

Connie Cochran

From: Courtney Christy
Sent: Tuesday, July 21, 2020 9:35 AM
To: Jodi Henninger
Cc: Jean Erhardt; Kerrie Bronwasser
Subject: RE: City of Stockton - Request to Sign Estoppel Certificates
Attachments: Cover Letter to A.G. Spanos Construction re. Estoppel re Parking, Easement and Maintenance Declaration (00509240xAF516).PDF; Cover Letter to City of Stockton re. Estoppel re Stormwater Maintenance Agreement (00509237xAF516).PDF; Cover Letter to AGS Business Center Assoc re. Spanos Business Center (00509239xAF516).PDF; Cover Letter to City of Stockton re. Estoppel for Spanos Park West Development Agrmt - Exception 8 (00509872xAF516).PDF; Estoppel Certificate - Spanos Park West Density Transfer Development Agreement.pdf

Good morning Ms. Henninger,

I actually came across this the other day and wondered if the department had handled it already and forgot to let me know. Now I know.

I have 4 full Estoppel packets in my file to collect signatures on. Please review the attached and let me know if we need to work on all four. I also have a 5th for a Spanos Park West Density Transfer Development Agreement (attached), but never received the attachments/exhibits, so I assume that one is out?

Let me know which direction to go and I'll get started.

Thank you,

Courtney Christy

City of Stockton - Office of the City Manager
425 N. El Dorado Street | Stockton, CA 95202
Direct: (209) 937-5576
Courtney.christy@stocktonca.gov

From: Jodi Henninger <henninger@ccmlawyer.com>
Sent: Tuesday, July 21, 2020 7:33 AM
To: Courtney Christy <Courtney.Christy@stocktonca.gov>
Cc: Jean Erhardt <erhardt@ccmlawyer.com>; Kerrie Bronwasser <bronwasser@ccmlawyer.com>
Subject: RE: City of Stockton - Request to Sign Estoppel Certificates

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Courtney,

We are gearing up to close on this matter again. It was delayed due to the Pandemic. You had assisted us with some Estoppels back in early March (see below). I do not find that we ever received the attached. Can you let me know if you can process the same?

Thank you, and best regards,

Jodi L. Henninger
Clingen Callow & McLean, LLC
2300 Cabot Drive, Suite 500
Lisle, IL 60532-3639

Direct: 630/871-8550
Fax: 630/871-9869
Email: Henninger@ccmlawyer.com



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From: Courtney Christy <Courtney.Christy@stocktonca.gov>
Sent: Tuesday, March 03, 2020 10:58 AM
To: Jodi Henninger <henninger@ccmlawyer.com>
Subject: City of Stockton - Request to Sign Estoppel Certificates

Good morning Ms. Henninger,

I wanted to let you know that we've received the 2 Estoppel Certificates (attached for reference) however, neither of them includes the original agreement attached as Exhibit A, as mentioned.

To be sure we're all looking at the same thing, would you mind sending your attachments when you can? I'll include them with the certificates and start routing for review and approval on our end.

I'm heading off-site for another meeting until 10:30 but will be back in the office shortly after.

Thank you,

Courtney Christy
City of Stockton - Office of the City Manager
425 N. El Dorado Street | Stockton, CA 95202
Direct: (209) 937-5576
Courtney.christy@stocktonca.gov

JODI L. HENNINGER
Direct Telephone: 630.871.8550
henninger@ccmlawyer.com

February 27, 2020

Via Federal Express

A.G. Spanos Construction, Inc.
Attn: Jerry Murphy
10100 Trinity Parkway, 5th Floor
Stockton, CA 95219

Re: Reciprocal Parking, Easement, and Maintenance Declaration for A.G. Spanos Professional Office Center dated as of February 9, 2006 (the "Agreement") by A.G. Spanos Construction, Inc., recorded with the recorder of deeds of San Joaquin County, California on February 10, 2006 as document number 2006-033422, for the property located at 10250 Trinity Parkway, Stockton, CA (the "Property")

Dear Mr. Murphy:


Our office represents BlueRoad Net Lease, LLC, the Seller for the above-referenced Property. The Agreement provides that we request an Estoppel Certificate from you.

We hereby request that you execute and return to the undersigned the enclosed Estoppel Certificate within ten (10) days from the date of this notice. Enclosed is a self-addressed Federal Express mailing label for your convenience.

Should you have any questions, please feel free to call the undersigned at 630-871-8550, or contact by email to henninger@ccmlawyer.com. Thank you for your prompt cooperation.

Very truly yours,

CLINGEN CALLOW & McLEAN, LLC

By: 
Jodi L. Henninger

JLH/keb

cc: Joe Perez, Plante Moran Real Estate Investment Advisers
Kevin Sanz, Orion Buying Corp.
Eric R. Everett, Darrow Everett LLP

ESTOPPEL CERTIFICATE

Date: _____, 2020

To: OREOF19 BR, LLC (“Purchaser”)
200 South Biscayne Blvd., 7th Floor
Miami, FL 33131
Attention: Kevin Sanz

Re: Reciprocal Parking, Easement, and Maintenance Declaration for A.G. Spanos Professional Office Center dated as of February 9, 2006 (the “Agreement”) by A.G. Spanos Construction, Inc. (“Declarant”), recorded with the recorder of deeds of San Joaquin County, California on February 10, 2006 as document number 2006-033422, a copy of which is attached hereto as Exhibit A covering certain real property more particularly described in the Agreement. BlueRoad Net Lease, LLC, a Delaware limited liability company (“Seller”), is the current and sole fee title owner of 10250 Trinity Parkway, Stockton, CA (the “Property”) is under contract to sell the Property to Purchaser, and Seller requests that Declarant execute this Estoppel Certificate as a one-time accommodation to Purchaser and Seller in connection with such proposed sale to Purchaser.

Gentlemen:

The undersigned Declarant understands and acknowledges that Purchaser has obtained or is in the process of obtaining a mortgage loan (“Loan”) from CIBC BANK USA (as administrative agent for itself and the lenders, together with its successors and assigns, “Lender”) which Loan is or will be evidenced by a note secured by a mortgage (“Mortgage”) upon the Property and that Lender, in making the Loan, is relying upon Declarant’s certification herein.

Declarant hereby certifies to Purchaser and Lender that:

1. (a) The Agreement is in full force and effect, has not been modified, supplemented or amended, and has not been assigned by Declarant; (b) to the best of Declarant’s current actual knowledge as of the date hereof, there are no uncured defaults on the part of Seller or Declarant, and (c) to the best of Declarant’s current actual knowledge as of the date hereof, there are no current sums owing to Declarant from Seller under the Agreement.

2. Declarant agrees that, in the event of a foreclosure of the Mortgage, or other enforcement of the provisions of the Loan Documents, or the exercise by Lender of its rights pursuant to the Mortgage, or in the event Lender comes into possession or acquires title to the Property as a result of a foreclosure or threat thereof, or as a result of any other means, then such party may enforce the Agreement with the same force and effect as if enforced by Purchaser. Lender may perform the obligations of Purchaser under the Agreement, but shall have no obligation to do the same (unless and until the interest of Purchaser in the Property is transferred to Lender, in which event such party shall be obligated to perform Purchaser’s obligations under the Agreement).

3. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Agreement.

4. The individual executing this Estoppel Certificate has the power and authority to execute this Estoppel Certificate on behalf of Declarant.

5. Declarant acknowledges and agrees that Purchaser, Lender, administrative agent for the Lender(s), co-lenders or participant lenders of the Loan and their respective successors and assigns shall be entitled to rely on Declarant's certifications set forth herein.

6. Electronic signatures to, and the electronic transmission of, this Estoppel Certificate (including, without limitation, transmission via electronic mail in scanned "PDF" format) shall be legally binding and shall have the same force and effect as an original ink-on-paper signature manually penned by such signatory.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed by its authorized representative as of the day and year first above written.

DECLARANT:

**A.G. SPANOS CONSTRUCTION, INC., a
California corporation**

By: _____

Name: _____

Its: _____

EXHIBIT A
AGREEMENT

RECORDED AT THE REQUEST OF AND
WHEN RECORDED PLEASE MAIL TO:

A.G. SPANOS CONSTRUCTION, INC.
10100 TRINITY PARKWAY, 5TH FL.
STOCKTON, CA 95219
ATTENTION: William E. Barbour

231533DB

DOC # 2006-033422
02/10/2006 12:56P Fee:136.00
Page 1 of 44

Recorded in Official Records
County of San Joaquin

GARY W. FREEMAN
Assessor-Recorder-County Clerk
Paid by FIRST AMER TITLE CO



RECIPROCAL PARKING, EASEMENT, AND
MAINTENANCE DECLARATION FOR
A.G. SPANOS PROFESSIONAL OFFICE CENTER

Section 1. Parties; Property; Date. This Declaration ("Declaration") for the A.G. Spanos Professional Office Center is made this 9 day of February, 2006, by A.G. SPANOS CONSTRUCTION, INC., a California corporation (the "Company"). The property subject to this Declaration is that certain real property described as: i) "Parcel 1 and 2" as shown on that certain parcel map entitled "23-24A" and filed for Record on April 30, 2004, in Book 23 of Maps and Plats, at Page 24, Records of San Joaquin County (respectively, "Parcel B or the Existing Parcel" and "Parcel A"); and ii) Parcels 1, 2 and 3 as shown on the Map (as defined below) ("Parcel E, Parcel D and Parcel C," respectively) but shall exclude that certain portion of land lying in the northeasterly corner of Parcel E, being the mostly northerly 40 feet of the most easterly 20 feet of said Parcel E, measured parallel to said lines (the "Sign Easement Area"), as depicted on *Exhibit C3*. Parcels A through E are more particularly described in *Exhibit A*, which is attached to this Declaration, and are collectively referred to as the "Project". This Declaration is subject to the A.G. Spanos Business Center Declaration dated January 13, 2003 and recorded January 14, 2003 as document number 2003-009303 in the Official Records of San Joaquin County ("Business Center CC&Rs").

Section 2. Definitions. Unless the context otherwise requires, the terms used in this Declaration shall have the meanings defined in this Section. Any term or phrase not defined in this Section, but either specifically defined or shown in quotes in parentheses in another provision of this Declaration, shall have the meaning set forth in such provision as though it were defined in this Section.

A. Driveway Easement. "Driveway Easement" means the easements granted pursuant to Section 6 of this Declaration. The Driveway Easement burdens portions of Parcels A through E.

B. Map. "Map" means that certain parcel map filed for record on February 2, 2006, in Book 23 of Maps, at Page 177, San Joaquin County Records, being a subdivision of a portion of the surveyed designated remainder as shown on the parcel map filed in Book 23 of Maps, at Page 24, San Joaquin County Records on April 30, 2004. .

C. Occupant. "Occupant" means any natural person or entity legally using or entitled to use a Parcel or any portion thereof within the Project, either as an Owner or pursuant to any lease or sublease, rental agreement, license, concession agreement, or other instrument conferring such status.

D. Operator. "Operator" means the Company or its successor performing the duties of managing the Project pursuant to this Declaration.

E. Owner. "Owner" means the holder of all or any part of the fee title to any part of a Parcel within the Project.

F. Parcel. "Parcel" means any legally subdivided parcel or lot located within the Project. Upon the splitting of a Parcel or the consolidation of Parcels or the adjustment of any Parcel's boundaries, "Parcel" shall refer to the resulting lots or parcels. "Parcel" when not used with a specific number means any of the Parcels within the Project, and includes all improvements on or to such lot or parcel.

G. Permitted User. "Permitted User" means any employee, agent, contractor, supplier, client, customer, or prospective client or customer, or any other business invitee of an Owner or Occupant.

H. Utility Easement. "Utility Easement" means the easements granted and reservations made pursuant to Section 7 of this Declaration.

Section 3. Recitals. This Declaration is made with respect to the following facts and circumstances:

A. Ownership. The Company owns the Project and plans to transfer all or portions of one or more of the Parcels to third parties.

B. Development of Project. The Project is or will be improved for use as a business center. Each Parcel is or may be developed with buildings and other improvements for use as professional and medical offices, restaurants, fitness / wellness centers, healthcare services or other businesses. Each Parcel may be further subdivided as part of the development of the office center.

C. Need for Maintenance and Assessments. The Project is improved or will be improved by each Owner on their respective Parcel with buildings, parking areas, and landscaped areas and entry drives. The Project contains parking areas for the use of customers, invitees, employees, and contractors of the Owners and Occupants. The Project will be improved by each Owner with landscaped signage identifying the professional office center and various businesses within the Project. The Company intends to provide certain requirements, limitations, and controls for the use and maintenance of the parking areas, signage, and easements. The cost to maintain the driveways, directional and monument signage, easements, landscaped areas adjoining the Driveway Easement, and the administrative and management costs for such maintenance will be borne proportionally by the Owners of Parcels within the Project based on the square footage of each Owner's Parcel relative to the total square footage of the entire Project.

D. Purpose. The purpose of this Declaration is to provide for such easements, requirements, limitations, and controls, the maintenance of improvements by the Operator, and to allocate the costs of maintenance and administration by way of assessment as provided in **Section 11**.

Section 4. Persons and Property Subject to this Declaration; Runs with Property.

A. Covenants. Upon the transfer of a portion of the Project by the Company to another person or entity, or at the time when more than one (1) person or entity become fee owners of all or a portion of different Parcels, the covenants of this Declaration shall run with the Project, and the

provisions of this Declaration shall be enforceable as covenants running with the land, pursuant to *California Civil Code Section 1468*, and in any other manner allowed by law, and shall be binding upon the Owners of the Project and inure to the benefit of the Owners of the Project or any part of it, and each successor-in-interest of any such Owners. This declaration does not create a common interest development as defined by *California Civil Code Section 1351(c)*.

B. No Liability After Conveyance. For any portion of the Project, Owners shall not be liable for any violation of this Declaration that occurs after the conveyance by such Owner of their fee interest in such portion of the Project, pursuant to *California Civil Code Section 1466*.

Section 5. Building Architectural and Sign Standards; Approval Process.

A. Development Standards. Buildings and other improvements, including, without limitation, loading docks and loading zones, constructed on the Project shall comply with the architectural and signage standards and requirements ("**Development Standards**") which are attached as *Exhibit F*, and incorporated herein by this reference. Written approval from the Operator shall be required pursuant to **Subsection B** of this Section, prior to the construction, reconstruction, or repair of a building or placement of a sign within the Project. The Operator shall have the authority to place a limitation on the maximum square footage and placement of such new building or improvement within such Owner's Parcel, based on such factors, which in the reasonable discretion of the Operator may have an adverse effect on the Project, including, without limitation, the proposed use of the new building or improvement and its effect on the demand for parking within the Project. The Operator shall have the authority to enforce the provisions of the Development Standards by legal or equitable remedy or other remedy provided for by this Declaration.

B. Approval Process. An Owner seeking approval from the Operator shall submit to the Operator, written plans and specifications of the proposed construction, reconstruction, or repair. The Operator shall approve, reject, or return for re-submission such request for approval within 30 days of the date such request was submitted. In the event the Operator rejects, or returns for re-submission, the request, the Operator shall provide a written explanation for its action. If after 30 days the Operator has not approved, rejected, or returned such request, the request shall be deemed to have been rejected by the Operator. Upon a written request by an Owner to do so, Operator shall promptly provide its reasons, if any, for its lack of action with respect to the request. No construction, reconstruction, or repair shall begin unless (i) the Operator has given its written approval or (ii) the Operator has not taken action within 30 days of the submission of such request. The approval required under this Section shall not be deemed to replace or pre-empt any approval required under the Business Center CC&Rs, but shall be required in addition to any such approval required under the Business Center CC&Rs.

Section 6. Driveway Easement; Grant of Access for Ingress and Egress.

A. Grant of Easements. The Company hereby grants a non-exclusive easement beneath, over, and upon the main arterial drive aisles as set forth in *Exhibit "B"* (the "Driveway Easement") to each Owner, Occupant, and Permitted User. Such easement is for the purpose of ingress and egress by pedestrians, bicycles, and by motor vehicles. This easement does not allow the right to block the easement area, to store vehicles or equipment, or to park any motor vehicles or other transportation vehicles in the easement area. This easement shall apply to the roads and road surface, as such improvements actually and physically exist from time to time. Such grants of access are subject,

however, to the limitations set forth in **Subsections B**, of this Section, and to reasonable periods of interruption caused by the performance of maintenance or repairs required for the upkeep of said driveways as may be necessary from time to time and as provided for in Section 10, below.

B. Restrictions to Access of Main Entry Way. Except with the prior written consent of the Company, construction vehicles and other heavy equipment shall be prohibited from using the main entry way located on the Existing Parcel ("Main Entry Way") as shown on *Exhibit G*, attached hereto and incorporated herein by this reference.

Section 7. Utility Easement.

A. Grant of Utility Easement. For the purposes of this Declaration, the Utility Easement describes an area under and upon portions of Parcels A through E, the location of which is set forth in *Exhibits "C1 through C4"*, containing subsurface power, communication, and other utility service lines and appurtenances. The Company grants to the Owners a non-exclusive easement beneath, over and upon the Utility Easement. Such easement is for the purposes of: (i) construction, use, operation, and maintenance of subsurface power, communication, and utility service lines and appurtenances; (ii) repair, reconstruction and replacement of such service lines and appurtenances; and (iii) the conveyance of electrical current, water, and other transmissions through such lines. The easement also allows necessary and convenient access ports and above ground transformer installations and vents. The use of the Utility Easement includes use by the agents and contractors of an Owner or Occupant and utility company and service provider personnel. This easement is not exclusive to the Owners, and each Owner on whose property the Utility Easement exists reserves the right to use the Utility Easement for purposes not inconsistent with this Declaration. The use of the Utility Easement also includes: (i) ingress and egress by pedestrians, motor vehicles, or equipment to and from the Project; and (ii) the work of repair and replacement of such service lines. The Utility Easement does not include the right to place and store construction equipment and materials necessary to repair and replace such service lines without the prior consent of the Operator. Any future Utility Easements will require the approval of the Owner of the affected Parcel, which approval shall not be unreasonably withheld.

B. Maintenance of Utility Easement; Payment of Costs. Each Owner shall construct, maintain, repair and replace as needed the service lines and appurtenances within the Utility Easement necessary to service such Owner's Parcel. Each Owner also covenants to repair and correct at its sole cost any physical damage to paving, landscaping, fencing, and other improvements caused by such Owner or by an agent or contractor of such Owner in the course of construction, repair, or maintenance of the service lines or surface area of the Utility Easement. Repairs made pursuant to this Section shall include restoring the surface to a condition equal to or better than its condition prior to such repair. Each Owner shall be responsible for the cost of maintaining or constructing the service lines serving such Owner's Parcel within the Utility Easement to the extent such lines are not maintained by a public utility, governmental entity, or other service company.

C. Prior Approval Required. Prior to beginning any construction, maintenance, or repair to the Utility Easement, an Owner shall first request and receive approval of the Operator and each Owner on whose property the Utility Easement exists, which approval shall not be unreasonably withheld or delayed, at least 10 days in advance of beginning such construction, maintenance, or repair. The Operator shall have the option to perform or cause to be performed such construction, maintenance, or repair to the Utility Easement as requested by such Owner, in which case the Owner

shall reimburse the Operator for the costs incurred for the performance of such construction, maintenance, or repair to the Utility Easement.

Section 8. Parking.

A. Parking. Each Owner and Occupant and the Permitted Users of each Owner and Occupant shall park only within the parking designated within such Owner's Parcel. No Owner nor Occupant, nor the Permitted Users of such Owner or Occupant shall park within any other Owner's Parcel without the express written consent of such other Owner.

B. Exclusive Use Parking.

1. Visitor Parking. The Permitted Users of each Owner and Occupant shall be permitted only to park in any marked stall on such Owner's Parcel. The Permitted Users of each Owner and Occupant shall not park on any Parcel other than such Owner's Parcel, or in any stall designated for the use of another Occupant by the Owner of such Parcel.

2. Reserved Parking. Upon written approval by the Operator, a portion of the marked parking spaces on each Parcel, excluding the Existing Parcel, which is subject to **Subsection B. 4** of this Section, may be reserved and set aside for a specific person or for use by a specific user as designated by the Owner or Occupant of that Parcel. The number of spaces so reserved shall be limited to a number, which, in the sole judgment of the Operator, shall not have an adverse impact on other Owners (for example, but not by way of limitation, reserved parking spaces on one parcel are causing tenants and invitees of such parcel to park on another owner's parcel). Operator shall have the sole discretion, from time to time, to readjust the allocation and appointment of reserved parking on a case by case basis should Operator determine in its discretion that the existing allocation and appointment is having an adverse impact on other Owners.

3. Non Reserved Parking. The remaining portion of marked parking spaces on each Parcel may be used by the Permitted Users of the Owner or Occupant of such Parcel.

4. Reserved Parking on The Existing Parcel. That portion of the parking area on the Existing Parcel, as shown on *Exhibit D-1*, attached to this Declaration and incorporated herein by this reference, shall be covered parking and reserved for the exclusive use by the Company. That portion of the parking area on the Existing Parcel, as shown on *Exhibit D-2*, attached to this Declaration and incorporated herein by this reference, shall be covered parking and reserved for use by the Owner and Occupants of the Existing Parcel, as allocated by the Owner of the Existing Parcel.

C. Allowed Uses; Improvements. The use of the parking areas throughout the Project ("Parking Area") shall be limited to use only as parking for allowed vehicles, for access for ingress and egress, for utility service lines, for signage, landscaping, and other uses as provided by this Declaration, but subject to the easements, restrictions, and reservations set forth herein. Any signage, trash enclosures, landscaping or other improvements, including, without limitation, loading docks and loading zones within the Parking Area, as shown on the attached Operator approved *Exhibit I*, must be approved by the Operator pursuant to Section 5, above, prior to beginning construction of such improvement. The Operator shall have the discretion to approve or disapprove the proposed improvement, or may approve the proposal with the condition that the construction be performed by

the Operator or its agent or contractor. Except for the covered parking areas provided for in **Subsection B.4** of this Section, the Owners shall not construct covered parking structures or attached garages on their respective Parcels, unless such structure has been approved in advance in writing by the Operator.

D. Covenant Not To Impair Access. The Owners shall not do or permit to be done anything that impairs or impedes access to the Utility Easement or Parking Area, including the construction of walls, fences, or other barriers. An Owner shall repair or replace any damage to the improvements within the Utility Easement or Parking Area caused by such Owner's act or omission or the act or omission of such Owner's agent or contractor. The Operator may construct or install paving, fencing, parking areas, lighting, landscaping, and other necessary or convenient improvements within the Parking Area.

Section 9. Easement in Favor of Operator. Upon such time that the Operator ceases to hold an interest in fee to any Parcel within the Project or upon such time that an owner's association becomes the Operator, an easement in favor of the Operator shall be created for the purpose of allowing the Operator to enter such Parcel and perform construction, reconstruction, repair and maintenance of the driveways, roads, utilities, landscaping and signage areas, and any other areas requiring construction, reconstruction, repair or maintenance pursuant to the terms of this Declaration.

Section 10. Use and Maintenance of the Property. The Owners and Occupants shall have the right to occupy, use, and improve their Parcels for all purposes consistent with applicable laws and regulations, subject to all of the covenants, restrictions, and limitations set forth in this Declaration and in the Business Center CC&Rs, except that no events shall be held within the Parking Area without the prior written consent of the Operator, which may be granted or denied in the sole discretion of the Operator.

A. Maintenance on Owners' Parcels. Each Owner shall maintain such Owner's Parcel and every building thereon in first-class condition and repair consistent with the condition and repair of the building on the Existing Parcel. If any such Parcel is unimproved, the Owner of such Parcel shall keep the Parcel free of weeds, trash, debris, and shall not store any vehicles or equipment, other than vehicles and equipment necessary for onsite improvements, on such Parcel. The Operator shall have the right, upon fifteen (15) days notice to an Owner, to perform maintenance not performed by such Owner, but which is otherwise necessary to keep the condition of such Owner's building or Parcel in compliance with maintenance standards contained in this Declaration. The costs of maintenance performed by the Operator under this **Subsection A** shall be paid by the Owner of such Parcel as provided for in **Section 11.B**.

B. Maintenance of Improvements. This Subsection describes the responsibility for the maintenance of improvements within the Driveway Easement, Parking Area, signage areas, and landscaped areas.

1. Performance of Maintenance. The Operator shall make repairs, reconstruct, and perform maintenance to the Driveway Easement area, common directional and monument signage, and the landscaped areas adjoining the Driveway Easement. Lighting and other improvements within the Parking Area shall be maintained by each Owner on such Owner's Parcel. Maintenance shall include surfacing, resurfacing, striping, re-striping, and cleaning, as necessary, all Parking Areas and stalls located thereon. Said repairs and maintenance shall be made as necessary and from time to time

in order to comply with the standards of maintenance as provided by **Subsection B. 2**, of this Section.

2. Standards of Maintenance. Maintenance of the driveway surface and parking areas in the Driveway Easement and Parking Area shall include: (i) maintenance in a level, smooth, and evenly covered condition; and (ii) repairs to the surface made necessary by the placement, service to, or replacement of utility and service lines. The driveways shall be maintained in a good and passable condition under all traffic and weather conditions. Landscaped areas and signage areas shall be neatly maintained and groomed. Flowers, shrubs, grass, and other plants shall be replaced from time to time in order to keep the landscaped and signage areas in first class condition. Lights and lighting structures shall be maintained in good condition and repaired or replaced from time to time as necessary to keep the parking, landscaped, and signage areas well lighted. The costs of the maintenance performed by the Operator required under this **Subsection B.2** shall be shared proportionally as provided for in **Section 11**.

3. Extraordinary Repairs to Driveway Easement and Parking Area. If extraordinary repairs are made necessary to the Driveway Easement or Parking Area and the landscaped areas adjoining such areas by the actions or omissions of: (i) an Owner or Occupant of any part of a Parcel within the Project; or (ii) the invitees of such Owner or Occupant, such Owner or Occupant shall pay directly or reimburse the other Owners for the costs of repair. "**Extraordinary Repairs**" include, without limitation, repairs to the surface of the road made necessary by use of the Driveway Easement or Parking Area for heavy vehicles, construction machinery, or any other use other than normal passenger vehicle and light truck traffic. Extraordinary Repairs also include any repairs to the road and parking surfaces made necessary by the placement or replacement of utility and service lines in the Driveway Easement area, as well as substantial repair or replacement of landscaping. Repairs made pursuant to this Section shall include restoring the road and Parking Area to a condition equal to or better than its condition prior to such use.

C. Landscaping and Signage. The Operator shall maintain common directional and monument signage, and landscaped areas adjoining the Driveway Easement, on portions of the Project, as shown on **Exhibit E**, which is attached hereto and incorporated herein by this reference. Such maintenance shall be of the type, quality, and condition of repair similar to that on the Existing Parcel. Except as otherwise set forth herein, the costs of maintenance of the landscaping and signage areas shall be shared proportionally by all Owners as provided for in **Section 11**. Notwithstanding the above, the cost of maintenance of the landscaping and signage area for the entrance and turnaround located on Parcel D (the "Mini Turnaround"), as shown on **Exhibit E**, shall be shared proportionally by the Owners of Parcels C, D, and E, in such amount equal to the total maintenance costs for the Secondary Entrance multiplied by the numerator of which is the total number of square feet of the actual building constructed on such respective parcel over the denominator of which equals the actual total square footage of all buildings built upon Parcels C, D, and E. The payment of such assessment shall be paid along with the Regular Assessment set forth in Section 11, below. Effective upon transfer of each of Parcels A through E, or any portion of any such Parcel, by the Company to another party, the transferee shall take such Parcel, or portion thereof, subject to the easement for a landmark sign and landscaped area to benefit Parcels A through E, as shown on **Exhibit E**.

D. Additional Services by Operator. The Operator may, in its reasonable discretion, but is not obligated to, provide additional services to benefit the Owners and Occupants such as security

patrols. The cost of any additional services shall be borne by the Owners proportionally as provided in Section 11 of this Declaration.

E. Nuisances. Except as expressly provided hereunder, activities, noises, uses, and improvements are prohibited which: (i) are noxious, illegal, or offensive; (ii) may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to Occupants; (iii) may adversely affect the availability or cost of insurance on any portion of the Project; or (iv) may impair the structural integrity of any building on the Project.

F. Heliport on Existing Parcel. Upon the transfer of a Parcel within the Project subject to this Declaration to an Owner, each such Owner acknowledges notice of, consents to, and waives any nuisance or other claim related to the existence and use of the heliport located on top of the building on the Existing Parcel. The Owners and Occupants acknowledge and agree that the use of the flight path air space above such Owner's building shall be restricted and the Owners and Occupants shall not place or allow the placement of any object or objects that may cause interference with the use of the heliport.

Section 11. Assessments.

A. Regular Assessments.

1. Amount Assessed. Each Owner of a Parcel on the Project, or any portion thereof, shall be obligated to pay a proportional amount of (i) the costs reasonably incurred by the Operator to maintain, and repair the Driveway Easement Area, and the landscaping and signage areas shown on *Exhibit E*, but for those costs and expense specifically allocated for maintenance and repair of the *Mini Turnaround* which shall be solely assessed to the owners of Parcels C, D, and E in proportion to the percentage amounts set forth in Section 10.C., above ; (ii) the cost of insurance, pursuant to **Subsection E** of this Section, and (iii) any other costs reasonably incurred by the Operator in the performance of services provided for herein, except for Administrative Costs and Management Fee which are provided for below ("**Maintenance Costs**"). Each Owner shall also pay a proportional amount of the reasonable costs of accounting and record keeping by the Operator, legal, and other administrative costs ("**Administrative Costs**"), as well as a management fee in an amount no greater than that imposed by a third party administrator engaged in commercial property management services located in the greater Sacramento-Central Valley ("**Management Fee**") to the Operator. Each Owner's proportional amount of the total assessment shall be that percentage of the total of Maintenance Costs, Insurance, Administrative Costs, and Management Fee equal to the square footage of such Owner's Parcel divided by the total square footage of the entire Project. The Operator may require payment of such assessments ("**Regular Assessments**") yearly, quarterly, or monthly.

2. Commencement of Assessments. Each Parcel within the Project shall be subject to Regular Assessments beginning upon the transfer of the first such Parcel by the Company to a third party Owner. An Owner of a building shall be assessed for any partial year after it is first subject to Regular Assessments. Such partial year assessment shall be pro rated based on the number of days remaining in the year on the date such Parcel first becomes subject to assessments under this Section.

3. Budget and Financial Reports. Once a year not less than one (1) month before the start of the calendar year, the Operator shall estimate the Maintenance Costs, Administrative Costs, and Management Fee, prepare a budget containing such estimates, and distribute it to the Owners. The Owners may review the budget and request additional information supporting the estimates contained in the budget, but, so long as Operator has not entered into transactions with affiliates at a greater than market rate cost, Owners shall not have any power to approve or disapprove the budget. Within ninety (90) days after the end of the year, the Operator shall distribute to the Owners a financial statement showing the income collected and expenses incurred during the previous year, and a reconciliation of the budget showing estimated expenses and actual expenses.

4. Adjustments to the Budget. The Operator may adjust the budget from time to time as necessary in order to correct estimated costs as actual costs become known or when it is otherwise necessary to meet expenses of performing maintenance and paying Administrative Costs. No such adjustment shall be made unless the actual costs exceed or are less than the estimated costs by at least ten percent (10%). If the Operator determines an adjustment to the budget is necessary, the Operator shall give at least thirty (30) days notice to the Owners prior to requiring payment ("Additional Assessment").

B. Remedial Assessments. The Operator may levy an assessment, called a "**Remedial Assessment**", against the Owner or Occupant of any Parcel who has, by negligent or willful acts or omissions, or acts or omissions in violation of this Declaration, made necessary any expenditure of money by the Operator or any other Owner related to the maintenance or operation of the Project. Such Remedial Assessment shall be in an amount necessary to reimburse the Operator or such other Owner for all costs, including attorneys' fees, whether or not legal action is brought, incurred in bringing the Owner or Occupant into compliance with this Declaration, or in obtaining compensation from, or other remedies against, such Owner or Occupant. Any assessment levied pursuant to this Subsection shall be due and payable when levied or in installments as required by the Operator.

C. Delinquency. Any assessment provided for in this Declaration that is not paid within thirty (30) days after it becomes due is delinquent. The Operator may require an Owner who has not paid an assessment within thirty (30) days after its due date to pay a late charge in an amount equal to the greater of Fifty Dollars (\$50.00) or five percent (5%) of such delinquent assessment. The Operator may also levy interest on overdue assessments, not exceeding the rate allowed by law.

D. Remedies. If an assessment is not paid within thirty (30) days after its due date, the Operator may bring an action to recover a money judgment against the Owner. All assessments, plus interest, late charges, costs, and attorneys' fees shall be the joint and several personal obligation of all Owners of Record of the Parcel assessed under this Declaration. The personal obligation of Owners to pay accrued assessments, other monies, and fees due the Operator, interest, late charges, costs, and attorneys' fees shall not pass to any successor in title as a personal obligation unless expressly assumed by such successor. "**Costs**", as used in this Section, include, but are not limited to, all filing and recording fees, service of process fees, title search fees, and copying and postage fees. "**Attorneys' fees**" include, but are not limited to, fees for consultation in preparation for any enforcement action by the Operator or Owner, and for representing such Operator or Owner in Court.

E. Insurance. The Operator may obtain and maintain general public liability insurance, insuring the Operator and all other persons who now or hereafter own or hold a Parcel or a portion thereof on the Project or building space within the Project or any leasehold estate or other interest

therein as their respective interests may appear, provided that the Operator is notified in writing of such interest, against claims for personal injury, death, or property damage occurring in, upon, or about the areas maintained by the Operator. Such insurance shall be written with an insurer licensed to do business in the State of California. The limits of liability of all such insurance shall be no more than customarily maintained for a professional office, or other uses allowed in the Project, of similar size and occupancy in the geographic area of the Project. In accordance with the provisions of any lease or separate ownership of any Parcel, upon the request of any person having an insurable interest hereunder, the Operator shall cause to be issued proper certificates of insurance or copies of the insurance policies maintained hereunder. Any insurance maintained by the Operator under this Section shall be supplemental to any insurance carried by any Owner or Occupant of any Parcel.

Section 12. Amendment; Termination.

A. This Declaration, or any provision of this Declaration as is in effect from time to time with respect to all or any part of the Project, may be amended or terminated upon: (i) the approval of a majority of the votes of the Owners within the Project, (ii) the approval of the Owner of the Existing Parcel, and (iii) the recordation of a certificate, executed by said Owners, that sets forth in full the amendment or termination provision so approved, but subject to **Subsection B**, below, provided, however, that no such amendment shall, without the prior written approval of the affected Owner, (i) create easements or other encumbrances against, or impair the security or priority of any lien created by a deed of trust or mortgage recorded against, such Owner's Parcel, (ii) terminate any easement rights such Owner has over other Parcels, (iii) deny the current or any subsequent approved uses of such Owner's parcel, (iv) alter or modify the current or any subsequently approved signage rights for such Owner's parcel, (v) require any alterations to any current or subsequently approved improvements, including but not limited to, the reduction in the number of parking stalls on such Owner's Parcel, (vi) require construction or installation of any new material improvements on such Owner's Parcel, (vii) alter the access to such Owner's Parcel, (viii) require such Owner, at its expense, to relocate any utilities then located on or under another Parcel, it being understood that the Operator or another Owner can move such utilities at its own expense provided there is no adverse affect on the Owner served by such relocated utilities, (ix) materially increase the square footage of areas commonly maintained by the Operator or any Owners' association, (x) permit other parties to park on such Owner's Parcel (i.e. alter Section 8. A. above), or (xi) require the installation of any landscaping or other improvements on such Owner's Parcel that affect the visibility of any building on such Owner's Parcel from Interstate 5. For purposes of the preceding sentence, each Owner shall be entitled to cast a number of votes equal to the amount of Regular Assessments last assessed to such Owner.

B. Transfer of Interest or Resignation by Company as Operator. If at any time, the Company sells, grants, transfers or otherwise ceases to hold an interest in the Existing Parcel or at any time the Company no longer wishes to carry out the obligations of Operator, an owner's association shall be formed pursuant to the Davis-Stirling Common Interest Development Act, *California Civil Code Section ---1350 et seq.* (the "**Association**"). The Association shall have the power to levy assessments as provided in **Section 11** of this Declaration, and shall have all the powers and duties granted to the Operator by this Declaration or provided for by law, including all powers granted by the Davis-Stirling Common Interest Development Act.

Section 13. Miscellaneous.

A. Enforcement.

1. Against Owners. Any Owner or Owners shall have the right to enforce any and all of the provisions now or hereafter imposed by this Declaration upon other Owners, or upon any Parcel within the Project.

2. Nuisances. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be and to constitute a nuisance and may be enjoined or abated by any Owner or Owners, whether or not the relief sought is for negative or affirmative action, as provided for in this Section.

3. Cumulative Remedies. Each remedy provided for in this Declaration is cumulative and not exclusive.

B. Non-Waiver. The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, or charge of this Declaration shall not constitute a waiver of any right to enforce any such provision or any other provision of this Declaration.

C. No Forfeiture. No breach of any of the provisions of this Declaration shall cause any forfeiture of title or reversion or bestow any rights of re-entry whatsoever.

D. Attorneys' Fees. Reasonable attorneys' fees and costs may be awarded to the prevailing party in any action brought to enforce or interpret the provisions of this Declaration.

E. Limitation of Enforcement Against Mortgagees. No violation by an Owner of this Declaration or enforcement of this Declaration against an Owner shall defeat or render invalid the lien of any mortgage made in good faith and for value against the property of such Owner but this Declaration shall be effective against any Owner whose title is acquired by foreclosure, trustee sale, voluntary conveyance, or otherwise.

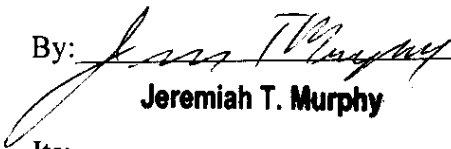
F. Construction. All of the limitations, restrictions, covenants, and conditions of this Declaration shall be liberally construed, together, to promote and effectuate the beneficial operation of the Project.

G. Compliance with Law. No provision of this Declaration shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Project.

H. Severability. Notwithstanding other provisions in this Section, the limitations, restrictions, covenants and conditions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any of such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the undersigned executed this Agreement Declaration on the date first above written.

A.G. SPANOS CONSTRUCTION, INC.
A California corporation

By: 
Jeremiah T. Murphy

Its: **Vice President**

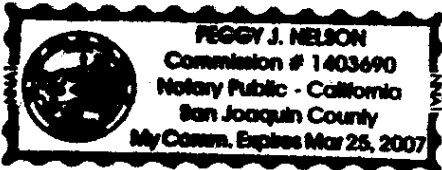
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of SAN JOAQUIN } ss.

On FEBRUARY 9, 2006 before me, PEGGY J. NELSON, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared JEREMIAH T. MURPHY
Name(s) of Signer(s)

- personally known to me
- 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.

WITNESS my hand and official seal.
[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

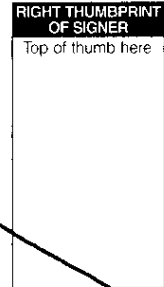


EXHIBIT A

(Legal Description of the Project)

Parcel 1 and 2 as shown on that certain parcel map entitled "23-24A" and filed for Record on April 30, 2004, in Book 23 of Maps and Plats, at Page 24, Records of San Joaquin County.

Parcels 1, 2, and 3 as shown on that certain parcel map filed for record on February 2, 2006, in Book 23 of Maps, at Page 177, San Joaquin County Records, being a subdivision of a portion of the surveyed designated remainder as shown on the parcel map filed in Book 23 of Maps, at Page 24, San Joaquin County Records on April 30, 2004 .

EXHIBIT B
(Driveway Easement)

SPANOS PARK WEST
 SITE EXHIBITS
 OCTOBER 2005

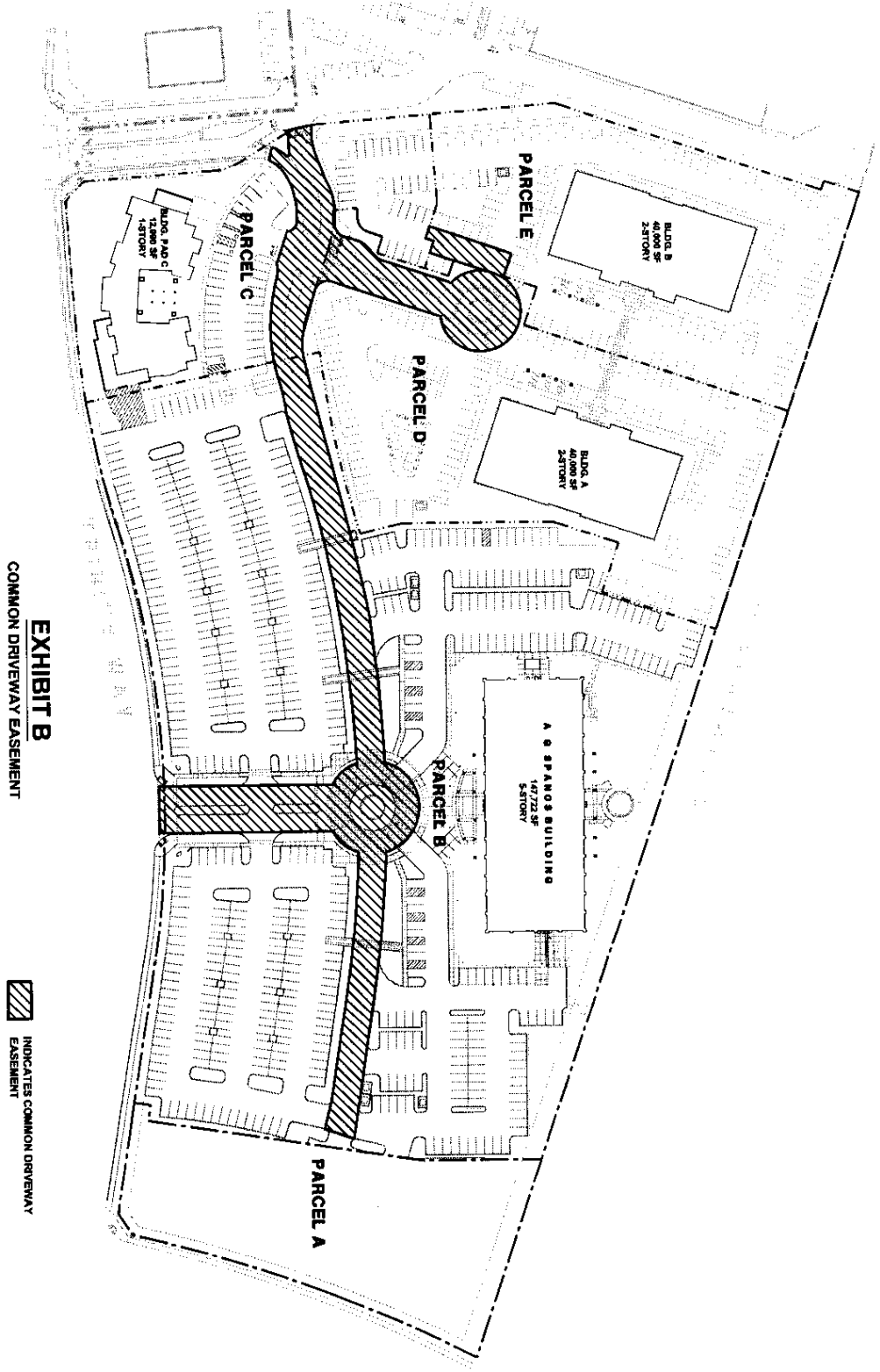


EXHIBIT C-1
(Utility Easement for Parcels D and E)

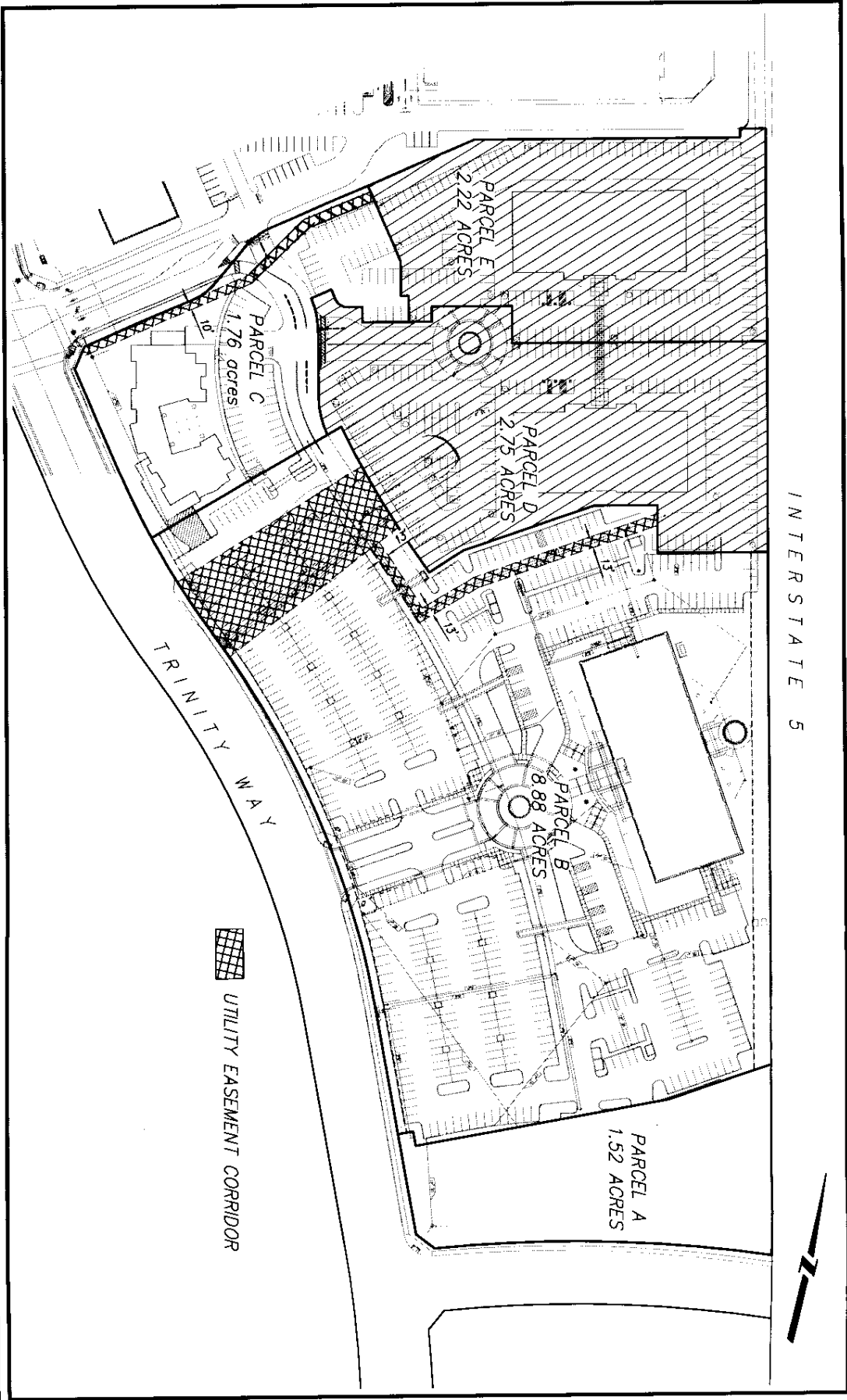


EXHIBIT C1
UTILITY EASEMENT FOR PARCELS D & E
SPANOS PARK WEST OFFICE SITE
CITY OF STOCKTON, CALIFORNIA

Stantec

APPROVED BY:	DATE:
SCALE AS SHOWN ON PLAN	DATE: 02/12/2005
PROJECT NUMBER:	PROJECT NAME:

1
OF 1

EXHIBIT C-2
(Utility Easement for Parcel A)

INTERSTATE 5

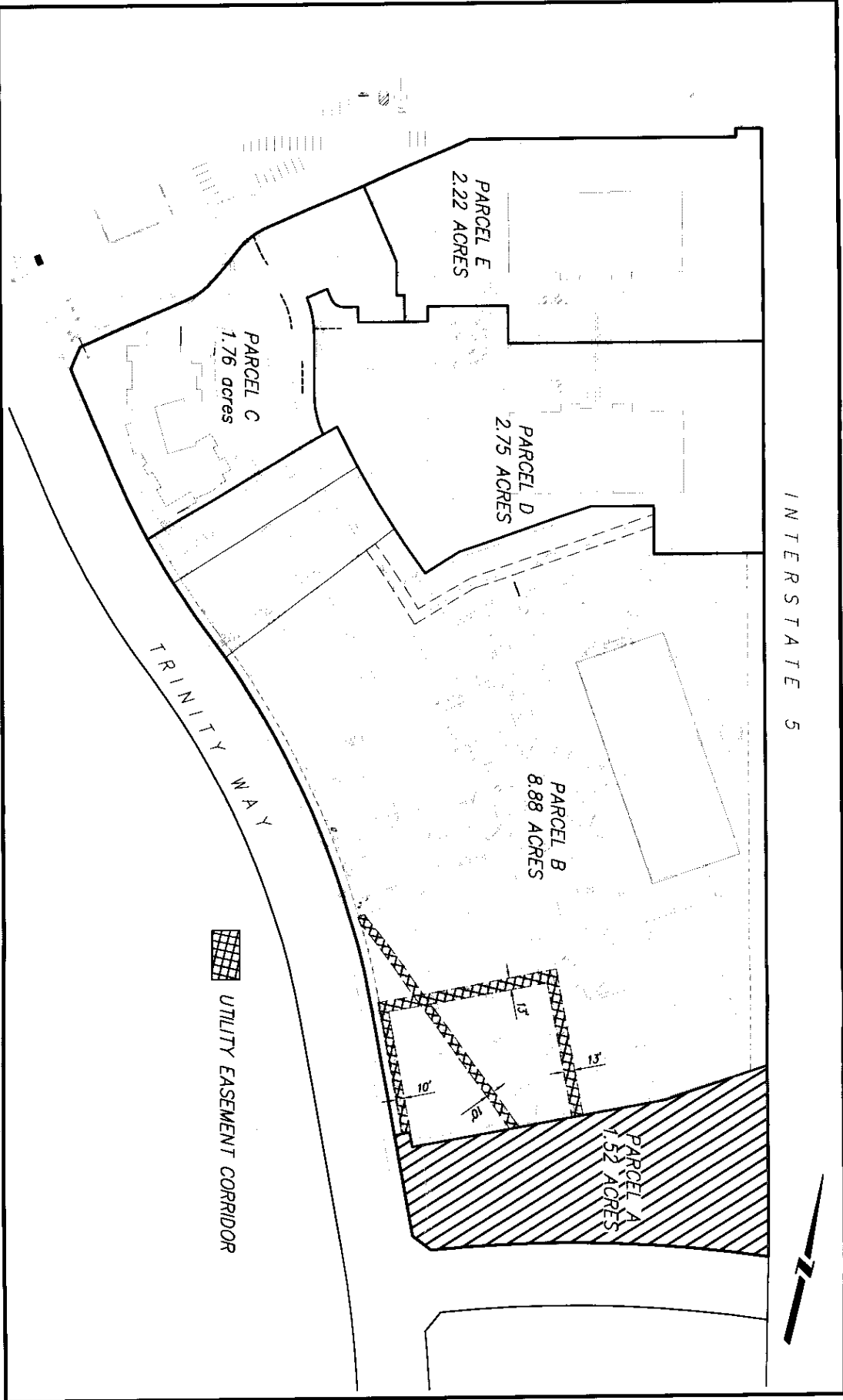


EXHIBIT C2
UTILITY EASEMENT FOR PARCEL A
SPANOS PARK WEST OFFICE SITE
CITY OF STOCKTON, CALIFORNIA

Stantec

APPROVED BY	DATE
DATE	DATE
DATE	DATE
DATE	DATE

DATE	DATE
DATE	DATE
DATE	DATE
DATE	DATE

1 OF 1

EXHIBIT C-3
(Utility Easement for Parcel B and Sign Area Easement)

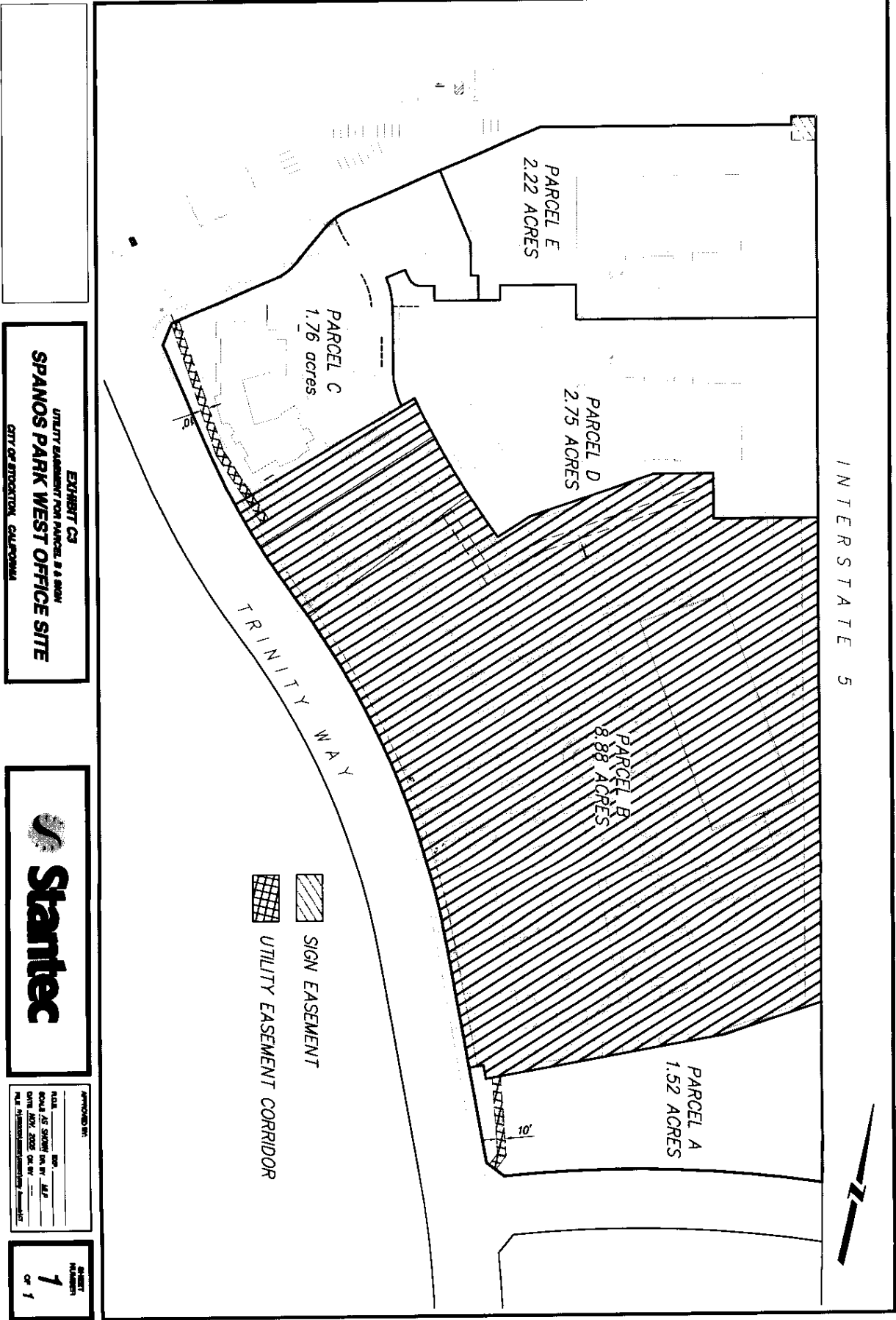


EXHIBIT C3
UTILITY EASEMENT FOR PARCELS B & C ONLY
SPANOS PARK WEST OFFICE SITE
CITY OF STOCKTON, CALIFORNIA

APPROVED BY: _____
DATE: _____
SCALE: AS SHOWN ON PLAT
DRAWN: _____
DATE: _____



PLAT NUMBER
1
OF 1

EXHIBIT C-4
(Utility Easement for Parcel C)

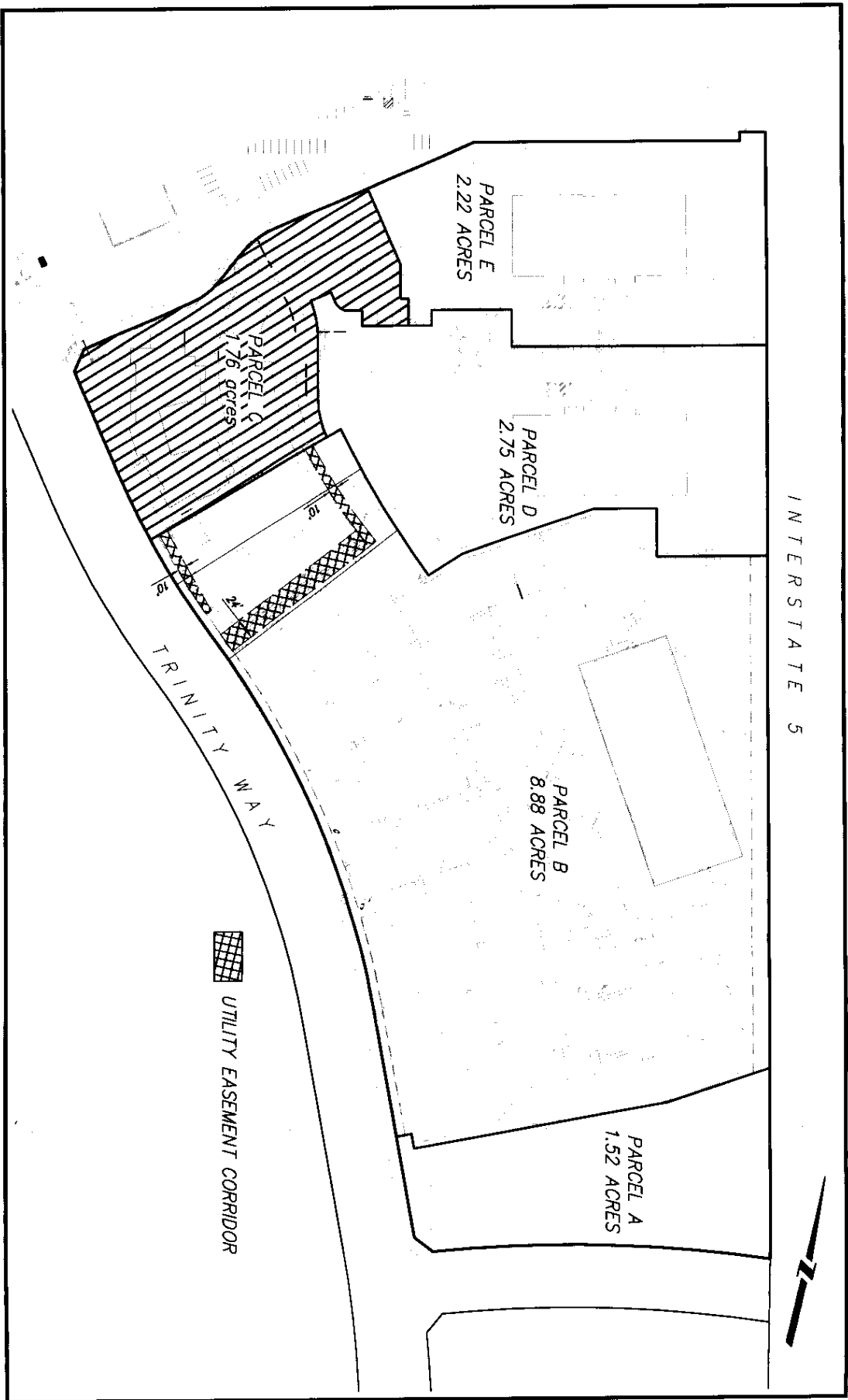


EXHIBIT C4
UTILITY EASEMENT FOR PARCEL C
SPANOS PARK WEST OFFICE SITE
CITY OF RICHMOND, CALIFORNIA

APPROVED BY: _____
DATE: 05/28/08
DRAWN BY: _____
SCALE: AS SHOWN ON PLANS



DATE: 05/28/08
DRAWN BY: _____
SCALE: AS SHOWN ON PLANS

PAGE: 1
OF 1

EXHIBIT D-1
(Reserved Parking for the Company)



Lesovsky-Donaldson
Architects, LLP
10000 Wilshire Blvd, Suite 2000
Beverly Hills, CA 90212

SPANOS PARK WEST

SITE EXHIBITS
OCTOBER 2 0 0 5

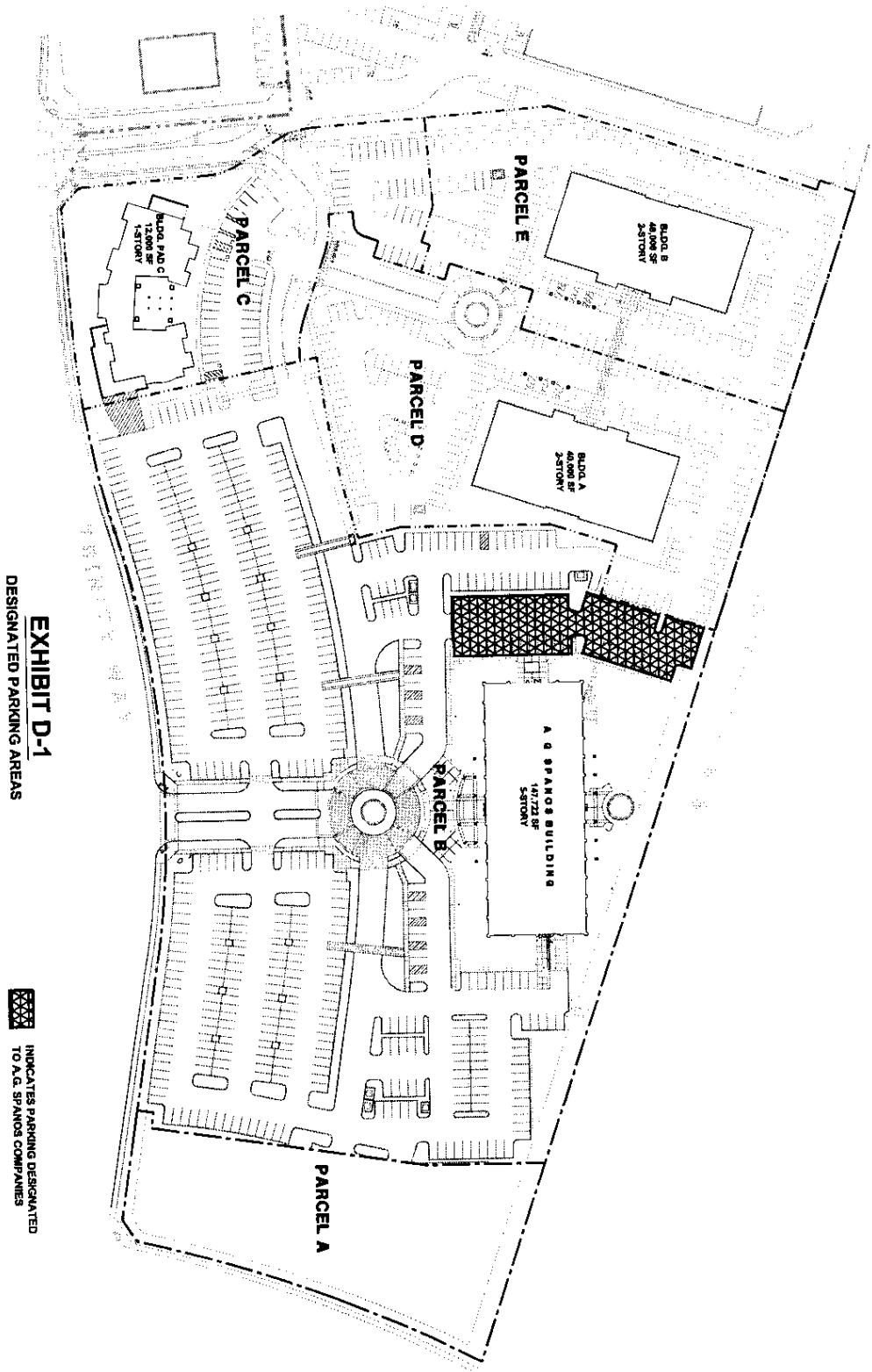


EXHIBIT D-1
DESIGNATED PARKING AREAS



INDICATES PARKING DESIGNATED
TO A.G. SPANOS COMPANIES



EXHIBIT D-2
(Reserved Parking for the Owner and Occupants of the Existing Parcel)

SPANOS PARK WEST
 SITE EXHIBITS
 OCTOBER 2005

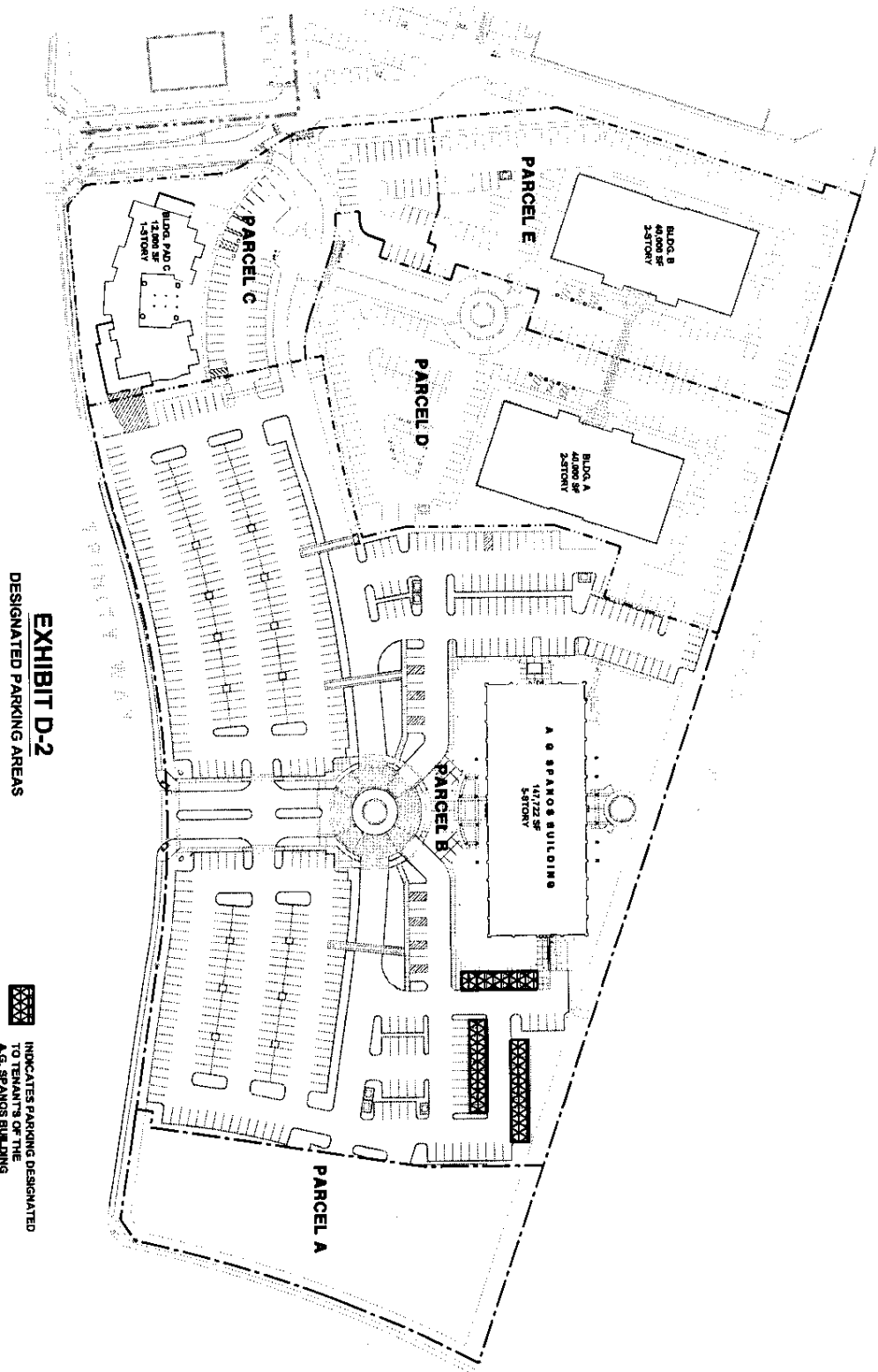


EXHIBIT D-2
 DESIGNATED PARKING AREAS

INDICATES PARKING DESIGNATED
 TO TENANTS OF THE
 A & SPANOS BUILDING



EXHIBIT E
(Diagram of Easements Designated for Signage and Landscaping)

SPANOS PARK WEST
 SITE EXHIBITS
 OCTOBER 2005

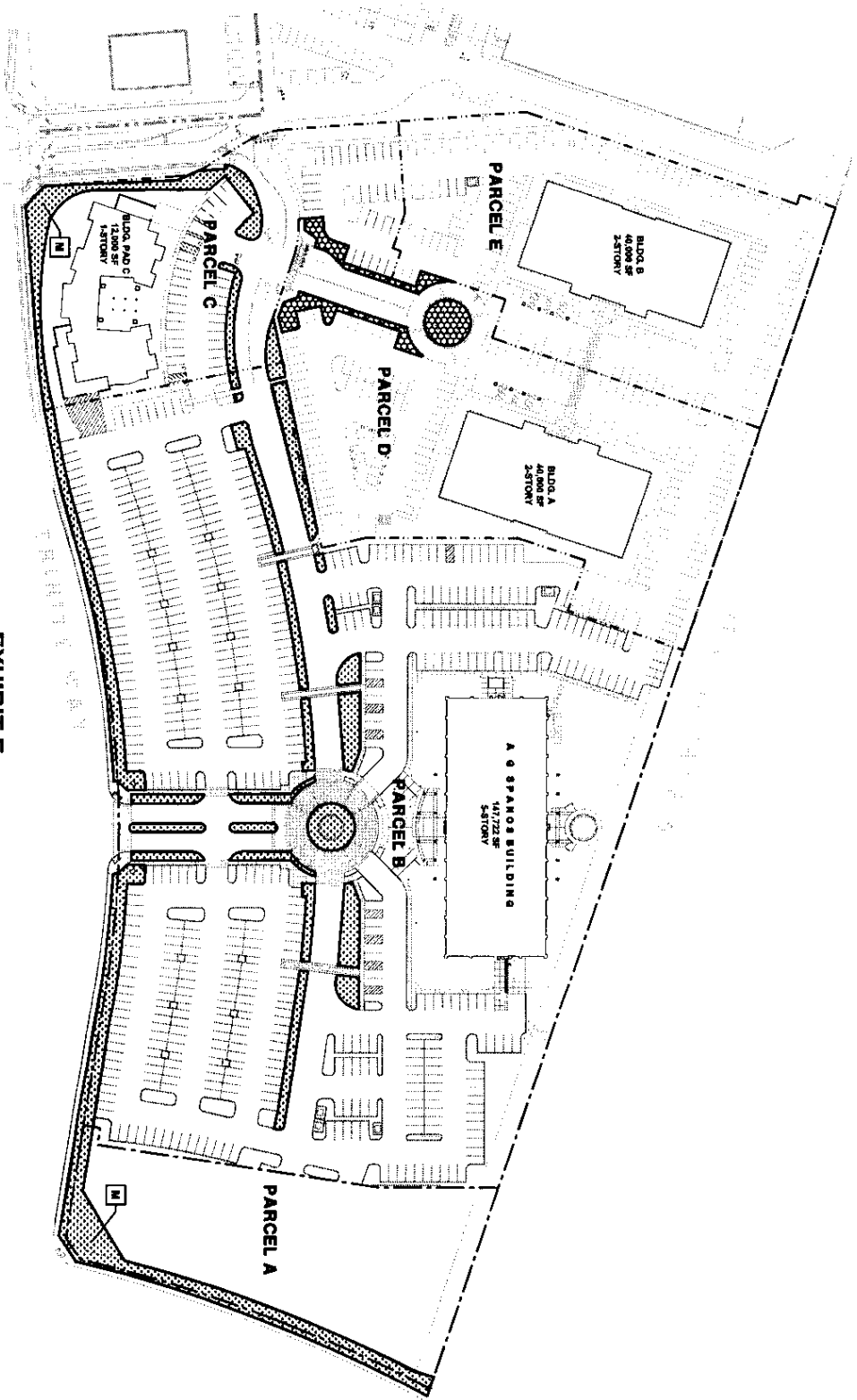


EXHIBIT E

OPERATOR MAINTAINED AREAS






-  INDICATES OPERATOR MAINTAINED COMMON DIRECTIONAL SIGNAGE AND LANDSCAPE AREAS ASSESSED TO ALL PARCELS IN OFFICE PARK
 -  INDICATES OPERATOR MAINTAINED COMMON DIRECTIONAL SIGNAGE AND LANDSCAPE AREAS ASSESSED TO PARCELS C,D,E ONLY
 -  INDICATES OPERATOR MAINTAINED MONUMENT SIGNAGE TO SERVICE ENTIRE SITE
 -  NOTE: LOCATION AND DESIGN OF ALL DIRECTIONAL AND MONUMENT SIGNAGE TO BE DETERMINED AND APPROVED BY OPERATOR
-  NORTH
 NOT TO SCALE

EXHIBIT F
(Development Standards)

DEVELOPMENT STANDARDS

- 1.1 Introduction/ Overall Concepts
- 1.2 Site Design
 - 1.2.1 General Uses
 - 1.2.2 Setback Requirements
 - 1.2.3 Lot Coverage
 - 1.2.4 Site Furnishings
 - 1.2.5 Site Lighting
- 2.1 Architectural Considerations
- 2.2 Signage
 - 2.2.1 Signage Construction and Installation
- 2.3 Equipment and Utilities
- 2.4 Visual Screening

DEVELOPMENT STANDARDS

1.1 Introduction/Overall Concepts

The Master Site Plan for Spanos Office Park, and these Development Standards, have been crafted to provide commercial and office use design opportunities within a contextual design character and a desired circulation system. The character and quality of future development should be exemplified by the Spanos Office Building. The architecture of the buildings, and the elements of the landscape, including plant materials, signage, site furnishings and special features, will maintain the existing character of the office park project.

The development of each parcel within the Spanos Office Park will be controlled and restricted by the Master Development Plan, these standards, and all applicable governmental and agency codes and restrictions. The Master Development Plan and these standards are intended to establish and maintain a consistent level of quality for the development of the Park.

The Operator, as defined under this Declaration to which these Development Standards are attached, will review all proposed development projects for consistency with the intent and purpose of the Master Development Plan, and these standards for design quality. The Operator may, from time to time, adopt additional, and/or propose the amendment and/or repeal of existing Development Standards, subject to the approval of a majority of the votes of the Owners within the Project. Operator shall have sole and absolute discretion to grant variances on any of Development Standards set forth herein on a case by case basis. Project plans must be reviewed and approved by the Operator before being submitted to the Community Development Director for the Director's review and finding that the project is consistent with the Land Uses and Development Standards of the Master Development Plan and these standards, for issuance of building permits.

1.2 Site Design

1.2.1 General Uses

- a. General uses identified by the Master Development Plan shall include commercial/office, and related uses, including without limitation professional and medical offices, restaurants, fitness and wellness centers and other healthcare facilities.
- b. Any uses other than those identified shall be subject to approval by the Master Developer.

1.2.2 Setback Requirements

All setback requirements within the Office Park development shall be subject to review and approval for the Operator and the Community Development Director for the City of Stockton. The setback requirements listed in the Master Development plan and these standards shall be minimum requirements, but shall in no instance supercede requirements of the City of Stockton.

a. **Building Setbacks:**

- 100'-0" from east property line (adjacent to Interstate Highway 5)
- 50'-0" from north property line (adjacent to future retail)
- 30'-0" from west interior drive boundary
- 20'-0" from south property line (adjacent to existing Spanos Office Building parking)
- 20'-0" from all parking areas

b. **Parking setbacks**

- 10'-0" from east property lines
- 15'-0" from north property lines (adjacent to future retail)
- 10'-0" from interior property lines

c. All setback areas are to be fully landscaped and maintained.

d. Parking stalls may overhang into required setback a maximum of 1'-6".

1.2.3 Lot Coverage

All lot coverage requirements within the Office Park development shall be subject to review and approval for the Operator and the Community Development Director for the City of Stockton. The coverage requirements listed in the Master Development plan and these standards shall be minimum requirements, but shall in no instance supercede requirements of the City of Stockton.

a. Maximum Lot coverage including all buildings, accessory structures, projected roof and floor areas, canopies, etc.

1. Commercial/ Office Development 30%

b. All site and facility development should de-emphasize the visual prominence of vehicle parking and loading areas.

c. All parking requirements shall comply with City of Stockton requirements for capacities, layout, size, and circulation.

d. The architectural edge along interior and perimeter vehicular frontages should be strongly considered and reinforced to reduce the prominence of vehicle parking areas and service loading locations. Parking and loading areas should be placed to the rear or sides of new building development whenever possible.

e. All parking areas should be divided into smaller units to decrease visual impacts associated with large expanses of pavement and vehicles.

f. Site access drives should provide sufficient length to permit vehicle stacking during hours of peak use.

g. Loading and service areas shall generally be located to the rear of all development. These areas should be separated from vehicle parking areas and screened from views to public access locations. All such screening should be integrated into the design of the structure.

h. Any outdoor storage areas containing materials, supplies, or equipment, shall be screened from public view.

i. Loading and services areas should be located in a manner to prevent "parked" service vehicles from disrupting adjacent traffic and travel lanes.

j. Refuse collection areas shall be located away from public views and adjacent buildings to minimize noise and odor impacts. Screening of refuse collection areas should be integrated into the overall design of the site and building structure.

1.2.4 Site Furnishings

Site furnishings should be incorporated into outdoor spaces to encourage and enhance the pedestrian scale of the Office Park development.

a. The design and location of site furnishings should be compatible with the architectural character of the development and responsive to adjacent development, primary pedestrian routes, and site amenities.

b. Site furnishings may include benches, seating, walls, trash receptacles, bicycle racks, telephones, planters, bollards, bus shelters, newspaper racks, and ornamental sculpture.

c. Site furnishings may be a portion of building and Tenant identification elements and building directories.

d. Other site amenities are also encouraged such as tree grates, ornamental paving, and other elements intended to enhance the architectural theme of the development.

e. The design, style, color, and finish of all site furnishings shall match those existing within the Office Park.

1.2.5 Site Lighting

The exterior lighting provided throughout the Office Park development shall match the architectural design, style, color, and finish of the existing development and provide a safe and efficient level of lighting for pedestrian and vehicular activities.

a. Boulevard lighting along the primary vehicular and pedestrian routes throughout the development shall be of type, height, and illumination level consistent with the existing development.

- b. All on-site lighting shall have a consistent illumination level throughout the development and be integrated into the architectural character of the project and overall Office Park theme.
- c. Exterior lighting should add visual interest, support building identification, and encourage pedestrian safety and access.
- d. All on-site lighting shall visible from primary vehicular access shall be shielded or indirect type fixtures.
- e. On-site parking areas, vehicular access and circulation areas shall be provided with luminaries no higher than 20'-0" and shall maintain minimum lighting levels as follows:
 - 1. Parking and drive areas .25 foot candles
 - 2. Pedestrian routes .50 foot candles
 - 3. Building entry areas and plazas 1.0 foot candles
- f. Building-mounted lighting shall be of a type compatible with the architecture of the façade and of a character similar to the existing building mounted lighting. All such lighting shall be shielded to prevent casting glare upon adjacent development or adjacent vehicular routes.
- g. All lighting shall systems shall be in conformance with applicable energy saving objectives.
- h. Service area, storage area, or loading area lighting shall be contained within the specific area boundaries and enclosures. No lighting shall cast a glare outside of these areas and should not be visible from adjacent developments or vehicular and pedestrian routes.

2.1 Architectural Considerations

The architectural character of the Office Park development should be responsive to, yet not duplicate the character of the existing Spanos Office Building structure. All architectural development should represent a comparable level of material and detail.

- a. All exterior colors should be harmonious and complimentary to the existing building development. High contrast, distracting colors should be avoided. Overall color themes should be developed based upon subdued tones of earth tones, with appropriate accent coloring.
- b. All exterior building materials shall be of high quality and durable to reflect the character of the development and the existing building. Large expanses of glazing should be avoided. Materials such as natural stone, precast and textured concrete, exterior plaster, tile, shall be predominant elements of exterior facades.
- c. All developments shall be cognizant of adjacent buildings design and construction types.

- d. Proto-typical designs associated with franchises and not representative or responsive to the Office Park character are discouraged.
- e. Areas of pedestrian activity (entrances, plazas, etc.) should provide a more concentrated usage of high quality materials. Building entries should be accented with strong architectural definition.
- f. The architectural facades shall promote an attractive, "pedestrian scale" environment suitable to the modest density of the development.
- g. The architecture shall be sympathetic to the existing structures on the site.
- h. No particular architectural style is preferred. However, building facades should be varied and articulated to add visual variety, distinctiveness, and pedestrian scale. Long straight facades without openings or variations in wall planes should be avoided. Articulations should add three dimensional interest to the facade and not rely upon false detailing.
- i. The building facade should be articulated on all sides of the building, with significant emphasis on the entry and pedestrian sides of the building.
- j. Vertical architectural elements can be used as focal points, to identify entry locations, and for signage.
- k. The height of the buildings should be consistent with adjacent development. In no instance should the height of a structure exceed forty-five feet (45') as defined by the City of Stockton zoning requirements.
- l. Arcades, trellis, and other open structures may be utilized to visually link buildings, enhance the pedestrian scale of the building, and provide connectivity to adjacent pedestrian routes.

2.2 Signage

Except as otherwise provided in these standards, the following signage standards shall apply to each building throughout the Project, except that signage standards applicable to Parcel __ (Restaurant Parcel) shall be determined by the Operator.

- a. All on-site signage shall not, because of height, location, or design, diminish the safety and efficiency of traffic circulation and patterns.
- b. Ground-mounted monument sign areas and height shall not exceed that allowed by the City of Stockton zoning requirements.
- c. Building-mounted or ground-mounted signage may be internally illuminated, backlighted illumination, or ground-mounted illumination. In no instance, shall such illumination, cast a glare upon adjacent development or vehicular routes.
- d. Signage will not be permitted on top of any roof.

e. No more than two (2) building mounted signs shall be permitted above the first story of the building. Each such sign shall be located on opposite faces of the building (e.g., one on the east and one on the west façade). They shall be identical in design and serve the same tenant/entity.

f. No more than two (2) building mounted signs will be permitted on any building of two stories or less. Each such sign shall be located on opposite faces of the building (e.g., one on the east and one on the west façade). They shall be identical in design and serve the same tenant/entity.

g. No more than two (2) building mounted sign will be permitted on any building of 50,000 square feet (sf) (gross building area) or less. Each such sign shall be located on opposite faces of the building (e.g., one on the east and one on the west façade). They shall be identical in design and serve the same tenant/entity. Buildings exceeding 50,000 sf (gross building area) will be permitted additional signage only as approved by the Operator.

h. No more than four (4) building mounted signs will be permitted on the first level façade. Signage can only be placed on two opposite façades and Operator approval is required for all signage at the first level. This applies only to buildings greater than three stories and more than 50,000 sf (gross building area).

i. No message other than the identification of the business or entity will be allowed on the exterior of the building.

j. Building address numbers shall be displayed on each building. Type of lettering shall be compatible with the existing building signage and the architectural character of the proposed building.

k. Except for one (1) sign in the Sign Easement Area on Parcel E (Triad Office Parcel), which shall be in the style of the adjacent Kitchell Shopping Center Signage, freestanding pole mounted signage shall not be allowed.

l. More than one sign per Tenant on each façade will not be allowed.

m. Content: Signage shall consist only of the name and/or logo of the Tenant occupying the lease space.

2.2.1 Signage Construction and Installation:

a. All signage shall be individual, rear or internally illuminated letters, or cast signage letters, not exceeding the following sizes:

1. Logos: Maximum 24" in height
2. Upper case lettering: Maximum 24" in height
3. Lower case lettering: Maximum 18" in height

b. The following signage types shall be allowed:

1. Internally illuminated or backlighted "channel type" lettering. Continuous raceways must be provided on the exterior of the façade to minimize the penetrations to the building façade. Such raceways shall be finished to match the surface and color of the adjacent façade as closely as possible. Signage drawings shall provide location of all proposed penetrations.

"Channel letters shall be manufactured of aluminum only, with returns finished with Matthews Acrylic Polyurethane #41-342, Brushed Aluminum. Faces of letters shall be trimmed with 3/4" silver plastic trim cap."

2. Letters of cast metal type lettering mounted to the building.
The Tenant shall review the location and access to the building structure for access of the sign mounting construction. Color of letter returns shall be clear anodized or as approved by the Operator.

c. The following types of signage and sign components and devices shall not be permitted:

1. Boxed or cabinet type.
2. Cloth, paper, cardboard and similar stickers or decals around or on surfaces of storefronts or building facade.
3. Moving, flashing, or rotating signage.
4. Noisemaking or odor producing signage.
5. Molded plastic signage.
6. No name brands, product names or phrases may appear on the storefront in any area directly visible from the space without approval of the Operator.
7. Decals or other signage indicating product lines or credit card acceptability shall not be permitted on the storefront or building facade.
8. Non-edged or capped letters with no returns and exposed fastenings.

d. All signage mounted to the facade of the building shall be centered on facade lines. All signage shall be limited to single line, single plane, subject to the review of the Operator.

e. Signage may project a maximum of 6" from building façade, inclusive of depth of any mounting signage raceway.

f. Manufacturer's labels, clips, brackets, or any other form of extraneous advertising, attachment, or lighting devices shall be fully concealed from public view.

g. No signage or window displays will be permitted on the surfaces of the signage.

h. No awnings of any type will be permitted.

2.3 Equipment and Utilities

a. Any equipment required to be placed on the exterior of new structures shall be subject to review and approval by the Operator.

- b. The visual impact of all equipment and utility locations adjacent to new structures should be minimized. Whenever possible, all such locations should be placed to the rear of buildings, not adjacent to entry locations, pedestrian access routes, and parking areas.
- c. All utilities shall be installed and maintained underground. Utilities shall be designed and installed to minimize disruption of on-site activities and adjacent development during any construction activities.
- d. Transformers, trash enclosures, and any above ground utility connections should not be located adjacent to primary vehicular routes within the development.

2.4 Visual Screening

- a. All ground mounted utility meters and equipment, communication transmission devices, generators, electrical switching devices, and trash enclosures shall be visually screened.
- b. All utility and mechanical equipment (i.e. meters, electric panels, transformers, junction boxes) should be visually screened. All screening devices should be compatible with architecture, materials, colors, and with adjacent facilities.
- c. Rooftop devices (i.e. satellite equipment, microwave towers, etc.) and mechanical equipment shall not extend above the building's highest architectural element or be visible within a horizontal line of sight.
- d. Trash enclosure areas shall be visually screened by a 6'-0" high, non-combustible enclosure constructed to match the existing project theme. Enclosures shall be located to minimize the visual impact on adjacent vehicular and pedestrian routes and parking areas.
- e. Service areas located within individual project areas shall be screened from view in a manner similar to that described for trash enclosure areas.

End of Standards

EXHIBIT G
(Diagram of Main Entry to the Existing Parcel)

SPANOS PARK WEST

SITE EXHIBITS
OCTOBER 2005

EXHIBIT G
MAIN ENTRY DRIVE AND ROUND ABOUT

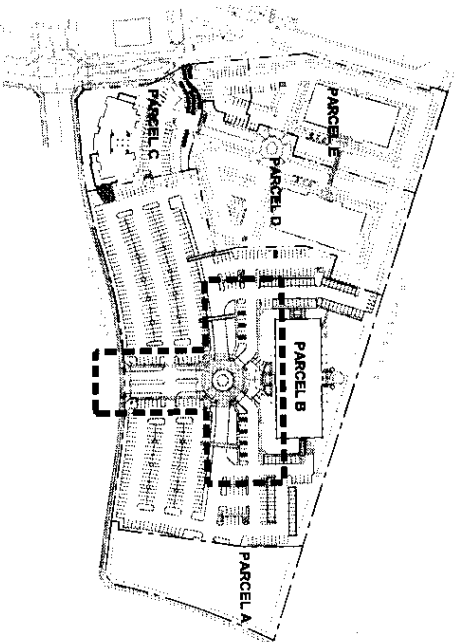
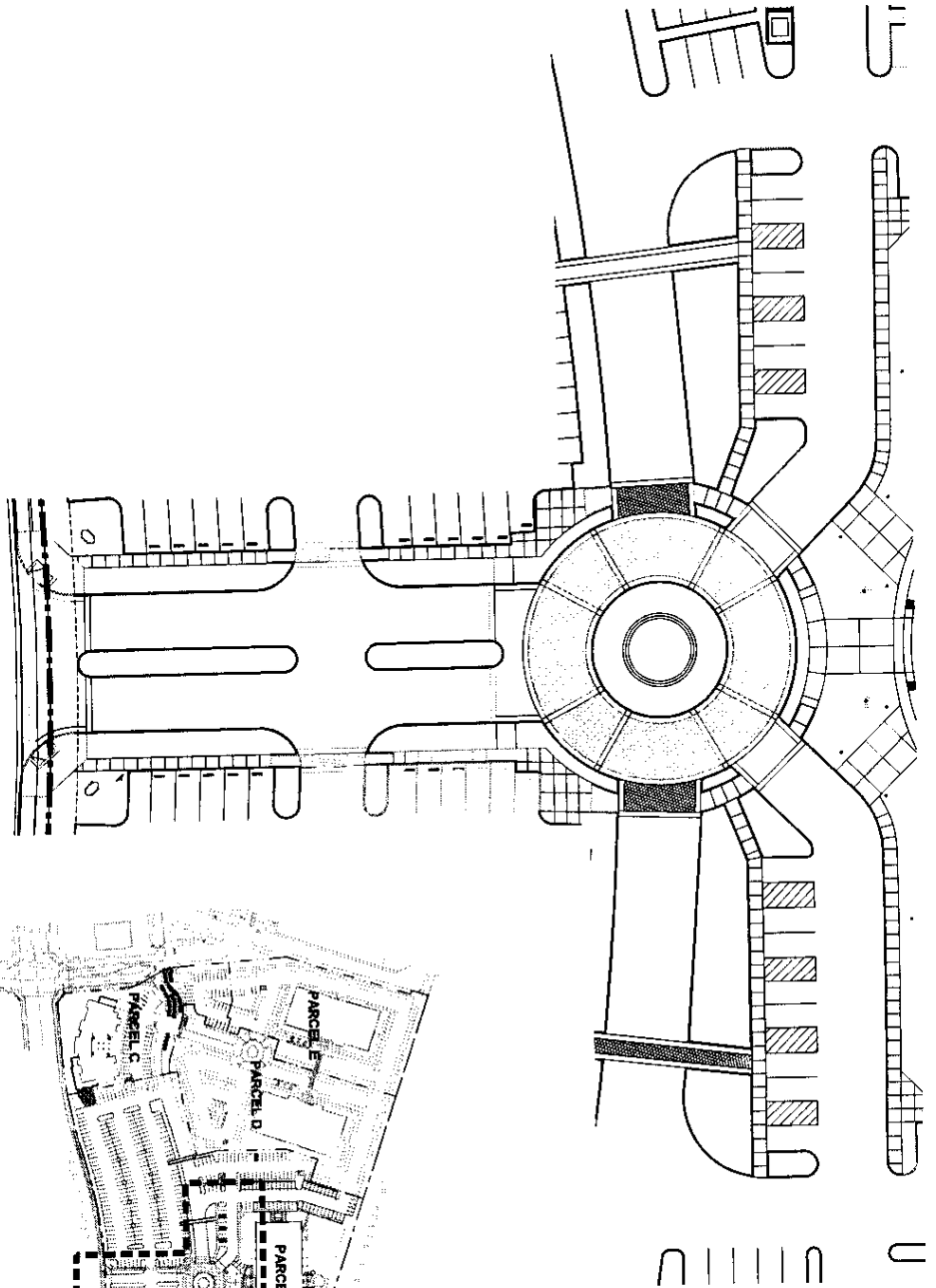


EXHIBIT I
(Diagram of Acceptable Locations for Trash Enclosures)

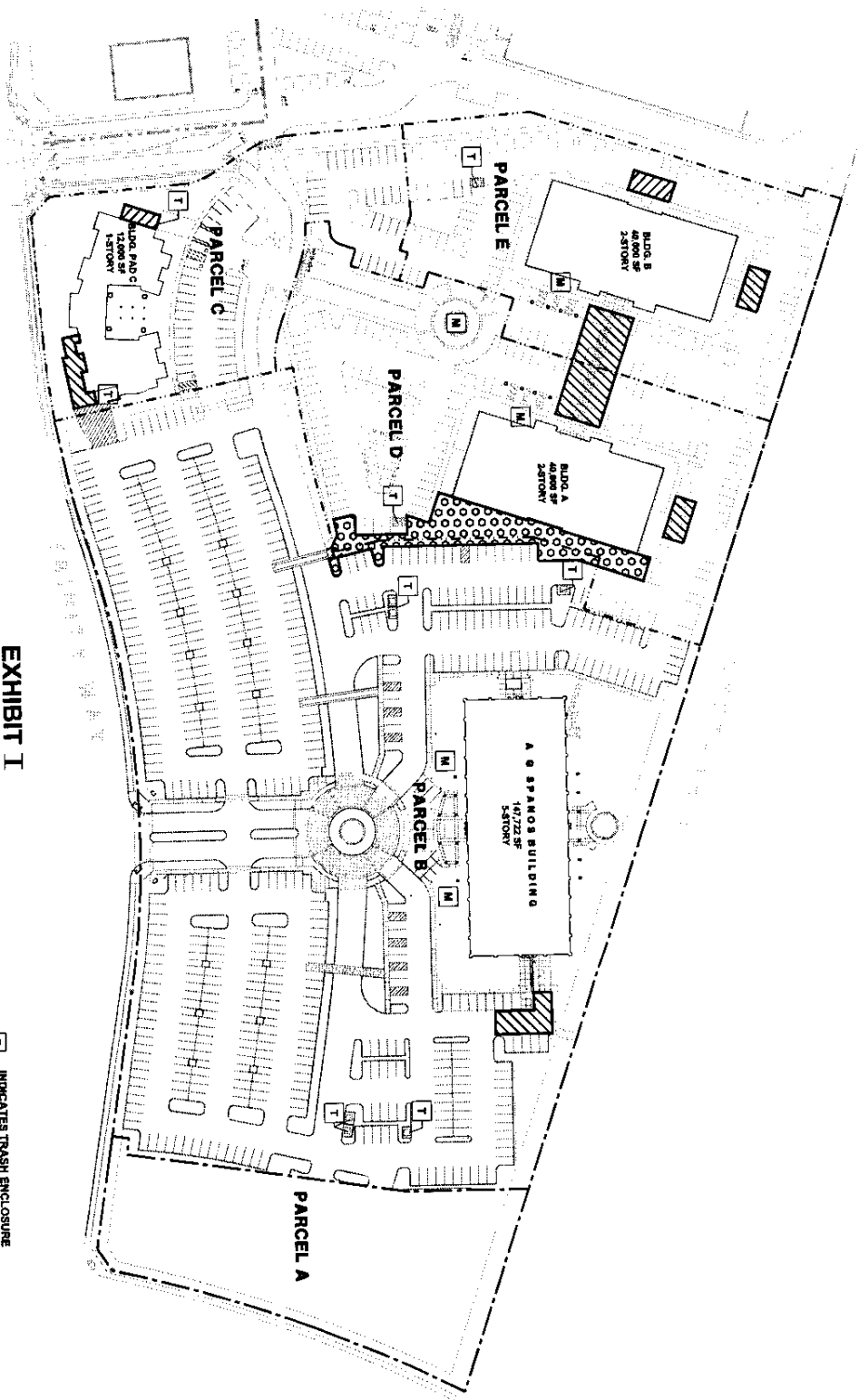






EXHIBIT I
 ALLOWABLE SITE
 TRASH ENCLOSURE LOCATIONS
 OWNER SPECIFIC LOADING ZONES

SPANOS PARK WEST
 SITE EXHIBITS
 OCTOBER 2005

-  INDICATES TRASH ENCLOSURE
-  INDICATES OWNER SPECIFIC LOADING ZONES
-  INDICATES OWNER SPECIFIC MONUMENT SIGNAGE
-  INDICATES NO SIGNAGE, LOADING ZONE, UTILITY/EQUIPMENT AREA OR TRASH ENCLOSURES PERMITTED



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PATENT & TRADEMARK COUNSEL
630.665.9404

February 27, 2020

Via Federal Express

City of Stockton
425 North El Dorado
Stockton, CA 95202
Attn: City Manager

Via Federal Express

City Attorney
City of Stockton
425 North El Dorado
Stockton, CA 95202

Re: Stormwater Treatment Device Access and Maintenance Agreement dated as of August 23, 2006, recorded as Document No. 2006-239981 (the "Stormwater Treatment Agreement"), and the Spanos Park West Density Transfer Development Agreement dated as of January 29, 2002 recorded as Document No. 2002-041899 (the "Density Transfer Development Agreement"), for the property located at 10250 Trinity Parkway, Stockton, CA (the "Property")

Dear Sir or Madam:

Our office represents BlueRoad Net Lease, LLC, the Seller for the above-referenced Property. The Stormwater Treatment Agreement and the Density Transfer Development Agreement each provide that we request an Estoppel Certificate from you.

We hereby request that you execute and return to the undersigned the enclosed Estoppel Certificate within ten (10) days from the date of this notice. Enclosed is a self-addressed Federal Express mailing label for your convenience.

Should you have any questions, please feel free to call the undersigned at 630-871-8550, or contact by email to henninger@ccmlawyer.com. Thank you for your prompt cooperation.

Very truly yours,

CLINGEN CALLOW & McLEAN, LLC

By:


Jodi L. Henninger

JLH/keb

cc: Joe Perez, Plante Moran Real Estate Investment Advisers
Kevin Sanz, Orion Buying Corp.
Eric R. Everett, Darrow Everett LLP

ESTOPPEL CERTIFICATE

Date: _____, 2020

To: OREOF19 BR, LLC (“Purchaser”)
200 South Biscayne Blvd., 7th Floor
Miami, FL 33131
Attention: Kevin Sanz

Re: Spanos Park West Density Transfer Development Agreement dated as of January 29, 2002 (the “Agreement”) by City of Stockton (“Declarant”), recorded with the recorder of deeds of San Joaquin County, California on March 11, 2002 as document number 2002-041899, a copy of which is attached hereto as Exhibit A covering certain real property more particularly described in the Agreement. BlueRoad Net Lease, LLC, a Delaware limited liability company (“Seller”), is the current and sole fee title owner of 10250 Trinity Parkway, Stockton, CA (the “Property”) is under contract to sell the Property to Purchaser, and Seller requests that Declarant execute this Estoppel Certificate as a one-time accommodation to Purchaser and Seller in connection with such proposed sale to Purchaser.

Gentlemen:

The undersigned Declarant understands and acknowledges that Purchaser has obtained or is in the process of obtaining a mortgage loan (“Loan”) from CIBC BANK USA (as administrative agent for itself and the lenders, together with its successors and assigns, “Lender”) which Loan is or will be evidenced by a note secured by a mortgage (“Mortgage”) upon the Property and that Lender, in making the Loan, is relying upon Declarant’s certification herein.

Declarant hereby certifies to Purchaser and Lender that:

1. (a) The Agreement is in full force and effect, has not been modified, supplemented or amended, and has not been assigned by Declarant; (b) to the best of Declarant’s current actual knowledge as of the date hereof, there are no uncured defaults on the part of Seller or Declarant, and (c) to the best of Declarant’s current actual knowledge as of the date hereof, there are no current sums owing to Declarant from Seller under the Agreement.

2. Declarant agrees that, in the event of a foreclosure of the Mortgage, or other enforcement of the provisions of the Loan Documents, or the exercise by Lender of its rights pursuant to the Mortgage, or in the event Lender comes into possession or acquires title to the Property as a result of a foreclosure or threat thereof, or as a result of any other means, then such party may enforce the Agreement with the same force and effect as if enforced by Purchaser. Lender may perform the obligations of Purchaser under the Agreement, but shall have no obligation to do the same (unless and until the interest of Purchaser in the Property is transferred to Lender, in which event such party shall be obligated to perform Purchaser’s obligations under the Agreement).

3. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Agreement.

4. The individual executing this Estoppel Certificate has the power and authority to execute this Estoppel Certificate on behalf of Declarant.

5. Declarant acknowledges and agrees that Purchaser, Lender, administrative agent for the Lender(s), co-lenders or participant lenders of the Loan and their respective successors and assigns shall be entitled to rely on Declarant's certifications set forth herein.

6. Electronic signatures to, and the electronic transmission of, this Estoppel Certificate (including, without limitation, transmission via electronic mail in scanned "PDF" format) shall be legally binding and shall have the same force and effect as an original ink-on-paper signature manually penned by such signatory.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed by its authorized representative as of the day and year first above written.

DECLARANT:

CITY OF STOCKTON, a municipal corporation

By: _____

Name: _____

Its: _____

EXHIBIT A
AGREEMENT



This document is recorded for the benefit of the City of Stockton and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

When recorded, mail to:
City of Stockton
425 N. El Dorado
Stockton, California 95202
Attn: City Attorney

DA3-01

**SPANOS PARK WEST
DENSITY TRANSFER
DEVELOPMENT AGREEMENT**

**CITY: CITY OF STOCKTON, a municipal corporation of the State of
California**

**OWNER: A. G. SPANOS CONSTRUCTION, INC.,
a California Corporation**

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Density Transfer GAS January 9, 2002
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SPANOS PARK WEST
DENSITY TRANSFER
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of this 29th day of January, 2002, by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("**City**"), and A. G. SPANOS CONSTRUCTION, INC., a California corporation ("**Owner**"), pursuant to the authority of California Government Code Sections 65864-65869.5 and Stockton Municipal Code ("**Code**") Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive.

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property that is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), City has adopted Code Chapter 16, Part IX establishing the procedures and requirements for the consideration of development agreements within the City.

C. Owner is a corporation organized under the laws of the State of California and is in good standing thereunder.

D. Owner owns fee title to that certain parcel of land commonly referred to as Spanos Park West. Owner holds certain entitlements for the development of Spanos Park West, i.e. two (2) approved tentative maps, TM 54-89 and TM 56-89. Owner has made application to City to modify Owner's existing entitlements into two separate components of Owner's Spanos Park West Project (sometimes referred to herein as the "**Project**"), a residential component, commonly referred to as The Villages at Spanos Park ("**The Villages**"), and an M-X, mixed use, component, commonly referred to as A. G. Spanos Business Campus ("**The Business Park**"). The entire Spanos Park West Project is the subject of this Agreement and is more fully described in Exhibit "A," attached hereto and incorporated herein by reference.



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E. Pursuant to the California Environmental Quality Act (Public Resources Code § 21000-21177) ("CEQA"), City prepared and circulated a draft supplemental environmental impact report ("SEIR") for the Project. On January 29, 2002, City certified that the SEIR was adequate; that it satisfied the requirements of CEQA, the CEQA Guidelines, and applicable City regulations; and that it fully and accurately described the Spanos Park West Project. Notices of Determination for Spanos Park West were filed on January 30, 2002 with the San Joaquin County Clerk and on January 30, 2002, with the Office of Planning and Research of the State of California.

F. The City of Stockton's General Plan ("**General Plan**") provides that City shall maintain an adequate supply of land designated as high-density residential to meet the requirements of General Plan's Housing Element. The General Plan policy states that 300 acres of vacant high-density residential land is necessary to promote the affordability of multi-family housing in the City. A proposed amendment to the General Plan will change the land use designation of certain lands within the Project from High-Density Residential to Low-Density Residential and Multi-Use. In order to assure that approval by City of the Project does not result in non-compliance with this policy, Owner has agreed to provide for and construct a minimum of Nine Hundred Thirty Five (935) multi-family units within the Mixed-Use component of the Project.

G. The Business Park is located in an area having a general plan and zoning designation of "M-X" (mixed use as described in Code Section 16-075). As required by Code Section 16-075.1, a master development plan for The Business Park will be submitted to and approved by the City (the "**Master Development Plan**"). The Master Development Plan will set forth the distribution, location and extent of uses for The Business Park and identify regulations and criteria for development of the site through subsequent implementing projects. Code Section 16-204.C. requires that a development agreement be completed to implement the Master Development Plan and that such development agreement be processed with the Master Development Plan. A development agreement concerning The Business Park and the Master Development Plan ("**MX Development Agreement**") is being completed between Owner and the City which will provide terms under which the Business Park will be developed. Additionally, City has determined (1) that this Agreement is appropriate to set forth the Owner's commitment to construct a minimum of Nine Hundred Thirty Five multi-family units as part of the development of The Business Park; (2) that this Agreement will eliminate uncertainty in City's land use planning for and secure orderly development of The Business Park; and (3) that this Agreement will assure compliance with the General Plan's Housing Element and otherwise achieve the goals and purposes for which Chapter 16, Part IX of the Code was enacted by City. In exchange for these benefits to the public benefits of the multi-family residential development within The Business Park, Owner desires to receive assurance that City shall grant permits and approvals required for the development of the Project. In order to effectuate these purposes, the parties desire to enter into this Agreement.

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H. On December 20, 2001, after conducting a duly noticed public hearing pursuant to Code Section 16-188.A., the City Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations that: (1) this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan; and (2) the proposed development complies with the requirements of CEQA, and state and local CEQA guidelines.

I. On January 29, 2002, the City Council held a duly noticed public hearing on this Agreement pursuant to Code Section 16-188.B. and made the same findings and determinations, which are set forth in Enacting Ordinance 005-02 approving this Agreement thereafter adopted by the City Council, a copy of which is attached hereto, marked Exhibit "B".

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Code Chapter 16, Part IX, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

1. General Provisions.

1.1 Incorporation of Recitals

The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.2 Covenants

The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project and the burdens and benefits thereof shall bind and inure to the benefit of all estates and interests in the Project, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

2. Definitions.

Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

2.1 **Approvals.** Any and all permits or approvals of any kind or character required under the applicable City Laws in order to develop the Project, including, but not limited to, conditional use permits, tentative and final parcel or subdivision maps, building permits, site clearance, grading plans and permits, and certificates of occupancy.



2.2 **City Laws.** The Stockton Municipal Code, resolutions, codes, rules, regulations, decisions and official policies of City governing the design, improvement and construction standards and specifications applicable to the development of the Project. Specifically, but without limiting the generality of the foregoing, City Laws shall include the General Plan.

2.3 **Director.** The Director shall mean the Director of Community Development for City.

2.4 **Enacting Ordinance.** Ordinance 005-02, enacted by the City Council on January 29, 2002, approving this Agreement, as described herein.

2.5 **Exactions.** All exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-or off-site improvements or construction requirements for public improvements or services or other conditions of approval called for in connection with the development of, or construction on, the Project under Existing City Laws, whether such exactions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

2.6 **Existing City Laws.** The Planning and Zoning Code (Chapter 16 of the Stockton Municipal Code), resolutions, rules, regulations, decisions and official policies of City governing the subdivision, design and improvement standards applicable to the development of the Business Park in effect as of the Effective Date (as defined in Section 3.1 below).

2.7 **Law or Laws.** The laws and constitution of the State of California, the laws and Constitution of the United States and any codes, statues or executive mandates in any court decision, state or federal, thereunder.

2.8 **Mortgage.** A mortgage, deed of trust, ground lease, sale and leaseback arrangement in which the Project or a portion thereof or an interest therein is sold by Owner and leased back concurrently therewith (which arrangement is subject to no prior contractual encumbrances securing payment of money), or other transaction in which the Project, or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

2.9 **Mortgagee.** The holder of the beneficial interest under a Mortgage.

3. **Effective Date; Term.**

3.1. **Effective Date.** This Agreement shall be dated and the obligations of the parties hereunder shall be effective as of the effective date of the Enacting Ordinance, pursuant to Government Code Section 36937, as specified herein (the "Effective Date"). Not later than ten (10) days after the Effective Date, City and Owner shall execute and acknowledge this Agreement, and thereafter the City Clerk shall cause this Agreement to be recorded in the Official Records of the County of San Joaquin, State of California.

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3.2. **Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate twenty (20) years from said Effective Date, unless earlier terminated under the terms of this Agreement.

4. **Density Transfer**

4.1. **Low Density Residential.** Owner shall have the right and obligation to develop Low Density Residential dwelling units within the residential component of the Project in accordance with applicable Existing City Laws, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement

4.2. **High Density Residential.** Owner shall have the right and obligation to develop within the proposed Mixed-Use component of the Project, Nine Hundred Thirty Five (935) multi-family units in accordance with applicable Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans), the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement.

4.3. **Project Phasing.** Owner presently intends to develop the Project in phases and the parties acknowledge that Owner cannot presently predict the timing or sequence of any such phasing. Such decisions depend upon numerous factors which are not within the control of Owner, such as market conditions and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the parties' intent to address that issue by acknowledging and providing that Owner shall have the right to develop the Project in phases in such order and at such times as Owner deems appropriate within the exercise of its subjective business judgment and in accordance with the provisions of this Agreement.

4.4. **Applicable Laws and Standards.** Notwithstanding any change in any Existing City Laws including, but not limited to any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws, regulations, standards and policies applicable to the Project are set forth in the Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans), the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. The Project is entitled to be built and occupied and Owner has the right to complete the Project, in accordance with this Agreement, provided that City may apply and enforce its codes, regulations and laws applicable under this Agreement.



4.5. **Processing and Approvals.** Upon submission by Owner of any and all necessary and required applications for Approvals to construct the High-Density Residential units and payment of any and all appropriate processing fees as provided in the MX Development Agreement, City shall promptly commence and diligently complete all steps necessary to approve or issue the requested Approvals in accordance with the terms of the MX Development Agreement, including, but not limited to, (a) the holding of any and all required public hearings and notice for such public hearings, and (b) the processing of the request for the Approval to the extent that it complies with applicable Law, the MX Development Agreement and this Agreement.

4.6. **Additional Fees.** Except as provided in this Agreement, City may impose further or additional fees, taxes or assessments, whether through the exercise of the police power, the taxing power, or any other means, which provide a reasonable benefit (nexus) to the development and/or maintenance of the Business Park provided that:

- (a) City may charge owner public facility fees and processing fees for land use approvals, building permits, plan checks and other similar permits and entitlements which are in force and effect on a City-wide basis at the time application is submitted for those permits.
- (b) If state or federal laws are adopted which require cities to impose fees on existing projects and if, consequently, City adopts enabling legislation and imposes fees on existing projects City-wide or area-wide basis, as defined below, these fees may be imposed on the Business Park, which fees shall be consistent with the fees imposed on other properties within the City or area similarly situated.
- (c) If owner requests the creation of a community facilities district for the purpose of financing some or all of the public capital facilities and services necessary for the development of the Business Park, City may adopt a special tax pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311 et seq), sufficient to pay all of the public facilities and services requested by Owner.

5. **Specific Criteria Applicable to Development of the Project.**

5.1. **Application of New City Laws.** Nothing herein shall prevent City from applying to the Project new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement. Any action or proceeding of City that has any of the following effects on the property within the Project shall be considered to be in conflict with this Agreement and the Existing City Laws;

- (a) limiting or reducing the density or intensity of all or any part of the Business Park, or otherwise requiring any reduction in the square footage or



total number of buildings and other improvements, including, but not limited to, the parking spaces;

(b) limiting the Owner's ability to transfer permitted uses, intensity of buildings between sites within the Project in a manner that is inconsistent with or more restrictive than limitations included in the Existing City Laws.

(c) limiting the timing of the development of the Business Park or the number of phases of the Business Park in a manner that is inconsistent with or more restrictive than the limitations included in the Master Development Plan.

(d) limiting the location of building sites, grading or other improvements on the Business Park in a manner that is inconsistent with or more restrictive than the limitations included in the Existing City Laws;

5.2. Future Growth Control Ordinances/Policies, Etc. One of the specific purposes of this Agreement is to assure Owner that no growth-control ordinance, measure, policy, regulation or development moratorium of City adopted by the City Council or by vote of the electorate after the Effective Date of this Agreement will apply to the Project, whether enacted by urgency ordinances, interim ordinances, initiatives, referendums or any other change in the laws of the City by any method or name which would alter in any way City's General Plan, Zoning Ordinance, Subdivision Ordinance, Uniform Codes or any other ordinance, enactment, resolution, approval, policy, rule, regulation, decision, or other action of City. There are currently no adopted growth control ordinances, policies or measures which would restrict the ability of Owner to complete the Project.

Therefore, the parties hereto agree that, except as otherwise expressly provided in Section 5.1 herein, or other provision of this Agreement which unambiguously and expressly authorizes City to make such pertinent changes, no ordinance, policy, rule, regulation, decision, or any other City action, or any initiative or referendum voted on by the public, which would be applicable to the Project and would affect in any way the rate of development and construction of the Project or to limit the Project's ability to receive any other City service shall be applicable to any portion of the Project during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum.

5.3. Police Power and Taxing Power. City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees or other exactions, policies, standards, laws or regulations, which directly relate to the development of the Project except as provided in Section 5.1 herein or other provision of this Agreement which unambiguously and expressly allows City to make such changes. Further, City shall not approve a Mello-Roos assessment, or other type of district to cause bonded indebtedness on any portion of the Project without Owner's prior written approval, which approval may be given or withheld in Owner's sole and

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absolute discretion; except that Owner's approval shall not be required if the district includes and benefits the Project. Nothing herein prohibits the Project from being subject to a (a) City-wide bond issue, (b) City-wide special or general tax, or (c) special assessment for the construction or maintenance of a City-wide facility as may be voted on by the electorate or otherwise enacted; provided that such tax, assessment or measure is City-wide in nature, does not discriminate against the land within the Project and does not distinguish between developed and undeveloped parcels.

5.4. **Revision of Ministerial Fees.** This Agreement shall not be construed to limit the authority of City to charge processing fees for land use approvals, public facilities fees and building permits as they relate to plumbing, mechanical, electric or fire code permits, or other similar permits and entitlements which re in force and effect on a city-wide basis at the time those permits are applied for, except to the extent any such processing regulations would be inconsistent with this Agreement

5.5. **Health and Safety.** Notwithstanding Section 5.3, the City may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

(a). A failure to do so would place the residents of the Business Park or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(b) The condition or denial is required in order to comply with state or federal law.

6. **Indemnity.**

6.1. **Indemnity.** Owner shall indemnify, defend and hold City, and its elective and appointive boards, commissions, officers, agents, and employees, harmless from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of multi-family units within the proposed Mixed-Use component of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to the Project, as a result of the operations of Owner or its employees, agents, contractors or representatives with respect to the development, operation and maintenance of the Project.

6.2. **Insurance.** Owner shall maintain insurance in order to assure Owner's ability to provide the indemnity described in Section 6.2. The amount and terms of such insurance shall be as follows:

(a) Commercial general liability and property damage insurance covering the risks of bodily injury and/or death, property damage, and personal injury liability, with total limits of not less than One Million Dollars (\$1,000,000.00)

(b) Worker's Compensation Insurance as required by law, together with a contingent employer's liability endorsement in favor of City, covering employees of Owner, employees of any contractor, subcontractor, agent of representative of Owner.

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(c) If available, each policy of insurance carried by Owner as required by this Indemnity Section, shall provide that it may not be canceled without at least thirty (30) day prior written notice to City. Upon request of City, Owner shall furnish to City a copy of each policy of insurance, or a certificate thereof, stating that such insurance is in full force and effect and, in the case of the public liability insurance, showing City named as an additional insured. Any insurance required to be maintained by Owner may be maintained under a so-called "blanket policy" insuring other parties and other locations, so long as the amount of insurance required hereunder is not thereby diminished. Owner shall maintain insurance in order to assure Owner's ability to provide the indemnity described in Section 6.1 in the amount and terms of such insurance as provided for in the MX Development Agreement.

7. Periodic Review of Compliance.

7.1. Annual Review. City, through the Planning Commission, shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement pursuant to Government Code Section 65865.1 and Code Section 16-192.

7.2. Owner's Submission. Within thirty (30) days of Owner's receipt of the written request of the Planning Commission made not more than once each year at least sixty (60) days prior to the anniversary date of this Agreement, Owner shall submit to the Planning Commission a letter setting forth Owner's good faith compliance with the terms and conditions of this Agreement. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Owner to enable the Planning Commission to undertake the review of Owner's good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code Section 65865.1 and Code Section 16-192.

7.3. Finding of Compliance. The Planning Commission shall review the Owner's submission to ascertain whether it contains sufficient information to determine whether Owner has complied in good faith with the terms of this Agreement. Upon receipt of the submission, the Planning Commission shall conduct a review of the good faith compliance by Owner with the terms of this Agreement. If the Planning Commission finds good faith compliance by Owner with the terms of this Agreement, the Director shall, upon request by Owner, provide to Owner written confirmation of such finding.

7.4. Finding of Noncompliance. If the Planning Commission, on the basis of substantial evidence, finds that Owner has not complied in good faith with the terms of this Agreement, the Planning Commission shall specify in writing to Owner the respects in which Owner has failed to comply and the Planning Commission may recommend that the City Council hold a public hearing and terminate or modify the Agreement. The City Council may (a) establish a reasonable time for Owner to



comply with this Agreement, which time shall not be less than thirty (30) days and shall be reasonably related to the time necessary for Owner to adequately bring its performance into good faith compliance with the terms of this Agreement, or (b) may take action to terminate or modify this Agreement. No action to terminate or modify the Agreement shall be taken without a public hearing before the City Council using the same process as was used for its adoption.

8. Permitted Delays; Supersedure by Subsequent Laws.

8.1. **Permitted Delays.** In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other party, or any other cause beyond the reasonable control of a party. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

8.2. **Supersedure by Subsequent Laws.** Except as provided in this Agreement with respect to City Laws, if any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to City. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

9. Events of Default, Remedies, Termination; Attorneys' Fees.

9.1. **Events of Default.** Subject to any extensions of time by mutual consent in writing, and subject to the provisions of this Agreement regarding periodic reviews, or permitted delays, any failure by either party to perform any material term or provision of this Agreement shall constitute an Event of Default, (i) if such defaulting party does not cure such failure within thirty (30) days following notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (ii) if such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting party does not within such

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thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

9.2. **Remedies.** Upon the occurrence of an Event of Default, the non-defaulting party may: (i) bring any proceeding in the nature of declaratory relief, specific performance, injunctive relief or mandamus, and/or (ii) the non-defaulting party shall have the right to terminate this Agreement pursuant to Government Code Section 65868. The remedies provided herein are exclusive and in no event shall either party be liable to the other for monetary damages for an event of default or any other breach of this Agreement.

9.3. **Waiver, Remedies Cumulative.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of an Event of Default shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time, other than any Event of Default and/or period of time specified in such express waiver. The exclusive remedies provided in this Agreement shall be cumulative and not alternative, and invocation of any permitted remedy shall not constitute a waiver or election with respect to any other permitted remedy.

9.4. **Effect of Termination.** If this Agreement is terminated on account of an Event of Default, such termination shall not affect any right or duty emanating from any Exactions already satisfied, City entitlements or Approvals with respect to the Project that have been approved concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the parties hereunder shall otherwise cease as of the date of such termination.

9.5. **Limitations on Actions.** City and Owner hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provision of this Agreement, or any action or decision taken or made hereunder, the parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in any such action or other proceeding and for any attorneys' fees and costs awarded to a party to be paid by City.

9.6. **Effect of Court Action.** If any court action or proceeding is brought by any third party to challenge any Approval, this Agreement, or any other permit or

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approval required from City or any other governmental entity for development or construction of the Project, or any portion thereof, and without regard to whether or not Owner is a party to or real party in interest in such action or proceeding, then Owner shall have the right, but not the obligation, (a) to defend, at Owner's expense, such action or proceeding on behalf of City and City shall fully cooperate with Owner in such defense; or (b) to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination. Any such action or proceeding shall constitute a permitted delay under the provisions of this Agreement.

9.7. **Estoppel Certificate.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Director shall have the right to execute on behalf of City any certificate requested by Owner hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees acting in good faith.

10. **Mortgagee Protection: Certain Rights of Cure.**

10.1. **Mortgagee Protection.** This Agreement shall be superior and senior to any lien placed upon the Project, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Project, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2. **Mortgagee Not Obligated.** Notwithstanding the provisions of this Agreement, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Project to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement or otherwise under City Laws.

10.3. **Notice of Default to Mortgagee, Right of Mortgagee to Cure.** If City receives notice from a Mortgagee requesting a copy of any notice of default

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given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of an Event of Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences cure during such ninety (90) day periods, and thereafter diligently pursues completion of such cure to the extent possible.

11. Assignment.

11.1 Owner's rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of the Project at any time during the term of this Agreement upon the following terms and conditions:

(a) Release Upon Transfer. Upon the sale, transfer or assignment of Owner's rights and interests under this Section of this Agreement, Owner shall be released from its obligations pursuant to this Agreement with respect to the Project or portion thereof so transferred provided such obligations are expressly assumed by the Transferee prior to the transfer and evidence is provided to the Director showing Transferee can perform Owner's obligations.

(b) Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Project, and the burdens and benefits shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), assignees, devisees, administrators, representatives, purchasers and lessees.

12. Amendment and Recordation.

12.1. Amendment or Cancellation. Except as provided for herein with respect to City's annual review, this Agreement may be canceled, modified or amended only by mutual consent of the parties in writing, and then only in the manner provided for in government Code Section 65868 and Code Section 16-193. Pursuant to Code Section 16-193.C., any amendment to this Agreement which does not relate to the Term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, shall not require a noticed public hearing before the



parties may make such amendment. Any fees paid or land dedicated pursuant to this Agreement prior to the date of cancellation shall be retained by City.

12.2. **Recordation.** Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation with any costs of recordation to be paid by Owner. Failure to record shall not affect the validity of any amendment, termination or cancellation.

13. Notices.

13.1. **Procedure.** Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by facsimile transmission or registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the party's mailing address. The respective mailing addresses and facsimile numbers of the parties are, until changed as hereinafter provided, the following:

City:	City of Stockton 425 North El Dorado Stockton, California 95202 Attention: City Manager Facsimile No.: (209) 937-7149
with a copy to:	City Attorney, City of Stockton 425 North El Dorado Stockton, California 95202 Facsimile No.: (209) 937-8898
Owner:	A.G. Spanos Construction, Inc. 1341 West Robinhood Drive Suite B-5 Stockton, California 95207 Attention: Jerry Murphy Facsimile No. (209) 473-3703
with a copy to:	John Briscoe Washburn, Briscoe & McCarthy 55 Francisco Street Suit 600 San Francisco, California 94133 Facsimile No.: (415) 421-5044

Either party may change its mailing address and/or facsimile number at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be

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deemed given, received, made or communicated on the date personal delivery is effected or, if mailed upon the expiration of five (5) days after the date of mailing, or, if sent by facsimile transmission, on the date of receipt as shown on written transmission verification.

14. Miscellaneous.

14.1. **Negation of Partnership.** The parties specifically acknowledge that the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the business of Owner, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

14.2. **Consent(s).** Unless otherwise herein provided, whenever consent or satisfaction (collectively referred to in this Section 14.2 as a "**consent**") is required of a party pursuant to this Agreement, such consent shall not be unreasonably withheld. Consent shall be deemed given if the party from whom the consent is sought neither approves or disapproves of the request within thirty (30) days, or such other applicable time period specified in this Agreement, after receipt of the written request for consent. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Consent by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests.

14.3. **Project Approvals Independent.** All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by City with respect to the Project, constitute independent actions and approvals by City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

14.4. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private, integrated development project as contemplated by this Agreement except for those areas designated as public easements.

14.5. **Severability.** Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other

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person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.6. **Exhibits.** The Exhibits listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety.

14.7. **Entire Agreement.** This written Agreement and the Exhibits contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

14.8. **Construction of Agreement.** The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities. This Agreement has been reviewed and revised by legal counsel for both Owner and City, and any presumption or rule that ambiguities shall be construed against the drafting party shall not apply to the interpretation or enforcement of this Agreement.

14.9. **Further Assurances; Covenant to Sign Documents.** Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10. **Governing Law.** This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

14.11. **Time.** Time is of the essence of this Agreement and of each and every term and condition hereof.

14.12. **Dispute Costs and Fees.** In any legal action or proceeding brought to enforce or interpret any provision of this Agreement, or otherwise arising from or related to this Agreement, the prevailing party shall be entitled to an award of its attorneys', investigators', expert witness' and consultants' fees and costs incurred in relation to that action or proceeding, in addition to any other relief awarded.

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

CITY OF STOCKTON, a municipal corporation of the State of California

By: [Signature]
City Manager

Attest: [Signature]
City Clerk

Approved as to Form By:
[Signature]
Deputy City Attorney

Owner:
A.G. SPANOS CONSTRUCTION, INC.

By William E. Bourbon

Its Vice President

By _____

Its _____



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EXHIBIT "A"

**Tract No. 3103
Spanos Park West Unit No. 1
according to map recorded June 14, 2001, in Book 36 of Maps and Plats at Page 32**



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EXHIBIT "B"

City Council Findings and Determinations

A. The provisions of the Development Agreement are consistent with the General and specific plans for this area; and

B. The proposed development complies with the requirements of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.



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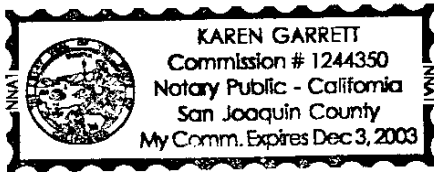
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Joaquin } ss.

On Jan. 29, 2002, before me, Karen Garrett, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared William E. Barbour
Name(s) of Signer(s)

- personally known to me
- 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.



WITNESS my hand and official seal.

Karen Garrett
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

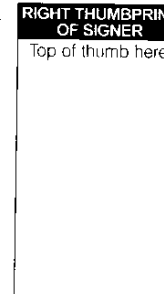
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



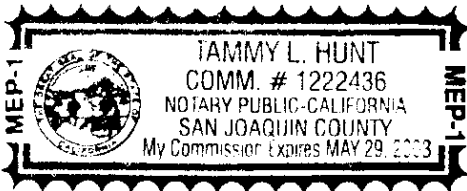
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
County of SAN JOAQUIN

On February 5, 2002 before me, TAMMY L. HUNT, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC"

personally appeared MARK LEWIS, ESQ.
NAME(S) OF SIGNER(S)

personally known to me - OR - 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.



WITNESS my hand and official seal.

Tammy L. Hunt
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
CITY MANAGER
TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
CITY OF STOCKTON

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT SPANOS PARK WEST DEVELOPMENT AGREEMENT

NUMBER OF PAGES 21 DATE OF DOCUMENT January 29, 2002

SIGNER(S) OTHER THAN NAMED ABOVE As attached



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ESTOPPEL CERTIFICATE

Date: _____, 2020

To: OREOF19 BR, LLC (“Purchaser”)
200 South Biscayne Blvd., 7th Floor
Miami, FL 33131
Attention: Kevin Sanz

Re: Stormwater Treatment Device Access and Maintenance Agreement as of August 23, 2006 (the “Agreement”) by City of Stockton (“Declarant”), recorded with the recorder of deeds of San Joaquin County, California on November 14, 2006 as document number 2006-239981, a copy of which is attached hereto as Exhibit A covering certain real property more particularly described in the Agreement. BlueRoad Net Lease, LLC, a Delaware limited liability company (“Seller”), is the current and sole fee title owner of 10250 Trinity Parkway, Stockton, CA (the “Property”) is under contract to sell the Property to Purchaser, and Seller requests that Declarant execute this Estoppel Certificate as a one-time accommodation to Purchaser and Seller in connection with such proposed sale to Purchaser.

Gentlemen:

The undersigned Declarant understands and acknowledges that Purchaser has obtained or is in the process of obtaining a mortgage loan (“Loan”) from CIBC BANK USA (as administrative agent for itself and the lenders, together with its successors and assigns, “Lender”) which Loan is or will be evidenced by a note secured by a mortgage (“Mortgage”) upon the Property and that Lender, in making the Loan, is relying upon Declarant’s certification herein.

Declarant hereby certifies to Purchaser and Lender that:

1. (a) The Agreement is in full force and effect, has not been modified, supplemented or amended, and has not been assigned by Declarant; (b) to the best of Declarant’s current actual knowledge as of the date hereof, there are no uncured defaults on the part of Seller or Declarant, and (c) to the best of Declarant’s current actual knowledge as of the date hereof, there are no current sums owing to Declarant from Seller under the Agreement.

2. Declarant agrees that, in the event of a foreclosure of the Mortgage, or other enforcement of the provisions of the Loan Documents, or the exercise by Lender of its rights pursuant to the Mortgage, or in the event Lender comes into possession or acquires title to the Property as a result of a foreclosure or threat thereof, or as a result of any other means, then such party may enforce the Agreement with the same force and effect as if enforced by Purchaser. Lender may perform the obligations of Purchaser under the Agreement, but shall have no obligation to do the same (unless and until the interest of Purchaser in the Property is transferred to Lender, in which event such party shall be obligated to perform Purchaser’s obligations under the Agreement).

3. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Agreement.

4. The individual executing this Estoppel Certificate has the power and authority to execute this Estoppel Certificate on behalf of Declarant.

5. Declarant acknowledges and agrees that Purchaser, Lender, administrative agent for the Lender(s), co-lenders or participant lenders of the Loan and their respective successors and assigns shall be entitled to rely on Declarant's certifications set forth herein.

6. Electronic signatures to, and the electronic transmission of, this Estoppel Certificate (including, without limitation, transmission via electronic mail in scanned "PDF" format) shall be legally binding and shall have the same force and effect as an original ink-on-paper signature manually penned by such signatory.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed by its authorized representative as of the day and year first above written.

DECLARANT:

CITY OF STOCKTON, a municipal corporation

By: _____

Name: _____

Its: _____

EXHIBIT "A"
AGREEMENT

Spanos Business Park –Pad C/Restaurant Parcel

**Stormwater Treatment Device
Access and Maintenance
Agreement**

DOC # 2006-239981

11/14/2006 01:29P Fee:73.00

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Recorded in Official Records

County of San Joaquin

GARY W. FREEMAN

Assessor-Recorder-County Clerk

Paid by SHOWN ON DOCUMENT

After recorded, return to:
Sandi Norman
City of Stockton
Municipal Utilities Department
2500 Navy Drive
Stockton, CA 95206



MUNICIPAL UTILITIES DEPARTMENT

After Recording Transmit Copy to

- Owner of Record
- Municipal Utilities Department
- City Clerk (Original)

OWNER NAME (S)
(as shown on deed)

A. G. Spanos Construction, Inc.

A CALIFORNIA CORPORATION

MAILING ADDRESS

10100 TRINITY PARKWAY, SUITE 500

STOCKTON , CALIFORNIA 95219

**FACILITY NAME
AND ADDRESS**

Spanos Business Park-Pad C/Restaurant Parcel

10250 Trinity Parkway, Stockton, CA 95219

ASSESSOR PARCEL NO.

071-60-34

THIS AGREEMENT is made and entered into in Stockton, California,
this 23rd day of August 2006 by and between
A.G. Spanos Construction, Inc. hereinafter referred to as "Owner" and
the CITY OF STOCKTON a municipal corporation, located in the County of San
Joaquin, State of California hereinafter referred to as "CITY",

WHEREAS, Owner owns real property (the "Property") in the City of Stockton, County
of San Joaquin, State of California, depicted in Exhibits A and B, which are attached hereto and
incorporated herein by this reference;

WHEREAS, at the time of initial approval of development project known as Spanos Business Park- Pad C/Restaurant Parcel within the property described herein, City required the project to employ on-site control measures to minimize pollutants in urban runoff;

WHEREAS, Owner has chosen to install a StormFilter designed by Contech Stormwater Solutions, Inc. (8 x 16 StormFilter w/ 20 Cartridges), hereinafter referred to as the "Device", as the on-site control measure to minimize pollutants in urban runoff;

WHEREAS, the Device will be installed in accordance with the requirements of the City of Stockton Stormwater Quality Control Criteria Plan and Owner's plans and specifications accepted by City;

WHEREAS, the Device, with installation on private property and draining only private property, is a private facility with all operation, maintenance and replacement, thereof, the sole responsibility of Owner in accordance with the terms of this Agreement;

WHEREAS, Owner is aware that periodic and continuous maintenance, including, but not necessarily limited to, sediment removal, is required to assure peak performance of the Device and that, furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs;

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. Owner hereby provides City or City's designee complete access, of any duration, to the Device and its immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by City's Director of Municipal Utilities with no advance notice, for the purpose of inspection, sampling, testing of the Device, and in case of emergency, to undertake all necessary repairs or other preventative measures at Owner's expense as provided in paragraph 3 below. Owner shall retain all operation and maintenance records at the facility for City inspection, and a copy shall be provided to City if requested. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.
2. Owner shall use its best efforts to diligently maintain the Device in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of material(s) from the Device and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. When requested from time to time by City, Owner shall provide City with documentation identifying the material(s) removed, the quantity, and disposal destination.
3. In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement within five (5) days of being given written

notice by City, City is hereby authorized to cause any maintenance necessary to be done and charge the entire cost and expense to Owner or Owner's successors or assigns, including administrative costs, attorneys fees and interest thereon at the maximum rate authorized by the Civil Code from the date of the written notice until paid in full, and Owner hereby agrees to pay such charge within 30 days of receipt of City's written demand for payment.

4. City may require Owner to post security, in a form and for a time period satisfactory to City, to guarantee the performance of the obligations stated herein. Should Owner fail to perform all obligations under this Agreement, City may, in the case of a cash bond, act for Owner using the proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of this Agreement. As an additional remedy, the Director may withdraw any previous stormwater related approval with respects to the property on which a Device has been installed until such time as Owner repays to City its reasonable costs incurred in accordance with paragraph 3 above.
5. This agreement shall be recorded in the Office of the Recorder of San Joaquin County, California, at the expense of Owner and shall constitute notice to all successors and assigns of the title to said Property, of the obligations herein set forth, and also constitute a lien in such amount as will fully reimburse City, including interest as herein above set forth, subject to foreclosure in event of default in payment.
6. In event of legal action occasioned by any default or action of Owner, or its successors or assigns, then Owner or its successors or assigns agree(s) to pay all costs incurred by City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and agree that the same shall become a part of the lien against said Property.
7. It is the intent of the parties hereto that the burdens and benefits herein undertaken shall constitute covenants that run with said Property and shall constitute a lien against said Property.
8. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Owner shall provide a copy of such notice to City at the same time such notice is provided to such successor.
9. Time is of the essence in the performance of this Agreement.
10. Any notice or demand for payment to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to addresses listed on Page 1 of this agreement either for the Owner or City. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to all other parties.

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

CITY OF STOCKTON,
a Municipal Corporation

ATTEST: APPROVED AS TO FORM:

By: 
J. GORDON PALMER JR., CITY MANAGER

OFFICE OF THE CITY ATTORNEY

By: 
Assistant City Attorney

(Spanos Business Park-Pad C

By: 
PROPERTY OWNER

Name Gerald A. Sperry

Title of Council

A. G. Spanos Companies Inc.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

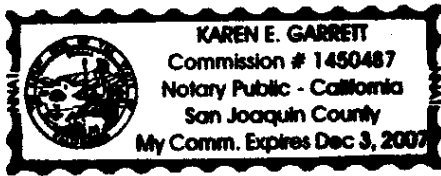
State of California

County of San Joaquin

On August 23, 2006 before me, Karen E. Garrett, Notary Public

personally appeared Gerald A. Sperry

- personally known to me
- (or 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.

WITNESS my hand and official seal.

Karen E. Garrett
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

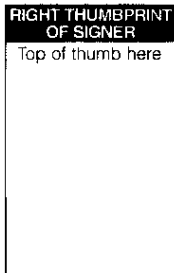
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

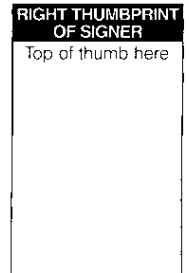
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____



Operation and Maintenance

The Stormwater Management StormFilter®

Vault, Cast-In-Place, and Linear Units

Important: *These guidelines should be used as a part of your site stormwater management plan.*

Description

The Stormwater Management StormFilter® (StormFilter) is a passive, flow-through, stormwater filtration system. The system is comprised of one or more vaults that house rechargeable, media-filled, filter cartridges. The StormFilter works by passing stormwater through the media-filled cartridges, which trap particulates and adsorb materials such as dissolved metals and hydrocarbons. Once filtered through the media, the treated stormwater is directed to a collection pipe or discharged into an open channel drainage way.

The StormFilter is offered in multiple configurations, including vault, linear, catch basin, manhole, and cast-in-place. The vault, linear, manhole, and catch basin models utilize pre-manufactured units to ease the design and installation processes. The cast-in-place units are customized for larger flows and may be either covered or uncovered underground units.

Purpose

The StormFilter is a passive, flow-through, stormwater filtration system designed to improve the quality of stormwater runoff from the urban environment before it enters receiving waterways. It is intended to function as a Best Management Practice (BMP) to meet federal, state, and local

requirements for treating runoff in compliance with the Clean Water Act.

Through independent third party studies, it has been demonstrated that the StormFilter is highly effective for treatment of first flush flows and for treatment of flow-paced flows during the latter part of a storm. In general, the StormFilter's efficiency is highest when pollutant concentrations are highest. The primary non-point source pollutants targeted for removal by the StormFilter are: suspended solids (TSS), oil and grease, soluble metals, nutrients, organics, and trash and debris.

Sizing

The StormFilter is sized to treat the peak flow of a water quality design storm. The peak flow is determined from calculations based on the contributing watershed hydrology and from a design storm magnitude set by the local stormwater management agency. The particular size of a StormFilter unit is determined by the number of filter cartridges (see Figure 1) required to treat this peak flow.

The flow rate through each filter cartridge is adjustable, allowing control over the amount of contact time between the influent and the filter media. The maximum flow rate through each cartridge can be adjusted to between 5 and 15 gpm using a calibrated restrictor disc at the base of each filter cartridge. Adjustments to the cartridge flow rate will affect the number of cartridges required to treat the peak flow.

Basic Function

The StormFilter is designed to siphon stormwater runoff through a filter cartridge containing media. A variety of filter media is available and can be customized for each site to target and remove the desired levels of sediments, dissolved phosphorus, dissolved metals, organics, and oil and grease. In many cases, a combination of media is recommended to maximize the effectiveness of the stormwater pollutant removal.

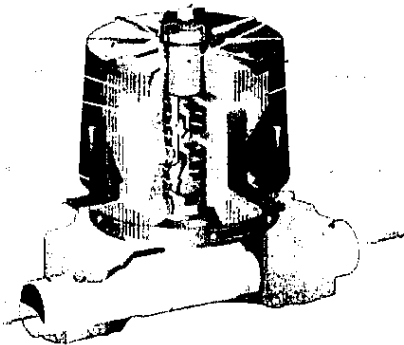


Figure 1. The StormFilter Cartridge

Priming System Function

When stormwater in the StormFilter unit enters a StormFilter cartridge, it percolates horizontally through the cartridge's filter media and collects in the center tube of the cartridge, where the float in the cartridge is in a closed (downward) position.

Water continues to pass through the filter media and into the cartridge's center tube. The air in the cartridge is displaced by the water and purged from beneath the filter hood through the one-way check valve located in the cap. Once the center tube is filled with water (approximately 18 inches deep), there is enough buoyant force on the float to open the float valve and allow the treated water in the center tube to flow into the under-drain manifold. This causes the check valve to close, initiating a siphon that draws polluted water throughout the full surface area and volume of the filter. Thus,

the entire filter cartridge is used to filter water throughout the duration of the storm, regardless of the water surface elevation in the unit. This siphon continues until the water surface elevation drops to the elevation of the hood's scrubbing regulators.

The cartridges are connected to the under-drain manifold with a plastic connector. Since some media used is potentially buoyant, a threaded connector affixed to the under-drain manifold (with glue or other adhesive) is necessary to ensure that the cartridge isn't lifted out of place. For the heavier compost media, a slip connector is used.

The StormFilter is also equipped with flow spreaders that trap floating debris and surface films, even during overflow conditions. Depending on individual site characteristics, some systems are equipped with high and/or base flow bypasses. High flow bypasses are installed when the calculated peak storm event generates a flow that overcomes the overflow capacity of the system. This is especially important for precast systems. Base flow bypasses are sometimes installed to bypass continuous inflows caused by ground water seepage, which usually do not require treatment. All StormFilter units are designed with an overflow. The overflow operates when the inflow rate is greater than the treatment capacity of the filter cartridges.

Maintenance Guidelines

The primary purpose of the StormFilter is to filter out and prevent pollutants from entering our waterways. Like any effective filtration system, periodically these pollutants must be removed to restore the StormFilter to its full efficiency and effectiveness.

Maintenance requirements and frequency are dependent on the pollutant load characteristics of each site.

Maintenance activities may be required in the event of a chemical spill or due to excessive sediment loading from site erosion or extreme storms. It is also good practice to inspect the system after severe storm events.

Types of Maintenance

Presently, procedures have been developed for two levels of maintenance:

- Inspection/minor maintenance
- Major maintenance.

Inspection/minor maintenance activities are combined since minor maintenance does not require special equipment and typically little or no materials are in need of disposal.

Inspection/minor maintenance typically involves:

- Inspection of the vault itself
- Removal of vegetation and trash and debris.

Major maintenance typically includes:

- Cartridge replacement
- Sediment removal

Important: Applicable safety (OSHA) and disposal regulations should be followed during all maintenance activities.

Maintenance Activity Timing

Two scheduled inspections/maintenance activities should take place during the year.

First, an inspection/minor maintenance activity should be done. During the minor maintenance activity (routine inspection, debris removal), the need for major maintenance should be determined and, if disposal during major maintenance will be required, samples of the sediments and media should be obtained.

Second, if required, a major maintenance activity (replacement of the filter cartridges and associated sediment removal) should be performed.

In addition to these two scheduled activities, it is important to check the condition of the StormFilter unit after major storms for damage caused by high flows and for high sediment accumulation that may be caused by localized erosion in the drainage area. It may be necessary to adjust the maintenance activity schedule depending on the actual operating conditions encountered by the system.

In general, minor maintenance activities will occur late in the rainy season, and major maintenance will occur in late summer to early fall when flows into the system are not likely to be present.

Maintenance Activity Frequency

The primary factor controlling timing of maintenance for the StormFilter is sedimentation.

A properly functioning system will remove solids from water by trapping particulates in the porous structure of the filter media. The flow through the system will naturally decrease as more and more solids are trapped. Eventually the flow through the system will be low enough to require replacement of the cartridges. It may be possible to extend the usable span of the cartridges by removing sediment from upstream trapping devices on an as-needed basis in order to prevent material from being re-suspended and discharged to the system.

Site conditions greatly influence maintenance requirements. StormFilter units located in areas with erosion or active construction should be inspected and maintained more often than those in fully stabilized areas.

The maintenance frequency may be adjusted as additional monitoring information becomes available during the inspection program. Areas that develop known problems should be inspected more frequently than areas that demonstrate no problems, particularly after large storms.

Ultimately, inspection and maintenance activities should be scheduled based on the historic records and characteristics of an individual StormFilter system. It is recommended that the maintenance agency develop a database to properly manage StormFilter maintenance programs.

Prior to the development of the maintenance database, the following maintenance frequencies should be followed:

Inspection/minor maintenance

- One time per year
- After Major Storms

Major maintenance

- One time per year
- In the event of a chemical spill

Frequencies should be updated as required.

The recommended initial frequency for inspection/minor maintenance is two times per year for precast units. StormFilter units should be inspected after all major storms. Sediment removal and cartridge replacement on an annual basis is recommended until further knowledge is gained about a particular system.

Once an understanding of site characteristics has been established, maintenance may not be needed for one to two years, but inspection is warranted.

Maintenance Methods

Inspection/Minor Maintenance

The primary goal of a maintenance inspection is to assess the condition of the cartridges relative to the level of sediment loading. It may be desirable to conduct this inspection during a storm to observe the relative flow through the filter cartridges. If the submerged cartridges are severely plugged, large amounts of sediments will be present and very little flow will be discharged from the drainage pipes. If this is the case, it is likely that the cartridges need to be replaced.

Warning: In the case of a spill, the worker should abort maintenance activities until the proper guidance is obtained. Notify the local hazard control agency and CONTECH Stormwater Solutions immediately.

To conduct an inspection and/or minor maintenance:

Important: Maintenance must be performed by a utility worker familiar with StormFilter units.

1. If applicable, set up safety equipment to protect pedestrians from fall hazards due to open vault doors or when work is being done near walkways or roadways.
2. Visually inspect the external condition of the unit and take notes concerning defects/problems.

3. Open the doors to the vault and allow the system to air out for 5-10 minutes.
4. Without entering the vault, inspect the inside of the unit, including components.
5. Take notes about the external and internal condition of the vault.

Be sure to record the level of sediment build-up on the floor of the vault, in the forebay, and on top of the cartridges. If flow is occurring, note the level of water and estimate the flow rate per drainage pipe. Record all observations.

6. Remove large loose debris and trash using a pole with a grapple or net on the end.
7. Close and fasten the door.
8. Remove safety equipment.
9. Make notes about the local drainage area relative to ongoing construction, erosion problems, or high loading of other materials to the system.
10. Finally, review the condition reports from the previous minor and major maintenance visits, and schedule cartridge replacement if needed.

Major Maintenance

Depending on the configuration of the particular system, a worker may be required to enter the vault to perform some tasks.

Important: If vault entry is required, OSHA rules for confined space entry must be followed.

Filter cartridge replacement should occur during dry weather. It may be necessary to plug the filter inlet pipe if base flows exist. Standing water present in the vault should be regarded as polluted and should be contained during this operation by temporarily capping the manifold connectors.

Replacement cartridges will be delivered to the site. Information concerning how to obtain the replacement cartridges is available from CONTECH Stormwater Solutions.

Warning: In the case of a spill, the worker should abort maintenance activities until the proper guidance is obtained. Notify the local hazard control agency and CONTECH Stormwater Solutions immediately.

To conduct cartridge replacement and sediment removal maintenance:

1. If applicable, set up safety equipment to protect pedestrians from fall hazards due to open vault doors or when work is being done near walkways or roadways.
2. Visually inspect the external condition of the unit and take notes concerning defects/problems.
3. Open the doors to the vault and allow the system to air out for 5-10 minutes.
4. Without entering the vault, give the inside of the unit, including components, a general condition inspection.
5. Make notes about the external and internal condition of the vault.

Give particular attention to recording the level of sediment build-up on the floor of the vault, in the forebay, and on top of the internal components.

6. Remove large loose debris and trash using a pole with a grapple or net on the end.
7. Using a boom, crane, or other device (dolly and ramp), offload the replacement cartridges (up to 150 lbs. each) and set aside.
8. Remove used cartridges from the vault using one of the following methods:

Important: This activity will require that workers enter the vault to remove the cartridges from the drainage system.

Method 1:

a. Using an appropriate sling, attach the cable from the boom, crane, or tripod to the cartridge being removed. Contact CONTECH Stormwater Solutions for specifications on appropriate attachment devices.

This activity will require that workers enter the vault to remove the cartridges from the drainage system and place them under the vault opening for lifting.

Important: Note that cartridges containing media other than the leaf media require unscrewing from their threaded connectors. Take care not to damage the manifold connectors. This connector should remain installed in the manifold and capped if necessary.

b. Remove the used cartridges (250 lbs. each) from the vault.

Important: Care must be used to avoid damaging the cartridges during removal and installation. The cost of repairing components damaged during maintenance will be the responsibility of the owner unless CONTECH Stormwater Solutions performs the maintenance activities and damage is not related to discharges to the system.

c. Set the used cartridge aside or load onto the hauling truck.

d. Continue steps a through c until all cartridges have been removed.

Method 2:

a. Unscrew the cartridge cap.

b. Remove the cartridge hood.

c. Tip the cartridge on its side.

Important: Note that cartridges containing media other than the leaf media require unscrewing from their threaded connectors. Take care not to damage the manifold connectors. This connector should remain installed in the manifold and capped if necessary.

d. Empty the cartridge onto the vault floor.

e. Set the empty, used cartridge aside or load onto the hauling truck.

f. Continue steps a through e until all cartridges have been removed.

9. Remove deposited sediment from the floor of the vault and, if large amounts are present, from the forebay. This can usually be accomplished by shoveling the sediment into containers, which, once full, are lifted mechanically from the vault and placed onto the hauling truck. If Method 2 in Step 8 is used to empty the cartridges, or in cases of extreme sediment loading, a vactor truck may be required.

10. Once the sediments are removed, assess the condition of the vault and the condition of the manifold and connectors. The connectors are short sections of 2-inch schedule 40 PVC, or threaded schedule 80 PVC that should protrude above the floor of the vault.

a. If required, apply a light coating of FDA approved silicon grease to the outside of the exposed portion of the connectors. This ensures a watertight connection between the cartridge and the drainage pipe.

b. Replace any damaged connectors.

11. Using the boom, crane, or tripod, lower and install the new cartridges. Once

again, take care not to damage connections.

12. Close and fasten the door.
13. Remove safety equipment.
14. Make notes about the local drainage area relative to ongoing construction, erosion problems, or high loadings of other materials to the system.
15. Finally, dispose of the residual materials in accordance with applicable regulations. Make arrangements to return the used cartridges to CONTECH Stormwater Solutions.

Related Maintenance Activities (Performed on an as-needed basis)

StormFilter units are often just one of many components in a more comprehensive stormwater drainage and treatment system. The entire system may include catch basins, detention vaults, sedimentation vaults and manholes, detention/retention ponds, swales, artificial wetlands, and other miscellaneous components.

In order for maintenance of the StormFilter to be successful, it is imperative that all other components be properly maintained. The maintenance/repair of upstream facilities should be carried out prior to StormFilter maintenance activities.

In addition to considering upstream facilities, it is also important to correct any problems identified in the drainage area. Drainage area concerns may include: erosion problems, heavy oil and grease loading, and discharges of inappropriate materials.

Material Disposal

The accumulated sediment found in stormwater treatment and conveyance systems must be handled and disposed of in a manner that will not allow the material to affect surface or ground water. It is possible for sediments to contain measurable concentrations of heavy metals and organic chemicals (such as pesticides and petroleum products). Areas with the greatest potential for high pollutant loading include industrial areas and heavily traveled roads.

Sediments and water must be disposed of in accordance with all applicable waste disposal regulations. It is not appropriate to discharge untreated materials back to the stormwater drainage system.

Part of arranging for maintenance to occur should include coordination of disposal of solids (landfill coordination) and liquids (municipal vacuum truck decant facility, local wastewater treatment plant, on-site treatment and discharge).

Owners should contact the local public works department and inquire about how the department disposes of their street waste residuals. CONTECH Stormwater Solutions will determine disposal methods or reuse of the media contained in the cartridges. If the material has been contaminated with any unusual substance, the cost of special handling and disposal will be the responsibility of the owner.

StormFilter Minor Maintenance and Inspection Data Sheet

Date: _____ Personnel: _____

Location: _____ System Size: _____

System Type: Vault Cast-In-Place Linear

System Observations

Media Months in Service: _____

Oil and Grease in Forebay: Yes No _____

Sediment Depth in Forebay: _____

Sediment Depth on Vault Floor: _____

Structural Damage: _____

Estimated Flow from Drainage Pipes (if available): _____

Cartridges Submerged: Yes No How Deep: _____

StormFilter Minor Maintenance Activities (check off if done and give description)

Trash and Debris Removal: _____

Minor Structural Repairs: _____

Drainage Area Report

Excessive Oil and Grease Loading: Yes No Source: _____

Sediment Accumulation on Pavement: Yes No Source: _____

Erosion of Landscaped Areas: Yes No Source: _____

Items Needing Further Work: _____

Other Comments: _____

Review the condition reports from the previous minor and major maintenance visits.

StormFilter Major Maintenance/Cartridge Replacement Data Sheet

Date: _____ Personnel: _____

Location: _____ System Size: _____

System Type: Vault Cast-In-Place Linear

List Safety Procedures and Equipment Used: _____

System Observations

Media Months in Service: _____

Oil and Grease in Forebay: Yes No _____

Sediment Depth in Forebay: _____

Sediment Depth on Vault Floor: _____

Structural Damage: _____

Drainage Area Report

Excessive Oil and Grease Loading: Yes No Source: _____

Sediment Accumulation on Pavement: Yes No Source: _____

Erosion of Landscaped Areas: Yes No Source: _____

StormFilter Cartridge Replacement Maintenance Activities

Remove Trash and Debris: Yes No Details: _____

Replace Cartridges: Yes No Details: _____

Sediment Removed: Yes No Details: _____

Quantity of Sediment Removed (estimate?): _____

Minor Structural Repairs: Yes No Details: _____

Residuals (debris, sediment) Disposal Methods: _____

Notes: _____

EXHIBIT B

(Deed Copy)

LEGAL DESCRIPTION

All that certain real property being Parcel 3 as shown on that certain Parcel Map filed in Book 23 of Parcel Maps, at Page 177, San Joaquin County Records, lying in a portion of Section 1, Township 2 North, Range 5 East, Mount Diablo Base and Meridian, in the City of Stockton, County of San Joaquin, State of California.

Containing 1.76 acres, more or less.

GUARANTEE

LIABILITY: \$100.00
FEE: \$75.00

ORDER NO.: 8701-302183
YOUR REF: Restaurant parcel- Trinity Pkwy.

First American Title Insurance Company
a California corporation, herein called the Company

GUARANTEES

Municiple Utility Department and A.G. Spanos Construction, Inc.

herein called the Assured, against actual loss not exceeding the liability amount stated above which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

LIABILITY EXCLUSIONS AND LIMITATIONS

1. No guarantee is given nor liability assumed with respect to the identity of any party named or referred to in Schedule A or with respect to the validity, legal effect or priority of any matter shown therein.
2. The Company's liability hereunder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurances herein set forth, but in no event shall the Company's liability exceed the liability amount set forth above.

Please note carefully the liability exclusions and limitations and the specific assurances afforded by this guarantee. If you wish additional liability, or assurances other than as contained herein, please contact the company for further information as to the availability and cost.

Dated: August 14, 2006 at 7:30 A.M.

First American Title Company of Stockton

**SCHEDULE A
LOT BOOK GUARANTEE**

The assurances referred to on the face page hereof are:

That, according to the Company's property records relative to the following described real property (but without examination of those Company records maintained and indexed by name):

Real property in the City of Stockton, County of San Joaquin, State of California , described as follows:

PARCEL 3 AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD OCTOBER 23, 2003 IN BOOK OF PARCEL MAPS, BOOK 22, PAGE 184, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM AN UNDIVIDED 49% OF ALL OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES IN AND TO THE ABOVE DESCRIBED REAL PROPERTY WITHOUT THE RIGHT TO EXPLORE AND EXTRACT OIL, GAS AND MINERALS ON AND FROM SAID PROPERTY AS RESERVED UNTO WILLIAM H. MOFFAT, JR. IN DEED EXECUTED BY WILLIAM H. MOFFAT, JR. AND ADRIENNE M. PROVO, ET AL RECORDED MAY 11, 1984 RECORDER'S INSTRUMENT NO. 84033226, SAN JOAQUIN COUNTY RECORDS.

ALSO EXCEPTING THEREFROM ALL [REMAINING] OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET BENEATH THE SURFACE OF SAID LAND WITHOUT THE RIGHT OF SURFACE ENTRY AS CONVEYED TO A.G. SPANOS SPECIALTY CAPITAL, INC., A CALIFORNIA CORPORATION BY DEED RECORDED NOVEMBER 20, 1990 RECORDER'S INSTRUMENT NO. 90113634, SAN JOAQUIN COUNTY RECORDS.

APN: 071-600-26

RECORDED VESTINGS:

A. The last recorded instrument purporting to transfer title to said real property is:

A Grant Deed recorded May 11, 1984 as Instrument No. 84033222 of Official Records.
Grantor: William H. Moffat, Jr., et al
Grantee: A.G. Spanos Construction, Inc., a California corporation

B. There are no mortgages or deeds of trust which purport to affect said real property, other than those shown below under Exceptions.

No guarantee is made regarding (a) matters affecting the beneficial interest of any mortgage or deed of trust which may be shown herein as an exception, or (b) other matters which may affect any such mortgage or deed of trust.

No guarantee is made regarding any liens, claims of lien, defects or encumbrances other than those specifically provided for above, and, if information was requested by reference to a street address, no guarantee is made that said real property is the same as said address.

EXCEPTIONS:

First American Title Company of Stockton

NONE

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

First American Title Company of Stockton

THIS MAP IS FOR ASSESSMENT USE ONLY



4-POR. SPANOS PARK WEST, UNIT NO. 1
 0-PARK WEST PLACE

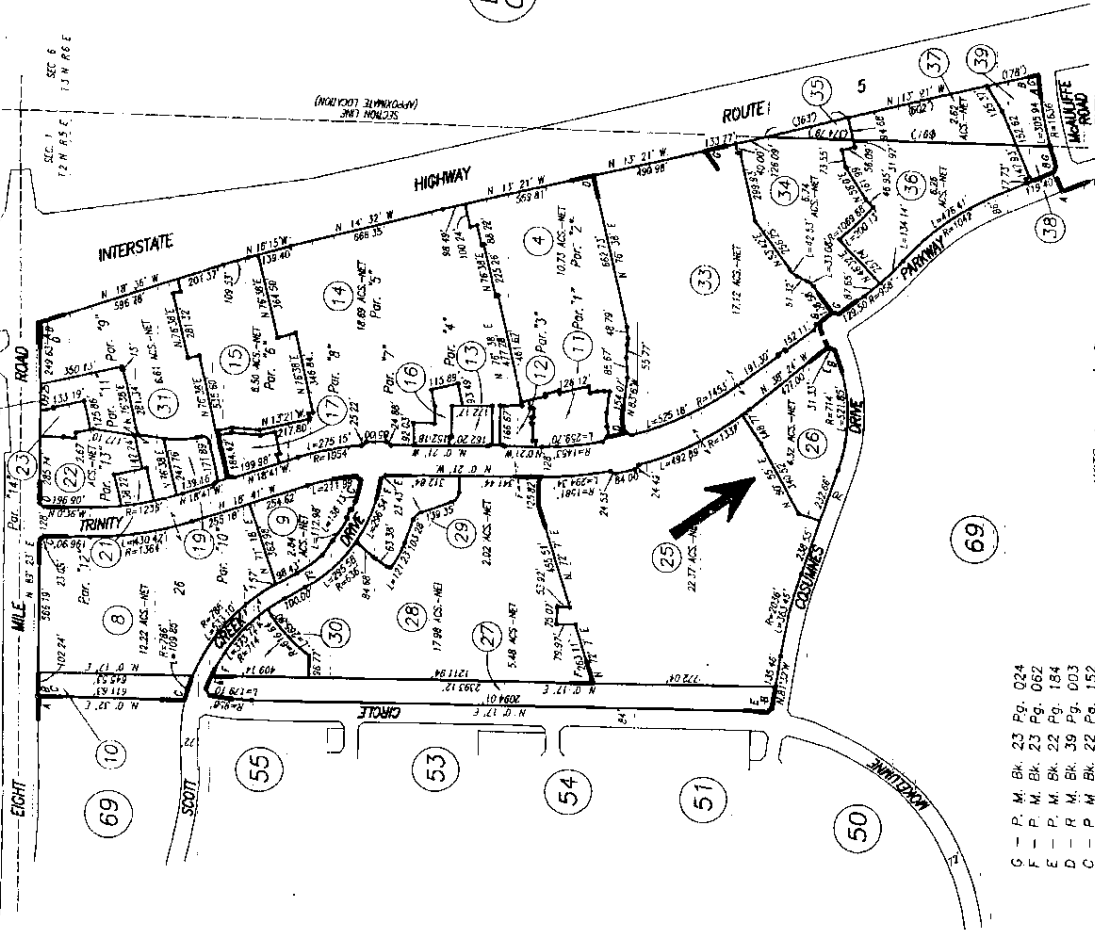
Bk. 55

Bk. 068

CITY OF STOCKTON
 Assessor's Map Bk.071 Pg.60
 County of San Joaquin, Calif.

03-04

YEAR	PAR.	PAR.	PAR.	PAR.
01-04	7			
04-05	10			
05-06	30			
06-07	39			



- G - P. M. Bk. 23 Pg. 024
- F - P. M. Bk. 23 Pg. 062
- E - P. M. Bk. 22 Pg. 184
- D - R. M. Bk. 39 Pg. 003
- C - P. M. Bk. 22 Pg. 152
- B - P. M. Bk. 22 Pg. 119
- A - R. M. Bk. 36 Pg. 022

NOTE: Assessor's Parcel Numbers Shown in Circles
 Assessor's Block Numbers Shown in Ellipses

"This map may or may not be a survey of the land depicted hereon. You should not rely upon it for any purpose other than orientation to the general location of the parcel or parcels depicted. First American expressly disclaims any liability for alleged loss or damage which may result from reliance upon this map."

SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE

1. Except to the extent that specific assurance are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
 - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or, (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
 - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
 - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps, or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
 - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
 - (c) The identity of any party shown or referred to in Schedule A.
 - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

GUARANTEE CONDITIONS AND STIPULATIONS

1. Definition of Terms.

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A) (C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A) (C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records" : records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

2. Notice of Claim to be Given by Assured Claimant.

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the manner or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. No Duty to Defend or Prosecute.

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4(a) the Company shall have the right to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.
- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, an Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

5. Proof of Loss Damage.

First American Title Company of Stockton

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such Assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss damage. All information designated as confidential by the Assured provided to the Company, pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. Options to Pay or Otherwise Settle Claims: Termination of Liability.

In case of a claim under this Guarantee, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price. Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

(b) To Pay Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim Assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

7. Determination and Extent of Liability.

This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The Liability of the Company under this Guarantee to the Assured shall not exceed the least of:

(a) the amount of liability stated in Schedule A or in Part 2;

(b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage Assured against by this Guarantee occurs, together with interest thereon; or

(c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance Assured against by this Guarantee.

8. Limitation of Liability.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter Assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.

(c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

9. Reduction of Liability or Termination of Liability.

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the amount of liability pro tanto.

10. Payment of Loss.

(a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within thirty (30) days thereafter.

11. Subrogation Upon Payment or Settlement.

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

First American Title Company of Stockton

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

12. Arbitration.

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

13. Liability Limited to This Guarantee; Guarantee Entire Contract.

(a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.

(c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, and Assistant Secretary, or validating officer or authorized signatory of the Company.

14. Notices, Where Sent.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at 2 First American Way, Bldg 2, Santa Ana, California, 92707.

First American Title Company of Stockton

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AFFILIATED WITH ERICKSON LAW GROUP, PC
PATENT & TRADEMARK COUNSEL
630.665.9404

February 27, 2020

Via Federal Express

AGS Business Center Association
Attn: Kelly Zibell
4305 Hacienda Drive, Suite 140
Pleasanton, CA 94588

Via Federal Express

Re: A.G. Spanos Business Center Declaration of Restrictions dated as of January 2003 (the "Agreement") by AGS Business Center Association, recorded with the recorder of deeds of San Joaquin County, California on January 14, 2003 as document number 2003-009303, for the property located at 10250 Trinity Parkway, Stockton, CA (the "Property")

Dear Ms. Zibell:

Our office represents BlueRoad Net Lease, LLC, the Seller for the above-referenced Property. The Agreement provides that we request an Estoppel Certificate from you.

We hereby request that you execute and return to the undersigned the enclosed Estoppel Certificate within ten (10) days from the date of this notice. Enclosed is a self-addressed Federal Express mailing label for your convenience.

Should you have any questions, please feel free to call the undersigned at 630-871-8550, or contact by email to henninger@ccmlawyer.com. Thank you for your prompt cooperation.

Very truly yours,

CLINGEN CALLOW & McLEAN, LLC

By:


Jodi L. Henninger

JLH/keb

cc: Joe Perez, Plante Moran Real Estate Investment Advisers
Kevin Sanz, Orion Buying Corp.
Eric R. Everett, Darrow Everett LLP

ESTOPPEL CERTIFICATE

Date: _____, 2020

To: OREOF19 BR, LLC (“Purchaser”)
200 South Biscayne Blvd., 7th Floor
Miami, FL 33131
Attention: Kevin Sanz

Re: A.G. Spanos Business Center Declaration of Restrictions dated as of January 2003 (the “Agreement”) by AGS Business Center Association (“Declarant”), recorded with the recorder of deeds of San Joaquin County, California on January 14, 2003 as document number 2003-009303, a copy of which is attached hereto as Exhibit A covering certain real property more particularly described in the Agreement. BlueRoad Net Lease, LLC, a Delaware limited liability company (“Seller”), is the current and sole fee title owner of 10250 Trinity Parkway, Stockton, CA (the “Property”) is under contract to sell the Property to Purchaser, and Seller requests that Declarant execute this Estoppel Certificate as a one-time accommodation to Purchaser and Seller in connection with such proposed sale to Purchaser.

Gentlemen:

The undersigned Declarant understands and acknowledges that Purchaser has obtained or is in the process of obtaining a mortgage loan (“Loan”) from CIBC BANK USA (as administrative agent for itself and the lenders, together with its successors and assigns, “Lender”) which Loan is or will be evidenced by a note secured by a mortgage (“Mortgage”) upon the Property and that Lender, in making the Loan, is relying upon Declarant’s certification herein.

Declarant hereby certifies to Purchaser and Lender that:

1. (a) The Agreement is in full force and effect, has not been modified, supplemented or amended, and has not been assigned by Declarant; (b) to the best of Declarant’s current actual knowledge as of the date hereof, there are no uncured defaults on the part of Seller or Declarant, and (c) to the best of Declarant’s current actual knowledge as of the date hereof, there are no current sums owing to Declarant from Seller under the Agreement.

2. Declarant agrees that, in the event of a foreclosure of the Mortgage, or other enforcement of the provisions of the Loan Documents, or the exercise by Lender of its rights pursuant to the Mortgage, or in the event Lender comes into possession or acquires title to the Property as a result of a foreclosure or threat thereof, or as a result of any other means, then such party may enforce the Agreement with the same force and effect as if enforced by Purchaser. Lender may perform the obligations of Purchaser under the Agreement, but shall have no obligation to do the same (unless and until the interest of Purchaser in the Property is transferred to Lender, in which event such party shall be obligated to perform Purchaser’s obligations under the Agreement).

3. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Agreement.

4. The individual executing this Estoppel Certificate has the power and authority to execute this Estoppel Certificate on behalf of Declarant.

5. Declarant acknowledges and agrees that Purchaser, Lender, administrative agent for the Lender(s), co-lenders or participant lenders of the Loan and their respective successors and assigns shall be entitled to rely on Declarant's certifications set forth herein.

6. Electronic signatures to, and the electronic transmission of, this Estoppel Certificate (including, without limitation, transmission via electronic mail in scanned "PDF" format) shall be legally binding and shall have the same force and effect as an original ink-on-paper signature manually penned by such signatory.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed by its authorized representative as of the day and year first above written.

DECLARANT:

AGS Business Center Association

By: _____

Name: _____

Its: _____

EXHIBIT A
AGREEMENT

WHEN RECORDED PLEASE MAIL TO:
NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION
POST OFFICE BOX 20
STOCKTON, CALIFORNIA 95201

ATTENTION: Duncan R. McPherson

DOC # 2003-009303

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Recorded in Official Records

County of San Joaquin

GARY W. FREEMAN

Assessor-Recorder-County Clerk

Paid by SHOWN ON DOCUMENT



A. G. SPANOS BUSINESS CENTER

DECLARATION OF RESTRICTIONS

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A. G. SPANOS BUSINESS CENTER
DECLARATION OF RESTRICTIONS

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EXHIBITS

- Exhibit A** Property Subject to this Declaration
- Exhibit B** Diagram of Street and Median Landscaping and Landscaped Buffer
- Exhibit C** Diagram of Landscaped area



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A. G. SPANOS BUSINESS CENTER
DECLARATION OF RESTRICTIONS

A Declaration of Covenants, Conditions, and
Restrictions for the Creation and
Maintenance of Commercial Planned Development

NOTICE: THIS DOCUMENT CONTAINS LIMITATIONS UPON THE
LIABILITY OF THE OWNERS' ASSOCIATION. OFFICERS OF THE
OWNERS' ASSOCIATION. MEMBERS OF THE BOARD OF DIRECTORS
OF THE OWNERS' ASSOCIATION, AND OTHERS SEE
SECTIONS 8.05, 8.06, AND 11.10

ARTICLE 1
DECLARATION

Section 1.01. **Date and Property.** This Declaration is made this ___ day of January, 2003, by A. G. Spanos Construction, Inc. a California corporation, with respect to that certain real property described in *Exhibit A* of this Declaration (“**Property**”).

Section 1.02. **Name of Declaration.** This Declaration may be referred to and cited as the “A.G. Spanos Business Center Restrictions.”

Section 1.03. **Declaration.** It is hereby declared that the Property is subject to this Declaration, which is for the purpose of creating and maintaining a commercial planned development, and for the improvement and protection of the value, desirability, and attractiveness, of the Property, as a commercial center for high quality mixed use development containing retail and commercial, office space, services, lodging and multi-family residential and open spaces and landscaping.

Section 1.04. **Runs With Property.** This Declaration shall run with the Property, and the provisions of this Declaration shall be enforceable as equitable servitudes, covenants running with the land, and in any other manner allowed by law, and shall be binding upon and inure to the benefit of Declarant, the Association, each Owner of the Property, or any part of it, and each successor in interest of Declarant, the Association and any such Owner and shall be binding on each user of the Property.

Section 1.05. **Description of The Property.** The Property is a commercial planned development located immediately south of Eight Mile Road and immediately west of Interstate Highway 5. The Common Areas consist of a one hundred foot-wide landscaped buffer along the west side of the property, streetscapes, medians, and entry features. This description is provided only as an aid to reading this Declaration, is not an operative provision of this Declaration, and is subject to all of the other provisions of this Declaration.



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**ARTICLE 2
DEFINITIONS**

Section 2.01. **Application of Definitions.** Unless the context otherwise requires, the terms defined in this Article shall have the meanings as defined in this Article for the purposes of this Declaration. These definitions are equally applicable to both the singular and plural forms of the defined terms. Any term or phrase not defined in this Article, but either specifically defined or shown in quotes in parentheses in another provision of this Declaration, shall have the meaning set forth in such provision as if it were defined in this Article. The capitalization of the first letter of any term, other than proper names, used in this Declaration, indicates that such term is defined in this Declaration.

Section 2.02. **Articles of Incorporation.** "*Articles of Incorporation*" or "*Articles*" means the Articles of Incorporation of the Association, as amended from time to time.

Section 2.03. **Association.** "*Association*" means the nonprofit mutual benefit corporation described in Article 8 entitled "Organization, Powers and Duties of the Association," and any predecessor or successor of such corporation. The name of the Association is or shall be the "AGS Business Center Association."

Section 2.04. **Board.** "*Board*" means the board of directors of the Association.

Section 2.05. **Bylaws.** "*Bylaws*" means the bylaws of the Association, as amended from time to time.

Section 2.06. **Center Rules** "*Center Rules*" or "*Rules*" means the rules from time to time in effect pursuant to Section 8.04 entitled "Rules and Regulations."

Section 2.07. **Common Area.** "*Common Area*" means: the one hundred foot-wide landscaped buffer along the west side of the Property, located on the east side of Moklumne Circle, north of Cosumnes Drive, and south of Scott Creek Drive ("Landscape Buffer") and the two (2) Trinity Parkway entry features located at the intersection of Trinity Parkway and Eight Mile Road both as shown on *Exhibit B*. For the purpose of maintenance as provided by Section 10.04, the Common Area shall include the street landscaping Improvements and median landscaping Improvements located within the public right of way on Trinity Parkway, Eight Mile Road, Scott Creek Drive, Cosumnes Drive and McAuliffe Road all as shown on *Exhibit B*.

Section 2.08. **Cost Center; Cost Center Area; Cost Center Budget.** "*Cost Center*" means an area where certain Improvements such as private streets, entry features, landscaping, gates, and other Improvements are maintained only for the benefit of certain Lots and not for the benefit of the entire Property. The expenses for maintenance, reserves, and other costs of such Improvements are charged as assessments only against the Lots and the Owners of Lots within the Cost Center area. "*Cost Center Area*" means the Lots and Common Area included within a Cost Center. "*Cost Center Budget*" means any budget adopted by the Association that includes expenses attributable to a Cost Center. A Cost Center exists only if the Association maintains any Common Area within the Cost Center Area, and a Cost Center Budget includes only costs related



to Common Area that is part of the Cost Center maintained by the Association. A Cost Center may be created only by a Supplemental Declaration.

Section 2.09. **Declarant.** "*Declarant*" means A. G. Spanos Construction, Inc. a California corporation, and any successors or assigns of Declarant, which become a "Declarant" in accordance with Section 17.20, entitled "Assignment by Declarant."

Section 2.10. **Declaration.** "*Declaration*" means this document, including the limitations, restrictions, covenants, and conditions set forth in this document, in any amendments to this document, and in any Declaration of Annexation.

Section 2.11. **Design Review Board; Design Review Board Rules.** "*Design Review Board*" means the Board established pursuant to the Master Development Plan, Development Agreement and Article 11 entitled "Architectural Control and Design Review Board" for the purpose of considering and taking action with respect to proposed work within the Property. "*Design Review Board Rules*" means the rules adopted by the Design Review Board pursuant to Section 11.02A "Rules."

Section 2.12. **Design Guidelines.** "*Design Guidelines*" means the guidelines set out in Chapter Seven of the Master Development Plan.

Section 2.13. **Development Agreement.** "*Development Agreement*" means that certain Spanos Park West Development Agreement dated as of March 11, 2002, between Declarant and the City of Stockton and recorded as Instrument No. 2002-041898 in the Records of San Joaquin County.

Section 2.14. **Development Standards.** "*Development Standards*" means the Development Standards set forth in Chapter Six of the Master Development Plan.

Section 2.15 **First Mortgage; First Mortgagee; Institutional Lender.** "*First Mortgage*" means a Security Device that constitutes a lien of first priority against any Lot or Lots including security devices securing development and construction loans as well as permanent loans. For purposes of this Section, the fact that the lien of a Security Device is inferior to mechanics' liens, or to tax liens, easements, declarations of covenants, conditions, and restrictions, and similar limited interests, does not deprive such lien of "first priority" within the meaning of this Section. "*First Mortgagee*" means any Institutional Lender who is a Secured Party who makes or holds a First Mortgage as defined in this Section, and includes any assignee, in whole or in part, of such a First Mortgage, and any Guarantor. "*Institutional Lender*" means any company or entity that is in the business of making real property loans or that is regulated by or chartered for that purpose under federal or state laws. "Institutional Lender" includes, without limitation, any bank, savings and loan association, savings bank, insurance company, mortgage broker, credit union, pension or profit sharing trust fund, or a federally chartered corporation or a government agency that is either a lender or that purchases or insures mortgages.

Section 2.16. **Fiscal Year.** "*Fiscal Year*" means the calendar year, or any other period of twelve (12) consecutive calendar months adopted from time to time by the Association by Bylaw or Board resolution as its Fiscal Year, including any initial fiscal year of less than twelve (12)



months. In the event the Association changes its fiscal year, "Fiscal Year" shall be deemed to include any interval between the end of the previous complete fiscal year and the beginning of the newly adopted fiscal year.

Section 2.17. **Governing Documents.** "*Governing Documents*" means this Declaration, the Bylaws, and Rules. Upon incorporation of the Association, the Governing Documents shall include any Articles for the Association.

Section 2.18. **Guarantor.** "*Guarantor*" means a government agency, a government chartered corporation, or an insurance company that has insured or guaranteed a First Mortgage.

Section 2.19. **Improvements.** "*Improvements*" means all improvements and includes, without limitation: (i) buildings, outbuildings, sheds, basements, and storage buildings; (ii) roads, driveways, walkways, and parking areas; (iii) fences, gates, walls, sound walls and retaining walls; (iv) stairs, decks, hedges, windbreaks; (v) poles, antennas, and signs; (vi) mechanical, utility and communication installations, whether aboveground or underground; and (vii) any work, structure and excavation of any kind, whether temporary or permanent, and anything deemed to be a "work of improvement" as defined in California Civil Code Section 3106.

Section 2.20. **Lot.** "*Lot*" means any lot or parcel located within the Property. "Lot" when used with a number or letter or other specific limitation refers to the specific Lot so designated on the subdivision map or parcel map specifically referenced, including Common Area. Upon the splitting of a Lot or the consolidation of Lots or the adjustment of any Lot's boundaries, "Lot" shall refer to the resulting Lots or parcels. "Lot" when not used with a specific number or letter or other specific limitation means any of the Lots within the Property but does not refer to Common Area. Lot includes all Improvements on or to such lots or parcels.

Section 2.21. **Master Development Plan.** "*Master Development Plan*" means the A.G. Spanos Business Park Master Development Plan dated January 4, 2002, adopted by the City of Stockton on January 29, 2002, by Resolution No. 02-0054 as amended from time-to-time.

Section 2.22. **Membership; Member.** "*Membership*" means membership in the Association by Owners as described in Article 7 entitled "Membership in the Association; Voting Rights." "Member" means the one (1) or more persons or entities holding any such Membership.

Section 2.23. **Notice.** "*Notice*" means a notice delivered in accordance with Section 17.16 entitled "Notices; Documents; Delivery."

Section 2.24. **Occupant.** "*Occupant*" means any person or entity from time to time legally using or entitled to the use of any Lot or portion of any Lot, either as an Owner or pursuant to any lease or sublease, rental agreement, license, concession agreement, or other instrument conferring such status.

Section 2.25. **Owner.** "*Owner*" means any person or entity, including Declarant, who holds all or any undivided part of the fee title to a Lot, except as otherwise provided in this Section. For a Lot subject to an executory installment land sale contract, the Owner is the buyer and the seller is not an Owner for the purpose of this Declaration.



**A. G. SPANOS BUSINESS CENTER
DECLARATION OF RESTRICTIONS**

Section 2.26. **Permitted User.** "*Permitted User*" means all persons, other than Owners or Occupants, who are lawfully using the Property, including all directors, officers, partners, members, customers, clients, patrons, employees, agents, contractors, suppliers, subcontractors, laborers, material suppliers, sales personnel, rental or leasing personnel, or other invitees of any Owner or Occupant.

Section 2.27. **Property.** "*Property*" means the real property as described in *Exhibit A* together with all Improvements on or to such real property. The Property is a "planned development" within the meaning of Section 1351(k) of the California Civil Code.

Section 2.28. **Project.** "*Project*" means any condominium, planned development, or any other common interest development within the Property which comprises two (2) or more Project Units and Project Common Area. The Property is not a Project.

Section 2.29. **Project Association.** "*Project Association*" means the association for a Project as "association" is defined in California Civil Code Section 1351(a). The Association is not a Project Association.

Section 2.30. **Project Common Area.** "*Project Common Area*" means all land within a Project either jointly owned or controlled by Owners of Project Units within the Project or by an association of Owners of Project Units within the Project, or both. Project Common Area is not Common Area.

Section 2.31. **Project Committee.** "*Project Committee*" means the governing body of a Project. In the case of an owners' association, the Project Committee means the board of directors of such association.

Section 2.32. **Project Unit.** "*Project Unit*" means the improved separate interests within a Project including without limitation: (i) units of a condominium project; and (ii) the individual lots within a planned development that are not Project Common Area.

Section 2.33 **Record; Recorded; Recordation.** "*Record,*" "*Recorded,*" and "*Recordation*" means, with respect to any document, the recording of the document in the Office of the Recorder of San Joaquin County.

Section 2.34. **Security Device; Secured Party.** "*Security Device*" means a mortgage, deed of trust, or executory installment land sale contract, given for value, which constitutes a lien against any Lot. "*Secured Party*" means any Mortgagee, beneficiary under a deed of trust, or seller under an executory installment land sale contract who holds a "Security Device" as defined in this Section.

Section 2.35. **Setback.** "*Setback*" means the distance between a building or other Improvement on a Lot and any point on the boundary line of such Lot. Any Setback requirement established in any subdivision map or deed executed by Declarant, or by any project map or plan approved by the government agency having jurisdiction, or by this Declaration, for any Improvement, shall be the minimum Setback for such Improvement.



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Section 2.36. **Supplemental Declaration.** *"Supplemental Declaration"* means a declaration of covenants, conditions and restrictions Recorded following this Declaration, which shall be subordinate to this Declaration and cover all or any part of the Property, including any Project. No Owner is obligated to execute a Supplemental Declaration.

ARTICLE 3
PERSONS SUBJECT TO DECLARATION

Section 3.01. **Application to Persons.** All Owners and Occupants, and the Permitted Users of such Owners and Occupants, are subject to this Declaration.

Section 3.02. **Application to Owners.**

A. **Owner a Natural Person.** When an Owner is a natural person, such Owner shall have all of the rights, duties, and obligations as set forth in this Declaration for Owners.

B. **Owner Not a Natural Person.** When an Owner is not a natural person, the following shall apply.

1. **Rights and Duties.** Such Owner shall have all of the rights, duties, and obligations as set forth in this Declaration for Owners

2. **Membership.** Such Owner may exercise its vote and other rights as a Member through any natural person specifically designated in writing and, in addition, if the Owner is: (i) a partnership, through a general partner; (ii) a corporation, through an officer of the corporation; or (iii) if the Owner is a limited liability company through a manager, or through a designated member if the company is member-managed.

Section 3.03. **When Declarant is Considered an Owner.** Declarant shall be considered to be an Owner of a Lot for the purpose of any provision of this Declaration that requires Declarant's consent, that determines Declarant's Class II voting power or that gives Declarant any powers or privileges not granted to other Owners if such Lot has never been conveyed to a third party buyer and is currently being held in inventory for sale or pending sale, and is owned by: (i) Declarant; (ii) a partnership or joint venture of which Declarant is a general partner or co-venturer; (iii) a limited liability company of which Declarant is a manager or a member holding fifty-percent (50%) or more of the membership entitled to vote; (iv) a corporation of which Declarant owns fifty-percent (50%) or more of the stock; or (v) an Institutional Lender for which Declarant is developing the Property.

Section 3.04. **Rights of Occupants.** The Occupants of a Lot have the same rights to use Common Area facilities designed for the use of Owners as do the Owners of the Lots, subject to the other provisions of this Article. Any Owner or Occupant may allow such Owner's or Occupant's Permitted Users to use the Common Area facilities, except as such use is limited or prohibited by the term of such Occupant's lease or other occupancy agreement or this Declaration.



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**ARTICLE 4
PROPERTY SUBJECT TO DECLARATION**

Section 4.01. **Owners' Interests.** The real property interest of each Lot shall include the components set forth in this Section. No component may be severed from the Lot to which it is appurtenant. The components are as follows:

- A. **Title to a Lot;**
- B. **Membership in the Association;** and

C. **If a Lot is Located within a Cost Center;** a right of use of the Common Area maintained within that Cost Center subject to any prohibitions and limitations contained in Section 6.04 entitled "Use of Common Area", or the Declaration of Annexation annexing the Cost Center or any portion of it, subject to any provisions of this Declaration under which such right of use may be modified or extinguished.

Section 4.02. **Effect of Supplemental Declarations.** Supplemental Declarations for Projects, other common interest developments, and Cost Centers are specifically allowed by this Declaration, and are subject to this Declaration and to the Association and Rules provided for by this Declaration to the extent such Supplemental Declaration covers property also subject to this Declaration. Such declarations may contain use and architectural restrictions for the real property encumbered by such Supplemental Declaration more stringent than the restrictions contained in this Declaration. A Supplemental Declaration must be executed by the Owners of all the real property to be subject to such Supplemental Declaration.

**ARTICLE 5
EASEMENTS, RESERVATIONS, AND RIGHTS-OF-WAY**

Section 5.01. **Reservations of Easements.** Easements, reservations, and rights-of-way may be made by this Declaration, by designation on a subdivision map or parcel map, by dedication or by reservation by Declarant in any conveyance.

Section 5.02. **Consent of Design Review Board.** No building or other structure of any kind shall be built, erected, or maintained upon any such easement, reservation, or right-of-way without the express consent of the Design Review Board if required by this Declaration in addition to any other consents that may be required by law.

Section 5.03. **Extinguishing Reservations.** The Association, or Declarant with the consent of the Association, shall have the right at any time to extinguish easements, reservations, and rights-of-way provided that the consent of the holder or owner of any such easement or right-of-way has been obtained. No such extinguishment shall deprive an Owner of access to such Owner's Lot, the Property, or any access easement or facility such Owner is entitled to use by virtue of this Declaration.

Section 5.04. **Encroachments.** If any Improvements within the Common Area or Common Area easements encroach on any portion of a Lot not subject to Common Area



easements, for any reason, including without limitation: (i) construction, reconstruction, repair, shifting, settlement, movement of any part of the Property; (ii) any work approved by the Design Review Board; or (iii) misdescription or error in draftsmanship on a subdivision or parcel map, other than an intentional encroachment, a valid easement exists for such encroachment and for its maintenance so long as the encroachment remains, and all Lots and the Common Area are subject to such easements.

Section 5.05. Owner's Easements. The Owner of any Lot that is served by communication, service or utility facilities, lying within the Common Area may enter upon such Common Area or may have utility, communication, or service companies do so, at reasonable times after prior Notice to the Association to modify, repair, replace, or maintain such facilities as necessary, when such work is not the responsibility of the Association or for other reasons is undertaken by such Owner. If the work is undertaken due to an emergency, no prior Notice to the Association is necessary. Such Owner, and person performing such work at such Owner's request, shall be jointly and severally liable for the full cost of restoring all property affected by such work to its previous condition. Such work is subject to approval in accordance with the requirements of Article 11 entitled "Architectural Control and Design Review Board," and the Design Review Board may require from the Owner performing the work a bond or other assurance to protect against mechanics' liens arising against the Common Area.

Section 5.06. Association Easements. The Association shall have nonexclusive easements and rights of use on and over the Property as limited by the last sentence of this Section for the limited purpose of maintaining and repairing the Common Area or other facilities or structures owned by the Association and located on a Lot, and for cleaning, repairing, replacing and otherwise maintaining or causing to be maintained service in underground utility lines owned by the Owners of various Lots in the event that any Owner fails to maintain or cause to be maintained such utility lines. The Association may enter any Lot without civil or criminal liability for such entry to correct or abate any violation of this Declaration, including without limitation to remove any structure, object, item, or condition causing such violation. Such entry shall be made only after prior Notice to the Occupant, except in case of emergency and be made with the least practicable inconvenience to the Occupant. The easements granted by this Section do not place any duty on the Association to perform any such work. The easement granted by this Section to the Association with respect to the land and Improvements, located East of Trinity Parkway and North of McAuliffe Road, is limited to access as is reasonably required to maintain the monument signs located at the intersection of Trinity Parkway and Eight Mile Road, and to maintain the landscaping within the area shown on *Exhibit C* in the event that the landscaping is not properly maintained by an Owner.

ARTICLE 6 USE OF THE PROPERTY

Section 6.01. Purpose. The purpose of the limitations, restrictions, and controls in this Article are to enhance, protect, establish and maintain the character, value, desirability and attractiveness of the real estate within the Property and to insure its proper development. All of the Property is subject to this Article and in the event of any conflict between any portions of this Article, the more stringent prohibition shall control.



Section 6.02. **Rights of Owners; Exceptions.** Each Lot in the Property shall be for the exclusive use and benefit of its Owner, subject however to all of the following rights, standards, limitations, and restrictions. Unless otherwise agreed to in writing by the Owner of another Lot, no Owner, Occupant, and Permitted Users of a Lot shall be allowed to use any appurtenances on the other Lot necessary to support any building on its Lot. Any Owner of a Lot may enforce this restriction against an Owner, Occupant and Permitted Users of any other Lot. Such appurtenances include, without limitation, parking areas, utility facilities and services, driveways, entryways, exits, sidewalks, loading areas and any road Improvements

A. Compliance of Improvements. Any Improvements and work regulated and controlled by provisions in this Declaration shall be done only in strict compliance with such provisions.

B. Owner's Responsibility Regarding Parking. Each Lot Owner shall prevent its Occupants and the employees of Occupants from using parking spaces located on another Lot unless such use is allowed by a written agreement to which such other Lot is subject. Each Owner subject to the requirements of Section 6.05 entitled "Building Standards for All Lots" and Article 11 entitled "Architectural Control and Design Review Board" may place walls, fences, landscaping or other barriers at the perimeter of the parking lots, located on such Owner's Lot, or on the property line of such Owner's Lot, in order to discourage the use of such Owner's parking facilities by the Occupants and users of other Lots.

C. Owner's Responsibility - General. Each Owner shall comply with this Declaration and will cause and be responsible for Owner's Occupants, and its Permitted Users and its Occupant's Permitted Users to do likewise.

Section 6.03. **Restrictions Applicable to Property.** The following prohibitions apply within the Property. Any Improvements permitted in this Section are subject to the approval of the Design Review Board in accordance with Article 11 entitled "Architectural Control and Design Review Board."

A. Permitted Uses. Any operation and use which is authorized by the Master Development Plan shall be permitted on the Property so long as: (i) it is performed or carried out so that such operations and uses do not cause or produce a nuisance to adjacent Lots, as "nuisance" is defined in Section 6.03D; (ii) all licenses, permits and other authorizations necessary for the operation and use of the Lot, and the construction of the Improvements are possessed by the Owner; and (iii) the use does not violate the specific prohibitions contained in the other Subsections of this Section.

B. Animals. The keeping, raising, or breeding of animals or birds of any kind is prohibited, except for the operation of a pet shop or veterinarian in connection with such business.

C. Certain Businesses. The operation of a pornographic or "adult" bookstore, movie theater, video store, or store selling, renting or showing such material, or other media is prohibited. This prohibition does not restrict the sale of any book in a book store selling a general range of books, nor does this restriction apply to the sale, rental, or showing of movies,



videos, or other media including movies or videos rated "X" by a place of business selling, renting, or showing a general line of movies or videos or other media.

D. Nuisances. Activities, trades, noises, uses, and Improvements are prohibited which are: noxious, illegal, or offensive, or which may impair the structural integrity of any building. No noxious, toxic or corrosive fumes, odors, gases, vapors, acids or other substances shall be emitted from any Lot so as to be detrimental to the health, safety or welfare of persons, or interfere with the comfort of persons within the vicinity or be harmful to property or vegetation, as determined by governmental agencies having jurisdiction. This subsection does not prohibit uses that have been approved by the Design Review Board and the Community Development Director of the City of Stockton, or uses that are the subject of a use permit issued by the Planning Commission.

E. Storage. Except for materials and equipment being used for current construction on a Lot, no materials, supplies, or equipment shall be stored in any area on the Property except inside a closed building or behind a visual barrier screening such area from the view of adjoining Lots or adjacent streets. This Subsection E shall not prohibit the outdoor storage of items being offered for sale in areas occupied by retail and food service establishments and does not prevent the operation of a self-storage project on the Property.

F. Refuse. No refuse receptacle shall be placed or maintained outside of a building, except in a completely enclosed portion of the Lot, or in other places specifically provided for such use. No refuse shall be burned within the Property.

G. Insects and Rodents. Doing any act, including leaving food and garbage exposed, which attracts ants, termites, rodents, or other pests onto or into any building within the Property is prohibited. This subsection does not prohibit normal food handling and disposal by stores selling food products and restaurants and other food service facilities.

H. Passages. Obstruction of public or Common Area sidewalks, drives, and parking area is prohibited. Use of such passages for any purpose other than ingress and egress is prohibited except for the use of public streets and parking facilities as may be allowed by appropriate public authorities.

I. Glass Areas. The covering or obstruction of windows and glass areas and areas that reflect or admit light that are visible from the outside of office buildings is prohibited, except for white or neutral colored drapes and blinds and window coverings that are permitted by the Rules. Hanging from, affixing to, or maintaining in any office building window, any signs not permitted by this Declaration, or any aluminum or metal foil or other reflective material (other than reflective characteristics of the window glass) is prohibited. This subsection does not apply to improvements used for retail and food service establishments.

J. Radio Transmissions. The operation of any short-wave or any other kind of radio, telephone or television or similar transmitter within the Property is permitted provided that any such transmitter shall only be for the use of the owner or lessee of the Lot. No Lot may be used for a radio, television, telephone or similar transmitter, head-in or transmitting antenna for the purpose of providing radio or television programming or telephone service to



persons other than the owners and lessees of a Lot without the prior written consent of Declarant and the consent of the Design Review Board which consent may be granted or withheld in the sole discretion of Declarant and the Design Review Board.

Section 6.04. **Use of Common Area.** Common Area shall not be improved, repaired, or replaced except by the Association in connection with its powers and duties.

Section 6.05. **Building Standards for All Lots.** The building standards contained in Section 6.1 of the Master Development Plan, in addition to the approval of the Design Review Board required in Article 11 entitled "Architectural Control and Design Review Board," shall apply to any and all Improvements from time to time existing or to be built on any Lot. Each Owner and Occupant shall comply with all applicable building and construction requirements of the City of Stockton, in addition to the Design Guidelines, Rules, and Design Review Board Rules.

Section 6.06. **Toxins and Emissions.**

A. **Toxins.** The storage, handling and disposal of toxic and radioactive materials shall not be permitted within the Property, except for the storage, handling and disposal of such materials in connection with a permitted use and not in violation of any then existing law or the regulations of any public entity having jurisdiction.

B. **Emissions.** No use shall be permitted on any Lot that:

1. Discharges liquid or solid wastes or other environmentally harmful matter into the atmosphere or any stream, river, canal, flood control channel or other body of water in violation of any then existing law or the regulations of any public entity having jurisdiction, which may adversely affect the (i) health or safety of persons; (ii) use or enjoyment of the Property; or (iii) vegetation within the Property.

2. Discharges waste or any substance or materials of any kind into any public sewer or storm drain serving the Property or any part thereof in violation of any then existing law or the regulations of any public entity having jurisdiction.

ARTICLE 7

MEMBERSHIP IN THE ASSOCIATION; VOTING RIGHTS

Section 7.01. **Membership.**

A. **Qualifications.** Each Owner, by virtue of being an Owner and during such time as such Owner remains an Owner, is a Member of the Association. No person or entity shall be a Member of the Association other than by virtue of being an Owner. When more than one (1) person or entity holds an ownership interest in any Lot, all such persons shall be Members.

B. **Transfer of Membership.** Neither Membership nor the right to vote may be severed from any Lot, and any sale, transfer, or conveyance of a beneficial interest in the



fee of any Lot to a new Owner shall operate automatically to transfer the appurtenant Membership and voting rights.

Section 7.02. **Classes of Membership in Association.** The Association shall have two (2) classes of voting membership:

A. **Class I.** Class I Members shall be all Owners, with the exception of Declarant for so long as there exists a Class II membership. Class I Members shall each be entitled to one (1) vote with respect to its Lot for each assessment share for such Lot as set out in Section 9.06.

B. **Class II.** The Class II Member shall be Declarant, and Declarant shall be entitled to four (4) votes with respect to Lots owned by Declarant for each assessment share for such Lots as set out in Section 9.06. The Class II membership shall cease and be irreversibly converted to Class A membership on the earlier happening of either of the following events:

1. When the total votes outstanding in the Class I membership equal the total votes outstanding in the Class II membership; or
2. Ten (10) years from the date of the closing of the sale of the first Lot.

Section 7.03. **Voting.**

A. **Voting Rights.** Each Owner may vote on all matters properly submitted for vote to the Membership. The right to vote with respect to a Lot shall not vest until the commencement of Regular Assessments against such Lot under Section 9.03B entitled "Commencement" and the right to vote shall cease at any time the Lot is not liable for the payment of Regular Assessments. Voting on behalf of any Owner not present at a meeting may be by written proxy or absentee ballot.

B. **Voting Rules.** When any provision of this Declaration requires the vote or consent of the Members, the following rules shall apply unless the provision specifically provides otherwise.

1. **Ownership In More than One Name.** If the Ownership of a single Lot stands in the name of two or more persons or entities, whether as fiduciaries, trustees or co-trustees of a trust, joint tenants, tenants-in-common, or a community property, the Ownership vote shall have the following effect unless the Association is given Notice to the contrary and is furnished with a copy of the instrument or order creating a different effect: (i) if only one votes, such act shall bind all of the Owners; (ii) if more than one votes, the act of the majority so voting bind all of the Owners if there is a majority; or (iii) if more than one votes and there is no majority, then the votes will be treated as abstaining. "Majority" as used in this subsection means the means the majority of the ownership interests in a single Lot and not the majority of the number of Owners.



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2. **Written Consent in Lieu of Vote.** Whenever a vote is required for action to be taken under this Declaration, it is sufficient to obtain the written consent of the same percentage and same class of Members, except as required by the Bylaws, as amended from time to time;

3. **Voting Percentage.** Any percentage requirement shall be a percentage of the number of votes and not a percentage of the number of Members;

4. **Quorum.** Quorum requirements for meetings of Members shall be as set forth in the Bylaws;

5. **Entity Voting.** For any Member that is not a natural person, votes shall be cast only by the person set forth in Section 3.02B2 entitled "Membership".

6. **Inclusion of Both Classes in Votes.** Any provision of this Declaration which requires the vote or consent of a prescribed majority of the Owners shall require the vote or consent of such majority of the votes of both classes of Membership, as long as both classes are in existence.

7. **Suspended Vote.** If a vote is taken at a time when the voting rights of one (1) or more Owners have been suspended in accordance with this Declaration, the vote of each such Owner shall be excluded from the computation of any necessary majority vote, as though the Property did not include such Owner's Lot; provided that, for any amendment of this Declaration, the certificate of such amendment shall set forth the fact of such exclusion, and the names of the Owners whose vote has been so excluded, and identifies the Lot owned by such Owners.

ARTICLE 8
ORGANIZATION, POWERS, AND DUTIES OF THE ASSOCIATION

Section 8.01. **Organization.**

A. **Nonprofit Corporation.** The Association shall be organized as a nonprofit corporation and shall be charged with the duties and empowered with the rights prescribed by law or set forth in this Declaration, its Articles, or its Bylaws. It is an "Association" within the meaning of Section 1351(a) of the California Civil Code.

B. **Unincorporated Association.** If after formation, the Association loses its corporate powers or is dissolved, a nonprofit, unincorporated association shall immediately and without further action or notice be formed and shall have all the rights and obligations of the Association until a nonprofit corporation is formed. Such unincorporated association shall not be deemed to be a partnership, or to create a general agency between the Owners for any purpose. The unincorporated association's affairs shall be governed by the laws of the State of California and, to the extent not inconsistent with those laws, by this Declaration, the Articles, and Bylaws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.



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C. **Certificate of Identity.** The president and secretary of the Association or a majority of the Board may execute, acknowledge, and Record a certificate of identity stating the names of all of the members of the then current Board, officers of the Association or the Members of the Design Review Board, or any of such groups. The most recently Recorded certificate shall be conclusive evidence, in favor of any person relying on such certificate in good faith, of the identity of the persons listed in such certificate as members of the Board, corporate officers, or members of the Design Review Board.

Section 8.02. Powers of the Association.

A. **General.** The Association shall have all of the powers set forth in its Articles, together with its general powers as a nonprofit corporation, limited only as expressly set forth in its Articles, its Bylaws and this Declaration, to do any and all lawful things which the Association is authorized, required or permitted to do under this Declaration, and to do any and all acts which may be necessary or proper for the exercise of any of the express powers of the Association, or for the benefit of the Property and of the Owners. All powers of the Association, except those for which a vote of the Members is required by this Declaration, the Bylaws, or by law, may be exercised by the Board.

B. **Enumerated Powers.** In exercising any of its powers or performing any of its duties under this Declaration, including, but not limited to, its powers or duties for the maintenance, repair, operation, or administration of Common Area, and for the development, construction, installation or acquisition of a capital improvement, the Association may perform the following functions as it deems necessary or appropriate.

1. **Maintenance and Repairs.** The Association may provide for the improvement, maintenance, restoration, and repair of the Common Area and other parts of the Property in accordance with the Article 10 entitled "Maintenance," and Article 13 entitled "Common Area, Damage, Destruction, and Eminent Domain."

2. **Insurance.** The Association may obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Property, the Association, the directors and officers of the Association, and the Owners. The Association may, on behalf of the Owners and consistent with this Declaration, enter into any appropriate agreement for the holding by a trustee of proceeds paid under any insurance policy held by the Association ("Insurance Trust Agreement"), which agreement may contain such provisions relating to the trustee's powers, duties, and compensation, as the Association may approve.

3. **Debt.** The Association may incur indebtedness and give security for such indebtedness, including a security interest in the future assessments of the Association; but (i) any indebtedness incurred after the total indebtedness exceeds the Association's estimate of its estimated gross revenues for the year the indebtedness is incurred; (ii) that will cause the total indebtedness of the Association to exceed the Association's estimate of its estimated gross revenue for the year the indebtedness is incurred; (iii) any indebtedness to be repaid over a period



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longer than three (3) years, or (iv) indebtedness secured by Common Area, must be approved by the majority vote of the Owners.

4. **Utility and Other Service.** The Association may contract and pay for, or otherwise provide for, such utility and other services, including, but not limited to, water, sewer, garbage, electrical, telephone, communication cable, and gas services, as may, from time to time, be desirable or required.

5. **Professional and Personal Services.** The Association may contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys, bookkeepers and accountants, and other professional and nonprofessional services.

6. **Material and Labor.** The Association may contract and pay for, or otherwise provide for, materials, supplies, furniture, equipment, and labor.

7. **Liens.** The Association may pay and discharge any and all liens from time to time placed or imposed upon any Common Area, or on account of any work done or performed by the Association in the fulfillment of any of its duties of maintenance, repair, operation, or administration.

8. **Ownership and Use of Property.** The Association may own both real and personal property and lease, license, or contract for the use of such real and personal property, including land, improvements, and equipment for services or other purposes. No such property shall be Common Area unless it is designated as Common Area by this Declaration, or by the Association with the prior written consent of the Owners of the interest in the area so designated.

9. **Signs.** The Association may place and maintain upon Common Area signs and curb markings for identification, the regulation of traffic, including parking, the regulation and use of the Common Area, and the health, welfare and safety of Owners, Occupants, and Permitted Users.

10. **Taxes.** The Association may pay, compromise, or contest any and all taxes and assessments levied against: (i) all or any part of the Common Area owned by the Association, if any; or (ii) any income of or assessed to the Association; or (iii) any personal property belonging to or assessed to the Association.

11. **Enforcement.** The Association may from time to time, in its own name, or on its own behalf, and on behalf of any Owner or Owners who consent thereto, commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Governing Documents, or to recover damages therefor or to enforce, by mandatory injunction or otherwise, any or all of the provisions of the Governing Documents, and take any other action required or permitted by the Governing Documents for their enforcement.

12. **Maintenance of Lots.** The Association may maintain or provide for the maintenance of any landscaping and connected irrigation that is not maintained by its Owner in accordance with the requirements of this Declaration, at the expense of any such



Owner. On the portion of the Property located east of Trinity Parkway and north of McAuliff Road, the only landscaping to which this subsection applies is the landscaped area described in *Exhibit C*.

13. Management Agreement. The Association may enter into an agreement with a professional managing agent for professional management of the Association.

14. Discipline. The Association may temporarily suspend an Owner's rights as a Member, levy monetary penalties and fines upon such Owner, and take other disciplinary action for failure of any Owner or an Occupant of such Owner's Lot to comply with the Governing Documents. The Association shall provide for reasonable notice and an opportunity to be heard before a decision to impose discipline is reached, and shall otherwise conform to Section 7341 of the California Corporations Code, as it may hereafter be amended, repealed or renumbered, relating to the termination of membership in a non-profit mutual benefit corporation. The Association may set fines, penalties, and other discipline by Rule, in accordance with Subsection A2 of Section 8.04, entitled "Discipline."

15. Reimbursement. The Association may reimburse any members of the Board or officer of the Association for expenses incurred in carrying on the business of the Association.

16. Other Action. The Association may take such action as may reasonably be necessary or desirable to enforce or carry out the purposes of the Governing Documents.

C. Common Area. The Association shall operate and control the Common Area for the sole purpose of carrying out the purposes of this Declaration. To the extent such power is needed, each Owner, upon acceptance of such Owner's deed to a Lot, does hereby irrevocably appoint the Association such Owner's attorney-in-fact to make the conveyances of Common Area described in this Section 8.02.C, and such power of attorney shall be held to be coupled with an interest in the property conveyed and irrevocable. The Association may do all of the following things without a vote of the Members.

1. Easements. The Association may accept grants of easements from Owners for the purpose of constructing, operating, and maintaining utilities, sewer and storm water disposal facilities, water systems, communications facilities and related equipment.

2. Transfers. The Association may transfer the position of Common Area easements over Lots, provided such transfer is done only for the purpose of assisting Owners with lot line adjustments or for the purpose of adjusting boundaries and facilities with the Owners, but only with the approval of all Owners whose property is affected thereby, who may withhold approval in their sole and absolute discretion.

D. Majority Vote Required. Any of the following actions by the Association shall require a majority vote of the Owners, including a majority of Owners other than Declarant, as well as approval required by Article 14 entitled "Protection of Mortgagees."



1. **Expenses Exceeding Five Percent (5%).** Incurring aggregate expenditures for capital Improvements to the Common Area in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year. Any work necessary to repair an existing Improvement is not a capital Improvement for this purpose.

2. **Sale of Property.** Selling, during any Fiscal Year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

3. **Compensation.** Paying compensation to members of the Board or officers of the Association for services performed in the conduct of the Association's business, provided that the Association without a vote may cause a director or officer of the Association to be reimbursed for reasonable expenses incurred in carrying on the business of the Association.

Section 8.03. **Duties of the Association**

A. **Insurance and Maintenance.** The Association shall maintain insurance as required by the Article 12 entitled "Insurance" and shall carry out its maintenance obligations under Article 10 entitled "Maintenance."

B. **Annual Statement.** The Association shall prepare and distribute to each Owner an annual statement complying with the Bylaws, reflecting the Association's receipts and expenditures for each Fiscal Year.

C. **Taxes.** The Association shall pay all real property taxes and assessments or fees and charges levied upon the Common Area and all income, franchise or other taxes levied upon the Association.

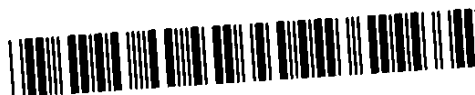
D. **Utilities.** The Association shall pay all costs for electricity, gas, water, sewer, storm drainage, and other services payable by the Association.

Section 8.04. **Rules and Regulations.**

A. **Adoption.** The Association may, from time-to-time, and subject to this Declaration, adopt, amend, and repeal rules and regulations, to be known as "Center Rules" or "Rules." Such Rules may provide for any of the circumstances listed in this Subsection.

1. **Common Area Use.** The Rules may govern the use of the Common Area, including without limitation, regulations as to time and method of use. Such Rules may also provide for methods to extend or alter existing service facilities during the build-out of the Property.

2. **Discipline.** The Rules may provide for monetary penalties, temporary suspension by the Association of an Owner's rights as a Member, or other discipline, for failure to comply with the Governing Documents. Such rules may provide for the setting of penalties and fines that may be assessed on a daily basis for any continuing violation or infraction. In such event, any infraction occurring within one twenty-four (24) hour period is



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considered a separate infraction. Any discipline imposed under this Subsection shall comply with the procedural requirements of Section 8.02B14 entitled "Discipline." No forfeiture or abridgment of an Owner's right to the full use and enjoyment of such Owner's Lot is permitted except by judgment of a court of competent jurisdiction, a decision arising out arbitration, or on account of foreclosure or sale under the provisions of the Section 9.07 entitled "Delinquency and Enforcement of Lien."

3. **Personal Information.** The Rules may provide for the supplying of information to be supplied to the Association by each Owner with regard to the ownership and transfer of each Lot, the Occupants of each building, and other information reasonably necessary to administer the Property.

4. **Construction of Declaration.** The Rules may provide for the interpretation of the provisions of this Declaration, as they would apply to specific factual situations.

B. **Common Area.** The Rules may limit and otherwise regulate the use of Common Area, but no such rule shall eliminate or unduly burden access to a Lot. The Rules relating to the use of Common Area shall not discriminate between Owners and other Occupants, and shall not discriminate between Permitted Users of Owners and Permitted Users of other Occupants, but may provide rules for Permitted Users differing from those governing Owners or Occupants.

C. **Delivery.** The Association shall give Notice to each Owner and Occupant of the Rules as they may, from time to time, be adopted, amended, or repealed. Upon such Notice, the Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. Any Rule relating to the health or safety of Occupants or other persons coming upon the Property shall take effect upon adoption.

Section 8.05. **Limitation of Liability of Officers and Members of the Association.** TO THE EXTENT ALLOWED BY LAW, NO MEMBER OF THE BOARD OR OFFICER OF THE ASSOCIATION SHALL BE PERSONALLY LIABLE TO DECLARANT, OWNER OR ANY OTHER PERSON, FOR ANY ERROR OR OMISSION OF THE BOARD, THE ASSOCIATION, ITS REPRESENTATIVES AND EMPLOYEES, OR THE ASSOCIATION'S MANAGER, PROVIDED THAT SUCH PERSON HAS, WITH THE ACTUAL KNOWLEDGE POSSESSED BY SUCH PERSON, ACTED IN GOOD FAITH. THE FAILURE TO PROVIDE SECURITY CONTROL OR SOME PARTICULAR TYPE OF SECURITY FOR THE PROPERTY IS NOT GROUNDS FOR LIABILITY OF A MEMBER OF THE BOARD OR AN OFFICER OF THE ASSOCIATION.

Section 8.06. **Limitation of Liability for the Acts of Others.** TO THE EXTENT ALLOWED BY LAW, THE ASSOCIATION, MEMBERS OF THE BOARD, AND EMPLOYEES AND AGENTS OF THE ASSOCIATION ARE NOT RESPONSIBLE OR LIABLE FOR PERSONAL INJURIES AND PROPERTY DAMAGE CAUSED BY CRIMINAL ACTS, INTENTIONAL ACTS, OR NEGLIGENT ACTS OF OTHERS WHETHER SUCH ACTS WERE FORESEEABLE OR NOT.



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**ARTICLE 9
FUNDS, ASSESSMENTS, AND DELINQUENCY**

Section 9.01. Creation of Personal Obligation and Lien for Assessments.

A. Agreements to Pay. Each Owner, including Declarant, covenants and agrees to pay to the Association, for each Lot owned:

1. Regular Assessments;
2. Special Assessments;
3. Remedial Assessments, if applicable;
4. Cost Center Assessments;
5. Reconstruction Assessments as provided for in Article 13 entitled "Common Area Damage, Destruction, and Eminent Domain;" and
6. All other fees or other monies due the Association.

B. Creation of Lien. All amounts payable by an Owner to the Association, plus interest, late charges, costs, and attorneys' fees provided by this Declaration, shall be a lien upon the Lot against which such assessment is made from the date the Notice of Delinquent Assessment is Recorded, as provided in Subsection C of this Section or from any earlier time as provided by law from time to time.

C. Recording of Notice. A notice of delinquent assessment ("Notice of Delinquent Assessment") may be Recorded by the Association when the assessment becomes delinquent or at any later time during which the assessment and any late charge or interest arising from such assessment is due and unpaid. The Notice of Delinquent Assessment shall state the following: (i) the amount of the assessment and other fees and monies payable to the Association are authorized by this Declaration; (ii) a description of the Lot assessed; (iii) the name of the record Owner of the Lot assessed; and (iv) the name and address of the trustee authorized by the Association, if any, to enforce the lien by sale. The Notice of Delinquent Assessment may be signed by any officer of the Association or by an authorized officer or employee of the Association's manager or by the Association's attorney.

D. Release of Assessment Lien. If a Notice of Delinquent assessment has been Recorded, the Association shall, upon payment of assessments, plus interest, late charges, costs, and attorneys' fees, if any, Record a notice of satisfaction and release of lien.

E. Personal Obligation. Assessments and other fees and monies due the Association are payable from and after the time the Association levies the assessment or bills the fees or other monies due the Association and until paid. All assessments and other fees and monies payable to the Association, plus interest, late charges, costs, and attorneys' fees shall be the joint and several personal obligation of all Owners of record of the Lot assessed when the



assessments are levied. The personal obligation of Owners to pay accrued assessments, other fees and monies due the Association, interest, late charges, costs, and attorneys' fees shall not pass to any successor in title as a personal obligation unless expressly assumed by such successor, but any such successor's title shall be subject to a Recorded lien except as otherwise provided by this Declaration. An Owner who conveys a Lot remains personally liable for obligations which accrued before the instrument of conveyance is Recorded and for those obligations accruing after conveyance to reimburse the Association for its costs in determining the Record Owner, as set forth in Section 17.13, entitled "Obligations of Owners; Avoidance; Termination."

F. **No Offset.** Except as specifically provided in this Declaration, all assessments and other charges shall be paid without offset or reduction for any reason, including without limitation, any claim that the Association is not properly discharging any of its duties under this Declaration.

G. **Certificate of Payment.** The Association shall, within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee fixed by the Association to cover costs, furnish to any Owner a written certificate signed by an officer or other authorized person stating whether the assessments on that Owner's Lot have been paid, and the amount of any unpaid assessments and other charges. Such certificate shall be conclusive evidence, in favor of any third party or Owner relying on it in good faith, of the amount of outstanding assessments, and of payment of any assessment, interest, late charges, costs, or attorneys' fees, stated in the certificate to have been paid.

H. **Costs of Enforcement.** The costs and attorneys' fees referred to in this Section include all expenses incurred by the Association in the enforcement of assessments. "Costs" include, but are not limited to, the cost of preparing a Notice of Delinquent Assessment, all filing and recording fees, service of process fees, title search fees, and copying and postage expenses. "Attorneys' fees" include, but are not limited to, fees for preparing, Recording, and enforcing an Association lien, for consultation in preparation for any enforcement action by the Association, and for representing the Association in court.

I. **Judgment Liens.** No Special Assessment or increase in Regular Assessments for the purpose of paying a judgment against the Association or satisfying a judgment against Common Area can be made without the majority vote of the Owners.

Section 9.02. **Funds.** The Association shall maintain the following funds, which shall be accounted for separately, for the receipt and expenditure of moneys. These funds do not need to be segregated in separate bank accounts except for the Maintenance Reserve Fund, which will be placed in a separate bank account if such segregation is necessary to comply with legal restrictions on withdrawals from such fund.

A. **Operating Fund.** A fund shall be maintained called the "Operating Fund." All funds from: (i) Regular Assessments; (ii) Special Assessments; (iii) Remedial Assessments (iv) miscellaneous income; and (v) income of profits attributable to the Operating



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Fund, shall be deposited in the Operating Fund unless deposited in the Maintenance Reserve Fund or in the Reconstruction Fund pursuant to other provisions of this Declaration.

B. Reconstruction Fund. A fund shall be maintained called the "Reconstruction Fund." Deposits to and expenditures from the Reconstruction Fund are governed by Article 13 entitled "Common Area Damage, Destruction and Eminent Domain." The Association may enter into an Insurance Trust Agreement for the holding by a trustee of the Reconstruction Fund.

C. Maintenance Reserve Fund. At the option of the Board, the Association may maintain a "Maintenance Reserve Fund" which includes any amounts allocated to reserves from fees and assessments. Amounts from this fund shall be withdrawn and used only for the purposes for which the fees and assessments were collected. If any amount in the Maintenance Reserve Fund is not used in the year assessed and the levy of income tax will occur or would be likely to occur by reason of such excess amount, the Association shall return such excess amount to the Owners in the proportion assessed, or may retain the same as trustee for the benefit of the Owners for application to the Regular Assessments of the next Fiscal Year, if the adverse tax consequences may thereby be avoided.

Section 9.03. Regular Assessments.

A. Establishment. Not less than sixty (60) days prior to the start of each Fiscal Year and at the start of any partial first Fiscal Year, the Association shall estimate the expenses to be incurred by the Association during such year, including a reasonable provision for contingencies and including reserves, if determined to be necessary by the Board. Such expenses shall also include expenses attributable to prior operating deficiencies. The Association shall subtract from such estimate an amount equal to the anticipated balance in the Operating Fund budgeted for expenditures for such purposes during the Fiscal Year, and the anticipated balance, if any, in the Maintenance Reserve Fund budgeted for expenditure during the Fiscal Year. The types of expenses to be allocated among the Owners are described in Subsection 2 of this Subsection A. The excess of such estimated expenses over such anticipated balances shall be assessed to each Lot as established in Section 9.06 entitled "Allocation of Assessment Shares" as "Regular Assessments."

1. **Increase of Regular Assessments.** The Regular Assessment may be increased by the Association during any Fiscal Year in accordance with a revised budget of the Association's gross expenses subject to any legal limitations on assessment increases.

2. **Expenses Included in Assessments.** The expenses to be included in the Regular Assessment are expenses for: (a) maintenance and repairs to any Common Area; (b) management, insurance, accounting, bookkeeping, legal services, and other professional services; (c) reserves for replacement of Improvements to the Common Area, if deemed necessary by the Board; (d) general overhead, such as costs to keep the Association in good standing with state agencies as a non-profit mutual benefit corporation.

B. Commencement. Regular Assessments shall commence, as to all Lots, on the first day of the month following the Recording of this Declaration. The first annual



Regular Assessment shall be prorated for the period from such commencement to the start of the next Fiscal Year. Upon conveyance of a Lot to a purchaser, the purchaser shall become liable for all assessments established in this Declaration. A "conveyance" for the purpose of this Subsection means a transfer of a Lot in which the transferee becomes an Owner as defined by this Declaration. A conveyance occurs when the deed is Recorded. If fee title to any Lot has been transferred under an executory installment land sale contract and the contract is not Recorded, conveyance is deemed to have occurred when possession of the Lot is delivered to the buyer.

C. Termination. Regular Assessments shall cease as to a Lot when it ceases to be subject to this Declaration for any reason including without limitation the termination of this Declaration in whole or as to certain Lots or to a taking of a Lot by eminent domain which severs the Lot from this Declaration.

D. Payment. Regular Assessments shall be due and payable to the Association when levied, or at such times and in such installments as the Association may designate. The Association may determine the appropriate number of times during the Fiscal Year for the levy of Regular Assessments, whether monthly, quarterly, or yearly. If an Owner is in default for more than two (2) payments within a Twelve-(12) month period, the Association may require the payment of all Regular Assessments for the entire remaining Fiscal Year. Upon Notice from the Association requiring payment of all regular Assessments for the remaining fiscal year, such Owner shall have fifteen (15) days to pay the remaining portion of such Owner's assessment liability for such Fiscal Year. Any payment shall first be applied to unpaid interest, then to unpaid late charges in the order in the late charges were incurred, and then to unpaid assessments in the order in which the assessments were levied.

Section 9.04. Special Assessments.

A. Establishment. The Association may, during the Fiscal Year, levy an assessment, called a "Special Assessment" when the maximum Regular Assessment permitted appears likely to prove inadequate for any reason including unforeseen expenditures or any shortage due to nonpayment of or delinquencies in the payment of Regular Assessments.

B. Basis of Special Assessments. All Special Assessments shall be assessed to Lots on the same basis as Regular Assessments.

C. Payment. Special Assessments shall be due and payable to the Association when levied, or at such times and in such installments as the Association may designate.

Section 9.05. Remedial Assessment. The Association may levy an assessment, called a "Remedial Assessment," against any Lot, the Owner or Occupant of which has, by negligent or tortious acts or omissions, or acts or omissions in violation of this Declaration, or acts and omissions in violation of Section 17.01 entitled "Observance of this Declaration," made necessary any expenditure of money by the Association, except to the extent such expenditure has been reimbursed by any type of insurance. Such assessment shall be in an amount necessary to reimburse the Association for all costs, including attorneys' fees, regardless of whether legal



action is brought, incurred in bringing the Owner or Occupant and the Owner's or Occupant's Lot into compliance with this Declaration, or in obtaining compensation from or other remedies against such Owner or Occupant. Such assessment shall be due and payable when levied or in installments as required by the Association. Prior to the levy of a Remedial Assessment, the Association shall conduct a hearing complying with the procedural requirements of Section 8.02B14 entitled "Discipline" to determine the validity and amount of the assessment. The Association shall not be required to conduct such a hearing prior to the levy of late charges imposed under Section 9.07A entitled "Delinquency" and a late charge is not a Remedial Assessment.

Section 9.06. Allocation of Assessment Shares.

A. General Assessment Allocation. All Lots and Project Units within the Property shall be assessed for the General Assessment for the estimated expenses of the Association as set forth in Section 9.03 entitled "Regular Assessments." The General Assessments shall not include any Assessments assessed as Cost Center Assessments under Subsection B of this Section. The General Assessments shall be allocated to Lots as set forth in this Subsection. Each Lot will be assessed for the General Assessment based on the shares allocated to such Lot ("Assessment Share"). Each Lot will be assessed one (1) Assessment Share for each full two-tenths (.2) of an acre of Lot area. The amount of an Assessment Share is computed by dividing the total number of Assessment Shares as of the date the computation is made into the estimated expenses of the Association.

B. Cost Center Assessment Allocation. "Cost Center Assessment" shall mean a class of Regular or Special Assessments that are assessed only to Owners of Lots and Project Units within a Cost Center. All Lots and Project Units located within a Cost Center shall be assessed Cost Center Assessments on the same basis as for General Assessments for the estimated expenses attributable to: (i) maintenance and repair to any Common Area Improvements within each Cost Center; (ii) insurance, management, accounting, bookkeeping, and legal expenses and other overhead costs relating to the Common Area Improvement within the Cost Center; and (iii) reserves for replacement of the Common Area Improvements within such Cost Center. The amount of an Assessment Share for a Cost Center is computed by dividing the total number of Assessment Shares for the Cost Center as of the date of the computation is made into the estimated expenses for the budget period of the Cost Center.

C. Assessments Against Projects. All Association assessments, as provided in this Article, that are applicable to Project Units, shall be levied against and paid by the applicable Project Committee from and after formation of such Project Committee. If the applicable Project Committee fails to pay any such assessments prior to delinquency, the Association shall have all of the same rights and remedies against such Project and Project Committee as it has against Lots and Owners, including the right to record a Notice of Delinquent Assessment against all of the Project Units within the entire project. However the Association shall grant a partial release of such lien in favor of the Owner of any Project Unit within such Project who pays such Project Unit's pro rata share of assessments applicable to the entire Project. Such pro rata share shall be determined by the proportion of such Assessment Shares payable by the Unit to the total number of assessment shares applicable to the entire



Project. A Project shall not be considered to have been created for a phase of the Project until it becomes a common interest development pursuant to California Civil Code 1351(c) following the first transfer of a separate interest within such phase of the Project.

Section 9.07. Delinquency and Enforcement of Lien.

A. Delinquency. Any assessment provided for in this Article, whether levied monthly, quarterly, or otherwise, that is not paid within fifteen (15) days after it becomes due, is delinquent. The Association may require any Owner who has not paid an assessment within fifteen (15) days after its due date, to pay a late charge, in an amount which the Association may prescribe by Rule or, in the absence of such a Rule, an amount equal to the greater of ten dollars (\$10.00) or ten percent (10%) of such delinquent assessment, as reimbursement for the costs of handling the delinquent payment. This provision for late charges is designed to encourage the prompt payment of assessments when due, and to compensate the Association for the cost and expenses caused by the late payment of assessments. The existence of this provision, whether or not any such late charge is actually paid in a given case: (i) does not excuse the payment of any assessment or allow an Owner the privilege of extending the due date of any assessment; (ii) does not constitute an agreement to forbear from the collection of any delinquent assessment; (iii) does not prevent such delinquency from being treated as a default of the Owner's obligations under this Declaration; and (iv) does not prevent the collection of the delinquent amount in any lawful manner. Owner agrees that the actual damages caused to the Association by Owner's failure to pay assessments when due would be impracticable or extremely difficult to determine, and that the late charge shall constitute liquidated damages payable to the Association. The late charge shall constitute the Association's sole damages for any Owner's late payment of assessments, but does not prevent the Association from pursuing other remedies for the Owner's breach provided for by this Declaration or applicable law.

B. Interest on Overdue Assessments. If the assessment, late charges and reasonable costs incurred in the collection of the assessment or any portion of them is not paid within fifteen (15) days after the due date of the assessment, the unpaid amount shall bear interest from the due date at a rate of twelve percent (12%) per annum or at the option of the Association, at a rate to be set by the Association by Rule that does not exceed such rate or any higher rate then allowed by law. Such charges shall constitute an additional assessment collectible together with the assessment for which they were charged.

C. Charges for Checks Returned from Bank. If the Association deposits a check tendered by an Owner for the payment of a Regular, Special, or Remedial Assessment, and the bank holding the account upon which the check is drawn returns the check as unpaid, the Association may require such Owner to pay a "bad check charge" in an amount which the Association may prescribe by Rule as compensation to the Association for the additional costs incurred in handling the check. Such a "bad check charge" may include any charges imposed on the Association by a bank for handling or processing the return of the check. Such a "bad check charge" shall constitute an additional assessment collectible together with the assessment for which it was charged.

D. Remedies.



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1. **General.** If an assessment is not paid within fifteen (15) days after its due date, the Association may bring an action to recover a money judgment against each Owner personally liable for the assessment, and, upon compliance with this Article, enforce its assessment lien by judicial foreclosure or nonjudicial (power of sale) foreclosure and sale of the Lot or in any other manner permitted by law. When an action is brought, there shall be added to the amount of the delinquent assessment, the late charge and the costs of preparing, filing, and prosecuting the action; any judgment in such action shall include interest as described above, costs, and reasonable attorneys' fees.

2. **Foreclosure of Lien.** The Association may enforce its lien by nonjudicial foreclosure (power of sale) in all cases where not prohibited by law in accordance with the following provisions.

(a) **Legal Requirements.** Foreclosure of the lien and sale of the Lot shall be conducted in accordance with Sections 2924 and 2924b through 2924h of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. If it is deemed desirable or required by law, the Association may designate a trustee and may substitute trustees for the nonjudicial foreclosure of the assessment lien and authorize such trustee to sell the property that is being foreclosed. The Association, through its duly authorized agents, may bid on the Lot at the foreclosure sale, take a deed in lieu of foreclosure, and may acquire and hold, lease, mortgage, and convey the Lot. Such a Lot if acquired by the Association shall not be Common Area.

(b) **Release of Lien.** The Association shall Record an appropriate satisfaction and release of the lien of any Notice of Delinquent Assessment, when the default giving rise to such notice is timely cured, and all applicable charges, interest, costs, and fees, including a fee not to exceed \$15.00 or the actual costs incurred by the Association, whichever is greater, as determined by the Association from time to time, for the preparation and Recording of such satisfaction and release, have been paid.

(c) **Writ of Execution.** If the Association Records a Notice of Delinquent Assessment and, before release of the lien, obtains a money judgment against the Owner, then any writ of execution issued upon such judgment shall relate back to the Recording of such notice, and shall have the same priority as such lien.

3. **Cumulative Remedies.** The assessment lien and rights to foreclosure and sale under such lien shall be in addition to, and not in substitution for, all other rights and remedies which the Association may have under this Declaration and by law, including a suit to recover a money judgment for unpaid assessments, as provided by this Section.

E. **Waiver by Association.** The Association may waive interest, late charges, or both on any delinquent assessment if the Association determines in its sole discretion, that the amount of the interest or late charge does not warrant the cost of billing it or collecting it or both.



**ARTICLE 10
MAINTENANCE**

Section 10.01. **Allocation of Maintenance Responsibilities.** Responsibility for maintenance of the Property and all components of the Property, are as set forth in this Article.

Section 10.02. **Insured Damage.** To the extent that the expense of maintenance, repair, or reconstruction of any part of the Property, whether Lots or Common Area, is covered or paid by insurance held by or paid to the Association, the responsibility for such work shall be as set forth in Article 13 entitled "Common Area Damage, Destruction, and Eminent Domain."

Section 10.03. **Association Maintenance.** The Association shall maintain or provide for the maintenance and upkeep of: (i) Common Area; (ii) signage on any Common Area; and (iii) exterior lighting (if any) for Common Areas that are part of the Landscaped Buffer or a Cost Center. Such maintenance shall include keeping all landscape areas, roads, signage, and entry features, in good condition and repair. Except as provided by Section 10.04 entitled "Maintenance of Improvements on Property not Owned by the Association" the Association has no duty of maintenance for roads, parking areas, entry features, or utilities and service lines, including storm drain and sewer services lines: (i) that are accepted for maintenance by any public or quasi-governmental agency; (ii) that are not located or constructed within Common Area; or (iii) that serve only a single Lot.

Section 10.04. **Maintenance of Improvements on Property not Owned by the Association.** In addition to the maintenance by the Association as set forth in Section 10.03 entitled "Association Maintenance", the Association shall maintain the following Improvements from and after such Improvements are constructed to the specifications required by the Design Guidelines: all street landscaping Improvements and all median landscaping Improvements located on Trinity Parkway, Eight Mile Road, Scott Creek Drive, Cosumnes Drive, and McAuliffe Road, all as shown on *Exhibit B*. All Improvements to be maintained pursuant to this Section shall be located within the public right-of-way. The Association shall also maintain all street-landscaping improvements subject to any improvement and maintenance agreement between Declarant and with the City of Stockton, which requires such maintenance. Except as set forth in this Section, the Association shall be under no duty to maintain walls, fences, and landscaping in the Property, including those walls fence and landscaping adjacent to public property and public facilities.

Section 10.05. **Maintenance of Lots.** Each Owner shall, at such Owner's sole cost and expense, maintain such Owner's Lot, and all Improvements on such Lot, except for improvements, maintained by the Association as provided in Section 10.03, entitled "Association Maintenance," or by a public utility or service company. Such maintenance shall include, without limitation, prompt removal of weeds and other undesirable vegetation and debris from such Owner's Lot. Each Owner shall promptly remove any graffiti from any Improvement located on such Owner's Lot. Each Owner shall provide and pay for, at its own expense, all garbage and refuse removal for such Lot. The Association, at its option, may enter upon and maintain, or provide for the maintenance of any Lot which is not maintained by the Owner thereof in accordance with the requirements of this Declaration at the expense of any such Owner upon



thirty (30) days' written Notice to such Owner, and may bring a judicial action to enforce the provision of this Section. No bond shall be required by the Association to obtain equitable relief to enforce this Section. The Association may levy a Remedial Assessment upon such Owner for any costs it incurs to maintain a Lot not maintained pursuant to this Section. Each Owner whose Lot contains all or a portion of the landscaped area described in *Exhibit C* is responsible for the installation and maintenance of landscaping on the portion of such area located on such Owner's Lot to the standards required by the Master Development Plan as approved by the Design Review Board, including the installation of any associated irrigation system.

Section 10.06. Storm Water Discharge Permit. The State of California State Water Resources Control Board (SWRCB) has enacted a statewide General Permit or Storm Water Discharges Associated with Construction Activity ("General Permit"). Part of the General Permit includes standards called the Storm Water Pollution Prevention Plan (SWPPP). The General Permit applies to all construction activities contributing storm water run-off that may include pollutants that cause impairment of fish, bird, and mammal habitat in streams, lakes, and other waters. The General Permit also applies minimum standards of action called Best Management Practices (BMP) to both construction activities and to the operation of storm drainage systems following construction. These standards require long-term maintenance of storm water drainage systems consistent with the SWPPP and the BMP. The Association is responsible for the operation of the storm drainage systems in the Property using the BMP required by the SWPPP, to the extent such maintenance is not performed by a governmental agency. This provision may not be amended without the consent of the SWRCB.

Section 10.07. Duty to Repair and Reconstruct Following a Casualty. In the event of a casualty ("Casualty") causing damage to or the destruction of Improvements located on a Lot, the Owner of the Lot shall repair or restore the damaged or restored Improvements or construct new Improvements as approved by the Design Review Board pursuant to Section 11.04 entitled "Design Review Board Approval" unless: (i) the Owner makes a determination in Owner's sole judgment that it is not economically reasonable for Owner to repair, restore, or construct new Improvements; or (ii) the terms of any lease of such property allows the landlord or tenant to elect not to repair or restore the Improvements, and the landlord or tenant so elects not to repair or restore. If the Improvements are not repaired or restored, or new Improvements constructed, Section 10.10 shall apply. The repair or restoration of the Improvement, or other construction of new Improvements, shall be started as soon as reasonably possible following the Casualty and shall be completed within the time periods provided for new construction in Section 11.06 entitled "Completion and Inspection."

Section 10.08. Securing Damaged Improvements. In the event of any Casualty, the Owner of the Lot shall, with reasonable promptness following such Casualty, secure the damaged Improvements by fencing or otherwise screening the damaged Improvements, pending that restoration.

Section 10.09. Casualty Occurring After Thirty-Five (35) Years. If a casualty occurs more than thirty-five (35) years after the date of this Declaration is recorded, and the Casualty causes damage to more than fifty-percent (50%) of a building, then the Owner of the building is



not obligated to repair, rebuild or restore damaged building, but must comply with Sections 10.08 and 10.10.

Section 10.10. **Restoration of Lot.** Any Owner or Owners not required to reconstruct a building or other Improvement and not electing to do so shall remove all debris from the affected Lot, together with any portion of the structure which remains standing but is unsuitable for occupancy, and repair any remaining structures and landscape the Lot in a manner satisfactory to the Design Review Board within one hundred twenty (120) days after the occurrence of the Casualty.

**ARTICLE 11
ARCHITECTURAL CONTROL AND DESIGN REVIEW BOARD**

Section 11.01. **Design Review Board.** There shall be a Design Review Board, whose composition and operations are subject to this Section.

A. **Composition and Appointments.** The Design Review Board shall consist of three (3) members. The members of the Board shall be appointed by Declarant, all of whose addresses for purposes of Notice under this Section is A.G. Spanos Business Center Design Review Board, c/o A.G. Spanos Construction, Inc., 1341 West Robinhood Drive, Suite B-5, Stockton, California, 95207, or such other address as from time to time may be designated by the Board by Notice delivered to the Owners pursuant to Section 16.16 entitled "Notices; Documents; Delivery". Declarant has the right and power at all times to appoint or remove members of the Board, or to fill any vacancy of any of such members so appointed until the earlier of, one (1) year after the closing of the sale by Declarant of the last Lot within the Property, or Declarant gives Notice to the Association that Declarant is terminating its right to appoint the Members of the Board. Such right shall terminate upon such occurrence, and appointments to the Board may thereafter be made by the Association. All appointments to the Board shall be made as provided by Section 6.1 of the Master Development Plan.

B. **Operations.** The Design Review Board shall meet from time to time as necessary to perform its duties, and shall keep a record of all action taken at such meetings or otherwise. The vote or written consent of a majority of the membership of the Design Review Board shall constitute an act by the Design Review Board, unless a unanimous vote or consent is otherwise required.

Section 11.02. **Powers and Duties of the Design Review Board.** The Design Review Board shall have both the power and duty as needed to:

A. **Action on Requests.** Approve, conditionally approve, deny, or take any other appropriate action upon such proposals or plans as are submitted to it from time to time, in accordance with this Declaration.

B. **Design Rules.** The Design Review Board by a majority vote may, from time-to-time and subject to this Declaration, adopt, amend, and repeal rules and regulations, to be known as "Design Rules." These rules may govern the interpretation or implementation of this Article, and the designation of plans, specifications, or other documents or things required as



a prerequisite for consideration of such proposed work. Any such rule shall be consistent with the Master Development Plan and consistent with the Development Agreement, during the period the Development Agreement is in effect. Such rules may provide for (i) sign design standards regulating the type, style, and size of exterior signs, (ii) additional window coverings which are acceptable as provided by Section 6.03I, and (iii) for the design of fences and walls, receptacles, benches, tree grates, planters, bicycle racks, and drinking facilities which are located on the exterior portion of Lots.

C. **Other Duties.** Perform such other tasks as are given to it under this Declaration; and the Master Development Plan and the Development Agreement

Section 11.03. **Matters Requiring Board Approval.** No Owner, without the approval of the Design Review Board, shall obtain a resubdivision of any property within the Property, or construct, reconstruct, or recolor, refinish, alter or maintain any part of the exterior of, any Improvement, including the installation of solar energy systems, or alter the topography or natural or existing surface drainage of the Property, or construct any Improvements described in Section 15.03 entitled "Owners' Responsibilities in Construction," or submit any application for a construction permit or building permit to the governmental agency having jurisdiction, or install any utility line (wire or conduit) on or over any Lot or Common Area. However, if the work undertaken by an Owner does not constitute a material change in the design or color of original construction or Improvements already approved by the Design Review Board, it shall be sufficient for an Owner to notify the Design Review Board in writing before commencing the work, and prior approval by the Design Review Board shall not be required unless the Design Review Board determines that such work does constitute a material change. The approval of the Design Review Board is not required for any resubdivision, or other work by Declarant, unless such approval is required by the Master Development Plan or the Development Agreement. Design Board approval does not allow any person to violate any provision of this Declaration nor does it in any way exempt the applicant from complying with the building and fire codes, building permit requirements, and other governmental requirements. No interior tenant Improvement shall require the review or approval of the Design Review Board.

Section 11.04. **Design Review Board Approval.** The procedure and criteria for Design Review Board approval are as follows:

A. Procedure.

1. **Preliminary Review.** The applicant shall submit for preliminary approval three (3) sets of plans which shall include:

(a) Basic project information including ownership of Lot, project proponent, name of professional contact, address and telephone numbers of all concerned parties and the Lot numbers of proposed sites to be developed;

(b) Detailed information regarding proposed uses;

(c) Plot Plan, shown at a minimum scale of 1" = 40'-0" and including the lengths of all boundaries, angles or degree of curves. The Plot Plan shall show all



proposed structures with gross and net square footages and lot coverage, fences, setbacks, walks, drainage and street rights-of-way;

- (d) Fence and wall plans including specifications of proposed materials to be used, colors, heights and the relationship of walls to any structures;
- (e) Preliminary grading plans at a minimum scale of 1"=40'-0" showing existing and proposed contours;
- (f) Conceptual landscape plans at a minimum scale of 1'=30'-0";
- (g) Architectural plans at a scale of 1/8"=1'-0" or 1"=10", indicating all walls, columns, window and door openings and other conditions which will affect the exterior design of the structure. The architectural plans shall include the footprint of the buildings with dimensions, including any appurtenant structures, and setbacks of buildings from property lines and easements;
- (h) Elevation of proposed structures at a scale of at least 1/8"=1'-0" or 1/4"=1'-0", rendered in representative colors;
- (i) Sample boards of proposed colors, materials and other relevant materials;
- (j) Location of parking areas, the number of parking spaces, and the size of the parking spaces serving the proposed Improvements;
- (k) Any security measures incorporated into the Improvements;
- (l) Design and location of any antenna or tower visible from the adjoining streets or Lots.
- (m) Architectural review fees, as established by the Design Review Board.

2. **Preliminary Approval or Disapproval.** The Design Review Board shall consider and give written preliminary approval, conditional approval, or disapproval as provided in this Article.

3. **Approval of Plans by Community Development Director.** After preliminary written approval by the Design Review Board of the plans and specifications submitted in compliance with Section 11.04 of this Declaration, the Owner may submit such plans and specifications to the Community Development Director of the City of Stockton in accordance with the Master Development Plan and Development Agreement. Design Review Board approval shall in no way be understood as a representation that the Community Development Director of the City of Stockton will approve such plans and specifications or the proposed uses, but merely that the plans and specifications are consistent with the intent and



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purpose of this Declaration. To the extent there is a conflict between the requirements of this Declaration and those of the City of Stockton, the most restrictive requirement shall apply

4. **Construction Review.** After receiving preliminary approval and prior to beginning construction, the applicant shall submit three (3) sets of plans including the following:

- (a) Final plans and specifications, including dimensioned floor plans, dimensioned elevations of buildings, roof plans with overhang and information;
- (b) Final plot plan with all setbacks and drainage information;
- (c) Final landscape architectural plans at a minimum scale of 1" = 20'-0", including layout, planting and irrigation plans and construction details; and
- (d) Mechanical, civil, electrical and structural engineering plans which correspond to the architectural plans.

5. **Construction Approval or Disapproval.** The Design Review Board shall consider and give construction written approval, conditional approval, or disapproval as provided in this Article.

6. **Review Fee.** The Design Review Board may require that the submission of plans and specifications be accompanied by a reasonable fee consistent with those fees charged in the industry, for construction review to defray the cost of the review of the plans and specifications.

7. **Form of Approval.** The approval shall be in writing, and may be conditioned upon the submission by the Owner of such additional plans and specifications, as the Design Review Board in its absolute discretion deems appropriate.

8. **Inaction.** Applications made in accordance with this section that are not acted upon within sixty (60) days from the date of submission thereof shall be deemed approved.

9. **Return of Plans.** If the application for final approval is approved, the Design Review Board shall return to the Owner one set of plans as finally approved and bearing the endorsement of the Design Review Board. If the Owner originally furnished only one (1) set of plans and specifications to the Design Review Board and the Design Review Board waived the requirement of such plans and specifications in triplicate, the Design Review Board may retain such plans and deliver to the Owner written Notice of the approval of such plans.

10. **Hearing on Disapproval.** If plans for final approval are disapproved by the Design Review Board, the applicant is entitled to a hearing before the Board at a regular or special meeting if the applicant gives written Notice to the Association within thirty (30) days following the disapproval of the plans. The hearing will be set within thirty (30) days following receipt of the Notice unless the Association and the applicant agree otherwise.



B. Criteria. The Design Review Board shall approve the work only in accordance with the criteria set forth in the Design Standards contained in the Master Development Plan and Subsection B2 of this Subsection.

1. **General.** The Design Review Board shall not consent to any Improvements described in this Article unless the Owner has either submitted the materials required by the Design Review Board or the Design Review Board has waived the requirement for any unsubmitted item.

2. **Findings Required.** The Design Review Board shall not do or consent to any Improvements described in Section 11.03 entitled "Matters Requiring Board Approval" unless the Design Review Board finds that: (i) the proposed work conforms to this Declaration and the Development Standards and Design Guidelines contained in the Master Development Plan; (ii) the applicant has obtained or will obtain all necessary building permits and conform to all governmental requirements; (iii) general architectural considerations, including the character, scale, and quality of the design, its architectural relationship with the Property, and the building materials, colors, screening, exterior lighting and similar elements are incorporated into the design in order to ensure the compatibility of the proposed Improvement with the character of adjacent dwellings and Improvements; (iv) general site considerations, including site layout, open space and topography, orientation and location, vehicular access, circulation and parking, setbacks, height, walls, fences and similar elements have been designed to provide a desirable environment; and (v) general landscape consideration, including the location, type, size, color, texture, and coverage of plant materials provision for irrigation, maintenance, and protection of landscaped areas and similar elements have been incorporated to ensure visual relief, to complement structures, and to provide an attractive environment for the use of Owners and Occupants and for the enhancement of property values in the Property. **IF THE PLANS ARE DISAPPROVED, THE DESIGN REVIEW BOARD SHALL MAKE WRITTEN FINDINGS AS TO THE REASONS FOR THE DISAPPROVAL.**

Section 11.05. **Obtaining Required Permits.** When an Owner has obtained the approval of the Community Development Director of the City of Stockton and construction approval as provided by Section 11.04.A.5, the Owner shall obtain all required building permits and other permits and approvals as may be necessary for the Improvements to be constructed.

Section 11.06. **Completion and Inspection.**

A. Completion of Improvements; Extension. Upon receipt of the approvals required under the Section entitled "Design Review Board Approval," the Owner shall, as soon as practicable, satisfy any conditions of such approval and diligently proceed with the commencement and completion of all work within one (1) year of the date of such approval or such longer period if granted by the Board based on the size and complexity of the work. The Design Review Board may extend the period if: (i) the Owner makes a written application to the Design Review Board setting forth the reason for the requested extension; and (ii) the Design Review Board finds that the Owner has pursued the work diligently and in good faith. If the Design Review Board approves the extension, the Design Review Board shall, in writing, notify the Owner of the length of the extension. If the Owner fails to complete the work within the



completion period and any applicable extension period, the approval shall be deemed revoked and the work may be treated as having been constructed in violation of this Article. Nothing in this Subsection imposes a requirement upon the Design Review Board to extend such initial period.

B. Inspection of Improvements. Upon completion of the work, the Owner shall give a Notice of the completion of the Improvement, in writing, to the Design Review Board. The Design Review Board, directly or through its authorized representative, may inspect the work for compliance with the approved plans. The Design Review Board shall notify the Owner of any noncompliance, in writing, and require the remedy thereof, within sixty (60) days from receipt of Owner's Notice of completion. If the Design Review Board fails to give a noncompliance Notice, the Improvement shall be deemed to have been completed in accordance with this Article. If Notice of noncompliance is given within such sixty (60) days period, and the Owner fails to remedy such noncompliance within sixty (60) days after receipt of such Notice, the Design Review Board may act in accordance with the provisions of Section 11.07, entitled "Noncompliance."

Section 11.07. **Noncompliance.** If Improvements are installed that are not in compliance with this Declaration, the Association may either remove the Improvement or remedy the noncompliance. No Improvement shall be removed from, or a noncompliance remedied on, a Lot without either the consent of the Owner of the Lot or an order obtained from a court of competent jurisdiction.

Section 11.08. **Limitation Period for Noncompliance.**

A. Deemed Compliance. Any work completed without compliance with this Article shall be deemed to have been done in compliance with this Article if, within one (1) year after completion of such work: (i) no legal action is commenced to enforce the provisions of this Article against such work; and (ii) the Association or Declarant does not Record a certificate of noncompliance ("Certificate of Noncompliance") as provided in Subsection B of this Section. If the Association or Declarant does Record a Certificate of Noncompliance, legal action to enforce this Article must be commenced within two (2) years of the completion of the work and a notice of pendency of action Recorded, or the certificate of non-compliance shall become null and void.

B. Certificate of Non-Compliance. The Certificate of Noncompliance referred to in Subsection A of this Section shall give a legal description of the Lot affected, state the name of the record Owner, state the date of completion, and describe generally the nature of the noncompliance. It shall be signed by an officer or other authorized person for the Association.

Section 11.09. **Estoppel Certificate.** Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee fixed by the Association to cover costs, the Association shall provide such Owner with an estoppel certificate executed by an officer of the Association and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date of the certificate, either: (i) all



Improvements and other work made or done on such Lot by the Owner, comply with this Declaration; or (ii) such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements and work, and set forth with particularity the nature of such noncompliance. Any Occupant, purchaser from the Owner, and any Secured Party, in good faith and for value, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between Declarant, the Association, and all Owners, Occupants, and such purchaser or Secured Party.

Section 11.10. Limitation of Design Review Board Liability. NEITHER THE ASSOCIATION, DESIGN REVIEW BOARD NOR ANY MEMBER OF THE DESIGN REVIEW BOARD SHALL BE LIABLE TO THE ASSOCIATION, ANY OWNER OR ANY OTHER PERSON FOR ANY DAMAGE, LOSS OR PREJUDICE SUFFERED OR CLAIMED ON ACCOUNT OF: (I) THE APPROVAL OF ANY PLANS, DRAWINGS, OR SPECIFICATIONS, WHETHER OR NOT DEFECTIVE; (II) THE CONSTRUCTION OR PERFORMANCE OF ANY WORK, WHETHER OR NOT PURSUANT TO APPROVED PLANS, DRAWINGS, AND SPECIFICATIONS; (III) THE DEVELOPMENT, OR MANNER OF DEVELOPMENT, OF ANY PROPERTY WITHIN THE PROPERTY; OR (IV) THE EXECUTION AND RECORDATION OF AN ESTOPPEL CERTIFICATE, WHETHER OR NOT THE FACTS STATED THEREIN ARE CORRECT, PROVIDED, HOWEVER, THAT THE OFFICER EXECUTING THIS CERTIFICATE, WITH THE ACTUAL KNOWLEDGE POSSESSED BY SUCH OFFICER, HAS ACTED IN GOOD FAITH. IN ANY CASE, THE DESIGN REVIEW BOARD OR ANY MEMBER OF THE DESIGN REVIEW BOARD, MAY CONSULT WITH OR HEAR ANY OWNER WITH RESPECT TO ANY PLANS, DRAWINGS, OR SPECIFICATIONS, OR ANY OTHER PROPOSAL SUBMITTED TO THE DESIGN REVIEW BOARD.

Section 11.11. Private Board. The Design Review Board has been created by this Declaration in part to perform the function and fulfill the requirements of Sections 6.1, 8.2 and 8.3 of the Master Development Plan and Section 4.5 of the Development Agreement. If a court of competent jurisdiction or the enactment of any applicable law should hold or provide that the Design Review Board cannot perform any or all of its functions as provided by the Master Development Plan or Development Agreement or both, the Design Review Board shall continue to perform its functions as provided by the Declaration on the authority of this Declaration.

Section 11.12. Owner's Liability. Any Owner who alters any portion of the Property, or causes any alteration to the Property, shall be responsible and liable for any damage to Common Area or other Lots resulting from such alteration, and shall be responsible and liable for any violation of any law or governmental regulation resulting from such alteration.

Section 11.13. Mechanics' Liens. No Owner shall permit any mechanics' lien to arise, in connection with any work initiated by such Owner, upon the Common Area or any Lot not owned by such Owner. Should such a lien arise, the Owner who initiated such work shall immediately take all necessary steps to remove such lien, including, if necessary, the obtaining of a bond, and shall indemnify the Association and all Owners against, and hold them harmless from, such lien and any costs incurred in removing such lien, including reasonable attorneys' fees.



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**ARTICLE 12
INSURANCE**

Section 12.01. **Property Insurance.** The Association shall obtain, and maintain in force, a policy of property insurance covering all insurable Improvements in the Common Area, including fixtures, machinery and building service equipment, and other personal property and supplies owned by the Association. The amount of coverage shall be not less than one hundred percent (100%) of current replacement cost.

Section 12.02. **Liability Insurance.** The Association shall obtain and maintain in force, a policy of commercial general liability insurance on the Common Area, in the amount of at least Three Million Dollars (\$3,000,000.00), per occurrence and in the annual aggregate, insuring Declarant, each Owner, the Board, and the Association, against: (i) liability for property damage, bodily injury or death in connection with the operation, maintenance, or use of the Common Area or any part thereof; and (ii) liability under any applicable worker's compensation statutes. The policy shall contain a "severability of interest" clause or gross liability endorsement. The insurer's liability under the policy shall be primary over any other insurance obtained by or for any other Owner and shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any act or negligence of any Owner.

Section 12.03. **Errors and Omissions Insurance.** The Association shall obtain and maintain errors and omissions insurance covering the acts or omissions of its Directors and Officers if such coverage is not provided under its commercial general liability policy in the amount of at least One-Million Dollars (\$1,000,000).

Section 12.04. **Other Insurance.** The Association shall consider and may obtain other insurance protection that from time to time is necessary or desirable to protect the Association, Owner, and Occupants.

Section 12.05. **Deductibles.** The Association, in its sole discretion, may obtain any policy of insurance with a "deductible" provision, under which losses not exceeding a specified amount are not covered.

Section 12.06. **Cross Liability.** Any Association policy of insurance shall contain a "cross-liability" endorsement or other endorsement, if required, to ensure that the policy covers damages or injuries caused by any named insured.

Section 12.07. General Insurance Requirements.

A. **Certificates.** The Association shall hold certificates or other evidence of all insurance policies obtained under this Article, and shall issue such certificates or other evidence to each Owner upon request.

B. **Owners' Insurance.** Any insurance obtained by the Association shall not prejudice the right of any Owner to insure his Lot and Improvements for his own benefit. Any policy obtained by the Association shall be primary in the event an Owner carries insurance covering the same loss. Any such insurance of an Owner shall contain a waiver by the insurer of



any right or subrogation to the right of any person or entity against the Association, or any Owner or Occupant. To the extent allowable by law, this Declaration hereby waives such rights of subrogation.

C. Prohibited Provisions. No insurance policy or fidelity bond required by this Article shall contain or be subject to any provision under which: (i) Declarant, the Association, or any Owner or Secured Party would be liable for any contribution or assessment; or (ii) any contribution or assessment for which any other person is liable may become a lien on any property prior to the lien of a Secured Party; or (iii) loss payments are contingent upon any action by the insurer's Board of Directors, policy holders, or members; or (iv) a secured party, Owner, or the Association would be prevented from collecting insurance proceeds other than in accordance with standard insurance conditions.

D. Notice of Cancellation or Modification. No insurance policy required by this Article shall be subject to cancellation including for nonpayment of premiums, except upon at least ten (10) days' prior written notice to the Association and to any Secured Party listed in such policy.

E. Increased Hazards. No insurance policy required by this Article shall contain a provision relieving the insurer from liability for loss occurring while any covered hazard is increased, whether or not within the knowledge of the Association, or any Owner or Occupant, by any act or omission, or breach of any warranty, condition, covenant, or restriction, by the Association, any Owner, Occupant, or any other person acting under such persons.

F. Acts of Individual Owners. Each insurance policy must provide that coverage is not prejudiced by any act or neglect of individual Owners or occupants not within the control of the Owners collectively.

G. Waiver of Subrogation. Each insurance policy required by this Article, including the insurance required by Section 12.08, shall contain a waiver by the insurer of any right of subrogation to the rights of any person or entity against the Association, and any Owner or Occupant.

H. Compliance With Law. All insurance coverage obtained by the Association shall be in accordance with and consistent with legal requirements.

Section 12.08. Owner's Insurance. Each Owner for each Lot owned and Improvements located thereon shall obtain and maintain, to the extent commercially available, a policy of ISO Special Form Property Insurance or the equivalent. Coverage endorsements insuring the full replacement value with a replacement cost endorsement, and a policy of public liability and property damage insurance naming the Association as an additional insured, and a policy of business interruption or earnings insurance. Each Owner shall provide evidence of such insurance coverage either: (i) in the form of a copy of such policy or a certificate of insurance from an insurance company authorized to do business in the State of California, stating that such Owner is and will be insured against liability for such damages; or (ii) evidence of self insurance.



**ARTICLE 13
COMMON AREA DAMAGE, DESTRUCTION AND EMINENT DOMAIN**

Section 13.01. **Reconstruction Fund.** Upon the damage or destruction of any part of the Common Area, the Board shall create and maintain a Reconstruction Fund for the following types of Common Area: (i) any Cost Center; and (ii) any other Common Area. Each Reconstruction Fund shall comprise any: (i) insurance proceeds, and any amounts recovered as a direct settlement from a third party; (ii) accumulated reserves for repair or replacement of the damaged Improvements; (iii) Reconstruction Assessments levied pursuant to this Article; and (iv) damages recovered from an action brought by the Association to recover damages for such damage or destruction. The funds in the Reconstruction Fund do not need to be segregated in a separate bank account. The amount in the Reconstruction Fund shall be disbursed in accordance with the provisions in Section 13.05 entitled "Disbursement of Reconstruction Fund."

Section 13.02. **Reconstruction Assessment Defined.** "Reconstruction Assessment" means those assessments levied against all or some of the Owners to pay the expenses attributable to the damage or destruction of all or any portion of the Common Area. Such Reconstruction Assessments shall be considered Special Assessments for the purposes of collection, remedies and the provisions relating to Special Assessments contained in Section 1367 of the California Civil Code. The allocation of such Reconstruction Assessments shall be as provided by Section 13.03 entitled "Damage or Destruction to Common Area."

Section 13.03. **Damage or Destruction to Common Area.** If there is damage or destruction of the Common Area then:

A. Cost Does Not Exceed Assessments. If the cost of replacing or rebuilding does not exceed the amount in the Reconstruction Fund by more than the amount the Board could assess without the Owners' vote under Section 9.04 entitled "Special Assessments," and the Board votes to repair and rebuild, then the Association shall contract to repair or rebuild the damaged areas according to the original plans and specifications, with such changes required by governmental agencies having jurisdiction, and shall levy a Reconstruction Assessment on all Owners, responsible for the assessments for the maintenance and upkeep of the damaged Common Area in the proportion established in Section 9.06 entitled "Allocation of Assessment Shares," in the amount, if any, by which the cost of repair or rebuilding exceeds the amount in the applicable Reconstruction Fund.

B. Cost Exceeds Assessments. If the cost of replacing or rebuilding exceed the amount in the Reconstruction Fund by more than the amount the Association could assess without the affected Owners vote under Section 9.04 entitled "Special Assessments" or if the Board does not wish to repair and rebuild, the question of repairing and rebuilding shall be decided by a vote of the Owners responsible for the assessment for maintenance and upkeep of the damaged Common Area and a disapproval by such Owners of the necessary assessment to replace or rebuild the damaged or destroyed Improvements shall be the affected Owners' decision not to replace or rebuild in which case the Association shall clear the property and place it in a neat and attractive condition. The consent of all Owners, whose right to access to their Lots is impaired by a decision not to rebuild, is required in such a vote.



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Section 13.04. Recovery of Damages for Damage or Destruction to Common Area.

The Association may commence and maintain actions for the recovery of any damages if any part of the Common Area and related facilities is damaged or destroyed. This Provision shall survive the termination of this Declaration, and any recovery minus costs advanced by the Association shall be paid into the Reconstruction Fund, designated, and paid out as provided for under this Article.

Section 13.05. Disbursement of Reconstruction Fund. The Reconstruction Fund shall be disbursed to pay for any costs of replacing, rebuilding or removing and placing Common Area in a neat and attractive condition. Any unused amount in the Reconstruction Fund shall be first credited to make up a deficiency in the Maintenance Reserve Fund and then to the Operating Fund.

Section 13.06. Eminent Domain.

A. **Action by Association.** If there is a taking of all or a portion of the Common Area and related facilities, the Association shall negotiate or settle with the condemning authority for the acquisition of all or part of such Common Area, subject to the rights of affected Owners to so negotiate, litigate, and settle for any loss or diminution to their Lots, or Cost Center, as the case may be. Any condemnation award or settlement shall be paid into the Operating Fund.

B. **Repair of Common Area.** If there is a taking of a portion of the Common Area and related facilities, the Association has the authority to apply any or all of the condemnation award to the repair or rebuilding of that portion of such Common Area damaged from the severance so that the remaining Common Area is kept in a neat and attractive condition.

C. **"Taking Defined."** A "taking" for the purpose of this Section is taking of the Common Area under the power of eminent domain, or a conveyance of the Common Area by the Association is settlement of a proposed taking by eminent domain.

**ARTICLE 14
PROTECTION OF MORTGAGEES**

Section 14.01. General Mortgagee Protection.

A. **Conflict.** The provisions and requirements of this Article, and any other provisions and requirements of this Declaration relating to the rights of First Mortgagees: (i) shall prevail over any conflicting provisions of this Declaration; and (ii) are in addition to any other provisions of this Declaration.

B. **Application of This Declaration.** Except as specifically provided in this Article or elsewhere in this Declaration, all Security Devices and Secured Parties are bound by this Declaration.

Section 14.02. Application of Assessments to Security Devices. No First Mortgagee or Secured Party shall be liable for the payment of assessments against a Lot subject to a First



Mortgage or a Security Device and any extension or modification of such First Mortgage or Security Device whether made prior to or after the Recordation of this Declaration, except those assessments payable after such First Mortgagee or Secured Party obtains title to the Lot pursuant to its remedies under the First Mortgage or Security Device. Each First Mortgagee or Secured Party holding a Mortgage Recorded prior to or after this Declaration who obtains title pursuant to its remedies under the First Mortgage, and any purchaser at a foreclosure sale conducted pursuant to the provisions of a First Mortgage or a Mortgage Recorded prior to or after this Declaration, shall take title to the Lot free and clear of any claims or liens for unpaid assessments and charges which were payable prior to such acquisition of title, except as otherwise provided by law. Any such sale shall extinguish such liens, but the purchaser or Secured Party who so acquires title shall be liable for all assessments accruing after the date of such sale, including assessments levied against all Lots proportionately to compensate for the unpaid assessments and charges, which assessments shall constitute a lien upon the purchased Lot in accordance with Article 9 entitled "Funds, Assessments, and Delinquency."

Section 14.03. **Limitation of Enforcement Against First Mortgagees.** No violation of this Declaration by, or enforcement of this Declaration against, an Owner, shall impair the lien of any First Mortgage against the Owner's Lot, but this Declaration shall be enforceable against any Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise except to the extent such lien is subordinated to the lien of the Association by statute.

Section 14.04. **Availability of Documents.** The Association must have current copies of the Governing Documents, books, records, and financial statements of the Association, available for inspection, during normal business hours, upon request, to Owners, First Mortgagees, and Guarantors.

Section 14.05. **Property Owned by Association.** First Mortgagees may, jointly or individually, pay taxes or other charges against such property which are in default and which may or have become a charge against any Common Area, and may pay overdue premiums on hazard insurance policies for such property, or secure new hazard insurance coverage on the lapse of a policy. First Mortgagees making such payments are entitled to immediate reimbursement for such payments from the Association, and the Association shall, at the request of any First Mortgagee, enter into an agreement to that effect in favor of all First Mortgagees. This Section applies only to Common Area owned by the Association.

Section 14.06. **Insurance and Condemnation Proceeds.** Notwithstanding any other provision of this Declaration, whenever insurance or condemnation proceeds are to be distributed to Owners of Lots, the First Mortgagee of each Lot shall have such rights to priority of distribution of the proceeds allocated to that Lot as are provided for in the First Mortgage.

Section 14.07. **Curing Defaults.** A Mortgagee which acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board, made in good faith as to whether a breach is non-curable or not feasible to cure, shall be final and binding on all Mortgagees.



Section 14.08. **Resale.** It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and is entitled to all of the rights and protections afforded to other Mortgagees.

Section 14.09. **Right of First Refusal.** The right of an Owner to sell, transfer or otherwise convey its Lot is not subject to any "right of first refusal" or any similar restriction in favor of the Association.

ARTICLE 15
APPLICATION OF DECLARATION TO CONSTRUCTION

Section 15.01. **Owners' Rights and Limitations.** Owners of Lots may undertake the work of constructing Improvements on Lots within the Property. The completion of that work and the expeditious sale, rental, or other disposition of property is essential to the establishment of the Property as a business center. Accordingly, Owners and their Permitted Users shall have the rights and privileges established in this Section.

A. **Structures.** Owners may erect place and maintain on a lot, such temporary structures as may be reasonably necessary for the completion of the work of constructing Improvements on a Lot, including but not limited to: business offices for its staff, employees, and contractors and storage and parking facilities for materials and equipment.

B. **Completing Work.** Each Owner may conduct within the Property and such Owner's Lot its business of completing the work and establishing and disposing of its Lot.

Section 15.02. **Architectural Control.** Improvements by Owners on or to the Property require approval of the Design Review Board and must conform to the architectural requirements of this Declaration.

Section 15.03. **Owners' Responsibilities in Construction.** This Section describes the obligations of each Owner in the work such Owner undertakes to construct Improvements on such Owner's Lot. Such obligations are in addition to compliance with the other requirements of this Declaration.

A. **Minimum Improvements.** Each Owner improving a Lot shall construct on such Owner's Lot at least one (1) building unless the Lot is used for a parking area or other auxiliary area serving another Lot or Lots, or the Lot is held for resale or lease. Each Lot shall contain all appurtenances necessary to support such building, including parking areas, utility facilities and services, driveways, entryways, sidewalks, exits, loading areas, and any road improvements. All such facilities are required to be constructed on the Lot for the use of a Lot, except where such facilities are located on a contiguous Lot pursuant to a written agreement with the Owner of such contiguous Lot. All Improvements shall be constructed to the standards required by this Declaration. No Lot shall be improved solely as a parking area unless it is part of a common development on nearby Lots.



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B. Facility Extensions. Each Owner shall connect as necessary the building, parking areas, landscaping and other amenities on its Lot to all existing electrical, gas, telephone, water, sewer, and storm drainage facilities.

C. Constructions Costs. Each Owner shall construct any Improvements required in this Section without reimbursement from other Owners for any construction costs, whether or not such Improvements benefit other Owners except as otherwise agreed to in writing between Owners.

Section 15.04. Construction Activities.

A. Limitation on Construction Time. Construction on any Lot adjacent to a completed and occupied multi-family project shall occur only between the hours of 7:00 A.M. and 6:00 P.M., Monday through Saturday.

B. Conduct of Employees. Each Owner shall ensure that its employees and the employees of its contractors, subcontractors and material suppliers, will not play radios or recorded performances loudly so as to disturb any nearby residences or businesses, will observe all speed limits, and will exhibit consideration to persons in the surrounding area. There will be no overnight occupancy by construction workers in vehicles or in "camps" in the area of the Property.

C. Alcohol and Drugs. The use, possession, purchase, sale, manufacture, distribution, or dispensation of alcohol; or being under the influence of alcohol is prohibited on any job site within the Property. Each Owner agrees to immediately have removed from the site any of its employees and the employees of any contractor, subcontractor, or material supplier, in violation of this provision. The use, possession, purchase, sale, manufacture, distribution, transportation, or dispensation of any illegal drug or controlled substance; or being under the influence of any illegal drug or other controlled substance is prohibited on the job site; and Owner agrees to have immediately removed from the site any persons in violation of this provision.

**ARTICLE 16
AMENDMENT OR TERMINATION, DURATION**

Section 16.01. Amendment or Termination.

A. Amendment or Termination. Any amendment to this Declaration adopted in accordance with this Section shall become effective upon the Recordation of a certificate signed by the secretary of the Association, setting forth in full the amendment so approved, and certifying that the amendment has been approved by the required majority or percentage vote the Owners. Except as limited by Subsections B and C of this Section, amendments may be adopted by the vote or written consent of a majority in interest of the Owners and the consent of Declarant, which is required for any amendment for as long as Declarant owns at least one (1) Lot. A termination of this Declaration shall become effective in the manner provided for amendments. This Declaration shall terminate on the expiration date provided in the certificate of termination.



B. Required Vote on Specific Provisions. The percentage of the voting power necessary to amend a specific provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under such provision.

C. Duration of Consent. The consent of an Owner to an amendment, once made, continues to be valid during the period consents are gathered even if such Owner's Lot is subsequently sold or transferred or if the consenting Owner dies or becomes incompetent or otherwise loses the ability to consent.

D. Extinguishment of Rights. Subject to Subsection A of this Section, any amendment adopted in accordance with this Declaration may alter or extinguish any easement, license, or right of use or enjoyment created by this Declaration, provided that such alteration or extinguishment does not discriminate between Owners similarly situated and does not deprive any Owner of access to or from such Owner's Lot, or the Property.

Section 16.02. Duration. All the provisions of this Declaration, including any duly adopted amendments, shall continue in full force and effect, unless the decision to terminate this Declaration has been approved by the Owners and procedural requirements of Subsection A of this Section have been met. If such an instrument is Recorded, this Declaration shall terminate on the expiration date provided in the instrument.

ARTICLE 17 MISCELLANEOUS PROVISIONS

Section 17.01. Observance of This Declaration. Each Owner shall comply with this Declaration and the Rules, and shall be responsible for such compliance by the Occupants of such Owner's building, and the Permitted Users of Owner or the Occupants of such Owner's building or buildings. If a Lot has more than one (1) Owner, all Owners are jointly and severally liable for all of the obligations of the Owner of the Lot.

Section 17.02. Enforcement.

A. Against Owners. Except to the extent otherwise expressly provided in this Declaration, the Association or Declarant may enforce any and all of the provisions now or hereafter imposed by this Declaration upon Owners, Occupants, and Permitted Users, or upon any of the Property.

B. Against Association. Except to the extent otherwise expressly provided in this Declaration, any Owner or Owners may enforce any and all of the provisions now or hereafter imposed by this Declaration upon the Association.

C. Nuisances. Every act or omission whereby any provision of this Declaration is violated in whole or in part, is hereby declared to be a nuisance, and may be enjoined or abated, by the Association or by an Owner or Owners, provided, however, that only the Association or its duly authorized agents may enforce by self-help any provision set forth in this Declaration.



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D. Cumulative Remedies. The remedies provided for in this Declaration are cumulative and not exclusive.

Section 17.03. **Nonwaiver.** The failure to enforce any provision of this Declaration shall not constitute a waiver of any right to enforce that provision or any other provision of this Declaration.

Section 17.04. **No Forfeiture.** No breach of any provision of this Declaration shall cause any forfeiture of title or reversion or bestow any rights of re-entry.

Section 17.05. **Attorneys' Fees.** Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any action brought to enforce this Declaration or collect any money due to the Association pursuant to the provisions of this Declaration.

Section 17.06. **Construction.** All provisions of this Declaration shall be liberally construed, together, to promote and effectuate the beneficial operation of the Property.

Section 17.07. **Compliance With Law.** No provision of this Declaration shall be construed to excuse any person from observing any applicable law or regulation of any governmental body.

Section 17.08. **Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, shall not affect the validity or enforceability of any other provision.

Section 17.09. **Number and Gender.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine shall include the feminine and neuter, as the context requires.

Section 17.10. **Titles.** The table of contents and all titles used in this Declaration, including those of Articles, Sections, and Subsections, are intended solely for convenience of reference and shall not affect the content of such Articles, Sections, and Subsections, nor any of the terms or provisions of this Declaration. Any numbered or lettered subdivision of a Section may be referred to as a "Subsection" or "Subsection _____."

Section 17.11. **Statutory References.** In the event any statute in this Declaration, whether stated by code and number, or named by body of law, is amended, repealed, renumbered, or renamed, all references to such statute or body of law shall refer to the amended, repealed, renumbered, or renamed statutory provisions.

Section 17.12. Lot Splitting, Consolidation

A. Change in Voting or Assessments. The Association may require a change in the voting rights and assessment obligations after any Lot partition, subdivision, or consolidation, to keep the assessment and voting rights the same after the partition, subdivision, or consolidation as they were before.



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B. Costs. All Owners seeking permission to consolidate or subdivide a Lot shall be responsible for engineering, legal, and other costs of the consolidation or subdivision including the costs of changing the voting and assessment rights and obligations as provided in Subsection C of this Section and shall pay such costs upon demand. The Association may require pre-payment of the estimated costs of the Association as a condition of approval.

Section 17.13. Obligations of Owners: Avoidance; Termination

A. No Avoidance of Duty. No Owner, through nonuse of any Common Area, or by abandonment of such Owner's Lot, may avoid the duties imposed on such Owner by this Declaration by virtue of being an Owner.

B. Termination of Obligations. Upon the conveyance, sale, assignment, or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments accruing with respect to such Lot following such transfer after the date upon which such transferring Owner gives the Association written Notice of the transfer, and no person, who has given such Notice, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration following the date of such termination.

Section 17.14. No Partition or Severance of Interests. There shall be no partition or severance of any Lot or any part of the Common Area from the Property, and the Declarant, Association, and Owners shall not seek to partition or sever any part of the Common Area or a Lot from the Property, nor shall they have any right to maintain an action for judicial partition in connection with the Property, unless such right is expressly given by this Declaration, and unless any consent of First Mortgagees required by this Declaration is obtained. This provision shall not prohibit the partition of the ownership of any Lot or Lots into joint or common ownership so long as no physical partition takes place and there is no severance of the Lot from the Common Area or from any incident of this Declaration. No Owner shall sever his Lot from its interest in the Association, and any attempt to do so is void.

Section 17.15. Implied Grant or Reservation of Easement. Whenever any provision of this Declaration provides for an easement over any portion of the Property ("the servient estate") in favor of another portion of the Property ("the dominant estate") and both estates are owned by the same Owner, the separate conveyance of either the dominant or servient estate without the other shall constitute a grant or reservation, respectively, of the easement, notwithstanding anything to the contrary in the instrument of conveyance.

Section 17.16. Notices; Documents; Delivery.

A. Manner of Giving Notice. Except as provided in Subsection B of this Section, any notice or other document permitted or required by this Declaration to be delivered, may be delivered either personally, by mail, or by a recognized national courier service, or by facsimile or electronic mail (provided the recipient has agreed in writing to receive Notice by such methods and the delivery method provides for a confirmation of delivery). If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, first-class postage prepaid. If delivery is by



**A. G. SPANOS BUSINESS CENTER
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courier, it shall be deemed delivered twenty-four (24) hours after copy of same has been delivered to the courier service, prepaid for overnight delivery. If delivery is by facsimile or electronic mail, it shall be deemed delivered when sent. Notice given by mail or by courier shall be addressed as follows: (i) If to an Owner other than Declarant, then to any Lot within Property owned by the Owner or at such other address given by the Owner to the Association, in writing; (ii) If to the Declarant or the Design Review Board, to the address given by Declarant or the Design Review Board, in writing. Any person's or entity's address may be changed from time-to-time by such person or entity by Notice, in writing, delivered to the Association.

B. Notices to Mortgagees and Guarantors. Notices to Mortgagees, Eligible Mortgagees and Eligible Guarantors shall be sent certified or registered mail, return receipt requested. The notice shall be deemed served when actually delivered; provided, however, that if the notice is not delivered due to an incorrect address furnished by the Mortgagee or Guarantor or a failure of the Mortgagee or Guarantor to inform the Association of a change of address, then the notice shall be deemed served seventy-two (72) hours after mailing.

C. Notice of Change of Ownership. At least ten (10) days prior to the consummation of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Lot, the transferring Owner or Owners shall provide the following information in writing to the Association: (i) the name of each transferor and transferee; (ii) street address of the Lot to be transferred; (iii) the mailing address of each transferee; (iv) the name and address of the escrow holder, if any, for such transaction and the escrow number; and (v) the proposed date for consummation of the transfer. Furthermore, within thirty (30) days of any change in the record Owner of a Lot, the transferor and the transferee shall give notice to the Association of the transfer, including the names and current mailing addresses of all record Owners of the Lot. If the notice required by this Section is not given by either the transferor or the transferee, the Association may charge a fee not to exceed Two-Hundred Dollars (\$200.00) to compensate it for the expense of determining the record Owners, which fee shall be the joint and several personal obligation of the transferor and the transferee.

D. Notice to Last Known Owner. Where any provision of the Governing Documents or of law requires notice to the Owner of a Lot, notice shall be deemed given if it is given in accordance with Subsection A of this Section to the Owner or Owners designated in the last notice of change of ownership received by the Association.

Section 17.17. Ownership of Funds. Any sale, transfer, or conveyance of the beneficial interest in the fee of any Lot shall operate to transfer the Owner's rights in such funds without the requirement of any express reference to those funds, except where the whole Property is being sold or transferred due to damage, destruction or a taking under the power of eminent domain, or pursuant to a partition of the Property.

Section 17.18. No Termination on Breach. No violation of this Declaration shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, but this provision does not affect in any manner any other rights or remedies the Association or any Owner may have by reason of any such violation.



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Section 17.19. **No Public Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of Declarant that this Declaration be strictly limited to and for the purposes expressed in this Declaration.

Section 17.20. **Assignment by Declarant.** Declarant may assign its powers and obligations in whole or in part to another Owner. Any such assignment will comply with any applicable provisions of the Master Development Plan, to make the assignee Declarant's "successor in interest" under the Master Development Plan. Any assignment or acceptance of part or all of Declarant's powers and responsibilities for all or a portion of the Property, shall be in writing and Recorded, filed with the Association, and placed with the records of the Association. Foreclosure of a First Mortgage covering all of Declarant's remaining interest in the Property shall be an assignment of Declarant's powers and obligations. No assignment of Declarant's powers, whether express or implied, shall be effective as to the assignee or the power unless the assignee accepts such assignment and agrees to perform Declarant's duties and obligations by a signed instrument Recorded and filed with the Association. No assignee of Declarant has any liability for the obligations or acts of any prior Declarant unless such assignee agrees in writing to be responsible for such acts or obligations.

Section 17.21. **Cost of Living Adjustment.** Any fixed or maximum dollar amount established by this Declaration for any charge which the Association may impose, other than fixed dollar amounts set by law, may be increased by the Association from time to time, as follows: The Consumer Price Index for all Urban Consumers (Base Year 1982-84+100) for the San Francisco-Oakland-San Jose Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics ("Increase Index"), shall be compared with the Index published immediately preceding the date of recording of this Declaration ("Beginning Index"). If the Increase Index has increased over the Beginning Index, the maximum amount of such change shall be set by multiplying the maximum amount set forth in this Declaration by a fraction, the numerator of which is the Increase Index and the denominator of which is the Beginning Index. If the Index is changed so that the Base Year differs from that set forth above, the Index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics. If the Index is discontinued or revised, such other government index or computation which replaces it shall be used so as to obtain substantially the same result as if the Index had not been discontinued or revised. If a fixed or maximum dollar amount set by law is in this Declaration and that amount is adjusted upward by law, then the amount as set out in this Declaration shall be similarly adjusted.

Section 17.22. **Notice of Agricultural Activities.** EACH OWNER AND OCCUPANT OF THE PROPERTY IS PUT ON NOTICE THAT THERE ARE AGRICULTURAL OPERATIONS ACTIVITIES AND FACILITIES EXISTING IN THE VICINITY OF THE PROPERTY. THERE MAY BE NOISE, DUST, ORDERS, AGRICULTURAL BURNING AND SMOKE, THE SPRAYING OF PESTICIDES AND FERTILIZERS, AND OTHER CONDITIONS CREATED BY AGRICULTURAL OPERATION ACTIVITIES AND FACILITIES. EACH OWNER AND OCCUPANT IS ALSO PUT IN NOTICE THAT, AS PROVIDED BY CALIFORNIA CIVIL CODE SECTION 3482.5, NORMAL



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AGRICULTURAL ACTIVITIES ARE NOT CONSIDERED A NUISANCE EXCEPT AS OTHERWISE PROVIDED BY THAT SECTION.

Section 17.23. **Riparian and Other Rights.** All rights to use water from Pixley Slough including all riparian rights appurtenant to the Property even though severed from the source of the water shall remain appurtenant to each parcel of land within the Property to the same extent as though the ownership of the land had at all times continued in Declarant.

Section 17.24. **Below Ground Level Improvements.** There are high subsurface ground water levels in the area of the Property. The ground conditions caused by such water table levels require that Owners and Occupants take precautions to monitor such levels prior to the installation of Improvements below ground level such as building foundations, basements, and other such Improvements.


Section 17.25. **Exhibits.** Unless otherwise specified, all exhibits referred to in this Declaration and all exhibits attached to this Declaration or both are incorporated into this Declaration by this reference.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

A. G. SPANOS CONSTRUCTION, INC.
A California Corporation

By:

Title


Jeremiah T. Murphy
Executive Vice President



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**A. G. SPANOS BUSINESS CENTER
DECLARATION OF RESTRICTIONS**

STATE OF CALIFORNIA)

COUNTY OF San Joaquin)

On Jan. 13, 2003, before me, Karen Gerrett, personally appeared Jeremiah T. Murphy, personally known to me (or 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.

WITNESS my hand and official seal.

Signature Karen Gerrett (Seal)



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EXHIBIT A

PROPERTY SUBJECT TO THIS DECLARATION

All of that certain real property situated in the City of Stockton, County of San Joaquin, State of California, more particularly described as follows:

- (1) Parcel 1 as shown on that certain Parcel Map filed for record on October 19, 1999, in Book 21 of Parcel Maps, at Page 114;
- (2) Parcel 1 as shown on that certain Parcel Map filed for record on October 21, 2002 in Book 22 of Parcel Maps at Page 107; and
- (3) All of that certain Parcel Map filed for record on December 26, 2002 in Book 22 of Parcel Maps, at Page 119, being Parcels 1, 2, 3, 4, and the REMAINDER Parcels, all as shown thereon;

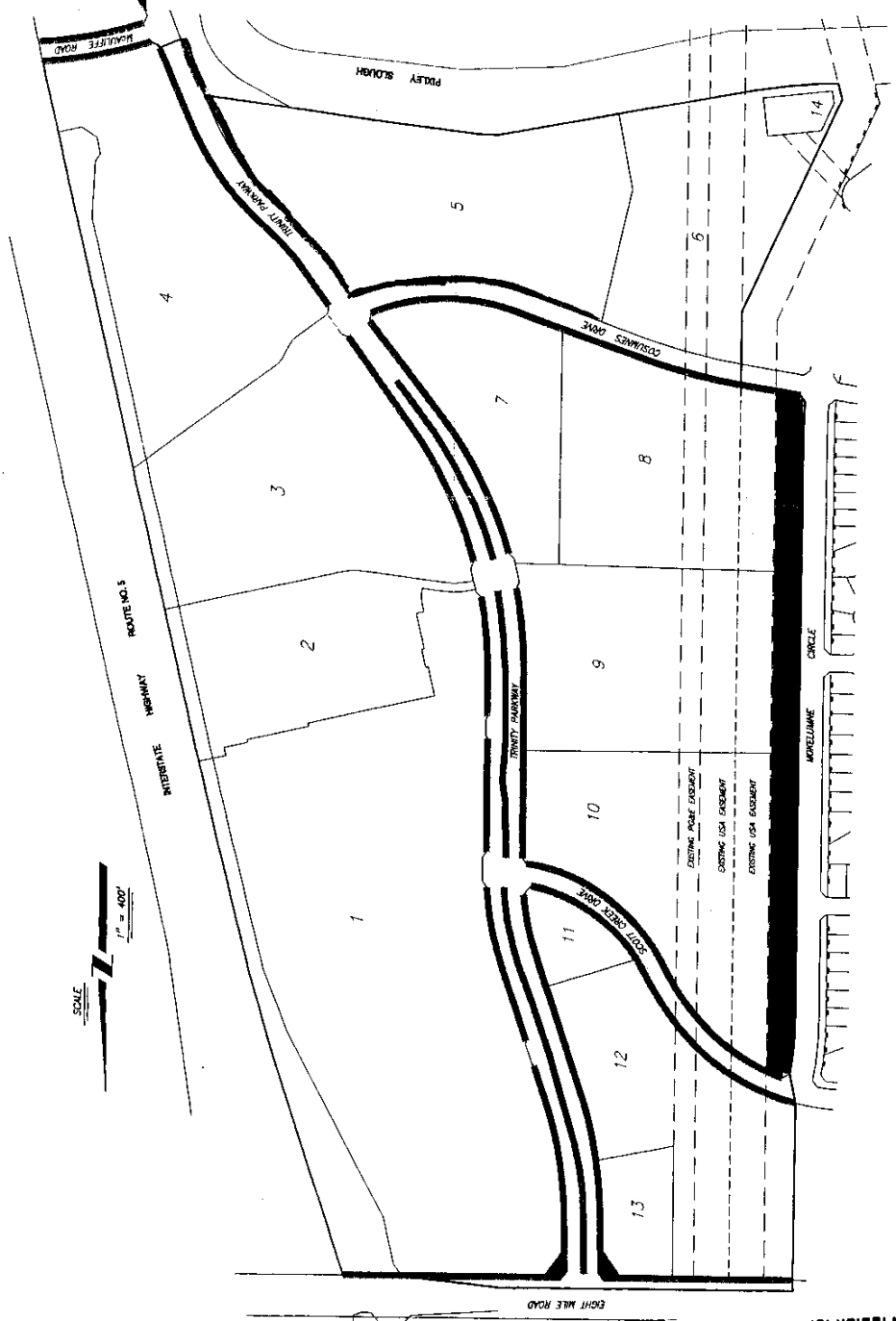
All with reference to San Joaquin County Records.



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**DIAGRAM OF STREET MEDIAN
LANDSCAPING AND
LANDSCAPED BUFFER**

EXHIBIT B



SCALE
1" = 400'

AREA TO BE MAINTAINED



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EXHIBIT C

All that certain real property situate, lying and being those portions of Lot 26 and 27 as shown on the Final Map of "Spanos Park West, Unit No. 1", filed in Book 36 of Maps and Plats, at Page 22, San Joaquin County Records, Parcel 1, as shown on the Parcel Map filed in Book 21 of Parcel Maps, at Page 114, San Joaquin County Records, and the "Left Frontage Road" as shown on the California Division of Highways "State Highway Monumentation Map" for Interstate 5, approved August 29, 1979, in Section 1, Township 2 North, Range 5 East, and Section 6, Township 2 North, Range 6 East, Mount Diablo Base and Meridian, City of Stockton, County of San Joaquin, State of California, described as follows:

Being a strip of land, 20.00 feet wide, lying westerly of the following described line.

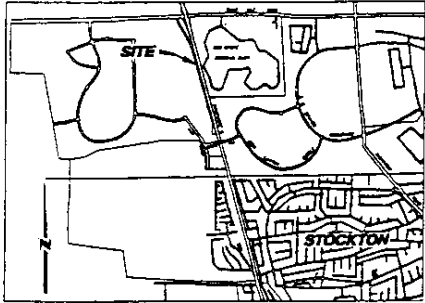
Commencing at City of Stockton Survey Monument 4N-13, as shown on the map filed in Book 33 of Record of Surveys, at Page 20, San Joaquin County Records; thence North 9°40'10" West 551.82 feet, to the southeasterly corner of said Parcel 1, said point being the **TRUE POINT OF BEGINNING** of this description; thence along the westerly right-of-way line of Interstate Highway Route No. 5, as shown on said "State Highway Monumentation Map", the following three (7) courses:

- 1) North 13°26'36" West 209.43 feet;
- 2) North 12°38'29" West 400.19 feet;
- 3) North 13°21'42" West 2550.40 feet,
- 4) North 14°32'02" West 666.35 feet,
- 5) North 16°15'16" West 182.57 feet,
- 6) North 16°34'43" West 109.53 feet,
- 7) North 18°36'32" West 812.58 feet,

to the northeasterly corner of said Lot 27, said point also being the point of termination, the westerly side of said strip to be shortened or lengthened to terminate at the southerly boundary line of said Parcel 1.



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VICINITY MAP
NO SCALE

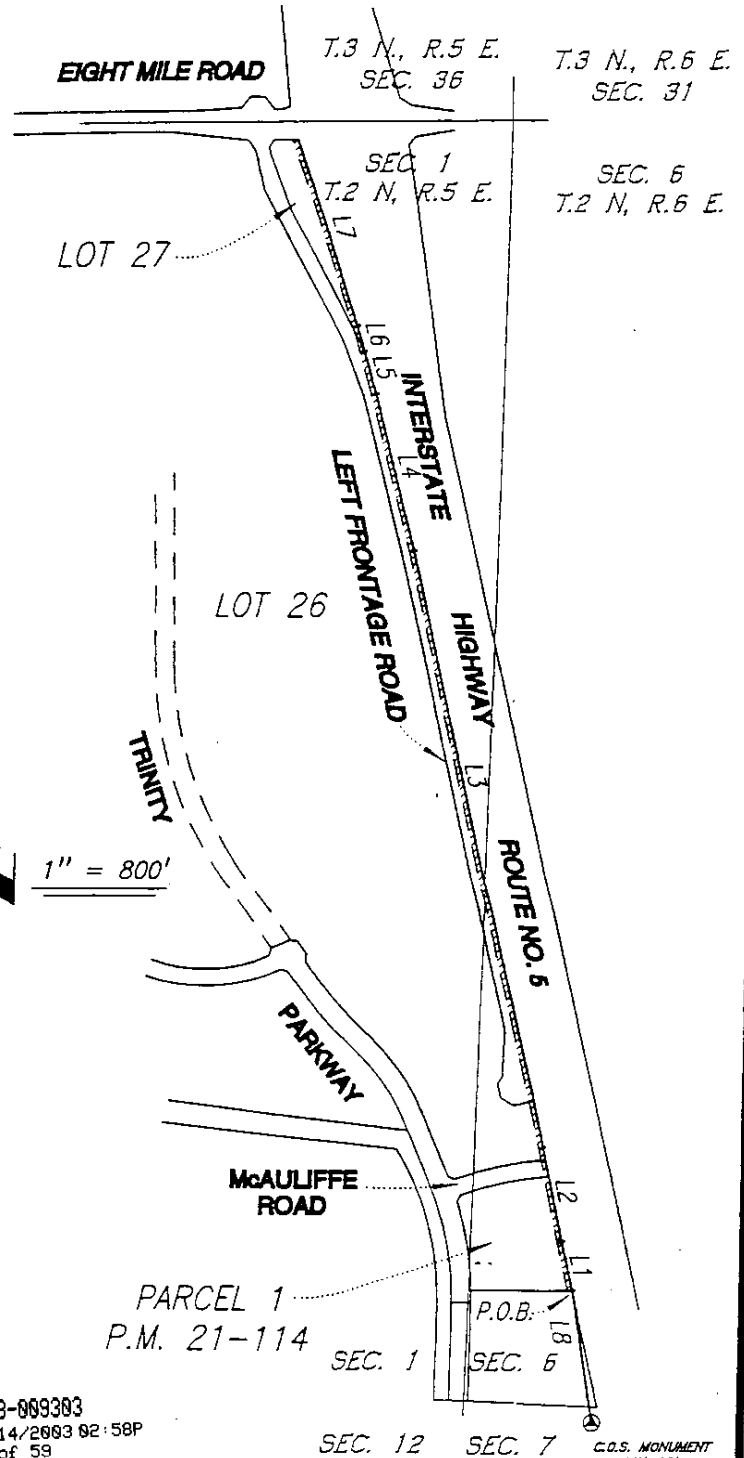


EXP: 12-31-03

SPANOS PARK WEST
UNIT NO. 1
M. & P. 36 - 22

SCALE 1" = 800'

LINE DATA		
NO	BEARING	DISTANCE
1	N13°26'36"W	209.43'
2	N12°38'29"W	400.19'
3	N13°21'42"W	2550.40'
4	N14°32'02"W	666.35'
5	N16°15'16"W	182.57'
6	N16°34'43"W	109.53'
7	N18°36'32"W	812.58'
8	N09°40'10"W	551.82'



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SEC. 12 SEC. 7 C.O.S. MONUMENT (4N-13)

EXHIBIT C-1

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henninger@ccmlawyer.com

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LISLE, IL 60532-3639
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312.265.6002
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AFFILIATED WITH ERICKSON LAW GROUP, PC
PATENT & TRADEMARK COUNSEL
630.665.9404

March 2, 2020

Via Federal Express

City of Stockton
425 North El Dorado
Stockton, CA 95202
Attn: City Manager

Via Federal Express

City Attorney
City of Stockton
425 North El Dorado
Stockton, CA 95202

Re: Spanos Park West Development Agreement dated as of January 29, 2002 (the "Agreement") by City of Stockton, recorded as Document No. 2002-041898, for the property located at 10250 Trinity Parkway, Stockton, CA (the "Property")

Dear Sir or Madam:

Our office represents BlueRoad Net Lease, LLC, the Seller for the above-referenced Property. The Agreement provides that we request an Estoppel Certificate from you.

We hereby request that you execute and return to the undersigned the enclosed Estoppel Certificate within ten (10) days from the date of this notice. Enclosed is a self-addressed Federal Express mailing label for your convenience.

Should you have any questions, please feel free to call the undersigned at 630-871-8550, or contact by email to henninger@ccmlawyer.com. Thank you for your prompt cooperation.

Very truly yours,

CLINGEN CALLOW & McLEAN, LLC

By:



Jodi L. Henninger

JLH/keb

ESTOPPEL CERTIFICATE

Date: _____, 2020

To: OREOF19 BR, LLC (“Purchaser”)
200 South Biscayne Blvd., 7th Floor
Miami, FL 33131
Attention: Kevin Sanz

Re: Spanos Park West Development Agreement dated as of January 29, 2002 (the “Agreement”) by City of Stockton (“Declarant”), recorded with the recorder of deeds of San Joaquin County, California on March 11, 2002 as document number 2002-041898, a copy of which is attached hereto as Exhibit A covering certain real property more particularly described in the Agreement. BlueRoad Net Lease, LLC, a Delaware limited liability company (“Seller”), is the current and sole fee title owner of 10250 Trinity Parkway, Stockton, CA (the “Property”) is under contract to sell the Property to Purchaser, and Seller requests that Declarant execute this Estoppel Certificate as a one-time accommodation to Purchaser and Seller in connection with such proposed sale to Purchaser.

Gentlemen:

The undersigned Declarant understands and acknowledges that Purchaser has obtained or is in the process of obtaining a mortgage loan (“Loan”) from CIBC BANK USA (as administrative agent for itself and the lenders, together with its successors and assigns, “Lender”) which Loan is or will be evidenced by a note secured by a mortgage (“Mortgage”) upon the Property and that Lender, in making the Loan, is relying upon Declarant’s certification herein.

Declarant hereby certifies to Purchaser and Lender that:

1. (a) The Agreement is in full force and effect, has not been modified, supplemented or amended, and has not been assigned by Declarant; (b) to the best of Declarant’s current actual knowledge as of the date hereof, there are no uncured defaults on the part of Seller or Declarant, and (c) to the best of Declarant’s current actual knowledge as of the date hereof, there are no current sums owing to Declarant from Seller under the Agreement.

2. Declarant agrees that, in the event of a foreclosure of the Mortgage, or other enforcement of the provisions of the Loan Documents, or the exercise by Lender of its rights pursuant to the Mortgage, or in the event Lender comes into possession or acquires title to the Property as a result of a foreclosure or threat thereof, or as a result of any other means, then such party may enforce the Agreement with the same force and effect as if enforced by Purchaser. Lender may perform the obligations of Purchaser under the Agreement, but shall have no obligation to do the same (unless and until the interest of Purchaser in the Property is transferred to Lender, in which event such party shall be obligated to perform Purchaser’s obligations under the Agreement).

3. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Agreement.

4. The individual executing this Estoppel Certificate has the power and authority to execute this Estoppel Certificate on behalf of Declarant.

5. Declarant acknowledges and agrees that Purchaser, Lender, administrative agent for the Lender(s), co-lenders or participant lenders of the Loan and their respective successors and assigns shall be entitled to rely on Declarant's certifications set forth herein.

6. Electronic signatures to, and the electronic transmission of, this Estoppel Certificate (including, without limitation, transmission via electronic mail in scanned "PDF" format) shall be legally binding and shall have the same force and effect as an original ink-on-paper signature manually penned by such signatory.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed by its authorized representative as of the day and year first above written.

DECLARANT:

CITY OF STOCKTON, a municipal corporation

By: _____

Name: _____

Its: _____

EXHIBIT "A"
AGREEMENT

This document is recorded for the benefit of the City of Stockton and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

When recorded, mail to:
City of Stockton
451 N. El Dorado
Stockton, California 95202
Attn: City Attorney

DOC # 2002-041898

03/11/2002 02:49P Fee:88.00

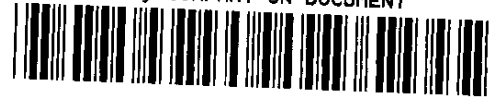
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Recorded in Official Records

County of San Joaquin

Gary W. Freeman

Assessor-Recorder-County Clerk
Paid by COMPANY ON DOCUMENT



DA 1-00

**SPANOS PARK WEST
DEVELOPMENT AGREEMENT**

CITY: CITY OF STOCKTON, a municipal corporation of the State
of California

OWNER: A. G. SPANOS CONSTRUCTION, INC.,
a California Corporation

Development Agr January 9, 2002
102223V1
MASTER

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this 29th day of January, 2002, by and between the **CITY OF STOCKTON**, a municipal corporation of the State of California ("**City**"), and **A. G. SPANOS CONSTRUCTION, INC.**, a California corporation ("**Owner**"), pursuant to the authority of California Government Code Sections 65864-65869.5 and Stockton Municipal Code ("**Code**") Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive.

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the parties:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property that is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), City has adopted Code Chapter 16, Part IX establishing the procedures and requirements for the consideration of development agreements within the City.

C. Owner is a corporation organized under the laws of the State of California and is in good standing thereunder.

D. Owner owns fee title to that certain parcel of land commonly referred to as Spanos Park West. Owner holds certain entitlements for the development of Spanos Park West, i.e. two (2) approved tentative maps, TM 54-89 and TM 56-89. Owner has made application to City to modify Owner's existing entitlements into two separate components of Owner's Spanos Park West Project, a residential component, commonly referred to as The Villages at Spanos Park, and an M-X, mixed use, Component, commonly referred to as A. G. Spanos Business Park (the "**Business Park**"). The Business Park is the subject of this Agreement and is more fully described in Exhibit "A," attached hereto and incorporated herein by reference.

E. Pursuant to the California Environmental Quality Act (Public Resources Code § 21000-21177) ("**CEQA**"), City prepared and circulated a draft supplemental environmental impact report ("**SEIR**") for the Spanos Park West Project including the Business Park component. On January 29, 2002, City certified that the SEIR was adequate; that it satisfied the requirements of CEQA, the CEQA Guidelines, and applicable City regulations; and that it fully and accurately described the Business Park component. Notices of Determination for Spanos Park West were filed on January 30, 2002 with the San Joaquin County Clerk and on January 30, 2002, with the Office of Planning and Research of the State of California.



F. The Business Park is located in an area having a general plan and zoning designation of "MX" (mixed use as described in Code Section 16-075). As required by Code Section 16-075.1, a master development plan was submitted to City on January 29, 2002. On January 29, 2002 the City approved A. G. Spanos Business Park Master Development Plan dated January 9, 2002 (the "**Master Development Plan**"). The Master Development Plan sets forth the distribution, location and extent of uses for the Business Park and identifies regulations and criteria for development of the site through subsequent implementing projects. Code Section 16-204.C. requires that a development agreement be completed to implement the Master Development Plan and that such development agreement be processed with the Master Development Plan. City has determined that this Agreement is appropriate for the development of the Business Park and that a development agreement will eliminate uncertainty in City's land use planning for and secure orderly development of the Business Park and otherwise achieve the goals and purposes for which the Chapter 16, Part IX of the Code was enacted by City. In exchange for these benefits to City and the public benefits of the Business Park, Owner desires to receive assurance that City shall grant permits and approvals required for the development of the Business Park in accordance with the Master Development Plan, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the parties desire to enter into this Agreement.

G. The Master Development Plan was approved based on its stated intention to provide a comprehensive description of all land uses proposed for the Business Park, while maintaining the greatest amount of flexibility possible in the planning review process. The Master Development Plan provides for a range of land uses for each parcel within the Business Park, each of which is consistent and compatible with the overall land use concept for the Business Park and consistent with the policies, general land uses and programs of the City's general plan. The Master Development Plan and the SEIR established the criteria for consideration of, and all action upon, all future specific proposals for development of land within the Business Park.

H. On December 20, 2001, after conducting a duly noticed public hearing pursuant to Code Section 16-188.A., the City Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations that: i) this Agreement is consistent with the objectives, policies, general land uses and programs specified in the City of Stockton General Plan and the Master Development Plan for the Business Park; and ii) the Business Park complies with the requirements of CEQA, and state and local CEQA guidelines.

I. On January 29, 2002, the City Council held a duly noticed public hearing on this Agreement pursuant to Code Section 16-188.B. and made the same findings and determinations, which are set forth in Enacting Ordinance 007-02 approving this Agreement thereafter adopted by the City Council, a copy of which is attached hereto, marked Exhibit "B".

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5 and Code Chapter 16, Part IX, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

Development Agr January 9, 2002
102223V1



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03/11/2002 02:49P
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1. General Provisions.

1.1 Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as it set forth herein in full.

1.2 Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Business Campus and the burdens and benefits thereof shall bind and inure to the benefit of all estates and interests in the Business Campus, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

2. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

2.1 Approvals. Any and all permits or approvals of any kind or character required under the Master Development Plan and applicable City Laws in order to develop the Business Park, including, but not limited to, conditional use permits, tentative and final parcel or subdivision maps, building permits, site clearance, grading plans and permits, and certificates of occupancy.

2.2 City Laws. The Stockton Municipal Code, resolutions, codes, rules, regulations, decisions and official policies of City governing the design, improvement and construction standards and specifications applicable to the development of the Project. Specifically, but without limiting the generality of the foregoing, City Laws shall include the General Plan.

2.3 Director. The Director shall mean the Director of Community Development for City.

2.4 Enacting Ordinance. Ordinance 007-02, enacted by the City Council on January 29 2002, approving this Agreement, as described herein.

2.5 Exactions. All exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-or off-site improvements or construction requirements for public improvements or services or other conditions of approval called for in connection with the development of, or construction on, the Business Park under Existing City Laws, whether such exactions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

2.6 Existing City Laws. The Planning and Zoning Code (Chapter 16 of the Stockton Municipal Code), resolutions, rules, regulations, decisions and official policies of City governing the subdivision, design and improvement standards applicable to the development of the Business Park in effect as of the Effective Date (as defined in Section 3.1 below).



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2.7 Law or Laws. The laws and constitution of the State of California, the laws and Constitution of the United States and any codes, statues or executive mandates in any court decision, state or federal, thereunder.

2.8 Mortgage. A mortgage, deed of trust, ground lease, sale and leaseback arrangement in which the Business Park or a portion thereof or an interest therein is sold by Owner and leased back concurrently therewith (which arrangement is subject to no prior contractual encumbrances securing payment of money), or other transaction in which the Business Park, or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

2.9 Mortgagee. The holder of the beneficial interest under a Mortgage.

3. Effective Date, Term.

3.1 Effective Date. This Agreement shall be dated and the obligations of the parties hereunder shall be effective as of the effective date of the Enacting Ordinance, pursuant to Government Code Section 36937, as specified herein (the "Effective Date"). Not later than ten (10) days after the Effective Date, City and Owner shall execute and acknowledge this Agreement, and thereafter the City Clerk shall cause this Agreement to be recorded in the Official Records of the County of San Joaquin, State of California.

3.2 Term. The Term of this Agreement shall commence on the Effective Date and shall terminate twenty years from said Effective Date, unless earlier terminated under the terms of this Agreement.

4. General Development of the Business Park.

4.1 Business Park. Owner shall have the right, and the obligation, to develop the Business Park in accordance with the Master Development Plan, the terms and conditions of this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement, and City shall have the right to control development of the Business Park in accordance with the provisions of the Master Development Plan, this Agreement, and such amendments thereto as shall from time to time be approved pursuant to this Agreement. Except as otherwise specified in this Agreement, the Master Development Plan and applicable Existing City Laws (including those Code Sections concerning MX zoning and Master Development Plans) shall control the overall design, development and construction of the Business Park, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses on the Business Park, the density and intensity of use, maximum height and maximum and minimum size of buildings, the number of parking spaces and all mitigation measures required in order to minimize or eliminate adverse environmental impacts and other adverse impacts of the Business Park. In accordance with the purpose of MX zoning as stated in Code Section 16-075, the specific land uses and specific development standards for the Business Park have been determined on a site-by-site basis by the Master Development Plan. By entering into this Agreement, Owner agrees to develop the Business Park pursuant to the following schedule: Ten years after the Effective Date, Owner shall have developed a



minimum of forty percent (40%) of the Business Park based on acreage available for development; Fifteen years after Effective Date, Owner shall have developed a minimum of sixty (60%) of the Business Park based on net acreage available for development.

4.2 Permitted Uses. The permitted uses of the Business Park, the density and intensity of use, the maximum height, bulk and size of proposed structures and location of public improvements, location of public utilities and other terms and conditions of development applicable to the Business Park shall be those set forth in the Master Development Plan, as may be modified from time to time as agreed to by City and Owner. Permitted uses shall be determined by the following:

(a) Commercial development may consist of the permitted uses provided for in Section 6.4 of the Master Development Plan.

(b) High Density Residential development may consist of the permitted uses provided for in Section 6.5 of the Master Development Plan.

(c) Office development may consist of the permitted uses provided for in Section 6.6 of the Master Development Plan.

(d) Open space permitted uses may consist of those provided for in Section 6.7 of the Master Development Plan.

(e) Neighborhood Park permitted uses may consist of the permitted uses provided for in Section 6.8 of the Master Development Plan.

(f) Utility Easement permitted uses may consist of the permitted uses provided for in Section 6.9 of the Master Development Plan.

(g) Development Standards for site development, building standards, landscaping and circulation within the Business Park shall be those provided for in Section 6.10 of the Master Development Plan.

4.3 Project Phasing. Owner presently intends to develop the Business Park in phases and the parties acknowledge that Owner cannot presently predict the timing or sequence of any such phasing. Such decisions depend upon numerous factors which are not within the control of Owner, such as market conditions and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the parties' intent to address that issue by acknowledging and providing that Owner shall have the right to develop the Business Park in phases in such order and at such times as Owner deems appropriate within the exercise of its subjective business judgment and in accordance with Chapter 5 of the Master Development Plan and the provisions of this Agreement. All improvements required pursuant to the Master Development Plan shall be constructed by Owner congruent with the development of each phase of the Business Park, as such



improvements relate thereto and are necessary for the development and operation of such phase of the Business Park.

4.4 Applicable Laws and Standards. Notwithstanding any change in any Existing City Laws including, but not limited to, any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws, regulations, standards and policies applicable to the Business Park are set forth in the Master Development Plan, the Existing City Laws (regardless of future changes in these by City) and this Agreement. The Business Park is entitled to be built and occupied and Owner has the right to complete the Business Park, in accordance with this Agreement, provided that City may apply and enforce its codes, regulations and laws applicable under this Agreement. The Master Development Plan includes Development Standards, Design Guidelines and Regulations (the "**Development Regulations**") which provide for the location, arrangement, development and use of the parcels within the Business Park. Should the Development Regulations conflict with similar regulations contained in the Existing City Laws, the Development Regulations shall take precedence. When any issue, condition or situation arises or occurs that is not covered or provided for in the Development Regulations, those provisions in the Existing City Laws which are most similar to the issue, condition or situation as determined by the Director, or his designee, shall apply, subject to this Agreement. Notwithstanding any other language or implication to the contrary in this Agreement, all construction shall comply with all provisions of, Chapter 14, Uniform Codes, of the Stockton Municipal Code, including , but not limited to, the Uniform Building Code, and the various related mechanical, electrical, plumbing, and fire codes as the same may be applicable at the time of application for the relevant permit.

4.5 Development Review Process.

(a) This Agreement shall implement the provisions of the Master Development Plan, which provides that in any future application for development or use of any portion of the Business Park, Owner shall comply with any criteria for issuance of permits for the development other than those as established in the Master Development Plan and the certified SEIR. Development within any portion of the Business Park may not occur until the Design Review Board for A. G. Spanos Business Park (the "**Design Review Board**"), City's Community Development Director (the "**Community Development Director**") and City's Public Works Director (the "**Public Works Director**") have made the determinations provided for in Section 8.2 of the Master Development Plan.

(b) Chapter 7 of the Master Development Plan provides the design guidelines applicable to the Business Park.

(c) The development review process for all Approvals shall be as described in Section 8.2 of the Master Development Plan. This process consists, generally, of review and approval by the Design Review Board and site plan review and approval by the



Community Development Director, and infrastructure facility plan review and approval by the Public Works Director.

(d) Once approved by the Design Review Board, consistency with the Master Development Plan of a proposed development project shall be reviewed and approved by the City, as described in Section 8.2 of the Master Development Plan, by the Community Development Director, which shall be City's primary discretionary process for determining that the proposed development is consistent with the Master Development Plan, and, if such a finding is made, it shall include that the application is consistent with the City's General Plan and the application shall thereby be approved.

(e) Any proposed development project or use shall be consistent with this Agreement.

4.6 Processing and Approvals. Upon submission by Owner of any and all necessary and required applications for Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall promptly commence and diligently complete all steps necessary to approve or issue the requested Approvals including, but not limited to, (a) the holding of any and all required public hearings and notice for such public hearings, and (b) the granting of the requested Approval to the extent that it complies with applicable Law and this Agreement. Such Approvals shall include, but not be limited to:

- (a) the adoption or amendment of any tentative or final subdivision or parcel maps;
- (b) the issuance of Use Permits;
- (c) architectural and site plan reviews;
- (d) lot line adjustments;
- (e) building permits;
- (f) site clearance or demolition permits;
- (g) grading plans and permits;
- (h) landscape plans;
- (i) certificates of occupancy, or their equivalent, whether temporary or final.

4.7 Other Governmental Permits. Owner shall apply for such other permits and approvals from governmental or quasi-governmental agencies, other than City, having jurisdiction over the Business Park as may be required for the development of, or provision of services to, the Business Park, including but not limited to:



- (a) Public utility district permits or service agreements;
- (b) Army Corps of Engineers permits;
- (c) Reclamation District 2042 permits.

4.8 Additional Fees. Except as provided in this Agreement, City may impose any further or additional fees, taxes or assessments, whether through the exercise of the police power, the taxing power, or any other means, which provide a reasonable benefit (nexus) to the development and/or maintenance of the Business Park provided that:

(a) City may charge owner public facility fees and processing fees for land use approvals, building permits, plan checks and other similar permits and entitlements which are in force and effect on a City-wide basis at the time application is submitted for those permits.

(b) If state or federal laws are adopted which require cities to impose fees on existing projects and if, consequently, City adopts enabling legislation and imposes fees on existing projects on a City-wide or area-wide basis, as defined below, these fees may be imposed on the Business Park, which fees shall be consistent with the fees imposed on other properties within the City or area similarly situated.

(c) If Owner requests the creation of a community facilities district for the purpose of financing some or all of the public capital facilities and services necessary for the development of the Business Park, City may adopt a special tax pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982 (Government Code sections 53311 et seq), sufficient to pay for all of the public facilities and services requested by Owner.

5. Specific Criteria Applicable to Development of the Business Park.

5.1 Application of New City Laws. Nothing herein shall prevent City from applying to the Business Park new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not materially interfere with the development of the Business Park as contemplated herein. Any action or proceeding of City that has any of the following effects on the property within the Business Park shall be considered to be in conflict with this Agreement and the Existing City Laws:

(a) limiting or reducing the density or intensity of all or any part of the Business Park, or otherwise requiring any reduction in the square footage or total number of buildings and other improvements, including, but not limited to, the parking spaces;

(b) limiting the Owner's ability to transfer permitted uses, intensity of uses or maximum height of buildings between sites within the Business Park in a manner that is inconsistent with or more restrictive than limitations included in the Master Development Plan;



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(c) limiting the timing of the development of the Business Park or the number of phases of the Business Park in a manner that is inconsistent with or more restrictive than limitations included in the Master Development Plan.

(d) limiting the location of building sites, grading or other improvements on the Business Park in a manner that is inconsistent with or more restrictive than the limitations included in the Master Development Plan;

5.2 Future Growth Control Ordinances/Policies, Etc.

(a) One of the specific purposes of this Agreement is to assure Owner that no growth-control ordinance, measure, policy, regulation or development moratorium of City adopted by the City Council or by vote of the electorate after the Effective Date of this Agreement will apply to the Project, whether enacted by urgency ordinances, interim ordinances, initiatives, referendums or any other change in the laws of the City by any method or name which would alter in any way City's General Plan, Zoning Ordinance, Subdivision Ordinance, Uniform Codes or any other ordinance, enactment, resolution, approval, policy, rule, regulation, decision, or other action of City. There are currently no adopted growth control ordinances, policies or measures which would restrict the ability of Owner to complete the Project.

Therefore, the parties hereto agree that, except as otherwise expressly provided in Section 5.1 herein, or other provision of this Agreement which unambiguously and expressly authorizes City to make such pertinent changes, no ordinance, policy, rule, regulation, decision, or any other City action, or any initiative or referendum voted on by the public, which would be applicable to the Project and would affect in any way the rate of development and construction of the Project, or limit the Project's ability to receive any other City service shall be applicable to any portion of the Project during the term of this Agreement, whether such action is by ordinance, enactment, resolution, approval, policy, rule, regulation, decision or other action of City or by public initiative or referendum.

(b) City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees or other exactions, policies, standards, laws or regulations, which directly relate to the development of the Project except as provided in Section 5.1 herein or other provision of this Agreement which unambiguously and expressly allows City to make such changes. Further, City shall not approve a Mello-Roos assessment, or other type of district to cause bonded indebtedness on any portion of the Project without Owner's prior written approval, which approval may be given or withheld in Owner's sole and absolute discretion. Nothing herein prohibits the Project from being subject to a (i) City-wide bond issue, (ii) City-wide special or general tax, or (iii) special assessment for the construction or maintenance of a City-wide facility as may be voted on by the electorate or otherwise enacted; provided that such tax, assessment or measure is City-wide in nature, does not discriminate against the land within the Project and does not distinguish between developed and undeveloped parcels.



(c) This Agreement shall not be construed to limit the authority of City to charge processing fees for land use approvals, public facilities fees and building permits as they relate to plumbing, mechanical, electric or fire code permits, or other similar permits and entitlements which are in force and effect on a city-wide basis at the time those permits are applied for, except to the extent any such processing regulations would be inconsistent with this Agreement.

(d) Notwithstanding subdivision (b), the City may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

- (1) A failure to do so would place the residents of the Business Park or the immediate community, or both, in a condition dangerous to their health or safety, or both.
- (2) The condition or denial is required in order to comply with state or federal law.

5.3 Allowable Heights, Size and Bulk Within Business Park. Owner shall have the right, subject to the standards specified in this Agreement and the Master Development Plan, to alter the height, size and bulk of buildings, until such time as the maximum density of the Business Park under this Agreement has been achieved and so long as the maximum height, size and bulk for the Business Park is consistent with the Master Development Plan.

5.4 Business Park Use. Owner shall have the right to use any portion of the Business Park as provided for in Chapter 3 of the Master Development Plan. TABLE 3-1 is intended to describe a wide range of land use options that comply with the criteria established by this Agreement.

5.5 Parking Ratio. Owner shall have the right to satisfy the parking ratio requirements for any portion of the Business Park by granting parking easements for the benefit of such portion of the Business Park on any other adjacent portion of the Business Park for the amount of parking necessary to satisfy such parking ratio requirements as prescribed by the Master Development Plan subject to the review and approval of the Community Development Director.

5.6 Easements: Improvements, Abandonments. City shall cooperate with Owner in connection with the abandonment of existing utility or other easements and facilities and the relocation thereof, or the creation of any new easements within the Business Park necessary or appropriate for development of the Business Park. If any such easement is owned by City or any agency of City, City or such agency shall, at the request of Owner and at Owner's cost, take such action and execute such documents as may be necessary to abandon existing easements and relocate them, as necessary or appropriate in connection with the development of the Business Park.

5.7 Subdivision of Business Park. Owner shall have the right, from time to time or at any time, to initiate resubdivisions the Business Park, as may be necessary in order to develop a particular phase, or to sell, lease or finance a portion of the Business Park in connection with the development of any phase or portion of the Business Park. Owner shall



initiate such subdivision through an application under the Existing City Laws. Each such application shall be processed in accordance with the Laws, the Master Development Plan and Existing City Laws. Each tentative subdivision map approved under the Master Development Plan shall have a term of not less than the remaining term of this Agreement as of the date such map is approved by the City.

6. Indemnity: Insurance.

6.1 Indemnity. Owner shall indemnify, defend and hold City, and its elective and appointive boards, commissions, officers, agents, and employees, harmless from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of the Business Park, any Approval with respect thereto, or claims for injury or death to persons, or damage to the Business Park, as a result of the operations of Owner or its employees, agents, contractors or representatives with respect to the development, operation and maintenance of the Business Park.

6.2 Insurance. Owner shall maintain insurance in order to assure Owner's ability to provide the indemnity described in Section 6.1. The amount and terms of such insurance shall be as follows:

(a) Commercial general liability and property damage insurance covering the risks of bodily injury and/or death, property damage, and personal injury liability, with total limits of not less than One Million Dollars (\$1,000,000.00)

(b) Worker's Compensation Insurance as required by law, together with a contingent employer's liability endorsement in favor of City, covering employees of Owner, employees of any contractor, subcontractor, agent of representative of Owner.

If available, each policy of insurance carried by Owner as required by this Indemnity Section, shall provide that it may not be canceled without at least thirty (30) day prior written notice to City. Upon request of City, Owner shall furnish to City a copy of each policy of insurance, or a certificate thereof, stating that such insurance is in full force and effect and, in the case of the public liability insurance, showing City named as an additional insured. Any insurance required to be maintained by Owner may be maintained under a so-called "blanket policy" insuring other parties and other locations, so long as the amount of insurance required hereunder is not thereby diminished.

7. Periodic Review of Compliance.

7.1 Annual Review. City, through the Planning Commission, shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement and the Master Development Plan pursuant to Government Code Section 65865.1 and Code Section 16-192.

7.2 Owner's Submission. Within thirty (30) days of Owner's receipt of the written request of the Planning Commission made not more than once each year at least



sixty (60) days prior to the anniversary date of this Agreement, Owner shall submit to the Planning Commission a letter setting forth Owner's good faith compliance with the terms and conditions of this Agreement. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Owner to enable the Planning Commission to undertake the review of Owner's good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code Section 65865.1 and Code Section 16-192

7.3 Finding of Compliance. The Planning Commission shall review the Owner's submission to ascertain whether it contains sufficient information to determine whether Owner has complied in good faith with the terms of this Agreement. Upon receipt of the submission, the Planning Commission shall conduct a review of the good faith compliance by Owner with the terms of this Agreement. If the Planning Commission finds good faith compliance by Owner with the terms of this Agreement, the Director shall, upon request by Owner, provide to Owner written confirmation of such finding.

7.4 Finding of Noncompliance. If the Planning Commission, on the basis of substantial evidence, finds that Owner has not complied in good faith with the terms of this Agreement, the Planning Commission shall specify in writing to Owner the respects in which Owner has failed to comply and the Planning Commission may recommend that the City Council hold a public hearing and terminate or modify the Agreement. The City Council may (a) establish a reasonable time for Owner to comply with this Agreement, which time shall not be less than thirty (30) days and shall be reasonably related to the time necessary for Owner to adequately bring its performance into good faith compliance with the terms of this Agreement, or (b) may take action to terminate or modify this Agreement. No action to terminate or modify the Agreement shall be taken without a public hearing before the City Council using the same process as was used for its adoption.

8. Permitted Delays; Supersedure by Subsequent Laws.

8.1 Permitted Delays. In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other party, or any other cause beyond the reasonable control of a party. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained.

8.2 Supersedure by Subsequent Laws. Except as provided in this Agreement with respect to City Laws, if any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such



modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to City. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

9. Events of Default, Remedies, Termination; Attorneys' Fees.

9.1 Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of this Agreement regarding periodic reviews, or permitted delays, any failure by either party to perform any material term or provision of this Agreement shall constitute an Event of Default, (i) if such defaulting party does not cure such failure within thirty (30) days following notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (ii) if such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

9.2 Remedies. Upon the occurrence of an Event of Default, the non-defaulting party may: (i) bring any proceeding in the nature of declaratory relief, specific performance, injunctive relief or mandamus, and/or (ii) the non-defaulting party shall have the right to terminate this Agreement pursuant to Government Code Section 65868. The remedies provided herein are exclusive and in no event shall either party be liable to the other for monetary damages for an event of default or any other breach of this Agreement.

9.3 Waiver, Remedies Cumulative. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of an Event of Default shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time, other than any Event of Default and/or period of time specified in such express waiver. The exclusive remedies provided in this Agreement shall be cumulative and not alternative, and invocation of any permitted remedy shall not constitute a waiver or election with respect to any other permitted remedy.

9.4 Effect of Termination. If this Agreement is terminated on account of an Event of Default, such termination shall not affect any right or duty emanating from any Exactions already satisfied, City entitlements or Approvals with respect to the Business Park that have been approved concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the parties hereunder shall otherwise cease as of the date of such termination.



9.5 Limitations on Actions. City and Owner hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provision of this Agreement, or any action or decision taken or made hereunder, the parties shall cooperate in defending such action or proceeding. Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse City for all reasonable court costs and attorneys' fees expended by City in any such action or other proceeding and for any attorneys' fees and costs awarded to a party to be paid by City.

9.6 Effect of Court Action. If any court action or proceeding is brought by any third party to challenge any Approval, this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of the Business Park, or any portion thereof, and without regard to whether or not Owner is a party to or real party in interest in such action or proceeding, then Owner shall have the right, but not the obligation, (i) to defend, at Owner's expense, such action or proceeding on behalf of City and City shall fully cooperate with Owner in such defense; or (ii) to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination. Any such action or proceeding shall constitute a permitted delay under the provisions of this Agreement.

9.7 Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Director shall have the right to execute on behalf of City any certificate requested by Owner hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees acting in good faith.

10. Mortgagee Protection: Certain Rights of Cure.

10.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Business Park, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Business Park, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2 Mortgagee Not Obligated. Notwithstanding the provisions of this Agreement, no Mortgagee shall have any obligation or duty under this Agreement to



construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Business Park to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, the Master Development Plan or otherwise under City Laws.

10.3 Notice of Default to Mortgagee, Right of Mortgagee to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of an Event of Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences cure during such ninety (90) day periods, and thereafter diligently pursues completion of such cure to the extent possible.

11. Assignment. Owner's rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of the Business Park at any time during the term of this Agreement upon the following terms and conditions:

11.1 Release Upon Transfer. Upon the sale, transfer or assignment of Owner's rights and interests under this Section of this Agreement, Owner shall be released from its obligations pursuant to this Agreement with respect to the Business Park or portion thereof so transferred provided such obligations are expressly assumed by the Transferee prior to the transfer and evidence is provided to the Director showing Transferee can perform Owner's obligations.

11.2 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Business Park, and the burdens and benefits shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), assignees, devisees, administrators, representatives, purchasers and lessees.

12. Amendment and Termination.



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12.1 Amendment or Cancellation. Except as provided for herein with respect to City's annual review, this Agreement may be canceled, modified or amended only by mutual consent of the parties in writing, and then only in the manner provided for in government Code Section 65868 and Code Section 16-193. Pursuant to Code Section 16-193.C., any amendment to this Agreement which does not relate to the Term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, shall not require a noticed public hearing before the parties may make such amendment. Any fees paid or land dedicated pursuant to this Agreement prior to the date of cancellation shall be retained by City.

12.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation with any costs of recordation to be paid by Owner. Failure to record shall not affect the validity of any amendment, termination or cancellation.

13. Notices.

13.1 Procedure. Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by facsimile transmission or registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the party's mailing address. The respective mailing addresses and facsimile numbers of the parties are, until changed as hereinafter provided, the following:

CITY:

CITY OF STOCKTON
425 North El Dorado
Stockton, California 95202
Attention: City Manager
Facsimile No.: (209) 937-7149

with a copy to:

City Attorney, City of Stockton
425 North El Dorado
Stockton, California 95202
Facsimile No.: (209) 937-8898

OWNER:

A. G. SPANOS CONSTRUCTION, INC.
1341 West Robinhood Drive Suite B-5
Stockton, California 95207
Attention: Jerry Murphy
Facsimile No.: (209) 955-2562

with a copy to:

John Briscoe
Washburn, Briscoe & McCarthy
55 Francisco Street, Suite 600
San Francisco, California 94133
Facsimile No.: (415) 421-5044



Either party may change its mailing address and/or facsimile number at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed upon the expiration of five (5) days after the date of mailing, or, if sent by facsimile transmission, on the date of receipt as shown on written transmission verification.

14. Miscellaneous.

14.1 Negation of Partnership. The parties specifically acknowledge that the Business Park is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the business of Owner, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

14.2 Consent(s). Unless otherwise herein provided, whenever consent or satisfaction (collectively referred to in this Section 14.2 as a "consent") is required of a party pursuant to this Agreement, such consent shall not be unreasonably withheld. Consent shall be deemed given if the party from whom the consent is sought neither approves or disapproves of the request within thirty (30) days, or such other applicable time period specified in this Agreement, after receipt of the written request for consent. If a party shall disapprove, the reasons therefore shall be stated in reasonable detail in writing. Consent by a party to or of any act or request by the other party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests.

14.3 Project Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by City with respect to the Business Park, constitute independent actions and approvals by City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

14.4 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Business Park, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Owner shall have the right to prevent or prohibit the use of the Business Park, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private, integrated development project as contemplated by



this Agreement except for those areas designated in the Master Development Plan or implementing project approvals as public easements.

14.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.6 Exhibits. The Exhibits listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety.

14.7 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

14.8 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities. This Agreement has been reviewed and revised by legal counsel for both Owner and City, and any presumption or rule that ambiguities shall be construed against the drafting party shall not apply to the interpretation or enforcement of this Agreement.

14.9 Further Assurances; Covenant to Sign Documents. Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

14.10 Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

14.11 Time. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.12 Dispute Costs and Fees. In any legal action or proceeding brought to enforce or interpret any provision of this Agreement, or otherwise arising from or related to



this Agreement, the prevailing party shall be entitled to an award of its attorneys', investigators', expert witness' and consultants' fees and costs incurred in relation to that action or proceeding, in addition to any other relief awarded.

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

	CITY: CITY OF STOCKTON, a municipal corporation of the State of California
Attest:	

By <u>[Signature]</u> City Clerk	By <u>[Signature]</u> City Manager
-------------------------------------	---------------------------------------

Approved as to Form:	
<u>[Signature]</u> Deputy City Attorney	
	OWNER: By <u>William E. Barbour</u> Its <u>Vice President</u> By _____ Its _____



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EXHIBIT "A"

Legal Description of Business Park



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EXHIBIT "A"

Legal Description of Business Park

All that certain real property situate, lying and being in Section 1, Township 2 North, Range 5 East and Section 6, Township 2 North, Range 6 East, Mount Diablo Base and Meridian, being a portion of the 321.034 and 330.704 Acre parcels of land shown on the Map of Survey filed in Book 28 of Surveys at page 134A, San Joaquin County Records, and being more particularly described as follows:

Commencing at the southeast corner of said 321.034 acre parcel of land; thence on the following three (3) courses:

- 1) North 87°46'42" West 561.39 feet to the Southeast corner of said Section 1;
- 2) North 87°46'42" West 1983.90 feet;
- 3) North 00°16'58" East 943.34 feet to the TRUE POINT OF BEGINNING; thence from said POINT OF BEGINNING the following thirty five (35) courses:

- 1) North 00°16'58" East 847.47 feet;
- 2) North 71°31'52" West 85.10 feet;
- 3) South 23°28'08" West 175.00 feet;
- 4) South 29°28'08" West 150.00 feet;
- 5) South 38°28'08" West 150.00 feet;
- 6) South 50°28'08" West 150.00 feet;
- 7) South 68°28'08" West 131.17 feet;
- 8) North 24°55'31" East 50.25 feet;
- 9) North 44°47'10" West 28.16 feet;
- 10) Northwesterly along the arc of a non-tangent curve concave to the southwest, having a radius of 70.00 feet, whose radius point bears South 77°15'23" West, through a central angle of 40°47'24", an arc distance of 49.83 feet;
- 11) on a tangent line, North 53°32'00" West 38.16 feet to the beginning of a tangent curve, concave to the northeast, having a radius of 90.00 feet and a central angle of 08°44'51";
- 12) Northwesterly, along the arc of said curve, 13.74 feet;
- 13) North 44°47'10" West 67.07 feet;
- 14) North 02°26'55" West 26.94 feet to a point on a non-tangent curve concave to the northwest, having a radius of 1036.00 feet, whose radius point bears North 50°06'39" West;
- 15) Northeasterly, along the arc of said curve, through a central angle of 17°06'00" an arc distance of 309.20 feet;
- 16) on a non-tangent line, North 23°13'36" East 104.03 feet to



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the beginning of a non-tangent curve concave to the northwest, having a radius of 1042.00 feet, whose radius point bears North 72°56'26" West;

- 17) Northeasterly, along the arc of said curve, through a central angle of 16°46'09", an arc distance of 304.97 feet;
- 18) On a tangent line, North 00°17'25" East 2094.02 feet to the beginning of a curve concave to the southeast, having a radius of 958.00 feet and a central angle of 10°42'42";
- 19) Northeasterly, along the arc of said curve, 179.10 feet;
- 20) On a non-tangent line, North 59°51'59" East 30.13 feet;
- 21) North 18°43'50" East 72.00 feet to a point on a non-tangent curve, concave to the southwest, having a radius of 786.00 feet, whose radius point bears South 18°43'50" West;
- 22) Northwesterly, along the arc of said curve, through a central angle of 01°45'26", an arc distance of 24.11 feet;
- 23) North 71°06'14" East 60.15 feet;
- 24) North 00°21'15" East 648.56 feet;
- 25) North 89°23'43" East 1482.47 feet;
- 26) South 18°36'32" East 859.38 feet;
- 27) South 16°22'33" East 292.09 feet;
- 28) South 14°30'33" East 656.30 feet;
- 29) South 13°21'48" East 2540.46 feet;
- 30) South 12°38'50" East 400.05 feet;
- 31) South 13°21'48" East 209.44 feet;
- 32) North 89°51'03" West 570.59 feet to a point on a non-tangent curve concave to the southwest, whose radius point bears South 87°50'34" West, having a radius of 1173.00 feet;
- 33) Northwesterly, along the arc of said curve, through a central angle of 30°23'59", an arc distance of 622.36 feet;
- 34) thence, on a non-tangent line, North 84°01'53" West 995.00 feet;
- 35) South 79°28'07" West 693.47 feet to the point of beginning.

Containing 211.71 Acres, more or less.

The basis of bearings for this description is the California Coordinate System-83, Zone 3, using the bearing of North 11°10'39" West between City of Stockton Monuments "4N-17" and "HARTE", as calculated from the data shown on City of Stockton Traverse Control Monument Survey, filed for record in Book 33 of Surveys, at Page 20, San Joaquin County Records. All distances are ground level distances.

A-2



2002-041898
03/11/2002 02:49P
25 of 28

EXHIBIT "B"

City Council Findings and Determinations

A. The provisions of the Development Agreement are consistent with the General and specific plans for this area; and

B. The proposed development complies with the requirements of the California Environmental Quality Act (CEQA) and the City of Stockton Guidelines for the Implementation of CEQA.



2002-041898
03/11/2002 02:49P
26 of 28

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

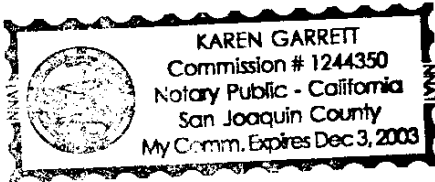
County of San Joaquin } ss.

On Jan. 29, 2002, before me, Karen Garrett, Notary Public

personally appeared William E. Berbowe

- personally known to me
- 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Karen Garrett
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

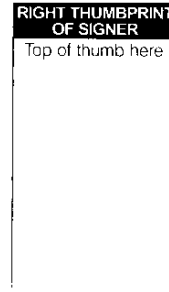
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



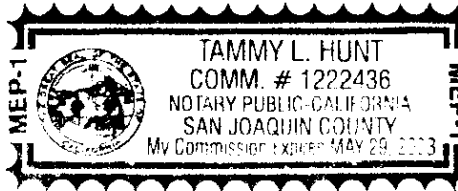
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA
County of SAN JOAQUIN

On February 5, 2002 before me, TAMMY L. HUNT, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC"

personally appeared MARK LEWIS, ESQ.
NAME(S) OF SIGNER(S)

personally known to me - OR - 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.



WITNESS my hand and official seal.

Tammy L. Hunt
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
CITY MANAGER
TITLE(S)
- PARTNER(S) LIMITED
 GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
CITY OF STOCKTON

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

TITLE OR TYPE OF DOCUMENT SPANOS PARK WEST DENSITY
TRANSFER DEVELOPMENT AGREEMENT

NUMBER OF PAGES 26 DATE OF DOCUMENT January 29, 2002

SIGNER(S) OTHER THAN NAMED ABOVE As attached



2002-041898
03/11/2002 02:49P
28 of 28

ESTOPPEL CERTIFICATE

Date: _____, 2020

To: OREOF19 BR, LLC ("Purchaser")
200 South Biscayne Blvd., 7th Floor
Miami, FL 33131
Attention: Kevin Sanz

Re: Spanos Park West Density Transfer Development Agreement dated as of January 29, 2002 (the "Agreement") by City of Stockton ("Declarant"), recorded with the recorder of deeds of San Joaquin County, California on March 11, 2002 as document number 2002-041899, a copy of which is attached hereto as Exhibit A covering certain real property more particularly described in the Agreement. BlueRoad Net Lease, LLC, a Delaware limited liability company ("Seller"), is the current and sole fee title owner of 10250 Trinity Parkway, Stockton, CA (the "Property") is under contract to sell the Property to Purchaser, and Seller requests that Declarant execute this Estoppel Certificate as a one-time accommodation to Purchaser and Seller in connection with such proposed sale to Purchaser.

Gentlemen:

The undersigned Declarant understands and acknowledges that Purchaser has obtained or is in the process of obtaining a mortgage loan ("Loan") from CIBC BANK USA (as administrative agent for itself and the lenders, together with its successors and assigns, "Lender") which Loan is or will be evidenced by a note secured by a mortgage ("Mortgage") upon the Property and that Lender, in making the Loan, is relying upon Declarant's certification herein.

Declarant hereby certifies to Purchaser and Lender that:

1. (a) The Agreement is in full force and effect, has not been modified, supplemented or amended, and has not been assigned by Declarant; (b) to the best of Declarant's current actual knowledge as of the date hereof, there are no uncured defaults on the part of Seller or Declarant, and (c) to the best of Declarant's current actual knowledge as of the date hereof, there are no current sums owing to Declarant from Seller under the Agreement.

2. Declarant agrees that, in the event of a foreclosure of the Mortgage, or other enforcement of the provisions of the Loan Documents, or the exercise by Lender of its rights pursuant to the Mortgage, or in the event Lender comes into possession or acquires title to the Property as a result of a foreclosure or threat thereof, or as a result of any other means, then such party may enforce the Agreement with the same force and effect as if enforced by Purchaser. Lender may perform the obligations of Purchaser under the Agreement, but shall have no obligation to do the same (unless and until the interest of Purchaser in the Property is transferred to Lender, in which event such party shall be obligated to perform Purchaser's obligations under the Agreement).

3. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Agreement.

4. The individual executing this Estoppel Certificate has the power and authority to execute this Estoppel Certificate on behalf of Declarant.

5. Declarant acknowledges and agrees that Purchaser, Lender, administrative agent for the Lender(s), co-lenders or participant lenders of the Loan and their respective successors and assigns shall be entitled to rely on Declarant's certifications set forth herein.

6. Electronic signatures to, and the electronic transmission of, this Estoppel Certificate (including, without limitation, transmission via electronic mail in scanned "PDF" format) shall be legally binding and shall have the same force and effect as an original ink-on-paper signature manually penned by such signatory.

[Remainder of this Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be duly executed by its authorized representative as of the day and year first above written.

DECLARANT:

CITY OF STOCKTON, a municipal corporation

By: _____

Name: _____

Its: _____

EXHIBIT A
AGREEMENT

Connie Cochran

From: Karen Garrett <kgarrett@agspanos.com>
Sent: Thursday, September 21, 2017 9:08 AM
To: Leslie Burnside
Cc: Mark Peterson;ken dharni;David Stagnaro;tom.bundarin@tracservices.com;RICHARD.REININGER@bp.com;Jenny Liaw;Pete Tobin
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Revised Sign Exhibits for Your Review and Approval

I am waiting on one individual who has been out of town. I hope I can get it tomorrow.

Karen E. Garrett
Development Manager
Northern California
The Spanos Corporation
(209) 478-7954 (main)
(209) 955-2574 (direct)
(209) 993-2745 (cell)

-----Original Message-----

From: Leslie Burnside [mailto:lburnside@barghausen.com]
Sent: Thursday, September 21, 2017 9:02 AM
To: Karen Garrett <kgarrett@agspanos.com>
Cc: Mark Peterson <mpeterson@barghausen.com>; ken dharni <dharniken@yahoo.com>; David Stagnaro <David.Stagnaro@stocktonca.gov>; tom.bundarin@tracservices.com; RICHARD.REININGER@bp.com; Jenny Liaw <Jenny.Liaw@stocktonca.gov>; Pete Tobin <ptobin@barghausen.com>
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Revised Sign Exhibits for Your Review and Approval

Hi Karen:

How is it going with the signatures?

-----Original Message-----

From: Karen Garrett [mailto:kgarrett@agspanos.com]
Sent: Monday, September 18, 2017 12:57 PM
To: Leslie Burnside <lburnside@barghausen.com>
Cc: Mark Peterson <mpeterson@barghausen.com>; ken dharni <dharniken@yahoo.com>; David Stagnaro <David.Stagnaro@stocktonca.gov>; tom.bundarin@tracservices.com; RICHARD.REININGER@bp.com; Jenny Liaw <Jenny.Liaw@stocktonca.gov>; Pete Tobin <ptobin@barghausen.com>
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Revised Sign Exhibits for Your Review and Approval

Leslie, this has been approved by the Board. It will just take a day or so to get all the signatures. Thank you.

Karen E. Garrett
Development Manager
Northern California
The Spanos Corporation

(209) 478-7954 (main)
(209) 955-2574 (direct)
(209) 993-2745 (cell)

-----Original Message-----

From: Leslie Burnside [mailto:lburnside@barghausen.com]
Sent: Tuesday, September 12, 2017 9:20 AM
To: Karen Garrett <kgarrett@agspanos.com>
Cc: Mark Peterson <mpeterson@barghausen.com>; ken dharni <dharniken@yahoo.com>; David Stagnaro <David.Stagnaro@stocktonca.gov>; tom.bundarin@tracservices.com; RICHARD.REININGER@bp.com; Jenny Liaw <Jenny.Liaw@stocktonca.gov>; Pete Tobin <ptobin@barghausen.com>
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Revised Sign Exhibits for Your Review and Approval

Karen:

Please see attached. The version of signage plan Spanos approved previously included a monument sign that was larger than the Park West Place sign program allowed. We have modified the sign to make it comply with the sign program size allowances. The other elements are as they were presented to you for Spanos design review. Please let me know if you have any questions. Thank you.

-----Original Message-----

From: Jenny Liaw [mailto:Jenny.Liaw@stocktonca.gov]
Sent: Tuesday, September 12, 2017 8:50 AM
To: Pete Tobin <ptobin@barghausen.com>
Cc: Karen Garrett <kgarrett@agspanos.com>; Mark Peterson <mpeterson@barghausen.com>; Leslie Burnside <lburnside@barghausen.com>; ken dharni <dharniken@yahoo.com>; David Stagnaro <David.Stagnaro@stocktonca.gov>; tom.bundarin@tracservices.com; RICHARD.REININGER@bp.com
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Revised Sign Exhibits for Your Review and Approval

Tom:

Thank you for your email regarding the proposed signs for ARCO gasoline station at the above location. I have reviewed your proposed signs for the subject use. Monument, channel letter and pop signs comply with the sign guidelines of the Park West Place sign program. Please forward the sign package to Karen Garrett for their ARC approval before the submittal of the building permit.

-----Original Message-----

From: Pete Tobin [mailto:ptobin@barghausen.com]
Sent: Tuesday, September 12, 2017 5:40 AM
To: Jenny Liaw <Jenny.Liaw@stocktonca.gov>
Cc: Karen Garrett <kgarrett@agspanos.com>; Richard Larrouy <Richard.Larrouy@stocktonca.gov>; Mark Peterson <mpeterson@barghausen.com>; sean@tcontractors.com; ken dharni <dharniken@yahoo.com>; Tom Bundarin - TRAC <tom.bundarin@tracservices.com>; Reininger, Richard (RICHARD.REININGER@bp.com) <RICHARD.REININGER@bp.com>; Leslie Burnside <lburnside@barghausen.com>
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Revised Sign Exhibits for Your Review and Approval
Importance: High

Jenny

We are under construction and need your conceptual review of this signage plan before the sign installer files the formal signage permit with the building department.
This is becoming urgent

Thanks for your help

Pete Tobin
Senior Project Manager
Barghausen Consulting Engineers, Inc.
915 Highland Pointe Drive Suite 250
Roseville CA 95678
Office | 425.251.6222 Fax | 425.251.8782

-----Original Message-----

From: Leslie Burnside
Sent: Tuesday, September 05, 2017 11:31 AM
To: Jenny Liaw
Cc: Karen Garrett; Richard Larrouy; Pete Tobin; Mark Peterson
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Revised Sign Exhibits for Your Review and Approval

Jenny:

Attached please find the revised signage exhibits for your review. Thank you.

-----Original Message-----

From: Jenny Liaw [mailto:Jenny.Liaw@stocktonca.gov]
Sent: Thursday, March 02, 2017 9:00 AM
To: Leslie Burnside <lburnside@barghausen.com>
Cc: Karen Garrett <kgarrett@agspanos.com>; Richard Larrouy <Richard.Larrouy@stocktonca.gov>
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Sign Program

Leslie:

Planning will release the building permit for the ARCO gas station, but, not include the monument signs on the subject site. We need work on the price sign to ensure compliance with the A. G. Spanos Business Park sign program. Thank you

-----Original Message-----

From: Jenny Liaw
Sent: Monday, February 27, 2017 1:03 PM
To: 'Leslie Burnside' <lburnside@barghausen.com>
Cc: 'Karen Garrett' <kgarrett@agspanos.com>; Richard Larrouy <Richard.Larrouy@stocktonca.gov>
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Sign Program

Leslie:

Thank for your information regarding proposed wall and monument signs and an approved letter from the Spanos Design Review Committee (DRC) at a New ARCO site. Although the monument sign was approved by the Spanos DRC, the City has an obligation to ensure that your proposed sign is consistent with the approved A. G. Spanos Business Park Master Development Plan. Based upon our review of the noted sign, the following comments will be provided to you:

- 1 The monument sign is not designed to incorporate the architecture design theme of the shopping center such as square tube framework and light fixture;
- 2 The height of the sign is not consistent with the high requirement of the gas sign; and 3. A monument sign shall be considered installing perpendicular or parallel to the public street and meet a traffic sight distance.

You may review the MDP sign program and provide a revised one for our review (see attachment). I attached an existing monument sign at Chevron gasoline station and it is consistent with the MDP sign program. If you have any question, please contact me. Thank you

-----Original Message-----

From: Leslie Burnside [mailto:lburnside@barghausen.com]
Sent: Wednesday, February 22, 2017 7:43 AM
To: Jenny Liaw <Jenny.Liaw@stocktonca.gov>
Cc: Karen E. Garrett (kgarrett@agspanos.com) <kgarrett@agspanos.com>; Pete Tobin <ptobin@barghausen.com>
Subject: FW: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Sign Program

Jenny:

In response to your message, I am forwarding a copy of the message I sent you back in September confirming that the Spanos DRC reviewed the sign exhibit and approved the ARCO monument sign at the height shown in the attached exhibit. Please let me know when the planning approval of the signage for the ARCO will be finalized. Thank you.

-----Original Message-----

From: Jenny Liaw [mailto:Jenny.Liaw@stocktonca.gov]
Sent: Tuesday, February 21, 2017 7:22 PM
To: Leslie Burnside
Cc: Karen Garrett
Subject: RE: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Sign Program

Leslie:

I am reviewed the signs and the following comments.

1. The property is located in the Spanos Business Park and under an approved Master Development Plan. Attached is a graphic for a price sign and the height is 6 ft'. ARCO signs could exceed the noted requirement. Further, have the signs been approved by Spanos Design Review Committee?

-----Original Message-----

From: Leslie Burnside
Sent: Thursday, September 08, 2016 4:41 PM
To: Jenny Liaw (Jenny.Liaw@stocktonca.gov)
Cc: Pete Tobin
Subject: FW: BCE #16700 - ARCO Stockton 10715 Trinity Parkway - Sign Program

Jenny:

The attached signage concept was included with our December submittal to Spanos and was subsequently approved as part of their January approval letter. Is there any other Planning approval required before the sign vendor submits for building permits? Thank you for your assistance.

-----Original Message-----

From: Karen Garrett [mailto:kgarrett@agspanos.com]
Sent: Thursday, September 08, 2016 8:35 AM
To: Leslie Burnside

Subject: RE: BCE #16700 - ARCO/Steak 'n Shake Trinity Parkway - Conceptual Sign Approval

Leslie, yes the sign was included in the January approval letter for the ARCO only. The City always has an option to comment on your sign even though the DRC has approved, I have not seen that happen yet, but it could.....

Karen E. Garrett
Development Manager
Northern California
The Spanos Corporation
10100 Trinity Parkway, Suite 500
Stockton, CA 95219
direct: 209-955-2574
cell: 209-993-2745

-----Original Message-----

From: Leslie Burnside [mailto:lburnside@barghausen.com]
Sent: Thursday, September 08, 2016 8:26 AM
To: Karen Garrett <kgarrett@agspanos.com>
Subject: BCE #16700 - ARCO/Steak 'n Shake Trinity Parkway - Conceptual Sign Approval

Karen:

I am working on addressing comments for the Steak 'n Shake, and a question came up about signage for the ARCO. We submitted a sign exhibit back in December in response to your reviewer's request. We received no further signage comments from Spanos to my knowledge, so we have been assuming that this exhibit was approved as part of the approval letter dated January 21. Is the Spanos approval for conceptual signage the final design review decision, or does the city have the option to request changes once we submit for the actual sign permit?

Thank you.

Leslie Burnside
Senior Project Manager
Barghausen Consulting Engineers, Inc.
Cell | 858.610.0153
Direct | 425.656.7468
D Please consider the environment before printing this email.

-----Original Message-----

From: Mark Peterson
Sent: Thursday, September 08, 2016 3:22 PM
To: Scanning
Cc: Pete Tobin; Leslie Burnside
Subject: FW: BCE #16700 - ARCO Stockton - Sign Program

Please file the approved bp sign plans w/ approval email Thanks Mark

-----Original Message-----

From: Reininger, Richard [mailto:RICHARD.REININGER@bp.com]
Sent: Thursday, September 08, 2016 2:48 PM
To: Pete Tobin

Cc: Mark Peterson; Leslie Burnside
Subject: RE: BCE #16700 - ARCO Stockton - Sign Program

Approved.

Rick R

-----Original Message-----

From: Pete Tobin [mailto:ptobin@barghausen.com]
Sent: Thursday, September 08, 2016 1:25 PM
To: Reininger, Richard
Cc: Mark Peterson; Leslie Burnside
Subject: FW: BCE #16700 - ARCO Stockton - Sign Program

Rick

Please approve the attached overall signage plan for our records.
Thanks

Pete Tobin
Senior Project Manager
Barghausen Consulting Engineers, Inc.
915 Highland Pointe Drive Suite 250
Roseville CA 95678
Office | 425.251.6222 - Cell | 925.768.0306 Fax | 425.251.8782

Connie Cochran

From: Jenny Liaw
Sent: Monday, July 24, 2017 3:50 PM
To: Karen Garrett
Cc: David Stagnaro
Subject: RE: Trinity Apartments
Attachments: Design.pdf; Code.pdf

Karen:

Per our telephone conversation last week, ARC provided the following comments for your project:

1. Roof lines should be varied within the overall horizontal plane. Adding the architectural treatments may exceed the building height (49.5 feet). Attached is a copy of the Development Code for your use.
2. Each apartment entry should be emphasized and differentiated through architectural detailing and elements such as stone veneer.
3. Recommend arch moldings around the windows modified (see attachment).
4. Stucco color tones are too close. Please use different colors to differentiate the overall building elevations.
5. The design of the recreation building shall be compatible with apartment buildings served. Using some of elements from the apartment buildings including roof material to the recreation center.
6. The carport design on the subject site shall be provided for our review. please incorporate with architectural elements from the apartments.
7. The design of trash enclosures shall be consistent with the architectural character of the apartment buildings served.

Site Plan

- 1 Provide the height of the masonry wall along the north property line of the site.
- 2 Provide the information regarding a percentage of common Open Space, private open space and landscaping requirements (see attachment), because the Master Development Plan (MDP1-00) for A. G. Spanos Business Park does not have the multi-family development standards.
- 3 A landscaping maintenance plan and management plan/agreement shall be provided prior to the issuance of building permit.
- 4 Sheet C-1- change "secondary access" to "emergency access." Does R/W be the property line?
- 5 Proposed signs will be under separated permit and shall comply with MDP requirements. Two monument signs will not allow to face the same street.

Fire Department has not provided their comments. I will send to you once I receive it. If you have any questions regarding SR and DR, you can contact me. Thank you

From: Karen Garrett [mailto:kgarrett@agspanos.com]
Sent: Thursday, July 13, 2017 4:11 PM
To: Jenny Liaw <Jenny.Liaw@stocktonca.gov>
Subject: FW: Trinity Apartments

Jenny, had not heard back from you, just checking in on the submittal. Thank you.

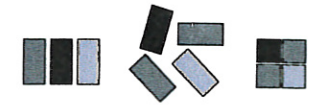
Karen E. Garrett
Development Manager
Northern California
The Spanos Corporation
(209) 478-7954 (main)
(209) 955-2574 (direct)
(209) 993-2745 (cell)

From: Karen Garrett
Sent: Wednesday, July 12, 2017 11:46 AM
To: 'Jenny Liaw' <Jenny.Liaw@stocktonca.gov>
Subject: Trinity Apartments

Jenny, I dropped off the material board, just wanted to make sure you have everything now to do site plan/design review? Thank you.

Karen E. Garrett
Development Manager
Northern California
The Spanos Corporation
(209) 478-7954 (main)
(209) 955-2574 (direct)
(209) 993-2745 (cell)

COMMENTS



KEPHART
community ■ planning ■ architecture

2555 WALNUT STREET
DENVER, COLORADO 80205
www.kephart.com



AN REVIEW

16.36.090 *Height measurement and height limit exceptions.*

All structures shall meet the following standards relating to *height*, except for fences and walls, which shall comply with Chapter 16.48 (Fences, Hedges, and Walls).

A. **Maximum Height.** The *height* of structures shall not exceed the standard established by the applicable zoning district in Table 2-3 (Zoning District Development Standards). Maximum *height* shall be measured as the vertical distance from the finish grade to an imaginary plane located the allowed distance above, and parallel to, the finish grade, or as provided by the Uniform *Building Code* (UBC).

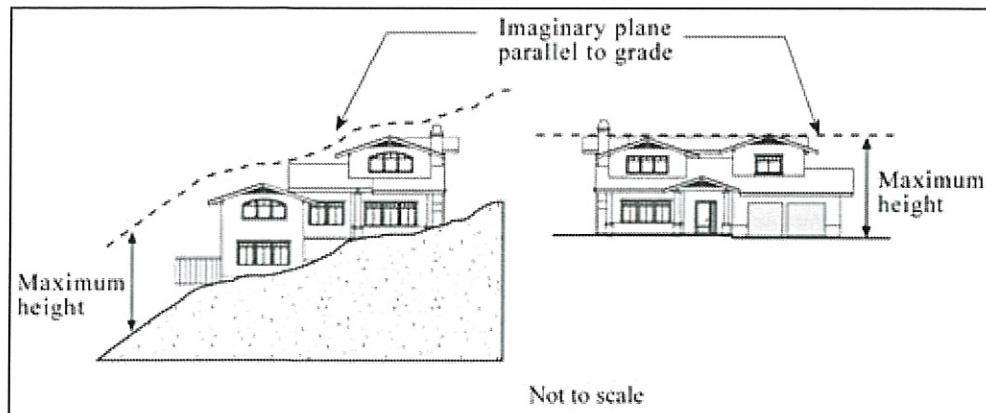


FIGURE 3-3 HEIGHT MEASUREMENT

B. **Exceptions to Height Limits.** The Director may approve exceptions to the *height* limits of this Development Code:

1. **Roof-Mounted Structures.** Roof-mounted structures for the housing of elevators, stairways, tanks, ventilating fans, wind power equipment, chimneys, flag poles, towers, skylights, smokestacks, wireless masts, or similar equipment required to operate and maintain the structure, shall be allowed, up to a maximum of 15 feet above the structure *height*. The structures shall be screened in compliance with Section 16.36.100(B) (Screening and buffering—Mechanical equipment, loading docks, and refuse areas). The total square footage of all structures above the heights allowed in the zoning districts shall not occupy more than 25 percent of the total roof area of the structure. In no case shall a roof-mounted structure be allowed for the purpose of providing or creating additional floor space.
2. **Communications Facilities.** Communication facilities, including antennae (television, radio, cellular, etc.), poles, towers, and necessary mechanical appurtenances, may be authorized to exceed the *height* limit established for the applicable zoning district, subject to the provisions of Chapter 16.44 (Communications Facilities).
3. **Parapet Walls.** Fire or parapet walls in nonresidential zoning districts may extend up to four (4) feet above the allowable *height* limit of the structure.

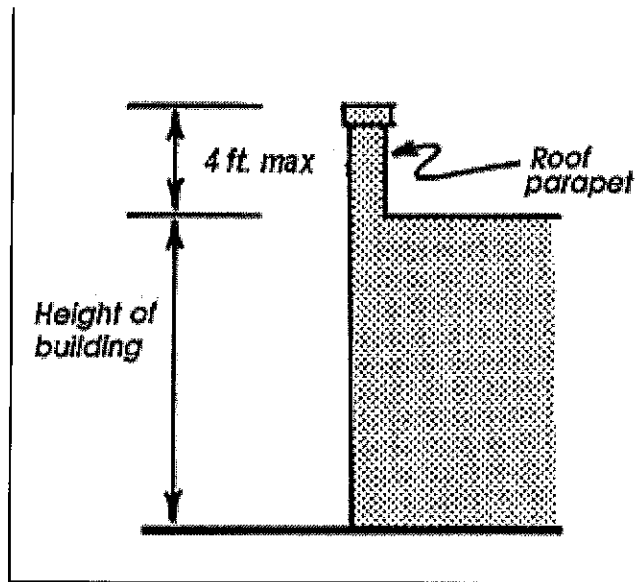


FIGURE 3-4 PARAPET WALL HEIGHT

4. **Institutional Uses.** Public and private institutional uses, including government buildings, hospitals, schools, and other similar structures, as determined by the Director, may be built to a maximum of 75 feet, including roof-mounted structures, provided the front, side, and rear setback requirements shall each be increased by one (1) additional foot for each one (1) foot that the structure exceeds the *height* limit established for the applicable zoning district.

5. **Residential Units.** Residential units may be built to a maximum of 45 feet in *height* provided both side yards are each increased by one (1) additional foot for each one (1) foot that the *height* of the structure exceeds 35 feet.

6. **Flagpoles.** Freestanding flagpoles shall be allowed:

a. **Nonresidential.** To 60 feet for nonresidential land uses.

b. **Residential.** To a maximum *height* of 15 feet in the setback area in compliance with Section 16.80.020 (Allowed use and structures); flagpoles located within the *building* envelope may be to the *height* allowed in the zoning district.

(Ord. 015-09 C.S., eff. 12-3-09; Ord. 023-07 C.S. § 19; prior code § 16-310.090)

16.36.100 Screening and buffering.

This section provides standards for the screening and buffering of adjoining land uses, equipment, and outdoor storage areas, and surface parking areas. Multifamily and nonresidential land uses shall comply with the requirements of this section.

A. Standards.

1. **Screening Between Different Land Uses.** A screen consisting of plant material and a solid masonry wall, or other material as approved by the Director, shall be installed along parcel boundaries whenever a commercial or industrial development adjoins a residential zoning district or a multifamily project adjoins single-family homes. The screen shall be a minimum of eight (8) feet in height for commercial, industrial, or multifamily development, except if the Director determines that no activities will occur adjacent to the residential zoning district that would be harmful to the neighboring properties or that the project is an infill project in compliance with Chapter 16.52 (Infill Development Standards) or a downtown project. The maximum height of walls shall comply with the provisions of Chapter 16.48 (Fences, Hedges, and Walls); heights may be increased if needed to mitigate an impact. Landscaping (trees and shrubs) shall be incorporated adjacent to the nonresidential side of the walls to help break up and soften the impact of long, flat surfaces at the discretion of the Director.

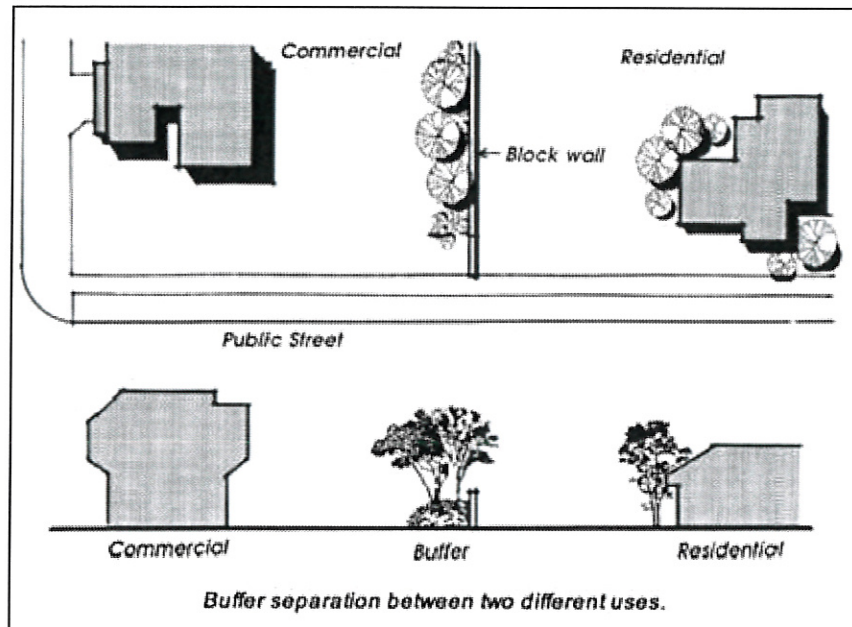


FIGURE 3-5 SCREENING AND BUFFERING

2. **Mechanical Equipment, Loading Docks, and Refuse Areas.** Roof- or ground-mounted mechanical equipment (e.g., air conditioning, heating, ventilation ducts and exhaust, etc.), except wind power equipment; loading docks; company-owned vehicles in compliance with Section 16.64.040(G) (Company-owned vehicles); refuse storage areas in compliance with the requirements of Section 16.36.130 (Solid waste/recyclable materials storage); and utility services shall be screened from public view from abutting public streets and rights-of-way and abutting area(s) zoned for residential or open space uses. The method of screening shall be architecturally compatible with other site development in terms of colors, materials, and architectural style. Landscaping shall be incorporated adjacent to walls to help soften the impact of long, flat wall surfaces, subject to the discretion of the Director.

3. Outdoor Storage Areas.

- a. The use of outdoor areas for storage purposes shall be subject to the following standards:
 - i. Outside storage areas shall be screened with a solid, sight-obscuring wall not less than six (6) feet nor more than eight (8) feet in height of a type and design approved by the Director. The wall shall include sight-obscuring gates. The wall and gate(s) shall be continuously maintained in good repair; and

- ii. Site operations in conjunction with outdoor storage, including the loading and unloading of materials and equipment, shall be conducted entirely within a walled area.
 - b. Incidental outdoor storage shall be permitted, subject to the above standards. Outdoor storage which is a primary land use shall be subject to the applicable permitting requirements identified in Table 2-2 (Allowable Land Uses and Permit Requirements) and the above standards.
- B. **Graffiti.** Fences/walls shall be designed and built so as to control graffiti in compliance with Section 16.32.060 (Graffiti). (Ord. 015-09 C.S., eff. 12-3-09; Ord. 023-07 C.S. § 20; prior code § 16-310-100)

[View the desktop version.](#)

 Chapter 16.80 STANDARDS FOR SPECIFIC LAND USES

16.80.220 Multifamily development.

This section provides development standards for the establishment of any multifamily residential projects in zoning districts where they are allowed in compliance with the provisions of Division 2 (Zoning Districts, Allowable Land Uses, and Zone-Specific Standards).

A. **Separation Between Structures.** Developments with multiple structures shall provide a 12-foot separation between those structures.

B. **Setbacks.** The rear elevation of the dwelling units may face the required side yards provided the side yards are increased to 10 feet.

C. **Usable Open Space.**

1. **Common Open Space.** For each dwelling unit, 100 square feet of usable open space shall be provided for active or passive outdoor activity. This requirement may be provided in one (1) central area or adjacent to each living unit. The area may include an open patio, swimming pool, lounge deck, lawn, game court, or similar type uses. Required front, rear, and side yards along streets, driveways, parking areas, and walkways may not be used to satisfy any part of this requirement.

2. **Private Open Space.** A minimum of 40 square feet, a minimum of four (4) feet in width, shall be provided for each unit to provide private open space. The area may include patios, balcony, decks, or similar uses. The footage provided for private open space may be applied to the common open space requirement.

D. **Landscaping.**

1. **Requirements.** At least 20 percent of the gross lot area shall be landscaped and maintained with lawn, ground cover, shrubs, and trees. All front, rear, and side yards along the street side shall be landscaped in compliance with Chapter 16.56(Landscaping Standards). The landscaping shall be maintained by the owners, developers, and/or successors-in-interest.

2. **Plan.** A comprehensive landscape and irrigation plan shall be submitted with the plot plan for approval by the Director.

E. **Fencing.** A solid eight (8) foot high fence of wood, masonry, or other suitable material that has been designed and built to control graffiti in compliance with Section 16.32.060 (Graffiti), as approved by the Director, shall be installed along the interior property lines to within 15 feet of the street side property lines. Additional fencing in compliance with Chapter 16.48(Fences, Hedges, and Walls) may be installed.

F. **Lighting.** Safety and security lighting for parking areas and buildings shall not reflect on adjacent residential properties and shall be confined to ground lighting wherever possible.

G. **Refuse Disposal.** The refuse collection areas shall be clearly designated on the plot plan. Refuse areas shall be clearly accessible for pickup and shall be effectively screened from public view in compliance with Section 16.36.130 (Solid waste/recyclable materials storage). Waste disposal pickup bins (dumpsters) shall not occupy any required parking spaces nor intrude into required access driveways.

H. **Parking.**

1. Parking areas and driveways shall be designed, surfaced, drained, and striped in compliance with City standards contained in the City's standard specifications and plans.

2. Parking stalls, driveways, and parking lots shall be in compliance with parking area standards in the City's standard specifications and plans and Chapter 16.64 (Off-Street Parking and Loading Standards).

3. Parking areas shall be designed so that an unobstructed pedestrian access way at least three (3) feet in width is provided between the public right-of-way and the dwelling units.

4. Parking areas shall be located no further than 200 feet from the dwelling units to be served as measured from the midpoint of the parking areas to the closest entrance doors of the dwelling unit to be served.

5. Each space shall be designed so it is not unduly restricted from ingress or egress due to obstructions, turning radius, or requiring more than two (2) turning maneuvers.

6. Parking spaces shall be designed to prohibit automobiles from backing into the street when exiting from the site.

7. Parking shall not be allowed in the required front yard.

I. Landscape Maintenance Plan and Management Plan/Agreement. A landscape maintenance plan and a management plan/agreement for the project shall be required, reviewed, and approved by the Director, the City Attorney, the City Landscape Architect, and the Housing Director prior to issuance of any building permit. The approved landscape maintenance plan and management plan/agreement shall be recorded by the property owner/developer in the office of the County Recorder and a copy shall be filed with the Department within 30 days of the issuance of a building permit. All recording expense shall be paid by the property owner/developer. (Ord. 015-09 C.S., eff. 12-3-09; Ord. 001-08 C.S. § 22; Ord. 023-07 C.S. § 91; Ord. 012-07 C.S. § 3; prior code § 16-365.180)

[View the desktop version.](#)

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Connie Cochran

From: Jordan Jay <jjay@zoning-info.com>
Sent: Wednesday, June 16, 2021 6:17 AM
To: CDD - Planning
Subject: RE: The Pavilions - 5222 Cosumnes Drive (APN #066-030-050-000)

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Never mind! I was able to track down the correct MDP online. You can disregard the previous email below.



Jordan Jay
Analysis Manager
Zoning-Info, Inc.

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w. www.zoning-info.com
a. 3555 NW 58th Street, Suite 400, Oklahoma City, OK 73112



From: Jordan Jay [mailto:jjay@zoning-info.com]
Sent: Tuesday, June 15, 2021 4:31 PM
To: 'planning@stocktonca.gov' <planning@stocktonca.gov>
Subject: FW: The Pavilions - 5222 Cosumnes Drive (APN #066-030-050-000)

Good afternoon,

I got a kickback that Robert Miller is no longer with the city. Could someone please get back to me on the email below and provide a copy of the applicable Master Development Plan for Spanos Park West?

Thank you!



Jordan Jay
Analysis Manager
Zoning-Info, Inc.

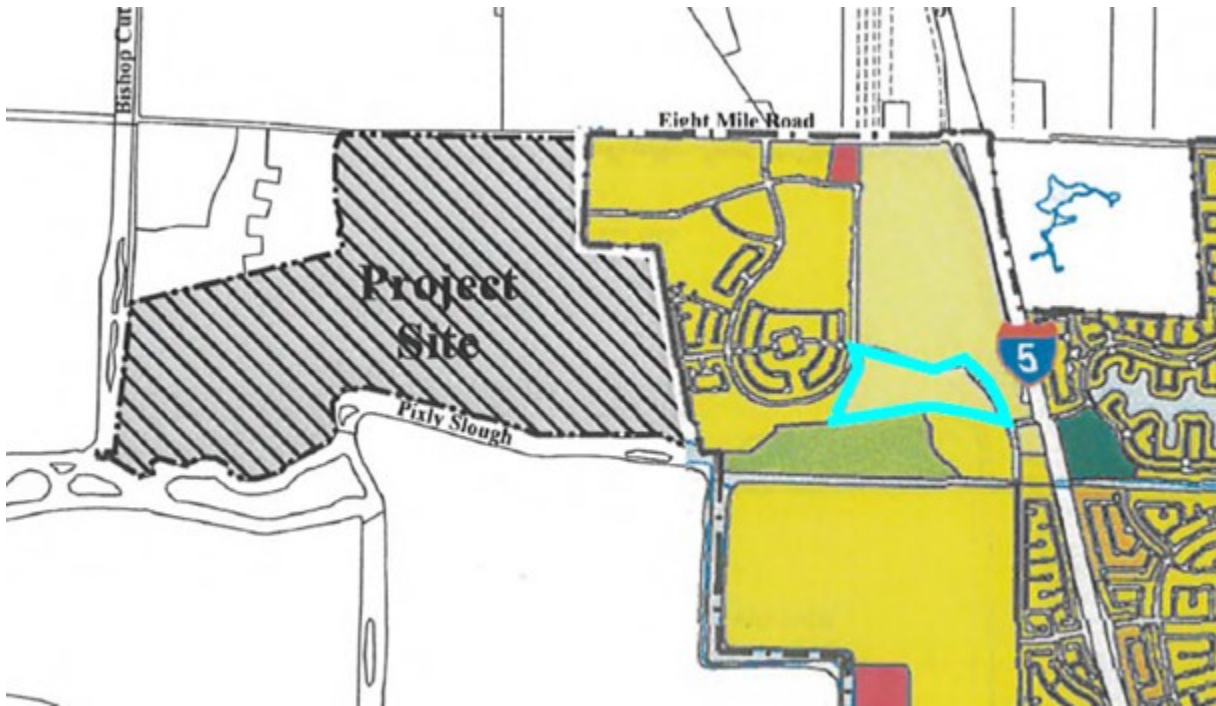
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w. www.zoning-info.com
a. 3555 NW 58th Street, Suite 400, Oklahoma City, OK 73112



From: Jordan Jay [<mailto:jjay@zoning-info.com>]
Sent: Tuesday, June 15, 2021 4:28 PM
To: 'Robert Miller' <Robert.Miller@stocktonca.gov>
Subject: RE: The Pavilions - 5222 Cosumnes Drive (APN #066-030-050-000)

Hi Robert,

I was just now able to go back and review the MDP you provided, and I believe it's actually not the correct file. I need to get a copy of the latest version of the MDP for **Spanos Park West**, not "Westlake at Spanos Park West" (which is located just to the west of The Pavilions property – please see the map excerpt below).



The highlighted area in blue is where The Pavilions is located, while the "Project Site" in gray is the area subject to the Westlake at Spanos Park West MDP regulations. Could you please let me know if the other Spanos Park West MDP is available online (or can be otherwise sent to me)?

Thank you,



Jordan Jay
Analysis Manager
Zoning-Info, Inc.

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From: Robert Miller [<mailto:Robert.Miller@stocktonca.gov>]
Sent: Thursday, June 10, 2021 12:40 PM
To: Jordan Jay <jjay@zoning-info.com>
Subject: RE: The Pavilions - 5222 Cosumnes Drive (APN #066-030-050-000)

Mr. Jay,

Please go to this [link](#) for the Westlake at Spanos Park West MDP.

Let me know if you need anything else.

Best,



Robert “Robby” Miller
Assistant Planner
Community Development Department
345 N. El Dorado Street, Stockton CA 95202
Office: 209.937.8266 Direct: 209.937.7564

My last day with the City of Stockton will be June 11, 2021. At that time, any unfinished applications will be reassigned to another Planner.

For City of Stockton Updates on COVID-19 please visit:

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City Website <http://www.stocktonca.gov>

From: Jordan Jay <jjay@zoning-info.com>
Sent: Monday, June 7, 2021 11:51 AM
To: CDD - Planning <planning@stocktonca.gov>
Subject: The Pavilions - 5222 Cosumnes Drive (APN #066-030-050-000)

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Good afternoon,

I am working on a zoning compliance report for the above property in Stockton, which is a multi-family apartment complex in the MX zoning district, which was constructed in 2004. Since it's in the MX district, the development standards applicable to the site are those "identified for the specific site in the applicable master development plan," per Section 16.24.180 of the zoning ordinance.

Would it be possible to obtain a copy of the final master development plan approved for this property? If not, is there a list of the applicable development standards on file, perhaps in a staff report, that could be provided to me?

Thanks for your help!

Jordan Jay
Analysis Manager



ZONING-INFO

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Connie Cochran

From: Jordan Pieper <jordanp@gnicharch.com>
Sent: Wednesday, June 29, 2022 4:50 PM
To: CDD - Planning
Subject: MP001-00, Spanos Park West

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Hello,

We are gathering information on the Master Development Plan above. We will be developing with Dutch Bros Coffee in the north of the lot (APN 06602004). Would you please share with us the development standards as approved by your department? (i.e. building height limits, setbacks, max. floor area, required landscaping, and architectural design standards). Do you have a building address for this site that we can add to our records? Let me know if you need anything from us to release these documents. Thank you!

GNICH ARCHITECTURE STUDIO

www.GnichArch.com

Jordan Pieper, Architect I
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