pursuant to the requirements of Government Code Section 65865.1.

6.3 City's Findings. Within thirty (30) days after the receipt of Developer's evidence, the City Council shall determine whether Developer has, for the year under review, demonstrated good faith compliance with the terms and conditions of this Agreement. If the City Council finds that Developer has complied, the annual review shall be deemed concluded. If the City Council finds and determines that Developer has not complied in good faith with the terms and conditions of this Agreement for the year under review, the City Council may issue a written notice of noncompliance ("Notice of Noncompliance") specifying in detail the grounds therefor and all facts demonstrating such noncompliance such that Developer may address the issues raised in the Notice of Noncompliance on a point-by-point basis. Developer shall have thirty (30) days to respond in writing to the Notice of Noncompliance. If, after receipt of the Developer's response or the passage of the thirty (30) day response period, the City Council, at a public hearing, finds and

determines, on the basis of substantial evidence, that the Developer and/or any successor in interest thereto has not complied in good faith with terms or conditions of the Agreement or PUD, the City Council may terminate or modify the Agreement.

6.4 Remedies.

6.4.1 Specific Performance. Unless amended or terminated in accordance with the terms of this Agreement, this Agreement is specifically enforceable by either party. Notwithstanding anything to the contrary herein, the parties hereto recognize and acknowledge that there is a risk that circumstances may occur under which one of the parties may not be able to specifically perform its obligations pursuant to the terms of this Agreement for reasons beyond that party's control. City agrees and acknowledges that if one party cannot reasonably be required to specifically perform, then the other party's remedies will be limited to damages, amendment or termination of this Agreement.

6.4.2 Damages. Both parties recognize and agree that damages are not an appropriate remedy for the party herein deprived of the full benefits of this Agreement and, in consideration for this Agreement, waive any claim to compensatory damages for breach of this Agreement, except as provided herein. In the event a court shall determine that an action or course of conduct by

City or Developer shall constitute a willful and intentional attempt to violate this Agreement, then compensatory damages shall be available. Both parties waive any claim for punitive damages and any claim of personal liability against the officials of the other party.

7. AMENDMENT OR TERMINATION.

7.1 Agreement. If City and Developer mutually agree to terminate or amend the terms of this Agreement, the amendment or termination shall be accomplished in the manner provided in state law for the adoption of development agreements, except as provided in Subsection 7.2.

7.2 PUD. City and Developer may by mutual agreement, amend or modify the PUD, including Conditions of Approval, without seeking an amendment of this Agreement. This Agreement shall incorporate all the terms and conditions of the PUD as so amended or modified.

8. ASSIGNABILITY.

The right to develop the Property pursuant to this Agreement and the obligation to comply with conditions of the PUD shall run with the Property except as provided herein:

(a) The obligations under the PUD affecting or benefitting more than one site within the Property shall be personal to Developer and shall also run with any

portion of the Property which is still owned by Developer at the time City enforces the obligation.

However, to the extent that such obligations arise from assessment liens or benefit districts, the obligations shall run with the lands assessed or benefitted whether or not still owned by Developer.

(b) Developer may assign its obligations pursuant to subsection (a) only upon approval by the City.

(c) Any right which Developer may have to reimbursement or credit for costs incurred in construction of any improvements, including but not limited to the Improvements, shall be a personal covenant that shall only apply to Developer unless Developer elects to have the covenant attached to the Property.

9. GENERAL.

9.1 Construction of Agreement. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California.

9.2 Severability. If any material provision of this Agreement or the PUD or the General Plan Amendment adopted

on November 8, 1983, shall be adjudged to be invalid, void or illegal, each party shall have the right to unilaterally terminate this Agreement, or to mutually seek amendment of this Agreement pursuant to Section 7.

9.3 Attorneys' Fees. In the event of any dispute between the parties involving the covenants or conditions contained in this Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

9.4 No Waiver. No delay or omission by the City in exercising any right or power accruing upon the noncompliance or failure to perform by Developer under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by City of any of the covenants or conditions to be performed by Developer shall not be construed as a waiver of any succeeding breach of the same or other covenants and conditions hereof.

9.5 Exhibits. The following exhibits attached hereto are incorporated herein by this reference.

Exhibit 1.

Exhibit 2.

Exhibit 3.

Exhibit 4.

10. NOTICE.

10.1 To Developer. Any notice required or permitted to be given by City to Developer under or pursuant to this Agreement shall be deemed sufficiently given if in writing and delivered personally to an officer of Developer, or mailed, with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed to Developer as follows:

Callahan-Pentz Properties, Pleasanton  
4637 Chabot Drive  
Suite 300  
Pleasanton, California 94566  
Attn: Mr. Joseph W. Callahan

10.2 To City. Any notice required or permitted to be given to City under or pursuant to this Agreement shall be made and given in writing, if by mail, with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed to:

City of Pleasanton  
200 Bernal Avenue  
Pleasanton, California 94566  
Attn: City Council  
City Attorney  
City Manager  
Planning Director

and, if personally delivered, to the City Clerk, at the City Hall, together with copies marked for the City Council, City Manager and City Attorney.

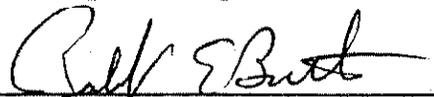
10.3 Effect of Notice. The provisions of this Section shall be deemed directives only and shall not detract from

the validity of any notice given in a manner which would be legally effective in the absence of this Section.

IN WITNESS WHEREOF, City and Developer have executed this Agreement in one (1) or more copies as of the day and year first above written.

"City"

THE CITY OF PLEASANTON,  
a municipal corporation

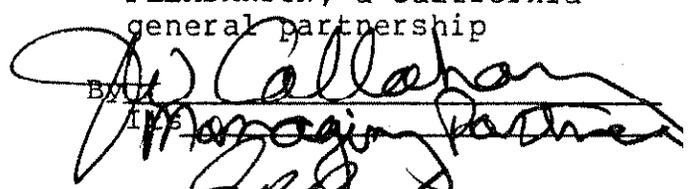
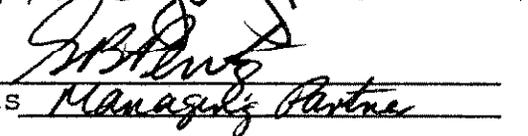
By   
Robert E. Butler, Mayor

ATTEST:

  
James R. Walker, City Clerk

"Developer"

CALLAHAN-PENTZ PROPERTIES,  
PLEASANTON, a California  
general partnership

By   
Its   
Managing Partner

APPROVED AS TO FORM:

  
Peter D. MacDonald,  
City Attorney

EXHIBIT 1

PROPERTY

REAL PROPERTY, in the City of Pleasanton, County of Alameda, State of California, described as follows:

Lots 2, 3, 4, 16, 17, 28, 30, 34 and 37, as said lots are shown on Parcel Map 3858, filed August 13, 1982 in Book 135 of Maps at pages 49-56, Official Records of Alameda County, California.



EXHIBIT 2

PT&T PROPERTY

REAL PROPERTY, in the City of Pleasanton, County of Alameda, State of California, described as follows:

Lot 29, as said lot is shown on Parcel Map 3858, filed August 13, 1982 in Book 135 of Maps at pages 49-56, Official Records of Alameda County, California.



EXHIBIT 3

**PRUDENTIAL PROPERTY**

REAL PROPERTY, in the City of Pleasanton, County of Alameda, State of California, described as follows:

Lots 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 35 and 36 as shown on Parcel Map 3858, filed August 13, 1982 in Book 135 of Maps at pages 49-56, Official Records of Alameda County, California.



EXHIBIT 4

PRIOR AGREEMENTS

1. NPID

- a. Petition For Special Assessment Proceedings, to City Council dated March 22, 1983.
- b. Improvements
  - (1) Street Improvement Agreement between City, Developer and Prudential dated September 28, 1982 (Hopyard Road)
  - (2) Agreement between City, Developer and Prudential dated April 26, 1983 (Hopyard Road)
  - (3) Improvement Agreement between City, Developer and Prudential dated March 12, 1983 (Santa Rita Road; Arroyo Mocho Bridge)
  - (4) Street Improvement Agreement between City, Developer and Prudential dated May 16, 1983 (Stoneridge Drive, West Las Positas)
  - (5) Agreement between City, Developer and Prudential, dated April 26, 1983. Agreement between City, Delta Properties, Developer and Prudential, dated December 27, 1982. Relocation of Johnson Drive - East Side (Owens Drive - Owens Court)
  - (6) Agreement For Relocation of Johnson Drive; Memorandum of Agreement, between Delta Properties, Developer and Prudential, dated December 30, 1982

2. NPWID. Agreement between City and Developer dated July 26, 1983

3. NPFID. Petition For Special Assessment Proceedings.

4. Second Amended Agreement between City, Developer and Prudential effective October 31, 1983.

5. Subdivision Agreement between City and Developer, dated July 23, 1982

Exhibit 4

6. Agreement between City and Developer, dated July 27,  
1982 (Mitigation Measures Agreement)

Exhibit 4

STATE OF CALIFORNIA )  
COUNTY OF Santa Clara ) SS.

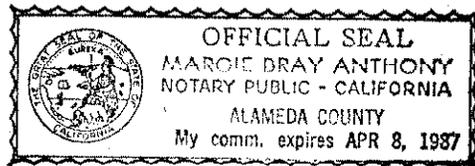
On this 30th day of December, in the year 1983,  
before me, Margie Dray Anthony, Notary Public in  
and for the State of California, personally appeared  
**JOSEPH W. CALLAHAN** and **GEORGE B. PENTZ**, personally known to  
me (or proved to me on the basis of satisfactory evidence)  
to be the persons who executed this instrument, on behalf of  
the partnership and acknowledged to me that the partnership  
executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my official seal in the County of Alameda  
the day and year in this certificate first above written.

Margie Dray Anthony  
NOTARY PUBLIC  
In and for the State of California

My Commission Expires: 4-8-87

(SEAL)



K313-40-J/Dec29