

1 **SHARED PARKING FACILITY EASEMENT AGREEMENT**

2
3 THIS SHARED PARKING FACILITY EASEMENT AGREEMENT (the "Agreement")
4 is made and entered into this day of March 2008, by PCCP Monrovia, LLC, a Delaware limited
5 liability company ("Developer") and the City of Monrovia, a municipal corporation ("City"),
6 with reference to the facts set forth below. Developer and City may each individually be
7 referred to as a "Party" and may collectively be referred to as the "Parties".

8
9 **RECITALS**

10
11 All capitalized terms shall have the meanings set forth in **ARTICLE 1** of this
12 Agreement.

13
14 A. Developer is the owner of certain real property located in Monrovia, California,
15 more particularly described on **Exhibit "A"** attached hereto and incorporated herein (the "Mixed
16 Use Property"). Developer is developing a mixed use residential, live/work and commercial
17 condominium project ("Mixed Use Project") on the Mixed Use Property and will convey the
18 Condominiums to the Owners in the Mixed Use Project.

19
20 B. The Mixed Use Project includes a subterranean parking garage ("Mixed Use
21 Parking Garage") located below the Condominiums on certain portions of the Mixed Use
22 Property. The Mixed Use Project will be located adjacent to a parcel of land which is owned (or
23 will be owned) by the City ("City Property") more particularly described on **Exhibit "B"**
24 attached hereto and incorporated herein. The Mixed Use Property and the City Property may be
25 referred to collectively herein as the "Properties."

26
27 C. A parking structure containing two hundred seventy nine (279) separately marked
28 parking spaces has been constructed on the City Property ("City Parking Structure"). The City
29 Parking Structure is a multi-level parking structure, which will provide (i) parking for the general
30 public, (ii) parking allocated exclusively for the Mixed Use Project, and (iii) access to the Mixed
31 Use Parking Garage. There is an elevator within the City Parking Structure ("City Elevator")
32 which provides access to all levels of parking in the City Parking Structure, including the level
33 which includes the Gated Parking Area, and there is an elevator within the Mixed Use Parking
34 Garage which is intended for use solely by the Owners and Occupants of the Condominiums and
35 which provides access from the Mixed Use Parking Garage to street level. The City Parking
36 Structure will be contiguous to, and integrated with, the Mixed Use Project as shown on the
37 parking plan attached hereto as **Exhibit "C"** ("Parking Plan"). An integrated fire suppression
38 system will serve both the City Parking Structure and the Mixed Use Parking Garage ("Fire
39 Suppression System").

40
41 D. The Mixed Use Project will be subject to the Declaration of Covenants,
42 Conditions and Restrictions, Reservation of Easements, and Alternative Dispute Resolution
43 Procedures for Colorado Commons ("Mixed Use Declaration") and, upon the first Close of
44 Escrow for the sale of a Condominium in the Mixed Use Project to an Owner, will be governed
45 by the Colorado Commons Maintenance Association ("Mixed Use Association").

1 E. The Parties acknowledge and agree that all of the rights and all of the obligations
2 of Developer under this Agreement shall automatically be assigned and delegated to and
3 assumed by the Mixed Use Association commencing on the Commencement Date.

4
5 F. Developer and City desire, among other things, to create easements for shared use
6 of certain parking and other facilities in the City Parking Structure as set forth herein and to
7 provide for related maintenance and the sharing of certain costs, subject to the terms and
8 conditions of this Agreement.

9
10 NOW, THEREFORE, Developer and the City agree as set forth below.

11
12
13 **ARTICLE 1**
14 **DEFINITIONS**

15
16 **1.1 Agreement** The term "Agreement" means this Shared Parking Facility
17 Easement Agreement as it may be amended or supplemented from time to time.

18
19 **1.2 Allocable Share** The term "Allocable Share" refers to a Party's
20 proportionate share of all Shared Expenses which shall be allocated as set forth below:

21
22 City Allocation: 67.00%
23
24 Mixed Use Project Allocation: 33.00%
25

26 The Allocable Share is a pro-rata allocation based on the allocation of Parking Spaces
27 within the City Parking Structure (i.e., 187/279 and 92/279). The Parties acknowledge and agree
28 that the Allocable Shares are fixed and shall not be re-negotiable for any reason or condition
29 whatsoever.

30
31 **1.3 Applicable Laws** The term "Applicable Laws" means the entitlements for the
32 City Parking Structure and the Mixed Use Project and any law, regulation, rule, order and
33 ordinance of any governmental agencies having jurisdiction over the structure and the Mixed
34 Use Project and the City Parking Structure which are applicable to the City Parking Structure.

35
36 **1.4 Association Property** The term "Association Property" refers to any real
37 property owned in fee title, or by easement, by the Mixed Use Association.

38
39 **1.5 Budget** The term "Budget" refers to the budget prepared under **ARTICLE**
40 **4** of this Agreement.

41
42 **1.6 City** The term "City" means the City of Monrovia, California.

43
44 **1.7 City Elevator** The term "City Elevator" means the elevator within the
45 City Parking Structure as described in Recital C above.

1 **1.8 City Parking Structure** The term "City Parking Structure" refers to the
2 entire parking structure located on the City Property as described in Recital C above.

3
4 **1.9 City Property** The term "City Property" refers to the real property owned
5 by the City described on **Exhibit "B"**.

6
7 **1.10 Claims** The term "Claims" means all claims, actions, demands, liabilities,
8 damages, costs, penalties, forfeitures, losses or expenses, including, without limitation,
9 reasonable attorneys' fees and costs and the costs and expenses of enforcing any indemnification,
10 defense and/or hold harmless obligations under this Agreement.

11
12 **1.11 Close of Escrow** The term "Close of Escrow" refers to the date upon which a
13 deed is recorded conveying a Condominium in the Mixed Use Project to an Owner.

14
15 **1.12 Commencement Date** The term "Commencement Date" refers to the date
16 upon which both of the following conditions have been satisfied: (i) the first Close of Escrow for
17 the sale a Condominium in the Development has occurred; and (ii) the City Parking Structure has
18 been conveyed by Developer to the City. All of the easements, rights and obligations under this
19 Agreement shall automatically commence as of the Commencement Date. Until the
20 Commencement Date, the City Parking Structure will be owned and all use thereof controlled by
21 Developer.

22
23 **1.13 Completion of Construction** The term "Completion of Construction" means the
24 date all of the following have occurred: (a) construction has been completed for the Mixed Use
25 Project and the City Parking Structure, and (b) any certificate of occupancy or equivalent
26 approval permitting occupancy and habitation of the Mixed Use Project and use of the City
27 Parking Structure has been issued by the City.

28
29 **1.14 Condominium** The term "Condominium" means an estate in real property
30 as defined in California Civil Code Section 1351(f).

31
32 **1.15 Condominium Plan** The term "Condominium Plan" means any condominium
33 plan recorded pursuant to California Civil Code Section 1351 covering any portion of the Mixed
34 Use Project.

35
36 **1.16 Default Interest Rate** The term "Default Interest Rate" means the lesser of:
37 (a) four percent (4%) per annum in excess of the "Prime Rate" or (b) the highest lawful rate. The
38 Prime Rate shall be the rate announced as such from time to time by Bank of America or its
39 successor. If there shall be no such announced rate of such bank or its successor, then the Prime
40 Rate shall be such equivalent rate as is charged from time to time by major money-center banks.

41
42 **1.17 Developer** The term "Developer" means PCCP Monrovia, LLC, a Delaware
43 limited liability company, and to any person(s) or entity(ies) to whom the Developer's rights
44 hereunder shall be expressly assigned and/or the Developer's obligations hereunder shall be
45 expressly delegated pursuant to a written assignment or other instrument in the Official Records
46 of Los Angeles County, California. Any such assignment of rights and/or delegation of duties
47 may be to all or any portion of the Mixed Use Project and may include only certain specific

1 rights and/or duties of the Developer and may be subject to such conditions as Developer may
2 impose in its sole discretion. (The Parties acknowledge and agree that all of the Developer's
3 rights and all of the Developer's obligations hereunder shall automatically be assigned and
4 delegated to and assumed by the Mixed Use Association commencing on the Commencement
5 Date.)

6
7 **1.18 DRE** The term "DRE" refers to the California Department of Real Estate.

8
9 **1.19 Emergency** The term "Emergency" means any situation, condition or event
10 which threatens substantial imminent danger or injury to any person or property subject to this
11 Agreement.

12
13 **1.20 Enforcing Party** The term "Enforcing Party" refers to a Party exercising its
14 right to cure the failure of a Maintaining Party to perform its maintenance or repair obligations
15 under this Agreement.

16
17 **1.21 Fire Suppression Systems** The term "Fire Suppression Systems" refers to the
18 integrated fire suppression system that will serve both the City Parking Structure and the Mixed
19 Use Parking Garage.

20
21 **1.22 Fiscal Year** The term "Fiscal Year" means each fiscal year commencing on
22 July 1 and ending on June 30 of the following calendar year. The first full Fiscal year shall
23 commence on July 1 immediately following the Commencement Date.

24
25 **1.23 Gated Parking Area** The term "Gated Parking Area" refers to the area within the
26 lower level of the City Parking Structure that is enclosed by the Mixed Use Access Gate and
27 which contains sixty-four (64) Mixed Use Parking Spaces.

28
29 **1.24 Insurance Proceeds** The term "Insurance Proceeds" refers to the insurance
30 proceeds described in **Section 7.1.1.**

31
32 **1.25 Landscaped Area** The term "Landscaped Area" refers solely to the ten foot
33 (10') landscaped strip located along a portion of the northerly exterior wall of the City Parking
34 Structure as designated on the Site Plan attached hereto as **Exhibit "D."**

35
36 **1.26 Maintaining Party** The term "Maintaining Party" refers to the Party
37 responsible for performing a maintenance or repair obligation under this Agreement.

38
39 **1.27 Maintenance; Maintain; Maintaining** The term "maintenance", "maintain",
40 or "maintaining" (whether or not capitalized), shall have the meaning set forth in **Section 3.1.1.**

41
42 **1.28 Mixed Use Access Gate** The term "Mixed Use Access Gate" refers to the
43 gate located in the City Parking Structure which will restrict access to the Mixed Use Parking
44 Spaces.

1 **1.29 Mixed Use Association** The term "Mixed Use Association" refers to the
2 Colorado Commons Maintenance Association that has been or will be formed by Developer as a
3 California non-profit mutual benefit corporation to operate and govern the Mixed Use Project.
4

5 **1.30 Mixed Use Declaration** The term "Mixed Use Declaration" refers to the
6 Declaration of Covenants, Conditions and Restrictions, Reservation of Easements, and
7 Alternative Dispute Resolution Procedures for Colorado Commons, recorded or to be recorded in
8 the Official Records of Los Angeles County covering the Mixed Use Property, as same may be
9 restated and/or amended from time to time.
10

11 **1.31 Mixed Use Parking Garage** The term "Mixed Use Parking Garage" refers to the
12 subterranean parking garage located in the lower levels of the Mixed Use Project. Parking
13 Spaces within the Mixed Use Parking Garage will be accessible through the Mixed Use Access
14 Gate.
15

16 **1.32 Mixed Use Project** The term "Mixed Use Project" refers to the mixed use
17 residential, live/work and commercial condominium project constructed on the Mixed Use
18 Property, including, without limitation, the Mixed Use Parking Garage.
19

20 **1.33 Mixed Use Property** The term "Mixed Use Property" refers to the real property
21 described on **Exhibit "A"**.
22

23 **1.34 Mixed Use Utility Facilities** The term "Mixed Use Utility Facilities" means any
24 Utility Facilities serving or benefiting the Mixed Use Project.
25

26 **1.35 Mortgage** The term "Mortgage" means any duly recorded mortgage or deed
27 of trust encumbering any portion of the real property covered by this Agreement.
28

29 **1.36 Mortgagee** The term "Mortgagee" means the mortgagee or beneficiary under
30 any Mortgage.
31

32 **1.37 Occupant** The term "Occupant" means any person or entity, other than an
33 Owner, who has the right to use and occupy any portion of a Condominium, including, without
34 limitation, an Owner's family members, licensees, lessees, tenants, subtenants and/or assignees.
35

36 **1.38 Owner** The term "Owner" means any and all persons or entities who alone or
37 collectively are the record owners of a Condominium, but excluding those having any such
38 interest merely as security for the performance of an obligation.
39

40 **1.39 Parking Plan** The term "Parking Plan" refers to the plan attached hereto as
41 **Exhibit "C"** designating the parking spaces allocated to the Mixed Use Project, including the
42 Mixed Use Parking Spaces, the Ungated Mixed Use Parking Spaces and the Ungated Overnight
43 Parking Spaces With Permit, and any modifications thereto.
44

45 **1.40 Parking Spaces** The term "Parking Space" or "Parking Spaces" refers to the
46 parking spaces located within the Mixed Use Parking Garage and/or the City Parking Structure as
47 set forth on the Parking Plan.

1 **1.40.1 Public Parking Spaces.** The term "Public Parking Spaces" refers to the
2 one hundred eighty-seven (187) Parking Spaces in the City Parking Structure allocated for use by
3 the public and all Permitted Users (including, without limitation, the Owners and Occupants).
4

5 **1.40.2 Mixed Use Parking Spaces.** The term "Mixed Use Parking Spaces"
6 refers collectively to the one hundred twenty seven (127) total Parking Spaces allocated for the
7 exclusive use of the Mixed Use Project as shown on the Parking Plan. Sixty-four (64) of the
8 Mixed Use Parking Spaces will be located within the Gated Parking Area within the lower level
9 of the City Parking Structure as shown on the Parking Plan. Sixty-three (63) of the Mixed Use
10 Parking Spaces will be located within the Mixed Use Parking Garage as shown on the Parking
11 Plan. The Mixed Use Parking Spaces have restricted access via the Mixed Use Access Gate.
12

13 **1.40.3 Ungated Mixed Use Parking Spaces.** The term "Ungated Mixed Use
14 Parking Spaces" refers to the eleven (11) Parking Spaces located within the City Parking
15 Structure which are allocated for the exclusive use of the Mixed Use Project as shown on the
16 Parking Plan and which are not within the Gated Parking Area.
17

18 **1.40.4 Ungated Overnight Parking Spaces With Permit.** The term "Ungated
19 Overnight Parking Spaces With Permit" refers to those certain seventeen (17) Parking Spaces
20 which are allocated for the exclusive use by the Owners and Occupants and their guests and
21 invitees for overnight parking pursuant to a parking permit issued by the Mixed Use Association
22 as provided herein and in the Mixed Use Declaration. The Ungated Overnight Parking Spaces
23 With Permit include sixteen (16) parking spaces and one (1) handicapped parking space. The
24 location of the Ungated Overnight Parking Spaces With Permit is generally depicted on the
25 Parking Plan.
26

27 **1.41 Party or Parties** The term "Party" or "Parties" refers individually or
28 collectively as the context requires to the City and to the Developer until the Commencement
29 Date and after the Commencement Date to the City and to the Mixed Use Association.
30

31 **1.42 Permitted User(s)** The term "Permitted User(s)" means the Owners and
32 Occupants, and the guests, agents, contractors, vendors and other invitees of any Owner, any
33 Occupant and/or the Mixed Use Association and, as the context requires, members of the general
34 public using the City Parking Structure.
35

36 **1.43 Properties** The term "Properties" refers collectively to the City Property and
37 the Mixed Use Property.
38

39 **1.44 Property Insurance** The term "Property Insurance" means the policy of
40 property insurance required to be maintained by the City pursuant to **ARTICLE 7** of this
41 Agreement. The Property Insurance shall be included within Shared Expenses as provided herein.
42

43 **1.45 Public Report** The term "Public Report" means a final subdivision public
44 report issued by the DRE covering a phase of the Mixed Use Project.
45
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47

1 Board of Directors shall be the Responsible Party under this Agreement as to the Mixed Use
2 Property and shall make all decisions on behalf of the Owners. Any approvals or consents to be
3 given by the Mixed Use Association under this Agreement shall be deemed given if approved by
4 the then president of the Association acting on behalf of the Board of Directors of the Mixed Use
5 Association.
6

7 **2.2 Easements in Favor of Mixed Use Project**
8

9 **2.2.1 Commencement of Easements Granted.** All of the easement rights
10 granted in this Agreement shall automatically become effective as of the Commencement Date.
11 The Parties acknowledge and agree that as to each easement granted to an Owner as set forth
12 herein, such Owner may delegate his right to use such easement to his respective Occupants as
13 more fully set forth in the Mixed Use Declaration.
14

15 **2.2.2 Non-Exclusive Access Easements.** City grants to Developer, to the
16 Mixed Use Association and to the Owners, non-exclusive easements for vehicular and pedestrian
17 ingress, egress and access in, on, over, through and across the traffic lanes within the City
18 Parking Structure to and from:
19

20 (a) The sixty-three (63) Mixed Use Parking Spaces located in the
21 Mixed Use Parking Garage;
22

23 (b) The sixty-four (64) Mixed Use Parking Spaces located within the
24 Gated Parking Area of the City Parking Structure;
25

26 (c) The eleven (11) Ungated Mixed Use Parking Spaces located within
27 the City Parking Structure; and
28

29 (d) The seventeen (17) Ungated Overnight Parking Spaces With
30 Permit located within the City Parking Structure.
31

32 **2.2.3 Exclusive Use Parking Easements.** City grants to Developer, and to the
33 extent any of the Parking Spaces have been assigned by Developer to the Owners, also grants to
34 such Owners, exclusive easements for parking purposes in, on, over, through and across the City
35 Parking Structure as follows:
36

37 (a) For the parking of sixty-four (64) vehicles in the Mixed Use
38 Parking Spaces located within the Gated Parking Area of the City Parking Structure;
39

40 (b) For the parking (including overnight parking) of eleven (11)
41 vehicles in the Ungated Mixed Use Parking Spaces located outside the Gated Parking Area of the
42 City Parking Structure in the area designated on the Parking Plan; and
43

44 (c) For the parking (including overnight parking) of seventeen (17)
45 vehicles (each vehicle pursuant to a separate permit issued by the Mixed Use Association) in the
46 Ungated Overnight Parking Spaces With Permit located outside the Gated Parking Area of the
47 City Parking Structure in the area designated on the Parking Plan.

1 Each Owner shall have the right to use the respective Parking Space(s) assigned to his
2 respective Condominium Unit as shown on the Parking Plan attached to the Mixed Use
3 Declaration. Additionally, the Permitted Users who have obtained a permit from the Mixed Use
4 Association shall have the right to park a vehicle in an Ungated Overnight Parking Space With
5 Permit subject to the provisions of this Agreement and the Mixed Use Declaration.
6

7 The City hereby reserves from such grant of easement the right of ingress, egress and
8 access for Emergency purposes.
9

10 **2.2.4 Non-Exclusive Elevator Easements.** City grants to Developer, to the
11 Mixed Use Association and to the Owners a non-exclusive easement for access to and use of the
12 City Elevator as shown on the Parking Plan between the street level and the lowest level of the
13 City Parking Structure which includes portions of the Gated Parking Area, and between other
14 levels as needed for access to the Ungated Overnight Parking Spaces With Permit. The Parties
15 acknowledge that such easement also includes the exclusive right to install, operate, maintain,
16 repair and replace a device within the City Elevator (including, without limitation, a card reader)
17 to control access to the Gated Parking Area for the benefit of the Owners, which device shall be
18 maintained by the Mixed Use Association ("City Elevator Access Device").
19

20 **2.2.5 Non-Exclusive Maintenance Easements.** City grants to the Developer
21 and to the Mixed Use Association for the benefit of the Mixed Use Project a non-exclusive
22 easement for access and maintenance as follows:
23

24 (a) Maintenance of the Gated Parking Area;

25 (b) Maintenance of the Ungated Mixed Use Parking Spaces; and
26

27 (c) Maintenance of any other portions of the City Property that the
28 Mixed Use Association is obligated to maintain pursuant to this Agreement.
29
30

31 **2.2.6 Non-Exclusive Easement for Mixed Use Access Gate.** City grants to
32 Developer and to the Mixed Use Association for the benefit of the Mixed Use Project a non-
33 exclusive easement for the placement, operation, maintenance, repair and replacement of the
34 Mixed Use Access Gate.
35

36 **2.2.7 Non-Exclusive Easement for Sump Pumps.** City grants to Developer
37 and the Mixed Use Association for the benefit of the Mixed Use Project a non-exclusive
38 easement for the placement, operation, maintenance, repair and replacement of the Sump Pumps.
39

40 **2.2.8 Non-Exclusive Easement for Fire Suppression System.** City grants to
41 Developer and the Mixed Use Association for the benefit of the Mixed Use Project a non-
42 exclusive easement for the inspection, placement, operation, maintenance, repair and
43 replacement of the Fire Suppression System serving the City Parking Structure and the Mixed
44 Use Parking Garage.
45

46 **2.2.9 Non-Exclusive Easement for Ventilation Systems.** City grants to
47 Developer and the Mixed Use Association for the benefit of the Mixed Use Project a non-
48

1 exclusive easement for the placement, operation, use, maintenance, repair and replacement of
2 ventilation systems servicing the Mixed Use Parking Garage or the Gated Parking Area.

3
4 **2.2.10 Non-Exclusive Easement for Repair and Restoration.** City grants to
5 Developer and the Mixed Use Association for the benefit of the Mixed Use Project a non-
6 exclusive easement to the extent reasonably necessary for purposes of performing maintenance,
7 staging, repair, restoration and reconstruction of the Mixed Use Project.

8
9 **2.2.11 Non-Exclusive Easement for Utility Facilities.** City grants to Developer
10 and the Mixed Use Association for the benefit of the Mixed Use Project a non-exclusive
11 easement for the placement and operation of any Mixed Use Utility Facilities servicing any
12 portion of the Mixed Use Project or the Gated Parking Area, subject to compliance with
13 applicable laws and codes.

14
15 **2.2.12 Non-Exclusive Easement for Pedestrian Access Within the Stairwells.**
16 City grants to Developer, to the Mixed Use Association and to the Owners a non-exclusive
17 easement for access to and use of the portions of the stairwells in the City Parking Structure as
18 shown on the Parking Plan located between the street level and the lowest level of the City
19 Parking Structure which includes portions of the Gated Parking Area. The Parties acknowledge
20 that such easement also includes the right to install, operate, maintain, repair and replace within
21 each stairwell an access door (including a card reader) to control access into the Gated Parking
22 Area for the benefit of the Owners, which door shall be maintained by the Mixed Use
23 Association ("City Stairwell Access Door").

24
25 **2.2.13 Non-Exclusive Easement for Drainage.** City grants to Developer, the
26 Mixed Use Association and the Owners, a non-exclusive easement for drainage in, through and
27 across the City Property as may be necessary to accommodate the drainage in place as of the date
28 of completion of construction of the Mixed Use Project.

29
30 **2.2.14 Easement for Support and Encroachment.** City grants to the Developer
31 and the Mixed Use Association for the benefit of the Mixed Use Project, over, under, across and
32 through the City Property (including the City Parking Structure), a non-exclusive easement for
33 encroachment, support, maintenance, repair, and use of such portions of the City Property or City
34 Parking Structure as are encroached upon, including, without limitation, those portions of the
35 Mixed Use Parking Garage and certain stairway areas which encroach into the City Property and
36 City Parking Structure as detailed on the Site Plan or encroachments that result from any original
37 construction design, accretion, erosion, addition, deterioration, decay, errors in original
38 construction, movement, settlement, shifting or subsidence of any building, structure, or other
39 improvements or any portion thereof, or any other cause. In the event any portion of the Mixed
40 Use Project is partially or totally destroyed, the encroachment easement shall exist for any
41 replacement structure that is rebuilt pursuant to the original construction design as modified
42 based upon any permits issued by the City for the rebuilding of the Mixed Use Project. The
43 easement for the maintenance of the encroaching improvement shall exist for as long as the
44 encroachments exist; provided, however, that no valid easement of encroachment shall be created
45 due to the willful misconduct of the Mixed Use Association or any Owner. Any easement of
46 encroachment may, but need not be, cured by repair and restoration of the structure.

47

1 **2.2.15 Easement for Signage.** City grants to Developer and the Mixed Use
2 Association, a non-exclusive easement to install and maintain any signage which the Developer
3 or the Mixed Use Association deems necessary or appropriate (including, but not limited to,
4 signage for the Ungated Mixed Use Parking Spaces and the Ungated Overnight Parking Spaces
5 With Permit).
6

7 **2.3 Reciprocal Easements for Exercise of Remedies** Each Party grants to the other
8 Party a non-exclusive easement for the benefit of such Party as reasonably required to cure a
9 failure by the other Party to perform any of its maintenance obligations under this Agreement as
10 permitted pursuant to **Section 3.1.6.**
11

12 **2.4 Limitations on Easement Rights** The easements herein granted or reserved
13 are granted and reserved subject to any and all covenants, conditions, restrictions, encumbrances,
14 easements, dedications, and rights of way of record or apparent.
15

16 **2.5 Easements Run with the Land** Each easement set forth and granted in this
17 Agreement shall run with and bind the City Property and the Mixed Use Property, as the case
18 may be, which is benefited or burdened by such easement and shall be binding upon and inure to
19 the benefit of the Parties and their respective heirs, successors, assigns and grantees.
20

21 **2.6 Term of Easements** The easements granted herein shall be in perpetuity;
22 provided however, in the event of a casualty in which the Mixed Use Project and City Parking
23 Structure are damaged or destroyed and the Owners and their respective Mortgagees elect not to
24 rebuild the Mixed Use Project as provided in the Mixed Use Declaration, then this Agreement
25 and all rights and easements granted under this Article shall terminate as provided in **Article 7.**
26

27 **2.7 Developer's Easement Rights** Notwithstanding the assignment of the
28 Declarant' s rights hereunder to the Mixed Use Association as of the Commencement Date as
29 provided above, Developer hereby reserves the right of access through the City Parking Structure
30 and will have a non-exclusive right to exercise the rights of ingress, egress and access and, to the
31 extent reasonably necessary, the other easement rights granted hereunder continuing through the
32 fifteenth (15th) anniversary of the Close of Escrow for the sale of the last Condominium from
33 Developer to an Owner.
34

35 **2.8 Access Rights to Offsite Drainage Facilities** The City hereby grants to the
36 Developer and to the Association, a perpetual right of unrestricted access to those certain water
37 quality control facilities (including, without limitation, the hydrodynamic vortex separator device
38 and adjacent junction box) which are located in the Colorado Boulevard right-of-way adjacent to
39 the City Parking Structure and Mixed Use Project to enable such facilities to be maintained in
40 accordance with the provisions of the Mixed Use Declaration.
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ARTICLE 3
MAINTENANCE

3.1 Maintenance

3.1.1 Maintenance. Unless the context otherwise requires, as used in this Agreement, "maintenance", "maintain" or "maintaining" means the inspection, maintenance, repair, sweeping, replacement, reconstruction and/or restoration of the areas and facilities designated for maintenance by the Mixed Use Association or the City on a regularly scheduled basis as determined by the Board of Directors of the Mixed Use Association, or by the City, as the case may be, based upon the nature of the specific area or facility to be maintained. To the extent repair, replacement, reconstruction and/or restoration is required as a result of damage or destruction under **ARTICLE 7**, then the repair, replacement, reconstruction and restoration shall be governed by the provisions of **ARTICLE 7**.

3.1.2 Allocation of Maintenance Obligations. The primary objective of the Parties in allocating maintenance responsibilities for the parking and other integrated areas of the Mixed Use Project and the City Parking Structure is to minimize the amount of shared maintenance responsibilities between the City and the Mixed Use Association and the Mixed Use Association and the City shall cooperate with each other to ensure the performance of the maintenance obligations in accordance with the requirements of this Agreement.

3.1.3 Mixed Use Association Maintenance Responsibilities. The Mixed Use Association will, at its sole cost and expense, have responsibility for the maintenance of the following, and save and except for the following, the Mixed Use Association shall not have any other maintenance obligations relating to the City Parking Structure:

- (a) The Mixed Use Access Gate;
- (b) The wearing surface (i.e., the floor) of the Gated Parking Area, and the interior walls of such Area (including painting, graffiti removal and mold remediation for such interior walls);
- (c) The wearing surface (i.e., the floor) of the Ungated Mixed Use Parking Spaces;
- (d) The Sump Pumps;
- (e) The ventilation fan and related meter which services the Gated Parking Area;
- (f) Any Utility Facilities solely serving the Gated Parking Area (including, without limitation, all lighting fixtures and bulbs, [including, replacement and disposal of fixtures and/or bulbs], and all electrical charges per the assigned meters);
- (g) Any Mixed Use Utility Facilities;

- 1 **(h)** The City Elevator Access Device (and related emergency call
2 signage);
3
4 **(i)** The City Stairwell Access Doors (and related emergency call
5 signage); and
6
7 **(j)** Any signage installed by the Developer or the Mixed Use
8 Association.

9
10 The Mixed Use Association shall perform such maintenance obligations so as to keep the above
11 items in a neat, clean and safe condition and in good operating condition for the intended
12 purpose. Such obligations of the Mixed Use Association shall include the obligation to sweep the
13 Gated Parking Area on a regularly scheduled basis, remove debris, trash and other litter, and re-
14 stripe the Gated Parking Area and the Ungated Mixed Use Parking Spaces as needed. The
15 Association shall give the City forty-eight (48) hours advance notice prior to initiating any
16 routine maintenance or repair work on the City Elevator Access Device. In the event of an
17 emergency, notice shall be given as is reasonable under the circumstances.

18
19 **3.1.4 City Maintenance Responsibilities.** Subject to the Mixed Use
20 Association's maintenance obligations set forth above, the City shall, at its sole cost and expense,
21 have the responsibility for maintaining the City Parking Structure, which shall include, without
22 limitation, the following:

- 23
24 **(a)** The structural integrity of the City Parking Structure, including,
25 without limitation, the foundation, roof, walls, floors, columns, beams and all other structural
26 components;
27
28 **(b)** The wearing surface (i.e., the floor) of all portions of the City
29 Parking Structure (excepting the Gated Parking Area and the Ungated Mixed Use Parking
30 Spaces, but including the Ungated Overnight Parking Spaces With Permit), and the interior and
31 exterior walls of the City Parking Structure (including painting, graffiti removal and mold
32 remediation for all such interior and exterior walls, except the interior walls of the Gated Parking
33 Area);
34
35 **(c)** All stairwells within the City Parking Structure (excluding the City
36 Stairwell Access Doors and the related emergency call signage);
37
38 **(d)** The ventilation fan and related meter which serves the City
39 Parking Structure;
40
41 **(e)** Any Utility Facilities which solely serve the areas within the City
42 Parking Structure under the control of the City (including, without limitation, all lighting fixtures
43 and bulbs, [including, replacement and disposal of fixtures and/or bulbs], and all electrical
44 charges per the assigned meters);
45
46 **(f)** The Landscaped Area as shown on the Site Plan;

- 1 (g) The alleyway areas as shown on the Site Plan; and
- 2
- 3 (h) All public street lights.
- 4

5 In addition to the foregoing, the City shall, at its sole cost and expense, have the responsibility
6 for maintaining the Landscaped Area as shown on the Site Plan, the alleyway areas as shown on
7 the Site Plan and all public street lights bordering the City Parking Structure and the Mixed Use
8 Project. The City shall perform all of its maintenance obligations so as to keep the City Parking
9 Structure and other areas in a neat, clean and safe condition and in good operating condition for
10 the intended purpose. Such maintenance shall include the obligation to sweep the City Parking
11 Structure and alleyway areas shown on the Site Plan on a regularly scheduled basis, remove
12 debris, trash and other litter, and re-stripe the parking areas as needed. All grass in the
13 Landscaped Area shall be mowed on a regularly scheduled basis so as to keep same in a neat,
14 clean, safe and attractive condition at all times. All irrigation systems shall be inspected
15 regularly to ensure there are no malfunctions. All aesthetic features shall be maintained in a neat,
16 clean and attractive condition in accordance with the original design and standards approved by
17 the City.

18
19 **3.1.5 Shared Maintenance Obligations.** For the benefit of the Mixed Use
20 Association and the City, the City shall have responsibility for maintaining or causing
21 maintenance to be performed for the following: ("Shared Maintenance Obligations"):

- 22
- 23 (a) Maintenance of any Shared Utility Facilities within the City
24 Parking Structure;
- 25
- 26 (b) Maintenance of the Fire Suppression System within the City
27 Parking Structure (including, without limitation, any costs or fees incurred for an inspection of
28 the Fire Suppression System which is required by law); and
- 29
- 30 (c) Maintenance of the City Elevator (excluding the City Elevator
31 Access Device and related emergency call signage).
- 32

33 The City shall perform such maintenance obligations to keep such facilities and systems in good
34 operating condition at all times and shall comply with all laws relating to such maintenance. The
35 costs of the Shared Maintenance Obligations shall be shared between the Parties based upon their
36 respective Allocable Share as described below and in Section 1.2.

37
38 **3.1.6 Right to Cure Upon Failure to Maintain.** If a Party responsible for
39 performing maintenance or repair obligations ("Maintaining Party") fails to perform such
40 obligations in accordance with the standards set forth herein, the other Party ("Enforcing Party")
41 may notify the Maintaining Party of its failure to perform its obligations hereunder, such notice
42 to specifically set forth the obligations which were not performed. Within ten (10) days following
43 such notice, the Parties shall meet and confer to establish reasonable procedures for the
44 Maintaining Party to implement. If, following such meeting, the Maintaining Party fails to
45 complete the performance of its maintenance obligations in accordance with the reasonable
46 procedures established at the meeting within thirty (30) days (or, if such maintenance obligations
47 cannot be completed within thirty [30] days, if the Maintaining Party either fails to commence to

1 perform such maintenance obligations within such thirty (30) day period, or if the Maintaining
2 Party timely commences to perform such maintenance obligations but thereafter fails to
3 diligently prosecute such maintenance obligations to completion), the Enforcing Party providing
4 notice shall have the right, but not the obligation, to cure the Maintaining Party's default of its
5 obligations pursuant to the terms of this Agreement by delivering at least fifteen (15) days prior
6 written notice to the Maintaining Party of the Enforcing Party's exercise of its right to cure the
7 default. Notwithstanding the foregoing, in the event of an Emergency, either Party may take
8 such actions as may be reasonable under the circumstances without the obligation for prior
9 notice, but shall after taking such actions provide notice to the other Party. After the Enforcing
10 Party completes the responsibilities of the previous Maintaining Party as provided above, the
11 Enforcing Party shall deliver an invoice to the previous Maintaining Party for the costs and
12 expenses incurred in performing such maintenance ("Maintenance Expenses"). The Maintaining
13 Party shall reimburse the Enforcing Party within thirty (30) days after receipt of such invoice.
14 All Maintenance Expenses not paid for when due shall bear interest at the Default Interest Rate
15 commencing from the date of delinquency and the Enforcing Party shall be entitled to reasonable
16 costs of collection, including, without limitation, attorneys' fees and costs.

17
18
19
20
21 **ARTICLE 4**
22 **PAYMENT OF SHARED EXPENSES**
23

24 **4.1 Shared Expenses** The City and the Mixed Use Association will share the
25 costs associated with the Shared Maintenance Obligations and the cost for the Property
26 Insurance, which the City will maintain as described below (collectively, "Shared Expenses").
27 Shared Expenses will include (i) the actual out-of-pocket expenses incurred in performing the
28 Shared Maintenance Obligations, and (ii) the actual out-of-pocket costs of City to obtain the
29 Property Insurance policy in satisfaction of the requirements set forth in **ARTICLE 6** herein.
30

31 **4.2 Payment of Shared Expenses** At least sixty (60) days before the estimated
32 Commencement Date, an initial budget for the Shared Expenses shall be prepared by Vigen
33 Onany & Associates ("Initial Budget") at Developer's cost and expense. The Initial Budget shall
34 be used as the basis for determining the first Fiscal Year's Shared Expenses. Thereafter, not less
35 than sixty (60) days prior to the beginning of each Fiscal Year (i.e., on or about May 1), the City
36 shall prepare or cause to be prepared a budget for the next Fiscal Year ("Budget") and shall
37 deliver to the Mixed Use Association a Budget which sets forth the total Shared Expenses
38 anticipated to be incurred for such Fiscal Year and the Allocable Share for the Mixed Use
39 Association. The cost to prepare such Budget, if prepared by an independent budget preparation
40 service, shall be paid by the City and the Mixed Use Association according to their Allocable
41 Shares. The Mixed Use Association shall use the Budget to determine the amount it must collect
42 from the Owners through the Assessments levied by the Mixed Use Association. Each Fiscal
43 Year the Mixed Use Association shall be obligated to pay to the City its Allocable Share of the
44 Shared Expenses on an annual basis in arrears, commencing on the first (1st) day of the first (1st)
45 fiscal year after the Commencement Date in accordance with the procedures set forth below. On
46 or before June 30 of each Fiscal Year, the City will deliver an invoice to the Mixed Use
47 Association specifying the actual Shared Expenses incurred by the City, together with reasonable

1 documentation, and requesting payment of the Mixed Use Association's Allocable Share of
2 Shared Expenses ("Invoice"). The Mixed Use Association shall reimburse the City for its
3 Allocable Share within thirty (30) days after receipt of each Invoice. If an Invoice is not paid
4 within such thirty (30) day period, it shall be deemed delinquent and subject to a late charge as
5 set forth in **Section 4.8**. The Mixed Use Association shall be responsible for levying
6 Assessments to collect its Allocable Share of Shared Expenses from the Owners pursuant to its
7 rights under the Mixed Use Declaration. The Mixed Use Association shall take such actions as it
8 deems necessary under the Mixed Use Declaration as a result of any delinquency or default by an
9 Owner in paying the Assessments levied to fund the Mixed Use Association's Allocable Share of
10 the Shared Expenses.

11
12 **4.3 Commencement of Payment of Allocable Share of Shared Expenses** The
13 Mixed Use Association's obligation and the City's obligation to commence paying their
14 respective Allocable Share of the Shared Expenses shall commence upon the Commencement
15 Date, however, the Mixed Use Association shall pay its Allocable Share annually in arrears as set
16 forth in **Section 4.2** above.

17
18 **4.4 Increases in Shared Expenses** Subject to the limitations set forth in
19 **Section 4.5**, if the City determines, in its reasonable discretion, that the amounts shown in the
20 Budget are or will be insufficient to meet all Shared Expenses, it shall promptly determine the
21 approximate amount of such deficiency, deliver a supplemental Budget to the Mixed Use
22 Association of the revised amount.

23
24 **4.5 Limitation on Increases** Except in the case of an Urgent Situation (as
25 defined below), the Budget for the Shared Expenses may not be increased by more than ten
26 percent (10%) over the Budget for the Shared Expenses for the preceding year without the prior
27 written consent of a majority of the total voting power of the Mixed Use Association as provided
28 in the Mixed Use Declaration. In the event of an Urgent Situation, no prior consent of the Mixed
29 Use Association shall be required. As used herein, an Urgent Situation means (a) an
30 extraordinary expense required by an order of a court; (b) an extraordinary expense necessary to
31 repair or maintain the City Parking Structure where there is a threat to personal safety; and/or
32 (c) an extraordinary expense necessary to maintain the City Parking Structure that would not
33 have been reasonably foreseen by the City when preparing the Budget.

34
35 **4.6 Audit and Inspection Rights** City shall deliver to Mixed Use Association
36 an annual accounting which shall be prepared by City for the Shared Expenses no later than one
37 hundred twenty (120) days after the expiration of the applicable Fiscal Year. The Mixed Use
38 Association shall have the right to inspect the records of the City which were created and/or
39 dated within two (2) years of the date of the request. The Mixed Use Association must deliver to
40 the City written notice, specifying the books and records which it desires to inspect, and the date
41 and time of inspection. The date of inspection must be at least ten (10) business days after
42 delivery of the written notice and the time must be during normal business hours. All
43 inspections shall take place at the City Hall for the City of Monrovia. The inspection shall
44 include the right to copy and make abstracts of the records, and to audit said records. All costs of
45 the inspection, copying and/or audit shall be borne by the Auditing Party requesting the
46 inspection.

1 restriction may be subject to towing or other enforcement rights and remedies by the Association
2 or by the City, as the case may be.

3
4 **5.3 No Fees** The Owners shall not be charged any fees by the City for access to,
5 or use of, any of the Mixed Use Parking Spaces, the Ungated Mixed Use Parking Spaces or the
6 Ungated Overnight Parking Spaces With Permit.

7
8 **5.4 Permitted User Fees** Any fees charged to Permitted Users for use of, or access
9 to, any public portions of the City Parking Structure shall not exceed the fees charged to other
10 residents of the City of Monrovia.

11
12 **5.5 No Security** The Parties acknowledge that the City Parking Structure does not
13 have any attendants or security services or devices and nothing contained herein shall be
14 interpreted or construed to impose any obligation whatsoever on either the City or the Mixed Use
15 Association to provide security.

16
17 **5.6 Establishment of Rules and Enforcement by Mixed Use Association** The
18 Mixed Use Association shall be responsible for establishing rules and regulations relating to the
19 parking of vehicles by Owners and other Permitted Users in the Mixed Use Parking Spaces, the
20 Ungated Mixed Use Parking Spaces and the Ungated Overnight Parking Spaces With Permit, and
21 shall monitor and enforce such rules and regulations (including, but not limited to, citing and
22 towing vehicles and taking any other action permitted by law to enforce such rules and
23 regulations).

24
25 **5.7 City Rules** The City shall be responsible for establishing reasonable rules and
26 for monitoring and enforcing all areas within the City Parking Structure under the control of the
27 City. Any rules established by the City governing the City Parking Structure shall be reasonably
28 acceptable to the Mixed Use Association. Although the rules may provide that the City Parking
29 Structure will be closed for two (2) hours each night (between 3 AM and 5 AM), Owners and
30 Occupants, for and on behalf of themselves and their respective guests and invitees, shall be
31 entitled to apply to the Mixed Use Association to obtain a permit to park a vehicle overnight in
32 the Ungated Overnight Parking Spaces With Permit. Only vehicles which display the required
33 permit may park in an Ungated Overnight Parking Spaces With Permit. The permit shall be
34 openly displayed as required by the Mixed Use Association and the City. Vehicles not
35 displaying the permit as required may cited and towed at the vehicle owner's expense. In no
36 event shall more than seventeen (17) permits be valid and active on any given day.

37
38 **5.8 Compliance with Insurance Requirements** The City and the Mixed Use
39 Association shall comply with all rules, regulations, and requirements of any insurance rating
40 bureaus having jurisdiction over the Properties or any portion thereof and the requirements of
41 any insurance policy affecting the insurance coverage on any portion of the Properties if
42 noncompliance by it would cause any insurance policy to be cancelled or cause a refusal to
43 renew the same, increase the premiums of any policy of insurance maintained by the Mixed Use
44 Association or the City or render any portion of the Properties uninsurable.

1 policy may also include such other endorsements as may customarily be obtained with respect to
2 properties similar in construction, location and use.

3
4 **(b) Earthquake Insurance. THE PARTIES ACKNOWLEDGE**
5 **AND AGREE THAT EARTHQUAKE INSURANCE IS NOT INCLUDED IN THE**
6 **BUDGET AND IS NOT BEING OBTAINED BY THE CITY. THE CITY IS NOT**
7 **OBLIGATED TO MAINTAIN EARTHQUAKE INSURANCE ON THE CITY PARKING**
8 **STRUCTURE, ANY SHARED MAINTENANCE AREAS OR ANY PORTION**
9 **THEREOF.** Either Party (and/or their respective lenders) may maintain earthquake insurance
10 for their own benefit, but the premiums therefor may not be included in the Shared Expenses,
11 unless the Parties jointly agree to purchase such earthquake insurance. If so obtained, and
12 approved as provided in **Section 4.5** above, the premiums for such earthquake insurance may be
13 included in the Shared Expenses.

14
15 **(c) Primary.** With respect to all property to be insured by the City
16 under this Agreement, the Property Insurance maintained by the City shall be primary and
17 noncontributing with any other property insurance covering the same loss.

18
19 **(d) Adjustment of Losses.** The City shall timely file, pursue and
20 complete the adjustment of all claims arising under the Property Insurance policy carried by the
21 City. The City is granted full right and authority to compromise and settle any property damage
22 claim under the policy of Property Insurance or enforce any such claim by legal action or
23 otherwise and to execute releases in favor of any insurer with respect to any such claim.

24
25 **(e) Payment of Insurance Proceeds.** Subject to the provisions of
26 Article 7 below, the proceeds from the Property Insurance shall be payable to the City and the
27 Mixed Use Association, and shall be held and expended for the benefit of the City and the Mixed
28 Use Association or disbursed to the Parties in accordance with the provisions of this Agreement.

29
30 **(f) Waiver of Claims and Subrogation.** The policy of Property
31 Insurance shall provide, if reasonably possible, that the City waives all Claims against the Mixed
32 Use Association, the Owners and the Occupants for any damage to the City Parking Structure,
33 (including, without limitation, any loss of use of such Structure), except that the City may assert
34 a Claim against the Mixed Use Association, any Owner or any Occupant for property damage
35 caused by the Mixed Use Association, the Owner or the Occupant to the extent (i) that the peril
36 causing such damage is not covered by the Property Insurance required by this Agreement to be
37 maintained by the City (or, if greater, by the property insurance which is actually maintained by
38 the City), provided that the Mixed Use Association's, the Owner's or the Occupant's liability for
39 such uninsured damage is limited to the amount of liability insurance required to be maintained
40 by the Mixed Use Association, the Owner or the Occupant pursuant to the Mixed Use
41 Declaration, (ii) the amount of the deductible or self-insured retention loss sustained by the City,
42 if any, if the peril causing such damage is covered by the City's Property Insurance, provided that
43 the Mixed Use Association's, the Owner's or the Occupant's liability for such deductible or
44 self-insured retention loss is limited to the amount of liability insurance required to be
45 maintained by the Mixed Use Association, the Owner or the Occupant pursuant to the Mixed Use
46 Declaration, or (iii) that such damage is caused by the gross negligence or willful misconduct of

1 the Mixed Use Association, the Owner or the Occupant. Any Property Insurance policy obtained
2 by the City must contain a waiver of subrogation rights by the insurer consistent with this
3 **Section 6.1.1** if reasonably practical to obtain; provided, however that a failure or inability of the
4 City to obtain such a waiver from an insurer shall not defeat or impair the waivers between the
5 City, the Mixed Use Association, the Owners and the Occupants as set forth herein. The Mixed
6 Use Association, the Owners and the Occupants may not reduce the amount of liability insurance
7 required to be maintained by the Mixed Use Association, the Owners or the Occupants under the
8 Mixed Use Declaration without the prior express written consent of the City. Any reduction from
9 the amount of insurance or any change in the type of insurance required to be carried by the
10 Mixed Use Association, an Owner or an Occupant under the Mixed Use Declaration in effect at
11 the first Close of Escrow for the sale of a Condominium to an Owner in the Mixed Use Project
12 shall not reduce the Mixed Use Association's, the Owner's or the Occupant's liability under this
13 Agreement. The waivers of Claims and subrogation set forth in this Subsection apply only in
14 favor of the Mixed Use Association, the Owners and the Occupants and do not limit or waive,
15 release or discharge any Claims that the City (or its insurer) may have against any third party,
16 including, without limitation, any contractor, service provider, agent, or invitees, and nothing
17 contained herein shall release the Mixed Use Association, any Owner or any Occupant from their
18 obligations to make any repair or restoration required hereunder or under the Mixed Use
19 Declaration.

20
21 **6.1.2 Liability Insurance.** The Parties acknowledge and agree that the City is a
22 member of the Independent Cities Risk Management Authority which provides for pooled self-
23 insurance. The limits of coverage in excess of the City's retained limit is Twenty Million
24 Dollars (\$20,000,000.00) for each occurrence. The City's retained limit (also known as an "SIR"
25 [self insured reserve]) shall not be less than Two Hundred Fifty Thousand Dollars (\$250,000.00),
26 or less than the amount required by the Independent Cities Risk Management Authority,
27 whichever is greater. The memorandum of coverage requires the Independent Cities Risk
28 Management Authority to pay those sums arising out of an occurrence on behalf of the City for
29 the ultimate net loss in excess of the City's retained limit that the City becomes legally obligated
30 to pay as damages by reason of liability imposed by law or liability assumed by contract because
31 of death or injury to any person, damage to property and/or public officials' errors and
32 omissions, including the obligation to pay defense costs, in accordance with the terms, conditions
33 and covenants set forth in the memorandum of coverage. At all times while this Agreement
34 continues in effect, the City shall, at its sole cost and expense, maintain its membership with the
35 Independent Cities Risk Management Authority or a similar organization providing pooled self-
36 insurance that provides liability limits of not less than Ten Million Dollars (\$10,000,000.00) in
37 excess of the City's retained limit. The coverage provided in the Independent Cities Risk
38 Management Authority memorandum of liability coverage is primary to any coverage provide by
39 any other liability insurance arising from or relating to any liability from the ownership,
40 operation, use, maintenance, repair and/or reconstruction of the City Parking Structure by the
41 City, its employees, council members, agents and contractors, as well as from any breach by the
42 City of its obligations under this Agreement. The City shall cause the Mixed Use Association,
43 the Board, the Owners and the Developer, and the agents and employees of each of the foregoing
44 to be named as additional insured under the memorandum of coverage.

1 **6.1.3 Worker's Compensation Insurance.** The City shall, at its sole cost and
2 expense, maintain worker's compensation insurance to the extent necessary to comply with all
3 Applicable Laws.
4

5 **6.1.4 Other Insurance.** The City shall, at its sole cost and expense, maintain
6 such other insurance coverage as the City determines in its sole discretion or as required to
7 comply with Applicable Laws. Except any additional insurance hereafter required by a newly
8 enacted law, no additional City insurance coverage shall be included in Shared Expenses unless
9 agreed to in writing by the Board of Directors of the Mixed Use Association.
10

11 **6.2 Insurance Obligations of the Mixed Use Association. Liability Insurance.** The
12 Mixed Use Association shall, at its sole cost and expense, obtain and maintain liability insurance
13 insuring the Mixed Use Association, the Board, the Owners and the Developer (for so long as the
14 Developer shall own any portion of the Mixed Use Property), and the agents and employees of
15 each of the foregoing, against any liability for bodily injury, death and/or property damage
16 arising from or incident to the exercise of rights or performance of their obligations under this
17 Agreement in the City Parking Structure, as provided in the Mixed Use Declaration. The Mixed
18 Use Association shall cause the City, its council members, directors and employees to be named
19 as additional insureds.
20

21 **6.2.2 Property Insurance.** The Mixed Use Association shall, at its sole cost
22 and expense, obtain and maintain, a policy of property insurance (a/k/a/ fire and casualty
23 insurance) with an extended coverage ("all risk") endorsement as provided in the Mixed Use
24 Declaration for the fixtures, equipment and systems to be maintained by the Mixed Use
25 Association under this Agreement, (including, without limitation, the Mixed Use Access Gate,
26 Sump Pumps, City Elevator Access Device, City Stairwell Access Doors and ventilation fan), if
27 the Master Association determines that the property insurance policy carried by the City for the
28 City Parking Structure does not cover such equipment and systems. Such insurance shall be
29 maintained, if feasible, in an amount equal to one hundred percent (100%) of the then current
30 replacement cost of such equipment and systems (without deduction for depreciation or co-
31 insurance).
32

33 **(a) Adjustment of Losses.** The Mixed Use Association shall timely
34 file, pursue and complete the adjustment of all claims arising under any policy of property
35 insurance carried by the Mixed Use Association. The Mixed Use Association is granted full
36 right and authority to compromise and settle any property damage claim under such policy of
37 property insurance or enforce any such claim by legal action or otherwise and to execute releases
38 in favor of any insurer with respect to any such claim.
39

40 **(b) Payment of Insurance Proceeds.** The proceeds from any policy
41 of property insurance maintained by the Mixed Use Association shall be payable solely to the
42 Mixed Use Association, and shall be held and expended for the benefit of the Mixed Use
43 Association in accordance with the provisions of the Mixed Use Declaration.
44

45 **(c) Waiver of Claims and Subrogation.** Any policy of property
46 insurance maintained by the Mixed Use Association shall provide, if reasonably possible, that
47 the Mixed Use Association waives all Claims against the City and its employees for any damage

1 to the equipment and systems maintained by the Mixed Use Association, except that the Mixed
2 Use Association may assert a Claim against the City for property damage caused by the City or
3 its employees to the extent (i) that the peril causing such damage is not covered by any property
4 insurance maintained by the Mixed Use Association hereunder (or, if greater, by the property
5 insurance which is actually maintained by the Mixed Use Association), provided that the City's
6 liability for such uninsured damage is limited to the amount of liability insurance required to be
7 maintained by the City hereunder, (ii) the amount of the deductible or self-insured retention loss
8 sustained by the Mixed Use Association, if any, if the peril causing such damage is covered by
9 the Mixed Use Association's property insurance, provided that the City's liability for such
10 deductible or self-insured retention loss is limited to the amount of liability insurance required to
11 be maintained by the City hereunder, or (iii) that such damage is caused by the gross negligence
12 or willful misconduct of the City or any employee of the City. Any property insurance policy
13 obtained by the Mixed Use Association must contain a waiver of subrogation rights by the
14 insurer consistent with this **Section 6.2.2** if reasonably practical to obtain; provided, however that
15 a failure or inability of the Mixed Use Association to obtain such a waiver from an insurer shall
16 not defeat or impair the waiver between the Mixed Use Association and the City and its
17 employees as set forth herein. The waivers of Claims and subrogation set forth in this Subsection
18 apply only in favor of the City and its employees and do not limit or waive, release or discharge
19 any Claims that the Mixed Use Association (or its insurer) may have against any third party,
20 including, without limitation, any contractor, service provider, agent, or invitee of the City, and
21 nothing contained herein shall release the City from its obligation to make any repair or
22 restoration required hereunder.

23
24 **6.2.3 Worker's Compensation Insurance.** The Mixed Use Association shall,
25 at its sole cost and expense, maintain worker's compensation insurance to the extent necessary to
26 comply with all Applicable Laws.

27
28 **6.2.4 Other Insurance.** The Mixed Use Association shall, at its sole cost and
29 expense, maintain such other insurance coverage as the Mixed Use Association determines in its
30 sole discretion or as required to comply with the Mixed Use Declaration and Applicable Laws.

31
32 **6.3 Review of Insurance** The Parties shall review the adequacy of all insurance
33 required by this Agreement to be maintained by the Parties at least once every year. The review
34 shall include a reasonable determination of the replacement cost of the City Parking Structure,
35 without regard to depreciation.

36
37 **6.4 General Policy Requirements**

38
39 **6.41 Changes in Coverage: Copies of Policies.** Copies of all insurance
40 policies required to be carried by either Party hereunder shall be retained by the Party and be
41 available for inspection by the other Party at reasonable times. All such insurance policies shall
42 provide that they shall not be cancelable or substantially modified by the insurer without first
43 giving at least thirty (30) days prior notice in writing to the Parties. Each Party shall furnish the
44 other Party with copies of the original certificates and endorsements (or equivalent in the case of
45 the City's self insurance) naming the other Party (and the property manager for the Mixed Use
46 Association) as a loss payee or as an additional insured, as the case may be, and any amendatory

1 endorsements effecting coverage required by this Agreement. The endorsements (or equivalent in
2 the case of the City's self insurance) shall be on forms provided by the insurer (or equivalent in
3 the case of the City's self insurance) and shall comply with the requirements set forth in this
4 **Article 6**. All certificates and endorsements (or equivalent in the case of the City's self insurance)
5 are to be received and approved by the Parties before this Agreement commences; however,
6 failure to do so shall not operate as a waiver of these insurance requirements. The Parties reserve
7 the right to require complete, certified copies of all required insurance policies, including
8 endorsements (or equivalent in the case of the City's self-insurance) affecting the coverage
9 required by these specifications at any time.

10
11 **6.4.2 General Requirements.** Except as otherwise provided herein, all
12 insurance policies the Parties are required to obtain pursuant to this Article shall be placed and
13 maintained with companies rated at least "A-/X" by A.M. Best Insurance Service and otherwise
14 reasonably satisfactory to the other Party. The Mixed Use Association's deductibles shall be as
15 provided in the Mixed Use Declaration and the City's deductibles shall be equivalent to
16 deductibles for other City property but shall not exceed Ten Thousand Dollars or one percent
17 (1%) of the face amount of the policy for the policy of Property Insurance, whichever is less.
18 The coverage amounts required for such insurance policies may be satisfied by any combination
19 of primary and excess policies that collectively serve to satisfy the requirements of this Article.
20 The City's liability and property insurance coverage shall be primary insurance as respects the
21 Mixed Use Association, its officers, directors, members, employees and property manager for
22 Claims arising out of City's ownership, operation, use, maintenance, repair and/or reconstruction
23 of the City Parking Structure by the City, its employees and/or contractors. The Mixed Use
24 Association's liability insurance coverage shall be primary insurance as respects the City, its
25 council members, directors and employees for Claims occurring within or relating to the Gated
26 Parking Area.

27
28
29
30 **ARTICLE 7**
31 **DAMAGE OR DESTRUCTION**
32

33 **7.1 Repair and Reconstruction** Except as otherwise stated in this **ARTICLE 7**, if
34 the City Parking Structure or any portion thereof is damaged or destroyed by fire or other
35 casualty, the City shall effect or cause the Repair (as defined below) of such improvements and
36 any other portions of the subject Property in accordance with the requirements set forth herein.
37 As used in this **ARTICLE 7**, the term "Repair" or "Repaired" refers to any repair, replacement,
38 reconstruction or restoration of the City Parking Structure, as the case may be, to the condition
39 that existed prior to such damage or destruction.

40
41 **7.1.1 Restoration When Insurance Proceeds Are Sufficient.** Where the
42 Insurance Proceeds received by the City in connection with any damage or destruction of the
43 City Parking Structure ("Insurance Proceeds") are sufficient, the City shall Repair the City
44 Parking Structure. The City shall make such Repairs in accordance with the requirements set
45 forth in this Article, and shall designate a construction consultant, a general contractor and an
46 architect for the Repair. All Insurance Proceeds and any other monies allocated for the Repair

1 shall be deposited into a separate segregated account and shall not be commingled with any other
2 City funds. The City shall disburse the available funds for the Repair under such procedures as
3 the City reasonably deems appropriate under the circumstances.
4

5 **7.1.2 Repair When Funds Are Not Sufficient.** If Insurance Proceeds and
6 other funds available for effecting the required Repairs of the City Parking Structure are not
7 sufficient and readily available to complete such Repair, the following provisions shall apply.
8

9 **(a) Mixed Use Project and City Parking Structure are Both**
10 **Damaged or Destroyed and Mixed Use Association Elects to Repair.**
11

12 **(i) Determination.** The Mixed Use Association shall
13 first determine whether to Repair the Mixed Use Project pursuant to the
14 requirements set forth in the Mixed Use Declaration. If the Mixed Use
15 Association elects to proceed with Repair of the Mixed Use Project, the
16 City shall be obligated to Repair the City Parking Structure and the Mixed
17 Use Association shall be obligated to contribute to the costs of the Repair
18 as provided below.
19

20 **(ii) Special Assessment.** If the Mixed Use Association
21 elects to proceed with Repair of the Mixed Use Project, the Mixed Use
22 Association shall levy a Special Assessment to and against each
23 Condominium for the costs of such Repairs that are not so covered by
24 Insurance Proceeds (including its Allocable Share of repairing the City
25 Parking Structure). Any damage or destruction of the Mixed Use Project
26 shall be deemed to constitute an Emergency and shall not be subject to any
27 limitations set forth in the Mixed Use Declaration.
28

29 **(b) Mixed Use Project and City Parking Structure are Both**
30 **Damaged or Destroyed and Mixed Use Association Elects Not to Repair.**
31

32 **(i) Determination.** The Mixed Use Association shall
33 first determine whether to Repair the Mixed Use Project pursuant to the
34 requirements set forth in the Mixed Use Declaration. If the Mixed Use
35 Association elects not to proceed with Repair of the Mixed Use Project,
36 the City shall not be obligated to Repair the City Parking Structure. The
37 City may, at its sole discretion, elect to Repair the City Parking Structure
38 at its sole cost and expense, and shall use its Allocable Share of the
39 Insurance Proceeds for such Repairs.
40

41 **(ii) Insurance Proceeds.** If the Mixed Use Association
42 elects not to Repair the Mixed Use Project, the Insurance Proceeds shall
43 be allocated between the City and the Mixed Use Association according
44 to their respective Allocable Shares. The Allocable Share attributable to
45 the Mixed Use Association shall be allocated among the Owners, (subject
46 to the rights of their respective Mortgagees), as set forth in the Mixed Use
47 Declaration.

1 (c) **Only the City Parking Structure is Destroyed.** If only the City
2 Parking Structure has been damaged or destroyed, the City shall be obligated to Repair the City
3 Parking Structure and shall use all Insurance Proceeds and any other monies allocated for the
4 Repair to complete the Repair. The Mixed Use Association shall be obligated to levy a Special
5 Assessment in accordance with the same procedures set forth in **sub-Section (a)(ii)** above. The
6 City shall make such Repairs in accordance with the requirements set forth in this Article, and
7 shall designate a construction consultant, a general contractor and an architect for the Repair. All
8 Insurance Proceeds and any other monies allocated for the Repair shall be deposited into a
9 separate segregated account and shall not be commingled with any other City funds. The City
10 shall disburse the available funds for the Repair under such procedures as the City reasonably
11 deems appropriate under the circumstances.

12
13 **7.1.3 Repair to Mixed Use Project.** The Mixed Use Association shall Repair
14 the Mixed Use Project, (except for Repairs to those improvements which are to be made,
15 undertaken or caused by the Owners) as set forth in the Mixed Use Declaration.

16
17 **7.2 Repair Work** Any Repair which is required hereunder shall be undertaken with
18 all due diligence and commercially reasonable efforts in accordance with the original plans for
19 the City Parking Structure, modified as may be required by applicable building codes and
20 regulations in force at the time of such Repair or as a result of any modifications pursuant to **sub-**
21 **Section 7.2.1** below.

22
23 **7.2.1 Changes.** Prior to the commencement of any Repairs, each Party shall
24 have the right to request modifications to the plans for their respective project pursuant to the
25 provisions set forth in this Section. If the a Party desires to make modifications ("Modifying
26 Party"), the Modifying Party shall deliver written notice to the other Party describing in
27 reasonable detail the scope of the proposed modifications and such other Party shall have the
28 right to review and approve such proposed modifications. The reviewing Party shall not
29 withhold approval to such proposed modifications provided it determines the following criteria
30 have been satisfied: (a) such relocation will not materially and adversely affect the Utility
31 Facilities, Shared Utility Facilities, easement rights, or the exterior facade, (b) the changes to the
32 plans will not substantially delay the Repair, (c) the changes to the plans shall be consistent with
33 the quality of the original construction, and (d) the Modifying Party shall be unconditionally
34 committed to pay any incremental costs associated with such modifications.

35
36 **7.2.2 Cooperation.** In the event of damage to both the Mixed Use Project and
37 the City Parking Structure, or if there is damage to areas or improvements which either Party is
38 required by this Agreement or the Mixed Use Declaration to Repair, the Owners and Occupants
39 of the Condominiums, the Mixed Use Association and the City shall all cooperate in the Repair
40 of their respective areas of responsibility by coordination of Repair work and providing access
41 where necessary over and across the respective Properties, the Condominiums and any exclusive
42 use easement areas. Each Party agrees that it shall take all appropriate steps before Repairs are
43 completed to erect necessary barriers and take such precautions as are reasonable to preclude
44 unauthorized access to the areas which are being Repaired, and otherwise mitigate dangerous or
45 hazardous conditions.

1 **7.3 Commencement and Completion of Repairs** In all cases, the City shall
2 undertake Repairs with all due diligence as promptly as reasonably practical under the
3 circumstances and shall diligently pursue the Repair to completion, subject to delays that are
4 beyond the reasonable control of the City.
5

6 **7.4 Cooperation for Temporary Offsite Parking** If the City Parking Structure
7 has been damaged or destroyed, but will be repaired as provided herein, and if the Mixed Use
8 Project has either not been damaged or destroyed or the Owners have elected to Repair any
9 damage or destruction to the Mixed Use Project, the City shall cooperate with the Board of
10 Directors of the Mixed Use Association to provide, if reasonably feasible, temporary offsite
11 parking in other public parking areas to replace the Mixed Use Parking Spaces and Ungated
12 Mixed Use Parking Spaces which are temporarily unavailable due to the Repair to the City
13 Parking Structure.
14

15 **7.5 Condemnation** In the event all or a portion of the City Parking Structure is
16 taken by condemnation, eminent domain or any proceeding in lieu thereof, then each Owner shall
17 be entitled to receive a distribution from the award in the same proportion as their Allocable
18 Share of Shared Expenses is calculated; provided, however, if City elects to repair or rebuild the
19 City Parking Structure, such proceeds shall be paid to City for such Repair.
20
21
22

23 **ARTICLE 8**
24 **ARBITRATION OF DISPUTES**
25

26 **8.1 Limitations on Rights** Except as otherwise specifically required herein,
27 nothing contained in this Agreement shall impose on any individual Owner any rights to enforce
28 any of the rights and obligations under this Agreement. Such enforcement rights are limited
29 solely to the Mixed Use Association and the City. Except as otherwise specifically required
30 herein, each Owner irrevocably appoints and delegates to the Mixed Use Association, full and
31 exclusive rights, privileges and authority to resolve any and all disputes regarding the rights
32 and/or obligations of the Parties under this Agreement.
33

34 **8.2 Disputes Subject to Arbitration** Except as provided herein, any disputes
35 arising out of or relating to this Agreement shall be settled by neutral binding arbitration before a
36 single arbitrator with any of the following arbitration/mediation services: (i) the American
37 Arbitration Association ("AAA"), (ii) the Judicial Arbitration and Mediation Service ("JAMS"),
38 or (iii) the Inland Valley Arbitration and Mediation Service ("IVAMS"), as may be agreed to by
39 the Parties. If the Parties are unable to agree to the arbitration/mediation service that is to be used
40 to resolve the dispute, then the dispute shall be resolved by an arbitrator with AAA. The
41 arbitrator shall be a licensed practicing attorney or a retired judge in California, and in either case
42 shall have at least ten (10) years substantial experience in real estate matters. The arbitrator shall
43 select the rules of arbitration to be used to resolve the dispute which are most applicable to the
44 nature of the dispute in question. Hearings shall be held in Monrovia, California, or such other
45 venue as the City and the Mixed Use Association may determine by mutual agreement.
46 Judgment upon the award rendered by the arbitrator may be entered in any court having
47 jurisdiction thereof.

1 **8.3 Demand and Limitations on Claims** Any Party making a demand for
2 arbitration must make such demand in writing to the other Party. In no event shall any demand
3 for arbitration be made after the date that the institution of legal proceedings based on such
4 claim, dispute or other matter would be barred by the applicable statute of limitations. As noted
5 above, if the Parties are unable to agree upon the arbitration/mediation service to be used to
6 resolve the dispute, then the dispute shall be resolved by AAA.

7
8 **8.4 Provisional Remedies** The Mixed Use Association or the City shall have
9 the right to file with a court of competent jurisdiction an application for temporary or preliminary
10 injunctive relief, writ of attachment, writ of possession, temporary protective order and/or
11 appointment of a receiver, if the arbitration award to which the applicant may be entitled may be
12 rendered ineffectual in the absence of such relief, or if there is not other adequate remedy. Any
13 such application shall not act as a waiver of the Mixed Use Association's or the City's arbitration
14 rights hereunder.

15
16 **8.5 Powers and Duties of the Arbitrator** The arbitrator shall have the
17 power to grant such legal and equitable remedies and award such damages as may be granted or
18 awarded by a judge of the Superior Court of the State of California. The arbitrator shall prepare
19 and provide to the Mixed Use Association and the City a written statement of decision on all
20 matters which are the subject of the arbitration, including factual findings and the reasons which
21 form the basis of the arbitrator's decision. The arbitrator shall not have the power to commit
22 errors of law or legal reasoning and the award may be vacated or corrected pursuant to California
23 Code of Civil Procedure Section 1286.2 or 1286.6 for any such error. The award of the arbitrator
24 shall be mailed to the Parties no later than thirty (30) days after the close of the arbitration
25 hearing. The statement of decision of the arbitrator upon all of the issues considered by the
26 arbitrator shall be binding upon the Parties, and upon filing of the statement of decision with the
27 clerk of any court of the State of California having jurisdiction thereof, judgment may be entered
28 thereon in the same manner as if the action had been tried by the court. The arbitration award
29 may only be vacated as provided in accordance with the provisions of Section 1285 et seq. of the
30 California Code of Civil Procedure.

31
32 **8.6 Discovery** The Parties shall be entitled to conduct all discovery as provided in
33 the California Code of Civil Procedure, and the arbitrator shall oversee discovery and may
34 decide all discovery disputes and enforce all discovery orders in the same manner as any trial
35 court judge, with rights to regulate discovery and to issue and/or enforce subpoenas, protective
36 orders or other limitations on discovery available under California law. All discovery disputes
37 shall be resolved by the arbitrator.

38
39 **8.7 Costs and Fees of the Arbitrator** Any filing fee or other costs to initiate the
40 arbitration proceedings shall be advanced equally by each Party to such proceeding. In all cases,
41 the costs and fees (including any initiation fees and costs) of such proceeding shall ultimately be
42 borne as determined by the arbitrator in his discretion as the interests of justice dictate. The
43 arbitrator may award litigation costs to the prevailing party.

44
45 **8.8 Smalls Claims Actions** Notwithstanding any other provision of this Article
46 to the contrary, if any entire dispute between the Parties is less than the Seven Thousand Five

1 Hundred Dollars (\$7,500.00) (or such other amount as may be established by law from time to
2 time as the jurisdictional limit for a small claims action), the Parties shall resolve such dispute in
3 small claims court in accordance with The Small Claims Act (California Code of Civil Procedure
4 Section 116.110 et seq.).
5

6 **8.9 WAIVER OF COURT AND JURY TRIAL AS TO ALL DISPUTES**
7 **SUBJECT TO THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS SET**
8 **FORTH IN THIS ARTICLE, EACH PARTY WAIVES ANY RIGHTS TO JURY TRIAL,**
9 **APPEAL AND OTHER CIVIL LITIGATION PROCEEDINGS FOR SUCH DISPUTES,**
10 **EXCEPT AS OTHERWISE EXPRESSLY SET FORTH OR REFERENCED HEREIN.**
11
12

13
14 **ARTICLE 9**
15 **REMEDIES**
16

17 **9.1 Default** Each of the covenants, conditions, restrictions, easements, terms
18 and provisions of this Agreement is a material consideration for this Agreement, the breach of
19 which shall be deemed a default hereunder.
20

21 **9.2 Remedies** The remedies contained in this Agreement shall be construed and
22 held to be cumulative, and no one of them shall be exclusive of the other, and each Party will
23 have the right to pursue any one or all of such remedies or to seek damages or specific
24 performance in the event of any breach of the terms hereof by the other Party or to pursue any
25 other remedy or relief that may be provided by law or equity, whether or not stated in this
26 Agreement.
27

28 **9.3 No Waiver** No waiver by either Party of a breach of any of the terms,
29 covenants or conditions of this Agreement by the other party shall be construed or held to be a
30 waiver of any succeeding or preceding breach of the same or any other term, covenant or
31 condition herein contained. No waiver of any default by the other Party hereunder shall be
32 implied from any omission by Developer, the Mixed Use Association, or City to take any action
33 on account of such default if such default persists or is repeated, and no express waiver shall
34 affect default other than as specified in such waiver. The consent or approval by Developer, the
35 Mixed Use Association or City to or of any act by the other party requiring Developer's, the
36 Mixed Use Association or City's consent or approval, respectively, shall not be deemed to waive
37 or render unnecessary Developer's, the Mixed Use Association or City's consent or approval to or
38 of any subsequent similar acts by the other party. Without limiting the generality of the
39 foregoing, Developer's, the Mixed Use Association or City's acceptance of any payments
40 hereunder shall not be deemed a waiver of any breach by the other party under the terms and
41 conditions hereof.
42
43
44
45
46

ARTICLE 10
GENERAL PROVISIONS

10.1 Amendments This Agreement may only be amended with the prior written consent of the City and the Developer for so long as Developer owns any Condominiums in the Mixed Use Project and continuing until the fifteenth (15th) anniversary of the Commencement Date. Additionally, from and after the Commencement Date, any amendment to this Agreement shall also require the prior express written consent of at least fifty-one percent (51%) of the total voting power of the Mixed Use Association as set forth in the Mixed Use Declaration.

10.2 Notices Any notice, payment, demand, offer, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if sent by registered or certified mail (return receipt requested), postage and charges prepaid, or by Federal Express or other reputable overnight delivery service requiring a signature upon receipt, addressed as follows:

- To Developer: PCCP Monrovia, LLC
c/o Snyder Langston
17962 Cowan
Irvine, CA 92614
Attention: Greg Sadick

- After Commencement Date to Mixed Use Association: Colorado Commons Maintenance Association
c/o Snyder Langston
17962 Cowan
Irvine, CA 92614
Attention: Greg Sadick

- With a copy to: Action Property Management Company
29 B Technology Drive, Suite 100
Irvine, CA 92618

- To City: City of Monrovia
415 S. Ivy Avenue
Monrovia, California 91016-2888
Designated Representative: Director of Public Works

Any such notice shall be deemed to be given on the date on which it is received or receipt thereof is refused. Any Party hereto may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other Party or Parties hereto.

1 **10.3 Binding Effect** All of the covenants, conditions, restrictions, easements,
2 rights, terms and provisions contained herein shall attach to and run with the Properties, and
3 shall, except as otherwise set forth herein, benefit or be binding upon the successors and assigns
4 of the respective Parties. This Agreement and all the covenants, conditions, restrictions,
5 easements, rights, terms and provisions herein contained shall be enforceable as mutual,
6 equitable servitudes in favor of said Properties and any portion thereof, shall create rights and
7 obligations as provided herein between the respective Parties and shall be covenants running
8 with the land. Every person who now or in the future owns or acquires any right, title or interest
9 in or to any of the Properties or portion thereof shall be conclusively deemed to have consented
10 to and agreed to every covenant, condition, restriction, easement, right, term and/or provision
11 contained in this Agreement, whether or not the instrument conveying such interest refers to this
12 Agreement.
13

14 **10.4 Attorneys' Fees** In the event of any action (which includes arbitration
15 proceedings) for breach of or to enforce any covenant, condition, restriction, easement, right,
16 term or provision hereunder, the non-prevailing Party in such action shall pay to the prevailing
17 Party all costs and expenses expressly including, but not limited to, reasonable attorneys' fees
18 incurred by the prevailing Party in connection with such action.
19

20 **10.5 Mortgagee Protection** No portion of this Agreement or any amendment or
21 violation thereof shall operate to defeat or render invalid, in whole or in part, the rights of the
22 beneficiary, insurer, guarantor, or holder of any mortgage or deed of trust encumbering any
23 portion of the Properties or Condominiums; provided that, after foreclosure of any such
24 mortgage or deed of trust, the portion of the Properties and/or Condominiums foreclosed upon
25 shall remain subject to this Agreement.
26

27 **10.6 Severability** In the event any covenant, condition, restriction, easement, right,
28 term or provision contained herein is held to be invalid, void or otherwise unenforceable by any
29 court of competent jurisdiction, such holding shall in no way affect the validity of enforceability
30 of any other covenant, condition, restriction, easement, right, term or provision contained herein.
31

32 **10.7 Governing Law** This Agreement and the obligations created hereunder shall
33 be interpreted, construed, and enforced in accordance with the laws of the State of California.
34

35 **10.8 Captions** Article and section titles or captions contained herein are inserted as
36 a matter of convenience and for reference, and in no way define, limit, extend, or describe the
37 scope of this Agreement or any covenant, condition, restriction, easement, right, term or
38 provision hereof.
39

40 **10.9 Counterpart Signatures** This Agreement may be executed in counterparts,
41 each of which, when taken together, shall constitute one fully executed original.
42
43

44 IN WITNESS WHEREOF, the parties have executed this Agreement on the date
45 stated above.
46

47 *(Signatures follow on the next page)*

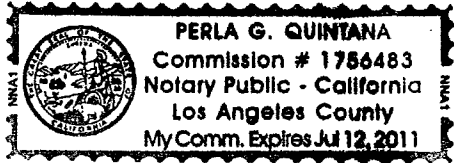
STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On March 20th, 2008, before me, Perla G. Quintana, a Notary Public, personally appeared Michael D. Barker and _____ 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 Perla G. Quintana



(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

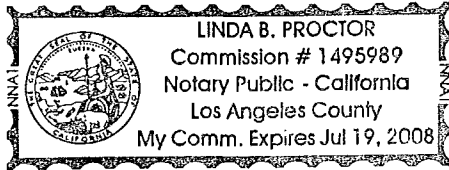
On 4/1/08, 2008, before me, Linda B. Proctor ^{NOTARY PUBLIC}, a Notary Public, personally appeared Rob Hammond and N/A who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed 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 Linda B. Proctor

(Seal)




**CONSENT OF LIENHOLDER
AND SUBORDINATION OF LIEN**

The undersigned ("Beneficiary") holds the beneficial interest in that certain Deed of Trust recorded on September 29, 2006 as Instrument No. 06-2174001 in the Official Records of Los Angeles County, California, which Deed of Trust encumbers all or a portion of the Mixed Use Property covered by this Shared Parking Facility Easement Agreement ("Agreement"). Beneficiary hereby consents to the recordation of the Agreement and subordinates the lien of said Deed of Trust and its beneficial interest thereunder to the said Agreement.

Dated: April 9, 2008

RABOBANK, N.A.,
a national banking association,

By: 

Name: MARCO MATSUKIAN

Title: Senior Vice President

By: _____

Name: _____

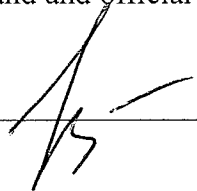
Title: _____

STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles)

On April 9, 2008, 2008, before me, MARIANNA SHAVERDIAN, a Notary Public, personally appeared MEENAS MANTIKIAN and N/A 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)



**CONSENT OF LIENHOLDER
AND SUBORDINATION OF LIEN**

The undersigned ("Beneficiary") holds the beneficial interest in that certain Deed of Trust recorded on September 29, 2006 as Instrument No. 06-2174002 in the Official Records of Los Angeles County, California, which Deed of Trust encumbers all or a portion of the Mixed Use Property covered by this Shared Parking Facility Easement Agreement ("Agreement"). Beneficiary hereby consents to the recordation of the Agreement and subordinates the lien of said Deed of Trust and its beneficial interest thereunder to the said Agreement.

Dated: March, 2008

MONROVIA REDEVELOPMENT AGENCY,
a public body, corporate and politic,

By: [Signature]
Name: ROB HAMMOND
Title: Chairman

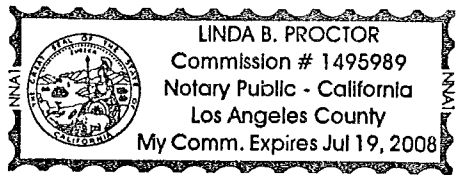
STATE OF CALIFORNIA)
COUNTY OF Los Angeles)

On 4/1/08, 2008, before me, Linda B Proctor, Notary Public, a Notary Public, personally appeared ROB HAMMOND and VA 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 Linda B Proctor

(Seal)



CONSENT OF THE CITY OF MONROVIA

The City of Monrovia, a municipal corporation, hereby acknowledges that fee title to the City Property, as more particularly described on Exhibit "B" attached hereto, has not been conveyed to the City prior to the execution of the Shared Parking Facility Easement Agreement (the "Agreement") and the recordation of the Agreement in the Official Records of Los Angeles County, California. Notwithstanding the foregoing, the City hereby acknowledges and agrees that the City has approved the Agreement and consents to the recordation thereof in the Official Records of Los Angeles County, California, as evidenced by its execution of the Agreement. Additionally, the City acknowledges and agrees that at the time fee title to the City Property is conveyed to the City, the Agreement shall automatically become binding upon and inure to the benefit of the City, and the City hereby covenants and agrees to perform all of its obligations under the Agreement and to otherwise comply with the terms and provisions of the Agreement as if the City had owned the City Property as of the date of the execution of the Agreement and the recordation thereof in the Official Records of Los Angeles County, California.

THE CITY OF MONROVIA,
a municipal corporation,

By: /s/

Name: /ROB HAMMOND/

Title: /MAYOR/

STATE OF CALIFORNIA)

COUNTY OF Los Angeles)

On 4/1/08, 2008, before me, LINDA B PROCTOR NOTARY PUBLIC, a Notary Public, personally appeared Rob HAMMOND ^{N/A} and

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 [Handwritten Signature]

(Seal)

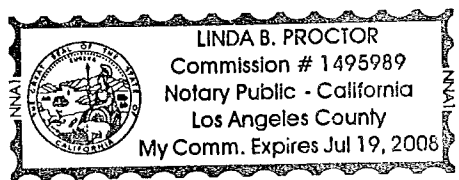


EXHIBIT "A"

LEGAL DESCRIPTION OF THE MIXED USE PROPERTY

The Mixed Use Property shall mean and refer to that certain real property located in the City of Monrovia, County of Los Angeles, State of California, more particularly described as follows:

Lots 1 through 4, inclusive, and Lot 6 of Tract 63269 as shown on a map filed in Book 1336, Pages 87 through 89, inclusive, of Maps in the office of the county recorder for Los Angeles County, California.

EXHIBIT "B"

LEGAL DESCRIPTION OF CITY PROPERTY

The City Property shall mean and refer to that certain real property located in the City of Monrovia, County of Los Angeles, State of California, more particularly described as follows:

Lot 5 of Tract 63269 as shown on a map filed in Book 1336, Pages 87 through 89, inclusive, of Maps in the office of the county recorder for Los Angeles County, California.

EXHIBIT "C"

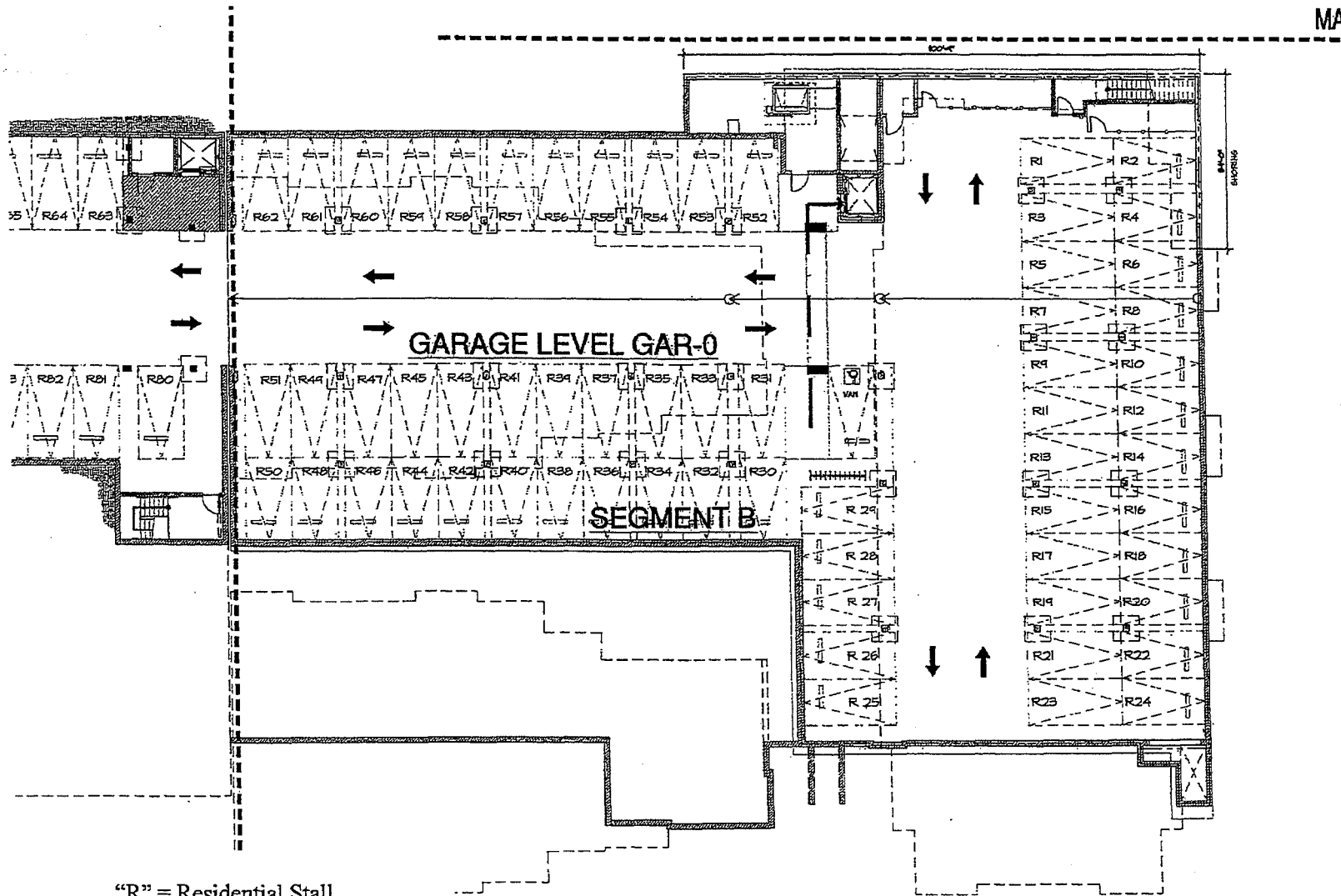
PARKING PLAN

(See the attached)

Exhibit "C" – Parking Plan

"←" (arrows) represent drive aisles

"This depiction is intended for illustrative purposes only. As-built conditions will control."



- "R" = Residential Stall
- "G" = Residential Guest Stall
- "P" = Public Stall

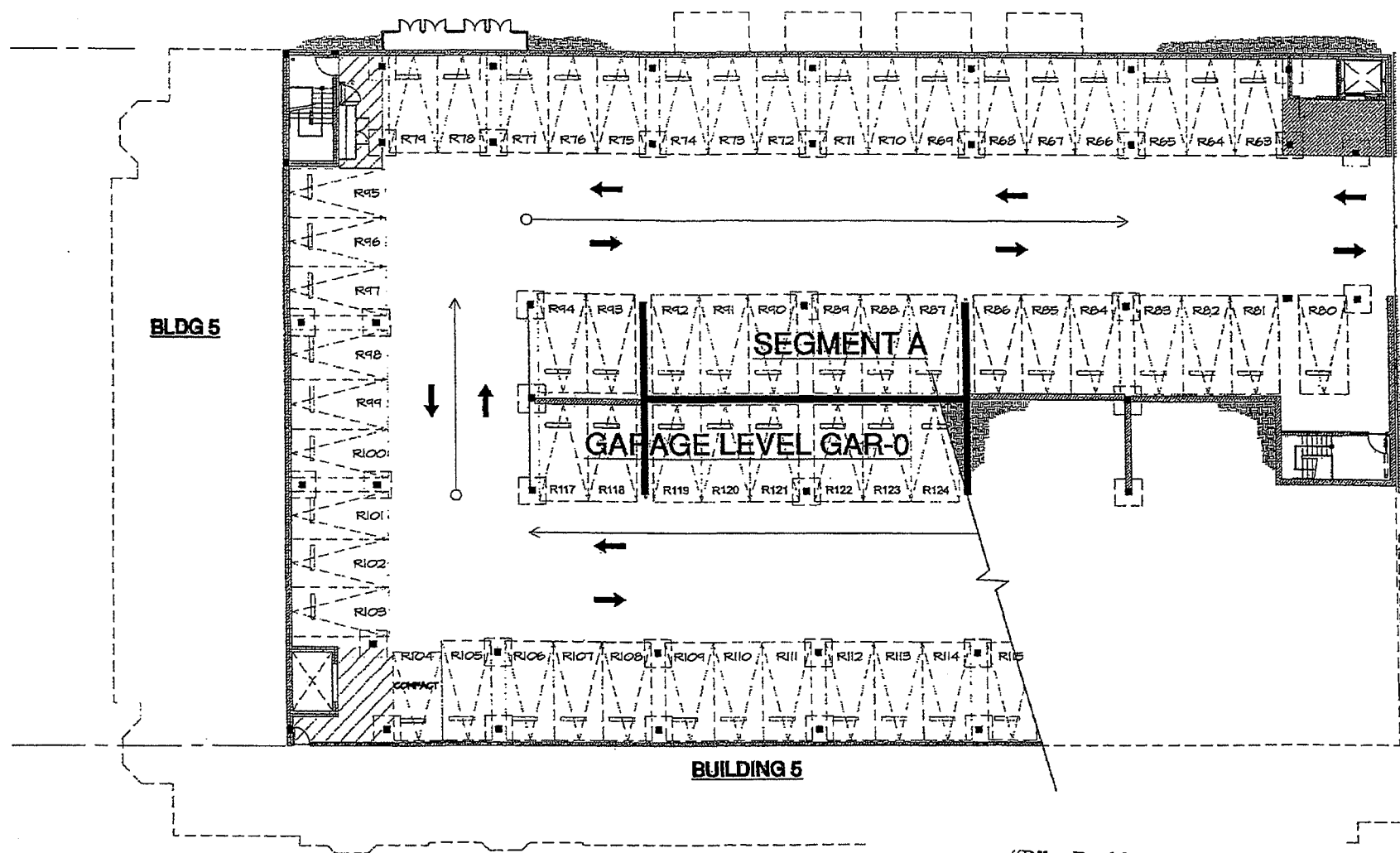
BUILDING 4

NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. THE AS-BUILT CONDITIONS WILL CONTROL.

Exhibit "C" - Parking Plan

"←" (arrows) represent drive aisles

"This depiction is intended for illustrative purposes only. As-built conditions will control."



NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. THE AS-BUILT CONDITIONS WILL CONTROL.

"R" = Residential Stall

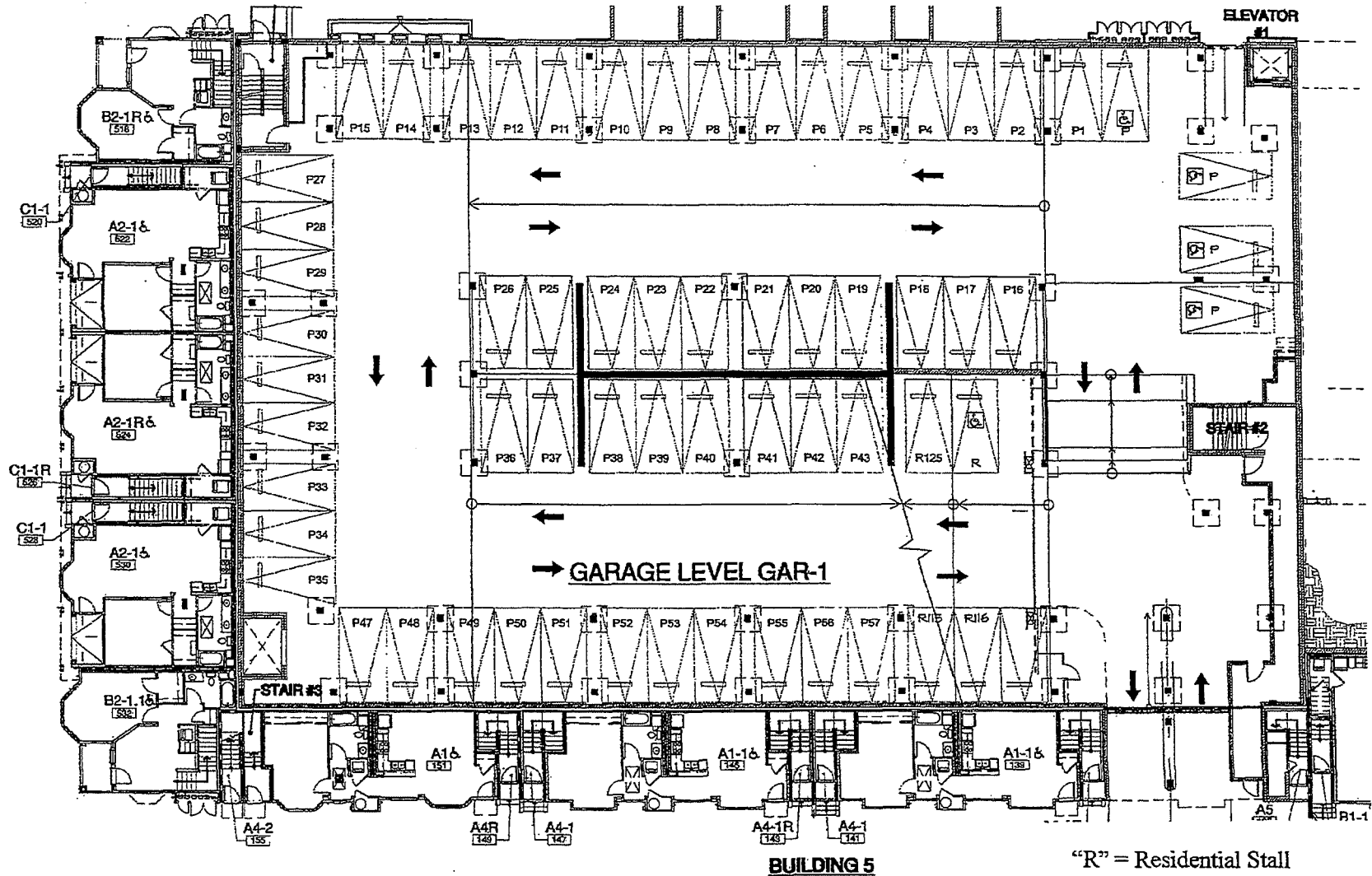
"G" = Residential Guest Stall

"P" = Public Stall

Exhibit "C" - Parking Plan

"←" (arrows) represent drive aisles

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"R" = Residential Stall

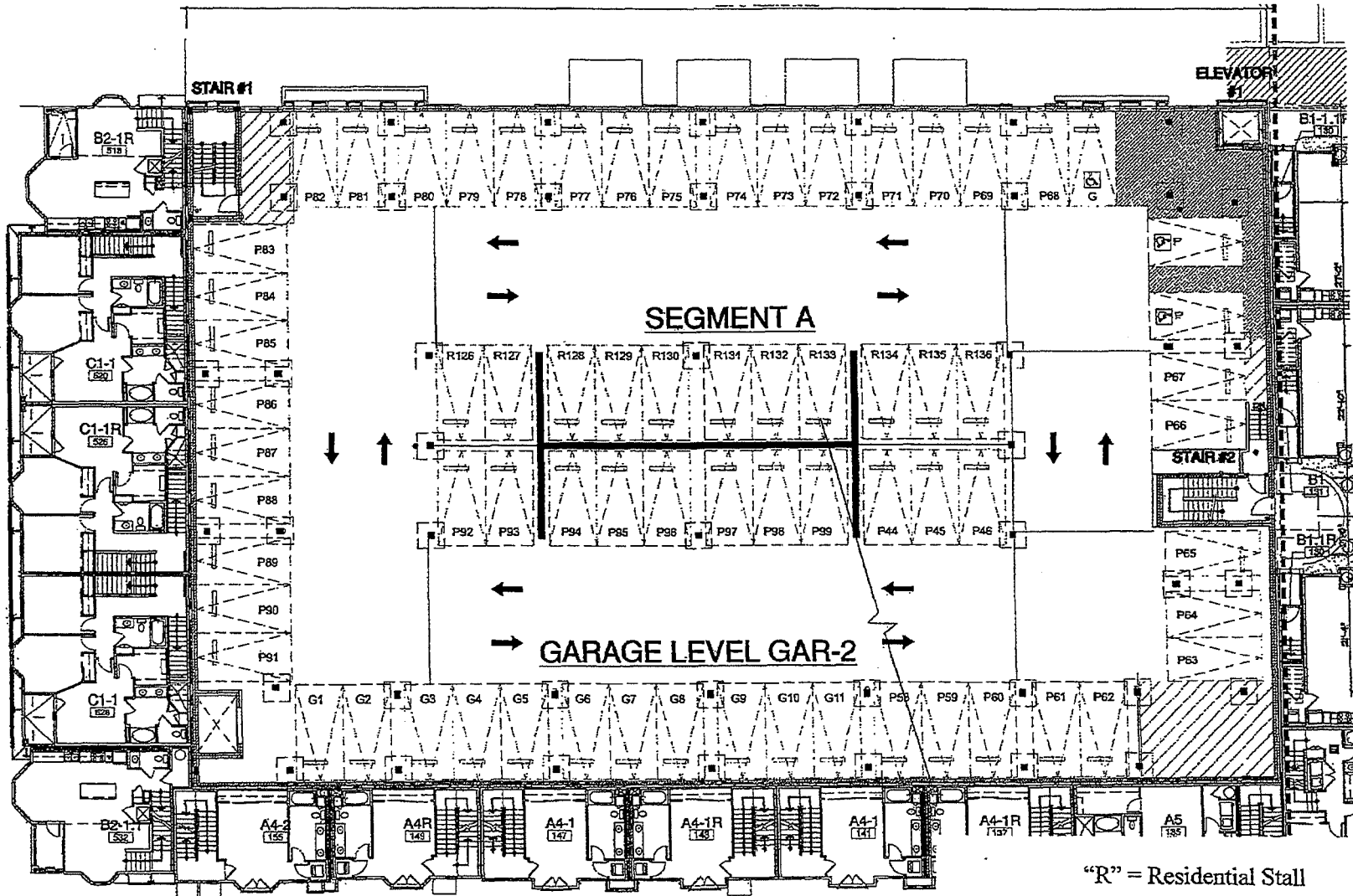
"G" = Residential Guest Stall

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Exhibit "C" – Parking Plan

“←” (arrows) represent drive aisles

“This depiction is intended for illustrative purposes only. As-built conditions will control.”



NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. THE AS-BUILT CONDITIONS WILL CONTROL.

BUILDING 5

“R” = Residential Stall

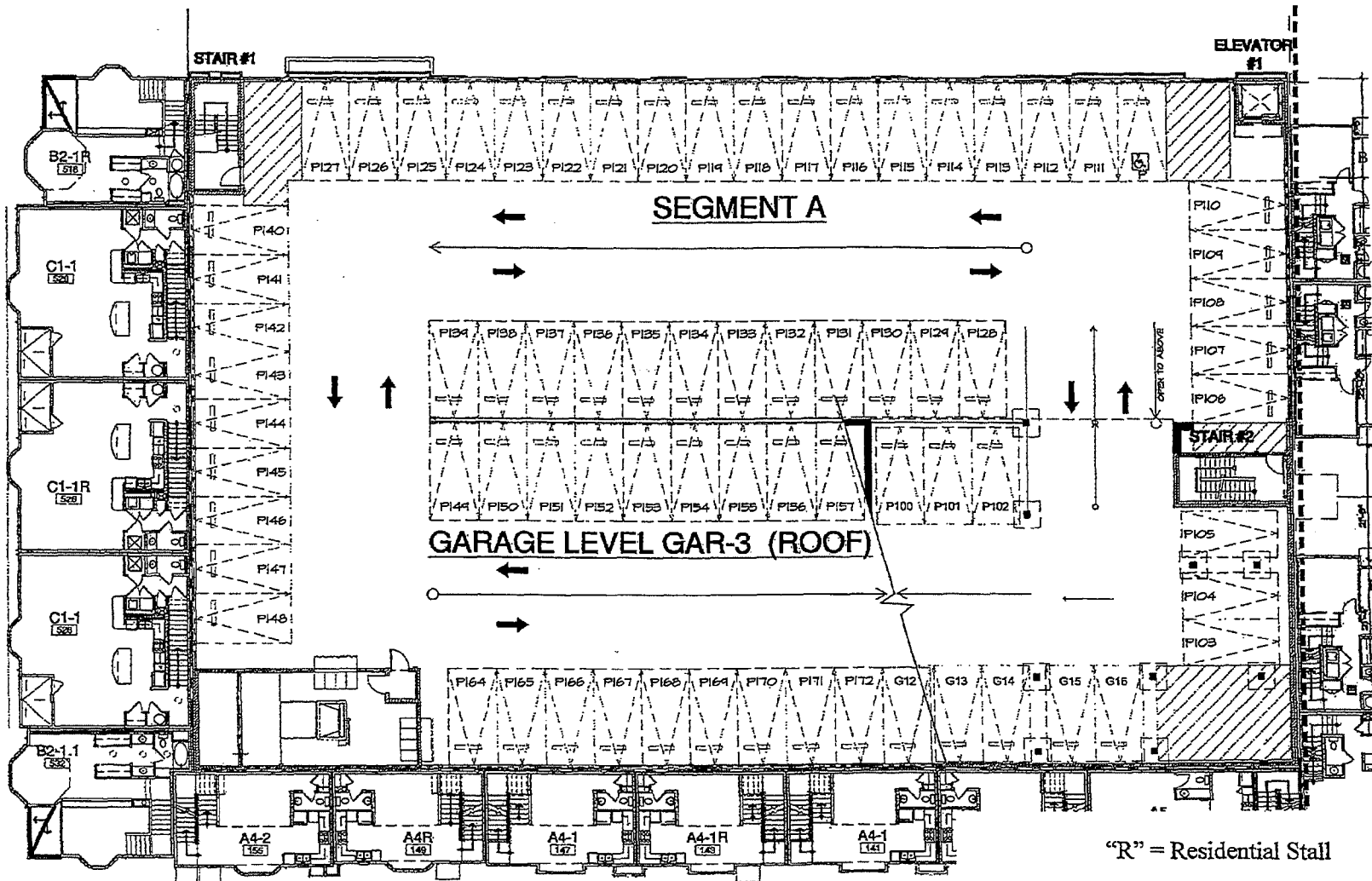
“G” = Residential Guest Stall

“P” = Public Stall

Exhibit "C" – Parking Plan

"←" (arrows) represent drive aisles

"This depiction is intended for illustrative purposes only. As-built conditions will control."



NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. THE AS-BUILT CONDITIONS WILL CONTROL.

BUILDING 5

"R" = Residential Stall

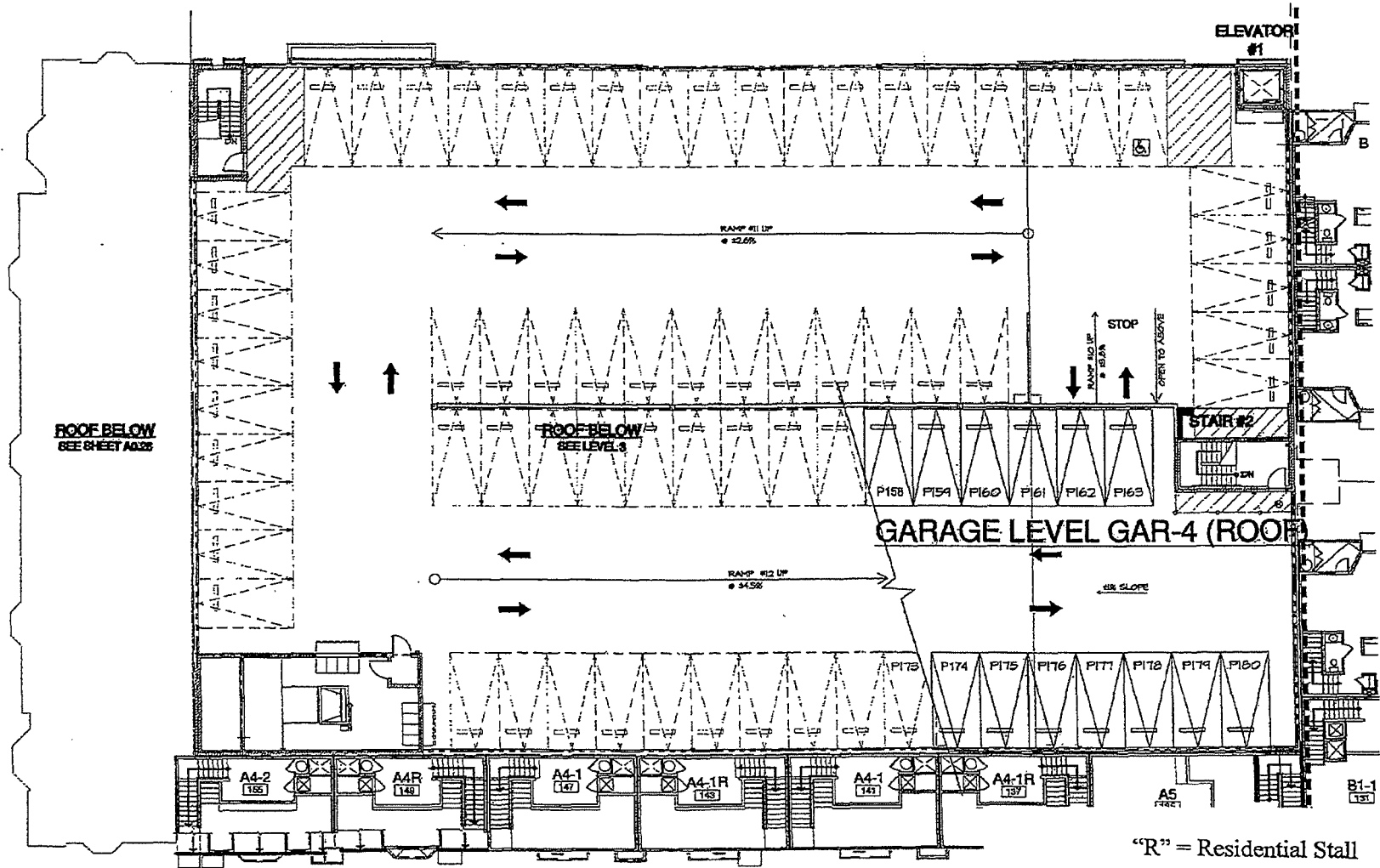
"G" = Residential Guest Stall

"P" = Public Stall

Exhibit "C" – Parking Plan

"←" (arrows) represent drive aisles

"This depiction is intended for illustrative purposes only. As-built conditions will control."



NOTE: THIS DEPICTION IS INTENDED FOR ILLUSTRATIVE PURPOSES ONLY. THE AS-BUILT CONDITIONS WILL CONTROL.

BUILDING 5

- "R" = Residential Stall
- "G" = Residential Guest Stall
- "P" = Public Stall

EXHIBIT "D"

SITE PLAN

(See the attached)

LEMON AVE.

PRIMROSE AVE.

EXISTING
3-STORY
CONDOMINIUM
BUILDING

54 FT - 10"
VERIFY W/ CIVIL DRAWINGS

WHITE OAK ALLEY

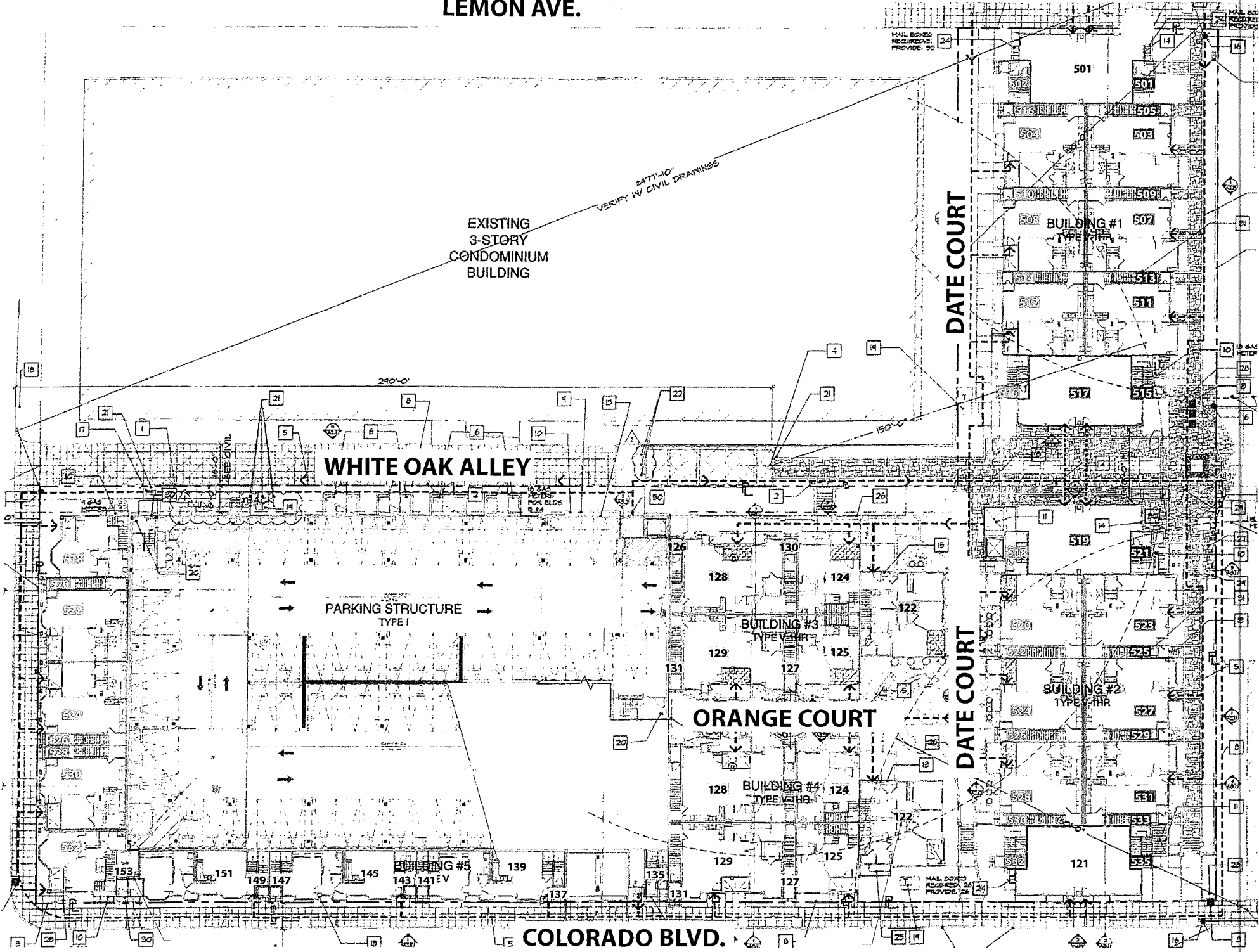
PARKING STRUCTURE
TYPE I

ORANGE COURT

DATE COURT

DATE COURT

COLORADO BLVD.



This page is part of your document - DO NOT DISCARD



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Pages:
016



Recorded/Filed in Official Records
Recorder's Office, Los Angeles County,
California

Fee: 0.00

Tax: 0.00

Other: 0.00

Total: 0.00

09/18/08 AT 08:00AM

Title Company

TITLE(S) : DEED



LEAD SHEET

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

- -

THIS FORM IS NOT TO BE DUPLICATED

E484700

RECORDED BY:
FIRST AMERICAN TITLE COMPANY
LOS ANGELES
WHEN RECORDED MAIL TO

2

CITY OF MONROVIA
415 SOUTH IVY AVENUE
MONROVIA, CALIFORNIA 91016
ATTENTION: CITY CLERK'S OFFICE



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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

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GRANT DEED

APN 8516-023-087, 8516-023-088; 8516-023-089, 8516-023-090; 8526-023-091; 8516-023-092

362450-82

**WHEN RECORDED MAIL TO AND
MAIL TAX STATEMENTS TO:**

City of Monrovia
415 South Ivy Avenue
Monrovia, California 91016
Attention: City Clerk's Office

(SPACE ABOVE FOR RECORDER'S USE)

DOCUMENTARY TRANSFER TAX \$ NONE - EXEMPT PER REVENUE & TAXATION CODE SECTION 11922

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, PCCP MONROVIA, LLC, a Delaware limited liability company ("**Grantor**") hereby GRANTS to the CITY OF MONROVIA, a municipal corporation ("**Grantee**") the following described real property (the "**Property**") located in the City of Monrovia, County of Los Angeles, State of California:

SEE EXHIBIT "A" ATTACHED

SUBJECT TO:

1. Current taxes and assessments;
2. That certain "Shared Parking Facility Easement Agreement" entered into by Grantor and Grantee and recorded on June 5, 2008 as Instrument No. 08-0991959 in the Official Records of Los Angeles County, California (the "Parking Easement Agreement");
3. All other covenants, conditions, restrictions, easements, reservations, rights, rights of way, encumbrances, liens, dedications, offers of dedication and all other matters of record or visible from an inspection of the Property; and
4. The following acknowledgements and covenants, conditions and restrictions (collectively the "**Special CC&Rs**") which are intended to and shall constitute covenants running with the Property and with the Benefited Property referenced below and which shall remain in full force and effect until the "Commencement Date" of the Parking Easement Agreement as set forth therein. (Various capitalized words and phrases used in these Special CC&Rs are defined in the Parking Easement Agreement and unless otherwise indicated herein, such words and phrases shall have the same meaning herein as is ascribed to them in the Parking Easement Agreement.)

(a) **Easements, Rights and Obligations Relating to the City Parking Structure Under the Parking Easement Agreement.** Grantor and Grantee acknowledge that the Property has been improved by Grantor as a municipal parking structure (the "**City Parking Structure**"), and that that certain real property located

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contiguous to the City Parking Structure and more particularly described on Exhibit "B" attached hereto (the "**Benefited Property**") has been developed by Grantor as a mixed use condominium project commonly known as "Colorado Commons" (the "**Mixed Use Development**"). Grantor and Grantee also acknowledge that they each anticipated that when Grantor completed construction of the Mixed Use Development, Grantor would sell the Condominium Units located therein, and that the Colorado Commons Maintenance Association, a California nonprofit mutual benefit corporation formed by Grantor (the "**Mixed Use Association**") would operate and manage the Mixed Use Development. Grantor and Grantee acknowledge and agree that it was their mutual intention that pursuant to the Parking Easement Agreement, the Mixed Use Association, each Owner of a Condominium Unit in the Mixed Use Development and Grantor would each have certain easements and rights (including, but not limited to, ingress, egress, access, parking, use, maintenance, repair, reconstruction, drainage, signage and all other purposes, as applicable) on, over, under, across and through certain designated portions of the City Parking Structure, and that the Mixed Use Association would have certain obligations relating to the City Parking Structure, including, but not limited to, (i) the obligation to maintain, at its sole cost and expense, certain improvements and areas within the City Parking Structure, (ii) the obligation to equitably share with the City certain costs incurred by the City to maintain other improvements and areas within the City Parking Structure; (iii) the obligation to equitably share with the City the cost incurred by the City to maintain a policy of property insurance for the City Parking Structure; and (iv) the obligation to maintain, at its sole cost and expense, a policy of liability insurance relating to its rights to use the City Parking Structure, all as more fully set forth in the Parking Easement Agreement. Additionally, Grantor and Grantee also acknowledge and agree that it was their mutual intention that Grantee would own the City Parking Structure and would have certain obligations under the Parking Easement Agreement to operate and maintain same, including, but not limited to, (i) the obligation to maintain, at its sole cost and expense, the City Parking Structure, except as otherwise provided in the Parking Easement Agreement; (ii) the obligation to equitably share with the Mixed Use Association certain costs incurred by the City to maintain other improvements and areas within the City Parking Structure; (iii) the obligation to equitably share with the Mixed Use Association the cost incurred by the City to maintain a policy of property insurance on the City Parking Structure; and (iv) the obligation to maintain, at its sole cost and expense, a policy of liability insurance relating to its ownership and use of the City Parking Structure, all as more fully set forth in the Parking Easement Agreement. Grantor and Grantee further acknowledge and agree that all easements and rights and obligations under the Parking Easement Agreement were to commence and become effective on the date that both of the following conditions were satisfied: (i) the City Parking Structure had been conveyed by Developer (i.e., Grantor) to the City (i.e., Grantee); and (ii) the first Close of Escrow for the sale a Condominium in the Mixed Use Development had occurred, (the "**Commencement Date**").

(b) **Leasing of the Condominium Units in the Mixed Use Development.**

Due to current adverse real estate market conditions, Grantor and Grantee have agreed that Grantor may postpone selling the Condominium Units in the Mixed Use

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Development and may lease them for a period of time, as provided in that certain "First Amendment to Disposition and Development Agreement" dated July 15, 2008 by and between Grantor and the Monrovia Redevelopment Agency, a public body, corporate and politic (the "*First Amendment*").

(c) **Reservation of Easements and Rights by Grantor.** Notwithstanding that the Parking Easement Agreement has not commenced, in furtherance of the agreement that Grantor may lease the Condominium Units in the Mixed Use Development, Grantor and Grantee acknowledge and agree that Grantor hereby reserves unto itself and its successors and assigns, the right to exercise each and all of the easements and rights that were to be conveyed to Grantor as the Developer of the Mixed Use Development as set forth in the Parking Easement Agreement on, over, under, across and through the City Parking Structure. Grantor's right to exercise such easements and rights shall automatically become effective on the date this Grant Deed is recorded in the Official Records of Los Angeles County, California and shall continue until the Commencement Date of the Parking Easement Agreement. Additionally, in furtherance of the leasing of the Condominium Units in the Mixed Use Development by Grantor, Grantor and Grantee also acknowledge and agree that Grantor hereby reserves unto itself and its successors and assigns, the right to exercise each and all of the easements and rights that were to be conveyed to the Mixed Use Association as set forth in the Parking Easement Agreement on, over, under, across and through the City Parking Structure. Grantor's right to exercise such easements and rights shall automatically become effective on the date this Grant Deed is recorded in the Official Records of Los Angeles County, California and shall continue until the Commencement Date of the Parking Easement Agreement. Without limiting the generality of the foregoing, Grantor and Grantee acknowledge and agree that the easements and rights reserved by Grantor herein expressly include, without limitation, the following:

(i) a non-exclusive easement appurtenant to the Benefited Property for vehicular and pedestrian ingress, egress and access in, on, over, through and across the traffic lanes in the City Parking Structure to and from: (a) the sixty-three (63) Mixed Use Parking Spaces located in the Mixed Use Parking Garage; (b) the sixty-four (64) Mixed Use Parking Spaces located within the Gated Parking Area of the City Parking Structure; (c) the eleven (11) Ungated Mixed Use Parking Spaces located within the City Parking Structure; and (d) the seventeen (17) Ungated Overnight Parking Spaces With Permit located within the City Parking Structure; and

(ii) an exclusive easement appurtenant to the Benefited Property for parking purposes in, on, over, across and through the City Parking Structure as follows: (a) the parking of sixty-four (64) vehicles in the Mixed Use Parking Spaces within the Gated Parking Area of the City Parking Structure; (b) the parking (including overnight parking) of eleven (11) vehicles in the Ungated Mixed Use Parking Spaces located outside the Gated Parking Area of the City Parking Structure; and (c) the parking (including overnight parking) of seventeen (17) vehicles (each vehicle pursuant to a separate permit issued by Grantor) in the

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Ungated Overnight Parking Spaces With Permit located outside the Gated Parking Area of the City Parking Structure in the area designated on the Parking Plan which is attached as Exhibit "C" to the Parking Easement Agreement.

Grantor and Grantee understand and agree that Grantor may temporarily delegate its easements and rights to use the City Parking Structure (including, without limitation, the rights of ingress, egress, access, parking and right to use the City Elevator) to the tenants and lessees renting or leasing Condominium Units in the Mixed Use Development, subject to the terms and provisions of the Parking Easement Agreement. Grantor may, at its sole discretion, terminate the delegation of such easements and rights to such tenants and lessees at such time as Grantor anticipates commencing a program to market and sell the Condominium Units in the Mixed Use Development.

(d) **Assumption of Obligations by Grantor.** In light of the fact that the Mixed Use Association will neither commence managing the Mixed Use Development nor commence performing its obligations under the Parking Easement Agreement until the Commencement Date, Grantor hereby covenants and agrees to perform each and all of the obligations that were to be performed by the Mixed Use Association as set forth in the Parking Easement Agreement (including, without limitation, performing all of the Mixed Use Association's maintenance obligations relating to the City Parking Structure and paying all costs and expenses allocated to the Mixed Use Association under the Parking Easement Agreement). Grantor shall commence performing the obligations that were to be performed by the Mixed Use Association effective on the date this Grant Deed is recorded in the Official Records of Los Angeles County, California and shall continue until the Commencement Date of the Parking Easement Agreement.

(e) **Performance of Obligations by Grantee.** Grantee hereby covenants and agrees to perform each and all of the obligations that were to be performed by the City as set forth in the Parking Easement Agreement (including, without limitation, performing all of the City's maintenance obligations relating to the City Parking Structure, and obtaining the insurance coverage required to be obtained by the City). Grantee shall commence performing the obligations that were to be performed by the City effective on the date this Grant Deed is recorded in the Official Records of Los Angeles County, California and shall continue until the Commencement Date of the Parking Easement Agreement.

(f) **Commencement of the Parking Easement Agreement on the Commencement Date and Termination of these Special CC&Rs.** Save and except as provided herein, Grantor and Grantee each acknowledge and agree that the Parking Easement Agreement shall not otherwise commence or become effective until the Commencement Date. From and after the Commencement Date, the easements and rights and obligations of the Mixed Use Association, each Owner of a Condominium Unit, the City and Grantor as the Developer shall be as set forth in the Parking Easement Agreement, and these Special Covenants shall automatically cease and terminate and be of no further force or effect. Without limiting the generality of the foregoing, as of the Commencement Date, the Mixed Use Association shall assume sole responsibility for

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performing all of its obligations under the Parking Easement Agreement and Grantor shall not have any further obligation to perform any of such obligations whatsoever, save and except to pay for any costs, expenses or other liabilities that arose prior to the Commencement Date.

(g) **Default and Remedies.** In the event of a breach or default by Grantor or Grantee (the "**Defaulting Party**") in the performance of, or compliance with, any of these Special CC&Rs (collectively a "**Default**") which has not been cured within thirty (30) days after written notice from the non-defaulting party to do so, or if such Default cannot be cured within such time, then if such cure is not then being diligently pursued to completion (but in all cases, such cure must be effectuated not later than ninety [90] days from receipt of such written notice from the non-defaulting party), the non-defaulting party, at its sole and absolute discretion, shall have the right, but not the obligation, to exercise any or all of its rights and remedies hereunder or any other rights and/or remedies available at law or in equity. All rights and remedies shall be deemed cumulative and not exclusive. Notwithstanding the foregoing, Grantor and Grantee understand and agree that a Default by either party shall not entitle the non-defaulting party to terminate, cancel, modify or otherwise rescind any of the easements or rights of the Defaulting Party set forth herein or in the Parking Easement Agreement. Further, in the event of a monetary default by the Defaulting Party, the sole and exclusive remedy of the non-defaulting party on account of such monetary default shall be an action for monetary damages which shall be subject to the dispute resolution provisions set forth below. In the event of any other default hereunder, the non-defaulting party may bring an action for damages or for specific performance only

(h) **Mortgagee Protection.** Any Default by a Defaulting Party under these Special CC&Rs shall not defeat or render invalid the lien of any mortgage, deed of trust or similar instrument securing a loan made in good faith and for value with respect to the Benefited Property or the Property; provided, that all of these Special CC&Rs shall be binding upon and effective against any subsequent owner of the Benefited Property or the Property, or portion thereof, whose title is acquired by or as a result of foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise pursuant to such lien rights, but such subsequent owner shall take title free and clear of any liability for any Default which occurred prior to such transfer of title.

(i) **Resolution of Disputes.** Grantor and Grantee acknowledge and agree that any and all disputes between Grantor and Grantee relating to these Special CC&Rs shall be resolved pursuant to the Arbitration of Disputes provisions set forth in the Parking Easement Agreement.

(j) **Termination of the Special CC&Rs.** As noted in Paragraph (f) above, each and all of these Special CC&Rs shall automatically cease and terminate and be of no further force or effect upon the Commencement Date of the Parking Easement Agreement, and Grantor shall not have any further obligation to perform any of the obligations of the Mixed Use Association as provided herein, save and except to pay for

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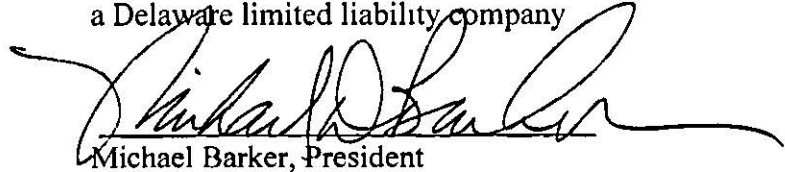
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any costs, expenses or other liabilities that arose prior to the Commencement Date of the Parking Easement Agreement.

IN WITNESS WHEREOF, Grantor has caused this Grant Deed to be executed as of August 11, 2008.

GRANTOR

PCCP MONROVIA, LLC,
a Delaware limited liability company

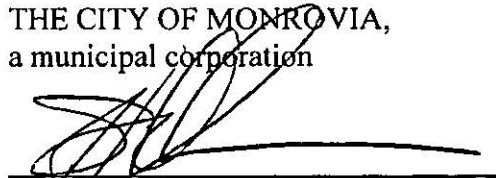


Michael Barker, President

ACCEPTANCE BY GRANTEE

Grantee hereby accepts the conveyance from Grantor of the real property described herein, subject to the covenants, conditions, restrictions, easements, reservations, rights, rights of way, encumbrances, liens, dedications, offers of dedication and all other matters of record or visible from an inspection of the Property, as referenced above, including, but not limited to the Special CC&Rs set forth above. Further, Grantee hereby expressly covenants and agrees to be bound by and to perform all of the Special CC&Rs to be performed by Grantee as set forth herein.

THE CITY OF MONROVIA,
a municipal corporation



Scott Ochoa, City Manager

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STATE OF CALIFORNIA)
) ss.
COUNTY OF Los Angeles)

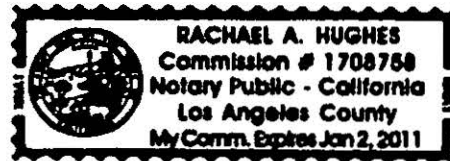
On Aug. 11, 2008, before me, Rachael A. Hughes, Notary Public
personally appeared Scott W. Ochoa
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same
in his/~~her/their~~ 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



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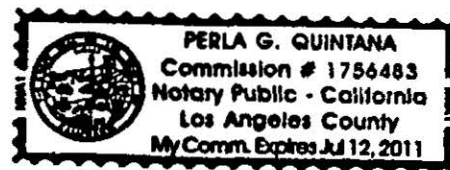
STATE OF CALIFORNIA)
) ss.
COUNTY OF Los Angeles)

On August 12, 2008, before me, Perla G. Quintana, Notary Public, personally appeared Michael D. Barker 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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Perla G. Quintana



(Seal)

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EXHIBIT "A"

//

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 2 OF CERTIFICATE OF COMPLIANCE, LOT LINE ADJUSTMENT NO. 2008-01, AS EVIDENCED BY DOCUMENT RECORDED MAY 16, 2008 AS INSTRUMENT NO. 20080872916 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 5 OF TRACT 63269, AS PER MAP FILED IN BOOK 1336, PAGES 87 THROUGH 89, INCLUSIVE, OF TRACT MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION LYING ABOVE AN ELEVATION OF 545.83 FEET ABOVE MEAN SEA LEVEL, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY SOUTHWEST CORNER OF SAID LOT 5; THENCE ALONG THE WESTERLY LINE OF SAID LOT 5, NORTH 00° 00' 00" WEST, 20.60 FEET, THENCE LEAVING SAID WESTERLY LINE, NORTH 89° 59' 48" EAST, 31.04 FEET TO THE EASTERLY LINE OF SAID LOT 5, THENCE ALONG SAID EASTERLY LINE, SOUTH 00° 00' 00" EAST, 20.59 FEET TO THE SOUTHERLY LINE OF SAID LOT 5; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 89° 59' 04" WEST, 31.04 FEET TO THE POINT OF BEGINNING.

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EXHIBIT "A"

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EXHIBIT "B"

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LEGAL DESCRIPTION OF THE BENEFITED PROPERTY

The Benefited Property shall mean and refer to that certain real property located in the City of Monrovia, County of Los Angeles, State of California, more particularly described as follows.

Lots 1, 2 and 3 of Tract 63269 as shown on a map recorded in Book 1336, Pages 87 through 89, inclusive, of Maps in the office of the County Recorder for Los Angeles County, California;

and

Parcels 1 and 3 as shown on Exhibit "D" attached to the Certificate of Compliance, Lot Line Adjustment 2008-001 recorded on May 16, 2008 as Instrument No. 08-0872916 in the Official Records of Los Angeles County, California.

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EXHIBIT "B"

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SCHEDULE 2

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SCHEDULE 3

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SCHEDULE 4

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