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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND ESTABLISHMENT OF EASEMENTS AND COST SHARING OBLIGATIONS  
FOR  
777 WEST MIDDLEFIELD

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	3
1.1 “Access Drives” .....	3
1.2 “Affiliate” .....	3
1.3 “Allocable Share” .....	3
1.4 “Allocation Formula” .....	3
1.5 “Applicable Laws” .....	3
1.6 “Authorized Users” .....	3
1.7 “Building” or “Buildings” .....	3
1.8 “Casualty” .....	3
1.9 “Claims” .....	3
1.10 “Commute Coordinator” .....	4
1.11 “Conditions of Approval” .....	4
1.12 “Condominium” .....	4
1.13 “Condominium Association” .....	4
1.14 “Condominium Declaration” .....	4
1.15 “Declarant” .....	4
1.16 “Declaration” .....	4
1.17 “Default Rate” .....	4
1.18 “District Allocated Parking Spaces” .....	4
1.19 “District Apartment Building” or “District Building” .....	4
1.20 “District Courtyard Area” .....	4
1.21 “District Ground Lease” .....	5
1.22 “District Ground Lease Termination” .....	5
1.23 “District Ground Leasehold Estate” .....	5
1.24 “District Ground Lessee” .....	5
1.25 “District Ground Lessor” .....	5
1.26 “District Guest Parking Spaces” .....	5
1.27 “District Parcel” .....	5
1.28 “District Parcel Access Drives” .....	5
1.29 “District Parcel Owner” or “District Owner” .....	5
1.30 “District Parking Area” .....	5
1.31 “District Storage Area” .....	5
1.32 “District Storage Lockers Expenses” .....	5
1.33 “District Storage Lockers” .....	5
1.34 “District Stormwater Drainage Facilities” .....	5
1.35 “District Water Line” .....	5
1.36 “Emergency” .....	6
1.37 “Emergency Vehicle Access Area” .....	6
1.38 “Exterior Façade” .....	6
1.39 “Final Parcel Map” .....	6
1.40 “First Mortgage” .....	6
1.41 “First Mortgagee” .....	6
1.42 “Future Resident Parking Spaces” .....	6
1.43 “Governmental Agencies” .....	6
1.44 “Governmental Requirements” .....	6
1.45 “Hazardous Materials” .....	6
1.46 “Heritage Trees” .....	6
1.47 “Improvements” .....	6
1.48 “Landscape and Lighting Plan” .....	6
1.49 “Lease” .....	6
1.50 “Lessees” .....	7

# SMRH DRAFT 10/31/22

1.51	“Maintenance Responsibility Allocation Chart”	7
1.52	“Maintenance Obligations”	7
1.53	“Mortgage”	7
1.54	“Mortgagee”	7
1.55	“Mountain View Owner”	7
1.56	“Multifamily Apartment Buildings”	7
1.57	“Multifamily Apartment Building A”	7
1.58	“Multifamily Apartment Building B”	7
1.59	“Multifamily Parcel”	7
1.60	“Multifamily Guest Parking Spaces”	7
1.61	“Multifamily Parcel Access Drives”	7
1.62	“Multifamily Parcel Owner” or “Multifamily Owner”	7
1.63	“Multifamily Pool and Spa Area”	7
1.64	“Multifamily Stormwater Line”	7
1.65	“Multifamily Stormwater Drainage Facilities”	7
1.66	“Multifamily Shared Amenities”	7
1.67	“Multifamily Water Line”	8
1.68	“Occupants”	8
1.69	“Official Records”	8
1.70	“Overall Property”	8
1.71	“Owner” or Owners”	8
1.72	“PAE (Bicycle)”	8
1.73	“PAE (Paseo)”	8
1.74	“PAE Bicycle Dedication”	8
1.75	“PAE Paseo Dedication”	8
1.76	“Parcel(s)”	8
1.77	“Parking Garage”	8
1.78	“Parking Garage Guest Parking Spaces”	8
1.79	“Parking Garage Shared Expenses”	8
1.80	“Parking Management Plan”	9
1.81	“Parking Spaces”	9
1.82	“Payment Commencement Date”	9
1.83	“Permitted Users”	9
1.84	“Person”	9
1.85	“Private Water Lines”	9
1.86	“Project”	9
1.87	“Project Entitlements”	10
1.88	“Project Exterior Areas”	10
1.89	“Project Exterior Lighting”	10
1.90	“Project Landscape Maintenance Areas”	10
1.91	“Project Maintenance Standards”	10
1.92	“Project Operator”	10
1.93	“Project Rules”	10
1.94	“Project Signage Program”	10
1.95	“Project Signs”	10
1.96	“Public Access Easement”	10
1.97	“Public Access Dedications”	10
1.98	“Public Bicycle Path”	10
1.99	“Public Open Space Signage”	10
1.100	“Public Use Areas”	10
1.101	“Public Use Paseo”	10
1.102	“Residences”	11
1.103	“Shared 759 West Middlefield Access Easement Area”	11
1.104	“Shared 759 West Middlefield Access Easement Agreement”	11
1.105	“Shared Expenses Budget”	11
1.106	“Shared Expenses”	11

1.107	“Shared Fire Hydrant Facilities” .....	12
1.108	“Shared Fire Line and Fire Pump Equipment” .....	12
1.109	“Shared Maintenance Areas” .....	12
1.110	“Shared Private Sewer Line” .....	13
1.111	“Shared Stormwater Drainage Facilities” .....	13
1.112	“Shared Use Areas” .....	13
1.113	“Shared Walkways” .....	13
1.114	“Shuttle Stop” .....	13
1.115	“Site Plan” .....	13
1.116	“Stormwater Drainage Facilities” .....	13
1.117	“Street Trees” .....	13
1.118	“Supplementary Declaration” .....	13
1.119	“Transportation Demand Management Monitoring Reporting Requirements” .....	13
1.120	“Transportation Demand Management Program” .....	13
1.121	“Trash Management Plan” .....	13
1.122	“Trash Staging Areas” .....	14
1.123	“Tree Mitigation and Preservation Plan” .....	14
1.124	“Utility Facilities” .....	14
1.125	“Work” .....	14
<b>ARTICLE 2 EASEMENTS</b> .....		<b>14</b>
2.1	Ownership and Easements .....	14
2.2	Ground Lease .....	14
2.3	Defined Terms Relating to Easements .....	14
2.4	Limitations .....	14
2.5	Access and Use Easements .....	14
2.6	Utility Easements .....	17
2.7	Shared Fire Line and Fire Pump Equipment .....	18
2.8	Easements for Encroachments .....	18
2.9	Drainage and Stormwater Drainage Facilities .....	18
2.10	Maintenance Easements .....	18
2.11	Easements for Way Finding and any Other Signage .....	19
2.12	Trash Staging Areas .....	19
2.13	Exercise of Cure Rights .....	19
2.14	Limitations on Easement Rights .....	19
2.15	No Separate Transfer .....	20
2.16	Duration of Easements .....	20
<b>ARTICLE 3 USE RESTRICTIONS</b> .....		<b>20</b>
3.1	Compliance With Applicable Laws and Project Entitlements .....	20
3.2	Residential Uses .....	20
3.3	Leases .....	20
3.4	Project Rules .....	21
3.5	Modifications to Improvements .....	21
3.6	Parking Management Plan .....	21
3.7	TMA Membership .....	21
3.8	Insurance Requirements .....	21
3.9	No Outside Storage .....	21
3.10	Parking Restrictions .....	22
3.11	District Storage Lockers .....	22
3.12	Signs .....	22
3.13	Roof and Exterior Façade Installations .....	22
3.14	Trash Disposal .....	23
3.15	Trash Staging Areas .....	23
3.16	Hazardous Materials .....	23
3.17	Balconies .....	23
3.18	Established Drainage .....	23

# SMRH DRAFT 10/31/22

3.19	Project Signage Program .....	24
ARTICLE 4 MAINTENANCE AND OPERATION .....		24
4.1	Maintenance .....	24
4.2	Maintenance Obligations of the Project Operator.....	24
4.3	Operational Obligations.....	27
4.4	Authorization to Contract .....	27
4.5	Owner's Maintenance Obligations.....	28
4.6	Property Manager for the District Parcel .....	28
4.7	Failure of District Parcel Owner to Maintain. ....	28
4.8	Damage Caused by Acts or Omissions of an Owner or its Occupants .....	29
4.9	Duty to Protect Against Mechanics' Liens .....	29
4.10	Meeting and Cooperation .....	29
ARTICLE 5 SHARED EXPENSES .....		30
5.1	Reimbursement Obligations .....	30
5.2	Payment of Allocable Share .....	30
5.3	Shared Expenses Budget.....	30
5.4	Payments.....	30
5.5	Late Payments.....	30
5.6	Failure to Prepare Shared Expenses Budget .....	30
5.7	Remedies for Non-Payment .....	31
ARTICLE 6 INSURANCE AND INDEMNITY .....		31
6.1	Insurance .....	31
6.2	Waiver of Subrogation .....	33
6.3	Mutual Indemnity .....	33
ARTICLE 7 CASUALTY AND CONDEMNATION .....		33
7.1	Repair and Reconstruction of Improvements by Owners.....	33
7.2	Repair Work.....	34
7.3	Condemnation .....	34
ARTICLE 8 ENFORCEMENT.....		35
8.1	Legal Action Generally .....	35
8.2	Remedies Cumulative .....	35
8.3	Operational Disputes .....	35
ARTICLE 9 TERM AND AMENDMENTS .....		36
9.1	Term .....	36
9.2	Amendment .....	36
9.3	Supplementary Declarations .....	37
ARTICLE 10 MISCELLANEOUS PROVISIONS .....		37
10.1	Enforcement .....	37
10.2	Binding on Successors .....	37
10.3	Severability .....	37
10.4	Reasonable Consents .....	37
10.5	Attorneys' Fees.....	37
10.6	No Waiver .....	37
10.7	Notice .....	37
10.8	Mortgagee Protection .....	38
10.9	Governing Law .....	38
10.10	Exhibits .....	38
10.11	Mutuality; Reciprocity; Runs With Land.....	38
10.12	Miscellaneous.....	38

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND ESTABLISHMENT OF EASEMENTS AND COST SHARING OBLIGATIONS  
FOR  
777 WEST MIDDLEFIELD

This Declaration of Covenants, Conditions and Restrictions and Establishment of Easements and Cost Sharing Obligations for 777 West Middlefield ("Declaration") is made and executed as of this \_\_\_\_ day of \_\_\_\_\_, 2022 by Mountain View Owner, LLC, a Delaware limited liability company ("Declarant" or "Mountain View Owner"), with reference to the facts set forth below.

RECITALS

All defined terms not defined in the Recitals shall have the meanings set forth in Article 1 of this Declaration.

A. Overall Project Description. Mountain View Owner is the owner of certain real property located at 777 West Middlefield Road, Mountain View, California, as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Overall Property"). The Overall Property consists of an approximately 9.84-acre Parcel (described on Exhibit "A" as Parcel 1 and referred to herein as the "Multifamily Parcel") that is anticipated to include approximately five hundred seventy-two (572) apartment units located within two market rate Multifamily Apartment Buildings, (which are sometimes referred to herein as Multifamily Apartment Building A and Multifamily Apartment Building B), Public Use Areas, Multifamily Shared Amenities, Project Landscape Maintenance Areas, Shared Walkways, Access Drives, a subterranean Parking Garage and related facilities. The Overall Property also includes an approximately 1.8-acre Parcel (described on Exhibit "A" as Parcel 2) and referred to herein as the "District Parcel" to be developed, constructed, operated, and maintained as an apartment complex with a one hundred forty-four (144) unit apartment building ("District Apartment Building") intended to be used for school district housing purposes and a portion of which may be used by other persons pursuant to the BMR described in Recital B below, Access Drives, Public Use Areas, Project Landscape Maintenance Areas, Shared Walkways and a District Courtyard Area. The Parcels were subdivided under the Final Parcel Map which was recorded prior to the recordation of this Declaration in the Official Records. A Site Plan showing the District Parcel and the Multifamily Parcel and other areas within the Overall Property is attached hereto as Exhibit "B" and incorporated herein.

B. School District Ground Lease. After the recordation of this Declaration, Mountain View Owner intends to enter into a Ground Lease to lease the District Parcel to Mountain View Whisman School District, a California public school district and political subdivision of the State of California ("MVWSD" or "District"), and, after construction of the District Apartment Building, MVWSD intends to lease the Residences located within the District Parcel as housing for teachers and other persons as specifically described in the Agreement By and Among The City of Mountain View, Mountain View Owner LLC, and A Residential Project Located at 777 West Middlefield dated \_\_\_\_\_, 202\_\_\_. The District Parcel shall be subject to certain affordable housing restrictions pursuant to the requirements of the City. References herein to the "District Parcel Owner" initially mean MVWSD as the District Ground Lessee of the District Parcel under the Ground Lease and, upon an assignment of the Ground Lease, means any successor District Ground Lessee. In the event of the termination or expiration of the Ground Lease, references herein to the District Parcel Owner mean the fee title owner of the District Parcel. The Declaration is intended to encumber both the fee title interest in Parcel 2 and the ground leasehold interest under the District Ground Lease but during the term of the Ground Lease all obligations and rights set forth herein shall be the rights and obligations of the District Ground Lessee. Mountain View Owner is executing this Declaration to confirm and acknowledge that this Declaration is intended to encumber the fee interest in the District Parcel.

C. Public Use Areas. Pursuant to the Project Entitlements authorizing the development of the Overall Property as described herein, easements to the public for access and use of the Public Use Paseo and the Public Bicycle Path and certain other areas within the Overall Property have been granted pursuant to the terms of a Public Access Easement Agreement.

D. Purpose of Declaration. Declarant desires to establish in this Declaration certain easements and use rights in favor of the District Parcel Owner and to the extent provided herein, to its Occupants and Permitted Users, which include easements to park within the District Allocated Parking Spaces and use the District Storage Lockers located within the Parking Garage, and to access and use the Multifamily Shared Amenities all as described herein. In addition to the foregoing, this Declaration establishes reciprocal easements for access and use of the Access Drives and Shared Walkways and certain other easements as described herein and reserves easements in favor of the Multifamily Parcel Owner for access over the District Parcel and to maintain the Project Exterior Areas and other Shared Maintenance Areas located on the District Parcel and for exercising its other rights and performance of its other obligations in accordance with the terms of this Declaration.

E. Shared Maintenance Areas. The Multifamily Parcel Owner will maintain the Project Exterior Areas, the Parking Garage and the Multifamily Shared Amenities and other areas and facilities described herein for the benefit of both the District Parcel Owner and the Multifamily Owner for which both Owners shall pay an Allocable Share of the Shared Expenses incurred in connection with the performance of such Maintenance Obligations as described herein. The Multifamily Parcel Owner will also maintain certain areas and facilities solely for the benefit of the District Parcel Owner for which the District Parcel Owner shall reimburse the Multifamily Parcel Owner for all of the Shared Expenses incurred in connection with the performance of such Maintenance Obligations as described herein. The areas which the Project Operator shall maintain and for which the Shared Expenses are allocated based upon the applicable Allocation Formula are referred to herein as the "Shared Maintenance Areas". The Multifamily Parcel Owner, in connection with the performance of the maintenance and other obligations described herein, is sometimes referred to herein as the "Project Operator".

F. Project Entitlement Requirements. The Conditions of Approval for the Project include requirements relating to the long term use and operation of the Project. These requirements include, without limitation, requirements to implement, monitor and report to the City on the Project required Transportation Demand Management Program which is referred to herein as the "TDM Program", to maintain Heritage Trees located within the Project in accordance with the Tree Mitigation and Preservation Plan, to implement a Parking Management Plan and to maintain the Public Use Areas and allow public access thereto in accordance with the requirements of the City including without limitation the requirements set forth in the Public Access Easement. The Project Operator will perform these and certain other City required obligations and the costs and expenses associated with performing such obligations shall be included in the Shared Expenses.

G. Owners Bound and Further Subdivision. Each Owner and successor Owner of the Parcels shall be bound by the obligations set forth in this Declaration. To the extent that any Owner further subdivides its Parcel into Condominiums or additional Parcels, and an owners association is formed to manage and govern such Parcels or Condominiums, references in this Declaration to an Owner shall mean the owners association formed to manage and govern such Parcels or Condominiums, unless otherwise provided for herein.

NOW, THEREFORE, Declarant declares that the Overall Property, including the fee title to the District Parcel and the Multifamily Parcel, and the ground leasehold estate in the District Parcel, shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, covenants, and conditions, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Overall Property. All of the limitations, restrictions, covenants and conditions set forth in this Declaration shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Parcels and shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such Owners.

**ARTICLE 1  
DEFINITIONS**

Except as the context otherwise requires, the defined terms set forth below shall have the meanings set forth below.

1.1 “Access Drives” means, individually or collectively, as the context requires, the District Parcel Access Drives and/or the Multifamily Parcel Access Drives in the locations generally depicted on the Site Plan.

1.2 “Affiliate” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified Person. Control as used herein is defined as possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

1.3 “Allocable Share” means the share of the Shared Expenses allocated by the Project Operator to the District Parcel and to the Multifamily Parcel based upon the applicable Allocable Shares set forth in this Declaration and in the Shared Expenses Budget.

1.4 “Allocation Formula” means the percentage used to allocate and charge Shared Expenses to the District Parcel and to the Multifamily Parcel in the Shared Expenses Budget which is set forth below.

1.4.1 Allocation Formula for Parking Garage Shared Expenses. Parking Garage Shared Expenses shall be allocated as follows:

District Parcel Allocable Share:	16.4%
Multifamily Parcel Allocable Share:	83.6%

1.4.2 Allocation Formula for District Storage Lockers Expenses. All Shared Expenses for the District Storage Lockers shall be allocated 100% to the District Parcel Owner.

1.4.3 Allocation Formula for All Other Shared Expenses. All Shared Expenses, other than the Parking Garage Shared Expenses and the District Storage Lockers Expenses, shall be allocated as follows and which Allocation Formula is sometimes referred to herein as the “General Allocation”:

District Parcel Allocable Share:	20%
Multifamily Parcel Allocable Share:	80%

1.5 “Applicable Laws” means the Project Entitlements and/or any laws, regulations, rules, orders, ordinances, resolutions, and policies of any Governmental Agencies.

1.6 “Authorized Users” means the employees, consultants, contractors, subcontractors and agents of an Owner.

1.7 “Building” or “Buildings” means individually or collectively, as the context requires, the District Apartment Building and/or the Multifamily Apartment Buildings.

1.8 “Casualty” means any taking of the Project and/or damage to the Project resulting from an event such as fire, weather, thefts, riots, vandalism, terrorism or other similar causes.

1.9 “Claims” means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses and expenses, including, without limitation, reasonable attorneys’ fees and costs and the



costs and expenses of enforcing any indemnification, defense or hold harmless obligations under this Declaration.

1.10 "Commute Coordinator" means the City required on-site commute coordinator, appointed to manage and monitor commute alternative programs pursuant to the requirements of the Conditions of Approval. The Project Operator shall perform the responsibilities of the Commute Coordinator in connection with its implementation of the TDM Program.

1.11 "Conditions of Approval" means the conditions of approval approved by the City of Mountain View pursuant to Resolution Series No. 2019.

1.12 "Condominium" means any condominium which may be established within the Overall Property pursuant to Section 4125 of the California Civil Code.

1.13 "Condominium Association" means any California incorporated or unincorporated condominium association, which may be established in connection with a Condominium Declaration if any Parcel is further subdivided into Condominiums.

1.14 "Condominium Declaration" means any declaration of covenants, conditions and restrictions which is recorded in connection with the establishment of Condominiums within a Parcel and which establishes a Condominium Association.

1.15 "Declarant" means Mountain View Owner, LLC, a Delaware limited liability company ("MVO") and shall include those successors and assigns of MVO who acquire or hold title to any portion or all of the Parcels for purposes of development and are expressly named as a successor Declarant to all or a portion of Declarant's rights in an Assignment of Declarant's Rights ("Assignment of Declarant's Rights") executed by the Declarant, or a successor Declarant, and recorded in the Official Records assigning the rights and duties of Declarant to such successor Declarant and, such successor Declarant accepts the assignment of such rights and duties. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Overall Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale and a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidation sale of stocks or assets, operation of law or otherwise.

1.16 "Declaration" means this Declaration of Covenants, Conditions and Restrictions and Establishment of Cost Sharing Obligations for 777 West Middlefield recorded in the Official Records and any amendments and supplements thereto.

1.17 "Default Rate" means the rate of interest equal to five percent (5%) in excess of the prime or reference rate charged from time to time by Bank of America, NTSA, but not to exceed the maximum rate allowed by Applicable Laws.

1.18 "District Allocated Parking Spaces" means the 144 Parking Spaces located within the District Parking Area which are intended for the exclusive use of the Occupants of the District Parcel.

1.19 "District Apartment Building" or "District Building" has the meaning set forth in Recital A.

1.20 "District Courtyard Area" means the courtyard area located within the District Parcel intended for access by the Occupants of the District Apartment Building and other Permitted Users to the District Apartment Building which shall be maintained by the Project Operator. The approximate location of the District Courtyard Area is depicted on the Site Plan.

1.21 “District Ground Lease” means that certain Ground Lease entered into by the District as ground lessee and Mountain View Owner as ground lessor, a Memorandum of which will be recorded in the Official Records subsequent to the recordation of this Declaration.

1.22 “District Ground Lease Termination” means the expiration or termination of the District Ground Lease pursuant to its terms.

1.23 “District Ground Leasehold Estate” means the ground leasehold interest under the District Ground Lease.

1.24 “District Ground Lessee” means the District and any successor ground lessee under the District Ground Lease.

1.25 “District Ground Lessor” means the lessor under the District Ground Lease and any assignee pursuant to the terms of the District Ground Lease.

1.26 “District Guest Parking Spaces” means the guest parking spaces designated for use by the guests of the Occupants of the District Owner in the Parking Garage.

1.27 “District Parcel” means Parcel 2 of the Final Parcel Map as described on Exhibit "A".

1.28 “District Parcel Access Drives” means the driveways and drive aisles which are located within the District Parcel intended for vehicular ingress and egress to and from the public streets adjacent to the Overall Property. The approximate locations of the District Parcel Access Drives are depicted on the Site Plan.

1.29 “District Parcel Owner” or “District Owner” has the meaning set forth in Recital B.

1.30 “District Parking Area” means the one hundred forty-four (144) District Allocated Parking Spaces located on Levels B-1 and B-2 of the Parking Garage in the approximate location depicted on the Site Plan as the District Parking Area for the exclusive use for parking purposes by the District Parcel Owner and its Occupants subject to the terms of this Declaration and the Project Rules.

1.31 “District Storage Area” means the areas in which District Storage Lockers are located in the Parking Garage in the location generally depicted on the Site Plan as the District Storage Area, for the use by the District Parcel Owner and its Occupants for storage purposes subject to the terms of this Declaration and the Project Rules.

1.32 “District Storage Lockers Expenses” means the expenses incurred by the Project Operator for maintenance of the District Storage Lockers as provided herein which shall be allocated 100% to the District Parcel Owner as a General Allocation.

1.33 “District Storage Lockers” means the one hundred forty-four (144) storage lockers located in the District Storage Area and intended for the exclusive use of the Occupants of the District Apartment Building and which shall be allocated for use by the District Ground Lessee to its Occupants. The District Storage Lockers shall be maintained by the Project Operator, but the Shared Expenses for maintenance thereof shall be allocated solely to the District Parcel Owner.

1.34 “District Stormwater Drainage Facilities” means the stormwater drainage line, bio swales and any underground and other drainage facilities located in the District Parcel in the approximate location depicted on the Site Plan.

1.35 “District Water Line” means the private water line solely serving the District Parcel in the location generally depicted on the Site Plan.

1.36 “Emergency” means any situation, condition or event which threatens imminent damage or injury to Person or property.

1.37 “Emergency Vehicle Access Area” means the area located on a portion of the Multifamily Parcel in the general location depicted on the Final Parcel Map as the Emergency Vehicle Access Area which is intended for emergency vehicle access in accordance with the requirements of the City.

1.38 “Exterior Façade” means the exterior façade of the District Apartment Building and the Multifamily Apartment Buildings including all architectural features and the roof of each of such Buildings.

1.39 “Final Parcel Map” means the final parcel map recorded in the Official Records concurrently herewith which subdivides the Overall Property into the Parcels described on Exhibit “A”.

1.40 “First Mortgage” means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering the applicable Parcel.

1.41 “First Mortgagee” means the Mortgagee of a First Mortgage.

1.42 “Future Resident Parking Spaces” means the parking spaces within the Project Exterior Areas in the approximate locations depicted on the Site Plan which are intended to be used for future resident parking.

1.43 “Governmental Agencies” means any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter or any portion of the Overall Property.

1.44 “Governmental Requirements” means all Applicable Laws, rules, regulations, orders, ordinances, subdivision requirements, zoning restrictions and map conditions imposed by any Governmental Agencies.

1.45 “Hazardous Materials” means any substance, material or waste which is or becomes (a) regulated by any governmental authority because of its toxicity, ignitability, corrosivity or reactivity; or (b) defined as a “hazardous substance”, “extremely hazardous substance”, “hazardous waste”, “extremely hazardous waste”, “restricted hazardous waste”, “Non-RCRA hazardous waste”, “RCRA hazardous waste”, “recyclable material”, “mixed waste”, “medical waste” or similar material under any applicable federal, state or local statute or regulation promulgated thereunder.

1.46 “Heritage Trees” means the trees within the Overall Property identified as heritage trees in the Tree Mitigation and Preservation Plan.

1.47 “Improvements” means any or all, as the context requires, of the improvements constructed on a Parcel from time to time, including without limitation, any Buildings and any outdoor eating and recreational areas, any drainage facilities, the walkways, parkways, landscaped and hardscaped areas, irrigation systems, improvements constructed or installed above or below ground, poles, signs, exterior lighting and light standards, antennae, plazas, planters, stairways, railings, ramps, Utility Facilities, pipes and conduits and any replacements, additions, repairs or alterations thereto of any kind whatsoever.

1.48 “Landscape and Lighting Plan” means the landscape and lighting plan for the Project approved by the City and any amendments thereto, a copy of which shall be retained in the records of the Project Operator or its managing agent and made available for inspection and review by the Owners upon request.

1.49 “Lease” means each lease whereby a Person acquires rights to use or occupy a Residence located within the Buildings for a specified term.

- 1.50 “Lessees” means any tenant or lessee occupying a portion of the Project with a Lease.
- 1.51 “Maintenance Responsibility Allocation Chart” means the chart attached hereto as Exhibit “D” which is intended to memorialize certain Maintenance Obligations and the Allocable Shares therefore. For the avoidance of doubt, the Maintenance Responsibility Allocation Chart is for illustrative purposes but nothing contained therein shall limit the rights of the District Parcel Owner and the Multifamily Parcel Owner to mutually agree to modify such allocation of Maintenance Obligations and the Allocable Shares therefore in the future.
- 1.52 “Maintenance Obligations” means the maintenance obligations imposed upon the Owners under this Declaration and the Project Entitlements.
- 1.53 “Mortgage” means a deed of trust recorded in the Official Records.
- 1.54 “Mortgagee” means the beneficiary of a Mortgage.
- 1.55 “Mountain View Owner” means Mountain View Owner, LLC, a Delaware limited liability company.
- 1.56 “Multifamily Apartment Buildings” has the meaning set forth in Recital A.
- 1.57 “Multifamily Apartment Building A” means the Multifamily Apartment Building within the Multifamily Parcel designated on the Site Plan as Multifamily Apartment Building A.
- 1.58 “Multifamily Apartment Building B” means the Multifamily Apartment Building within the Multifamily Parcel designated on the Site Plan as Multifamily Apartment Building B.
- 1.59 “Multifamily Parcel” means Parcel 1 of the Final Parcel Map as described on Exhibit “A”.
- 1.60 “Multifamily Guest Parking Spaces” means the Parking Spaces in the Parking Garage allocated for parking by the guests of the Occupants of the Multifamily Parcel.
- 1.61 “Multifamily Parcel Access Drives” means the driveways and drive aisles which are located within the Multifamily Parcel intended for vehicular and bicycle ingress and egress to and from the public streets adjacent to the Overall Property. The approximate locations of the Multifamily Parcel Access Drives are generally depicted on the Site Plan.
- 1.62 “Multifamily Parcel Owner” or “Multifamily Owner” means the Owner of the Multifamily Parcel.
- 1.63 “Multifamily Pool and Spa Area” means the area within the Multifamily Parcel where a pool and spa and other recreational amenities are located which shall be made available for shared use by the Occupants of the Residences within the District Parcel.
- 1.64 “Multifamily Stormwater Line” means stormwater line located within a portion of the District Parcel in the location generally depicted on the Site Plan.
- 1.65 “Multifamily Stormwater Drainage Facilities” means the stormwater drainage lines including the Multifamily Stormwater Line, bio swales and any underground and other drainage facilities located in the Multifamily Parcel in the approximate location depicted on the Site Plan.
- 1.66 “Multifamily Shared Amenities” means collectively the Multifamily Pool and Spa Area and certain other recreational and other facilities located within Multifamily Apartment Building over which rights of use are provided to Lessees within the Multifamily Apartment Buildings, and within which certain access right have been granted herein to the District Parcel Owner to allow usage of such Multifamily Shared

Amenities by the Occupants of the District Apartment Building as provided in this Declaration and subject to the Project Rules. The Multifamily Shared Amenities are listed on Exhibit "C". In no event do the Multifamily Shared Amenities include any rooftop amenities located in Multifamily Apartment Building A or Multifamily Apartment Building B.

1.67 "Multifamily Water Line" means the private water line solely serving the Multifamily Parcel, a portion of which is located within the District Parcel, within the location generally depicted on the Site Plan.

1.68 "Occupants" means any Person entitled by ownership or a lease to use and occupy or operate any portion of a Parcel or Condominium.

1.69 "Official Records" means the Office of the County Recorder of Santa Clara County.

1.70 "Overall Property" means the two Parcels encumbered by this Declaration described on Exhibit "A".

1.71 "Owner" or Owners means individually or collectively, as the context requires, with respect to the Multifamily Parcel, MVO as the Owner of the Multifamily Parcel and any successor Owners of the Multifamily Parcel and, with respect to the District Parcel, the Ground Lessee under the Ground Lease and upon termination or expiration of the Ground Lease, the fee title Owner of the District Parcel. "Owner" shall exclude those Persons merely having a security interest in a Parcel, unless and until such Person acquires fee title thereto (or in the case of a Mortgage encumbering a Ground Lease, upon the holder of such security interest acquiring the subject District Ground Leasehold Estate thereunder). In the event a Parcel is divided into one or more separate legal lots, each of such separate legal lots shall thereafter be considered to be a "Parcel" and the Owner of each such legal lot shall be an "Owner."

1.72 "PAE (Bicycle)" means the portion of the Overall Property over which a Public Use Easement has been dedicated to the public pursuant to the terms of the PAE (Bicycle) Dedication.

1.73 "PAE (Paseo)" means the portion of the Overall Property over which a Public Use Easement has been dedicated to the public pursuant to the terms of the PAE (Paseo) Dedication.

1.74 "PAE Bicycle Dedication" means the Dedication of Public Access Easement, Including Covenants, Agreements, and Deed Restriction (Bicycle) recorded in the Official Records on September 27, 2022 as Document Number 25378150 and any amendments thereto.

1.75 "PAE Paseo Dedication" means the Dedication of Public Access Easement, Including Covenants, Agreements, and Deed Restriction (Paseo) recorded in the Official Records on September 27, 2022 as Document Number 25378149 and any amendments thereto.

1.76 "Parcel(s)" means individually, or collectively, as the context requires, Multifamily Parcel and/or District Parcel.

1.77 "Parking Garage" means the subterranean parking garage located within the Multifamily Parcel.

1.78 "Parking Garage Guest Parking Spaces" means collectively the District Guest Parking Spaces and the Multifamily Guest Parking Spaces.

1.79 "Parking Garage Shared Expenses" means the Shared Expenses associated with performing the Project Operator's obligations hereunder with respect to the maintenance and operation and other services provided in connection with the Parking Garage, as to which the expenses shall be allocated as between the District Parcel Owner and the Multifamily Parcel Owner based upon the Allocation Formula

## SMRH DRAFT 10/31/22

for Parking Garage Shared Expenses as provided above. Parking Garage Shared Expenses shall be included in the Shared Expenses Budget and shall include without limitation:

(a) all operational and maintenance expenses for the Parking Garage, including, without limitation, costs of maintaining, operating, cleaning, removal of oil stains, picking up trash and resurfacing of the areas within the Parking Garage and restriping of the Parking Spaces in the Parking Garage and maintenance of the stairwells within the Parking Garage and for performing all of the other maintenance described in Section 4.2.13;

(b) expenses of operating and maintaining equipment serving the Parking Garage including without limitation any elevators and any access gates installed in connection with the original construction or as may otherwise be installed by the Multifamily Parcel Owner and any electric vehicle chargers, lighting systems and equipment, key fob and access control equipment;

(c) costs for any security or other similar services provided by the Project Operator in connection with the operation of the Parking Garage;

(d) costs of operating and maintaining any Utility Facilities used in connection with the operation of the Parking Garage;

(e) expenses for reserves and any contingency amounts funded by the Project Operator for the Parking Garage; and

(f) any other expenses related to the maintenance and operation of the Parking Garage.

1.80 "Parking Management Plan" means the parking management plan for the Overall Property required by the City to be prepared and implemented to regulate parking, a copy of which is attached and included in the Project Rules shall be retained in the records of the Project Operator or its managing agent and made available for inspection and review by the Owners upon request.

1.81 "Parking Spaces" means the parking spaces within the Parking Garage and/or, as the context requires, the Future Resident Parking Spaces within the Project Exterior Areas.

1.82 "Payment Commencement Date" means, with respect to the District Parcel, the first day of the first month after the later to occur of (a) the date the first certificate of occupancy is issued for the District Apartment Building or (b) the date the Project Operator commences to maintain any of the Shared Maintenance Areas or commences to perform its other obligations under this Declaration as to which the expenses are to be shared.

1.83 "Permitted Users" means all Persons whose presence within the Overall Property is approved by or is at the request of a particular Owner or a Lessee of such Owner, including, without limitation, the respective employees, agents, contractors, customers, invitees, and licensees of the Owners.

1.84 "Person" means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, the word refers only to natural persons.

1.85 "Private Water Lines" means the private water lines serving the District Parcel referred to herein as the "District Water Lines" and the private water lines serving the Multifamily Parcel referred to herein as the "Multifamily Water Lines".

1.86 "Project" means both Parcels and all Improvements thereon.

1.87 “Project Entitlements” means all governmental approvals, permits and authorizations, issued in connection with the approval of the development of the Overall Property, which are binding upon the Overall Property.

1.88 “Project Exterior Areas” means all of the exterior areas within the Overall Property located outside of the Buildings excluding any exterior lighting attached to any Buildings.

1.89 “Project Exterior Lighting” means all lighting and lighting equipment located in and/or illuminating the Project Exterior Areas. References to Project Exterior Lighting do not include any lighting fixtures attached to any Building.

1.90 “Project Landscape Maintenance Areas” means all of the landscaped areas within the Project Exterior Areas and all irrigation systems for such Project Landscape Maintenance Areas, including without limitation, any of the Heritage Trees and to the extent required by the City, the Street Trees.

1.91 “Project Maintenance Standards” means the standards required to maintain the Buildings and all other Improvements to the higher of the following standards: (a) a Class A standard comparable to other Class A multifamily housing projects in the City of Mountain View and (b) the standards established by the Project Entitlements.

1.92 “Project Operator” means the Multifamily Parcel Owner who shall initially be Declarant and shall then be any successor Owner of the Multifamily Parcel.

1.93 “Project Rules” means the rules applicable to the Project and use of the Project by the Owners and their Permitted Users. Project Rules shall be adopted in accordance with the requirements set forth in Section 3.4 below.

1.94 “Project Signage Program” means the signage program for the Project approved by the City.

1.95 “Project Signs” means all wayfinding and other signage installed within the Project Exterior Areas and the Parking Garage and the Multifamily Shared Amenities, including signage required by the City to regulate use and access in the Public Use Areas, signage within the Parking Garage and other Shared Use Areas and signage designating the marketing names of the District Parcel and the Multifamily Parcel but excluding signage on the Exterior Façade of any Building. Unless otherwise provided for herein, references to the Project Signs include the Public Open Space Signage.

1.96 “Public Access Easement” means the easement for public access granted pursuant to the Public Access Dedications granting members of the public certain rights of ingress and egress over the Public Use Areas in accordance with the Project Entitlements.

1.97 “Public Access Dedications” means collectively the PAE Bicycle Dedication and the PAE Paseo Dedication.

1.98 “Public Bicycle Path” means the path within the approximate location depicted on the Site Plan as the Public Bicycle Path which is included in the PAE (Bicycle).

1.99 “Public Open Space Signage” means the signage required to be posted by the City allowing public access to the Public Use Areas.

1.100 “Public Use Areas” means collectively the PAE (Bicycle) and the PAE (Paseo).

1.101 “Public Use Paseo” means the outdoor paseo area within the approximate location depicted on the Site Plan as the Public Paseo Path which is included in the PAE (Paseo).

1.102 “Residences” means each individual dwelling unit located in the District Apartment Building and Multifamily Apartment Buildings.

1.103 “Shared 759 West Middlefield Access Easement Area” means the area located within a portion of the Multifamily Parcel in the approximate location are depicted on the Site Plan as the “Shared 759 West Middlefield Access Easement Area” over which area access easement for ingress and egress has been granted to the adjacent property owner pursuant to the terms of the Shared 759 West Middlefield Access Area Agreement.

1.104 “Shared 759 West Middlefield Access Easement Agreement” means that certain Shared Access and Signage Easement Agreement dated September 22, 2022 and entered into by Hiro Apartments, L.P., a California limited partnership, and Mountain View Buddhist Temple, a California nonprofit religious corporation (collectively “Adjacent Owners”) and MVO recorded in the Official Records on September 22, 2022 as Document Number 25376266 and any amendments thereto.

1.105 “Shared Expenses Budget” means the annual budget for Shared Expenses prepared by the Project Operator in accordance with Section 5.3 hereof.

1.106 “Shared Expenses” means the costs and expenses incurred or anticipated to be incurred by the Project Operator in performing operating, maintaining, repairing and replacing the Shared Maintenance Areas and providing the other services and performing the other obligations under this Declaration which shall include, without limitation the following and for which the costs shall be allocated based upon the applicable Allocation Formula:

1.106.1 expenses incurred for the inspection, maintenance, operation, repair and replacement of the Shared Maintenance Areas;

1.106.2 expenses incurred in replacing equipment and street furniture and other amenities within the Project Exterior Areas;

1.106.3 expenses incurred in operating, maintaining, and cleaning the Multifamily Shared Amenities, including without limitations costs of operating, maintaining and replacing and obtaining any insurance therefor, equipment and other personal property used in the operation of such areas (e.g. pool equipment, spa equipment, furniture, etc.);

1.106.4 expenses incurred for maintenance of all Project Signs, including the Public Open Space Signage;

1.106.5 expenses incurred in complying with the requirements of the Public Access Easement Dedications;

1.106.6 expenses incurred in complying with the Tree Mitigation and Preservation Plan;

1.106.7 expenses for any events and/or functions hosted by the Project Operator for the benefit of the Occupants of the District Building and the Multifamily Apartment Buildings (which may include events or functions held in both the Multifamily Shared Amenities and/or in the Project Exterior Areas) but excluding events and/or functions solely for the Occupants of the Multifamily Apartment Buildings;

1.106.8 costs of any patrols or other security deemed necessary for the Project which may include costs associated with security or patrols for the Parking Garage and/or the Multifamily Shared Amenities as well as the Project Exterior Areas;



1.106.9 expenses incurred for Utility Facilities (including without limitation, maintenance, repair, replacement and costs of utility service) for the Utility Facilities servicing the Shared Maintenance Areas to the extent separately metered or sub-metered or otherwise equitably allocated by the Project Operator;

1.106.10 the Parking Garage Shared Expenses;

1.106.11 expenses incurred in complying with Governmental Requirements, the Project Entitlements, Applicable Laws (including without limitation the Americans with Disabilities Act) and all other obligations under this Declaration relating to the applicable Shared Maintenance Areas and the performance of all obligations imposed on the Project Operator under this Declaration, including compliance with the Conditions of Approval;

1.106.12 reasonable operating and replacement reserves for the applicable Shared Maintenance Areas as set forth in the Shared Expenses Budget or as may be required under Applicable Laws;

1.106.13 expenses of any capital improvements to the Shared Maintenance Areas;

1.106.14 expenses of insurance required to be obtained and maintained by the Project Operator for which the costs are to be allocated as provided in Article 6;

1.106.15 expenses of management and administration by the Project Operator and for performing all of the Maintenance Obligations of the Project Operator and for providing all of the services and/or performing all of the obligations imposed upon the Project Operator, which management may be performed by an Affiliate of the Project Operator; and

1.106.16 any other expenses (or categories of expenses) relating to the Shared Maintenance Areas set forth in the Shared Expenses Budget or otherwise determined to be reasonably necessary to be included in the Shared Expenses Budget relating to the performance by the Project Operator of its Maintenance Obligations and other obligations hereunder and/or related to any services provided by the Project Operator hereunder for the benefit of the Overall Property.

1.107 "Shared Fire Hydrant Facilities" means the fire hydrant and fire hydrant lateral serving the District Parcel and Multifamily Parcel in the approximate location depicted on the Site Plan.

1.108 "Shared Fire Line and Fire Pump Equipment" means the shared fire line, fire pump and ancillary equipment including the generator serving both the District Parcel and the Multifamily Parcel located in the District Parcel and the Multifamily Parcel in the approximate location depicted on the Site Plan. The fire pump and ancillary equipment are located within a portion of the Multifamily Buildings.

1.109 "Shared Maintenance Areas" means the areas and Improvements and equipment therein or serving such areas to be maintained by the Project Operator for the benefit of the Owners or as required by the City which include, without limitation, the following: (a) the Access Drives; (b) the Shuttle Stop; (c) the irrigation for the Street Trees; (d) the Project Signs; (e) the Parking Garage and all equipment serving the Parking Garage; (f) the Multifamily Shared Amenities; (g) the Public Use Areas; (h) the Project Landscape Maintenance Areas and the irrigation systems serving the Project Landscape Maintenance Areas, (i) the Project Exterior Lighting; (j) the District Courtyard Area; (k) the Stormwater Drainage Facilities; (l) the Shared Walkways; (m) the Shared Fire Line and Fire Pump Equipment; (n) the Shared Private Sewer Line; (o) the Shared Fire Hydrant Facilities; (p) the Trash Staging Areas; (q) the District Storage Lockers (to the extent provided herein and for which the Shared Expenses shall be allocated solely to the District Parcel Owner); and (r) any other areas designated herein or in a Supplementary Declaration or required to be commonly maintained pursuant to the Project Entitlements to be included in the Shared Maintenance Areas or included in the Shared Expenses Budget as an area to be maintained by the Project Operator for which the Shared Expenses are to be shared by the Owners, or for which the Shared Expenses are allocated

solely to the District Parcel Owner. The Maintenance Responsibility Allocation Chart attached hereto as Exhibit "D" describes the Shared Maintenance Areas and the Allocable Shares applicable therefor.

1.110 "Shared Private Sewer Line" means the sewer line located within a portion of District Parcel serving both the District Building and the Multifamily Apartment Building within the approximate location depicted on the Site Plan.

1.111 "Shared Stormwater Drainage Facilities" means the stormwater drainage facilities and stormwater lines serving both the District Parcel and Multifamily Parcel depicted on the Site Plan as the Shared Stormwater Drainage Facilities.

1.112 "Shared Use Areas" means the Access Drives, the Parking Garage, the Public Use Areas, the Multifamily Shared Amenities and the Shared Walkways.

1.113 "Shared Walkways" means the pathways and sidewalks within the Project Exterior Areas, some of which are depicted on the Site Plan including the covered walkway and the structures for such covering in the approximate location depicted in the Site Plan.

1.114 "Shuttle Stop" means the shuttle stop which will be located along Shoreline Boulevard per the Conditions of Approval for the Project and which may be maintained by the Project Operator if not maintained by the City or transit agency and included in the Shared Maintenance Areas.

1.115 "Site Plan" means the Site Plan attached hereto as Exhibit "B" which is included solely as a pictorial illustration of the approximate locations of certain areas and Improvements within the Project. In the event of any discrepancy between the location of any portion of the Project shown on the Site Plan and the actual location, the actual location shall control.

1.116 "Stormwater Drainage Facilities" means collectively the Multifamily Stormwater Drainage Facilities, the District Stormwater Drainage Facilities and the Shared Stormwater Drainage Facilities.

1.117 "Street Trees" means the street trees located along the street frontage for the Overall Property.

1.118 "Supplementary Declaration" means any supplementary declaration recorded in the Official Records by the Multifamily Parcel Owner to do any or all of the following: (a) further describe or delineate other Shared Maintenance Areas and easements required hereunder or modifications thereto; (b) reflect any adjustments made to the Allocable Shares with the approval of both Owners; (c) impose obligations or requirements required by Governmental Agencies or to conform this Declaration to any Governmental Requirements or Applicable Laws; (d) revise, supplement or amend any exhibits or schedules to this Declaration, or any previously recorded Supplementary Declarations to reflect as built conditions; and/or (e) make corrections to the provisions of this Declaration or any previously recorded Supplementary Declarations.

1.119 "Transportation Demand Management Monitoring Reporting Requirements" means the annual transportation demand management monitoring reporting requirements imposed by the City. The requirements relating to the Transportation Demand Management Monitoring Reporting Requirements are set forth in Section 4.3.1 below.

1.120 "Transportation Demand Management Program" means the transportation demand management program required by the City for the Overall Property.

1.121 "Trash Management Plan" means the trash management plan required by the City and which shall be complied with by the Owners in connection with trash placement and removal. A copy of the Trash Management Plan shall be on file with the Project Operator.

1.122 “Trash Staging Areas” means the areas within the Project Exterior Areas intended for the placement of trash containers for pickup and disposal in the approximate location depicted on the Site Plan as the Trash Staging Area.

1.123 “Tree Mitigation and Preservation Plan” means the tree mitigation and preservation plan required to be prepared and submitted to the City in accordance with Chapter 32, Articles I and II of the City Code, and which is subject to the approval of the Zoning Administrator of the City.

1.124 “Utility Facilities” means all utility, communication, heating and other similar facilities including, without limitation, intake and exhaust systems, any back flow preventers, any drainage systems, water systems, storm and sanitary sewer systems, natural gas systems, electrical systems, vaults and switchgears, telephone systems, cable television systems, telecommunications systems, satellite communications systems, sump pumps and all other utility systems, communications and data transmission facilities, conduits, cabling and facilities servicing the Project which are situated in, on, over and/or under the Parcels.

1.125 “Work” means the construction of any Improvements and subsequent construction, alteration, repair, restoration and rebuilding of any Improvements or performance of such obligations under this Declaration.

**ARTICLE 2  
EASEMENTS**

2.1 Ownership and Easements. Ownership of each Parcel includes any exclusive or non-exclusive easements appurtenant to such Parcel as described in this Declaration and/or the deed to the Parcel. Each of the easements reserved or granted in this Declaration shall be deemed established upon recordation of this Declaration, and shall thereafter be deemed to be covenants running with the land for the use and benefit of the Owners and the Overall Property. Individual grant deeds may, but shall not be required to, set forth the easements specified in this Article 2.

2.2 Ground Lease. The Multifamily Parcel includes any exclusive or non-exclusive easements appurtenant to such Parcel over any District Ground Leasehold Estate of the District Parcel and over fee title to the District Parcel as described in this Declaration.

2.3 Defined Terms Relating to Easements. As used in this Article 2, prior to the District Ground Lease Termination, references to “Grantor” shall mean the following: (a) as to the District Parcel, the Owner granting the easement hereunder as to the District Ground Leasehold Estate for the District Parcel, and (b) as to the Multifamily Parcel, the fee title Owner of the Multifamily Parcel. Prior to the District Ground Lease Termination, references to “Grantee” shall mean the following: (a) as to the District Parcel, the recipient of the easement as to the District Ground Leasehold Estate for such Parcel, and (b) as to the Multifamily Parcel, the fee title Owner of such Parcel. Prior to the District Ground Lease Termination, as to the District Parcel, references to “Burdened Parcel” shall mean the District Ground Leasehold Estate in the Parcel on or over which the easement has been granted and references to “Benefitted Parcel” shall mean the District Ground Leasehold Estate in the Parcel to which the easement is appurtenant. As to the Multifamily Parcel, references to “Burdened Parcel” shall mean the Parcel on or over which the easement has been granted and references to “benefitted Parcel” shall mean the Parcel to which the easement is appurtenant.

2.4 Limitations. All of the easements and licenses described in this Article 2 are subject to the limitations set forth in this Declaration including, but not limited to, the limitations set forth in Section 2.14 below.

2.5 Access and Use Easements. The access and use easements granted herein shall commence as of the date construction on the Parcel has been completed such that the Access Drives, Shared Walkways, Parking Garage, Multifamily Shared Amenities and any other applicable Shared Use

Areas are available for access and use as determined by the Project Operator. District Parcel Owner acknowledges that certain areas and facilities within the Multifamily Parcel may be completed after the issuance of a certificate of occupancy for the District Apartment Building and that the access and use of certain areas within the Multifamily Parcel may be phased to accommodate the completion of the applicable Shared Use Areas.

## 2.5.1 Project Exterior Areas.

(a) Access Easement Over Access Drives. Declarant hereby establishes for its benefit and the benefit of all successor Owners of the Multifamily Parcel and for the benefit of the District Parcel Owner and all successor Owners of the District Parcel and each of their Permitted Users and Occupants a non-exclusive easement for pedestrian, vehicular and bicycle ingress and egress on, over, through and across the Access Drives, portions of which are located on the District Parcel and portions of which are located on the Multifamily Parcel. Nothing contained herein shall be deemed to grant rights to an Owner or its Permitted Users to utilize loading areas within the other Owner's Parcel nor shall any Owner or its Permitted Users be deemed to be granted rights to park or allow parking by its future residents in the Future Resident Parking Spaces located within the other Owner's Parcel.

(b) Shared 759 West Middlefield Access Area. Pursuant to the terms of the Shared 759 West Middlefield Access Easement Agreement, the Adjacent Owners have, during the term of the Shared 759 West Middlefield Access Easement Agreement a non-exclusive easement for pedestrian and vehicular access within the Shared 759 West Middlefield Access Easement Area on the terms set forth in the Shared 759 West Middlefield Access Easement Agreement.

(c) Access Easement Limitations. Except for any obstructions or limitations on access reasonably necessary in connection with the maintenance, repair and replacement of portions of the Access Drives, Shared Walkways, the Shared 759 West Middlefield Access Easement Area and/or Public Use Areas, or as a result of Emergencies, no Owner shall cause or permit any obstructions within the Access Drives, Shared Walkways, the Shared 759 West Middlefield Access Easement Area and/or Public Use Areas. The easements herein granted in this Section 2.5.1 are also subject to (a) the rights of the Multifamily Parcel Owner to restrict access on a temporary or permanent basis as provided in Section 2.14.4 and Article 7, as applicable, (b) any licenses or easements for vehicular ingress and egress granted to emergency service providers, including police, ambulance and fire service providers, and (c) the right of the Multifamily Parcel Owner to install, maintain, repair, replace and relocate Utility Facilities which may be located within the Access Drives, Shared Walkways, the Shared 759 West Middlefield Access Easement Area and/or Public Use Areas in accordance with and subject to the provisions of Section 2.5 and with respect to the Public Use Areas, subject to the PAE Dedications.

(d) Shared Walkways. Declarant hereby establishes for its benefit and the benefit of all successor Owners of the Multifamily Parcel and for the benefit of the District Parcel Owner and all successor Owners of the District Parcel and each of their Permitted Users a non-exclusive easement for pedestrian ingress and egress, over, through and across the Shared Walkways to access the public streets and Shared Use Areas and the Multifamily Shared Amenities and any other areas intended for use by such Owner and its Permitted Users on the Parcel of the other Owner.

(e) Public Use Areas. Each of the Owners and their Occupants and other Permitted Users shall have the rights as members of the public for the use of the Public Access Areas subject to the terms of the PAE Dedications including without limitation any bicycle repair facilities provided pursuant to the requirements of the City. Notwithstanding any limitations on access established under the PAE Dedications, and time of day limitations on access, if any, the limitations set forth in the PAE Dedications are not intended to apply to the Owners or to their Occupants and guests to the extent access is required to exercise the rights established under this Declaration.

2.5.2 Parking Garage.

(a) Parking Within District Parking Area. Declarant hereby grants to the District Parcel Owner for its benefit and the benefit of its Occupants, a non-exclusive easement appurtenant to the District Parcel for ingress and egress within the Parking Garage to access the District Allocated Parking Space and for parking within the District Allocated Parking Spaces and a non-exclusive license for parking by the guests of the Occupants of the District Building in the District Guest Parking Spaces. District Parcel Owner shall cooperate with the Multifamily Parcel Owner and shall, if so requested, exercise remedies under its Leases if its Occupants are in violation of posted signage or the Project Rules or otherwise or not parking in the District Allocated Parking Spaces in the Parking Garage. District Parcel Owner shall be obligated to require its Occupants who have been assigned the right to park within the District Parking Area to provide car make and model, license plate and contact information to the Multifamily Parcel Owner to enable Multifamily Parcel Owner to monitor parking within the Parking Garage and with respect to parking by guests in the District Guest Parking Spaces to require the use or display of stickers, decals or other identifying information as may be requested by Multifamily Owner from time to time to ensure the use of such District Guest Parking Spaces is in conformance with this Declaration, the Project Rules, posted signage and any security or other measures imposed by Project Operator. District Parcel Owner shall pay, or shall obligate its Occupants to pay, any costs associated with key fob entry systems and transponders or any other entry control devices for the entry control systems installed by Multifamily Parcel Owner. Except as provided in Subsection (b) below, nothing contained herein shall be deemed to grant District Parcel Owner or its Occupants rights to park within any portion of the Parking Garage other than the District Allocated Parking Spaces and, with respect to guests, within the District Guest Parking Spaces, and in no event may such District Allocated Parking Spaces be used for parking by non-Occupants of the District Parcel unless authorized by the Multifamily Parcel Owner in its sole and absolute discretion. District Parcel Owner shall be obligated to cooperate with Multifamily Parcel Owner in causing District Parcel Owner's Occupants to comply with the requirements set forth herein, the requirements set forth in the Project Rules and the requirements set forth in the Parking Management Plan related to parking in the Parking Garage and any posted signage.

(b) Guest Parking. District Parcel Owner shall ensure that any District Guest Parking Spaces are only used for guest parking during periods that may be authorized through signage and/or regulated under the Project Rules and shall comply with any posted limitations on time periods for parking in the District Guest Parking Spaces established by the Multifamily Parcel Owner.

(c) District Storage Areas. Declarant hereby grants to the District Parcel Owner for its benefit and the benefit of its Occupants a non-exclusive easement appurtenant to the District Parcel for access, ingress and egress into the Parking Garage to access the District Storage Area for the purpose of using any District Storage Lockers located therein which have been assigned to Occupants of the District Parcel Owner. Such easements are for the benefit of the District Parcel Owner and its Occupants. District Parcel Owner shall have the right to assign use of the District Storage Lockers to the Occupants of the Residences located within the District Building. In connection with such assignment, upon request by Project Operator, District Parcel Owner shall provide to the Project Operator the name of the Occupant who has been assigned the right to use a District Storage Locker and appropriate contact information. In no event may the rights to use the District Storage Lockers be granted to non-Occupants of the District Parcel. District Parcel Owner shall be obligated to cooperate with Multifamily Parcel Owner in causing District Parcel Owner's Occupants to comply with the requirements set forth herein and all Project Rules and posted signage related to use of the District Storage Lockers. While the Project Operator shall maintain the functional elements of the District Storage Lockers, the District Parcel Owner shall be solely responsible for any damage caused to the District Storage Lockers as a result of the use thereof by its Occupants and shall be responsible to reimburse the Project Operator for any such costs incurred in repairing the damage by the Project Operator as provided in Section 4.7.

2.5.3 Multifamily Shared Amenities. Declarant hereby grants to the District Parcel Owner for its benefit and the benefit of its Occupants a non-exclusive easement appurtenant to the District Parcel for access, through the portions of the Multifamily Parcel and within the Multifamily Apartment Buildings designated by the Multifamily Parcel Owner for access to the Multifamily Shared Amenities and

use and enjoyment of the Multifamily Shared Amenities during such periods and times when such areas are made available for use by the Occupants of the Residences in the Multifamily Apartment Buildings. Such easement is for the benefit of the District Parcel Owner and its Occupants and only to the extent authorized under the Project Rules to their guests. Such easement shall be subject to the right of the Multifamily Parcel Owner to establish hours of operation and conditions of use, and to close the Multifamily Shared Amenities for private events and functions and to perform Maintenance Obligations, or as otherwise may be deemed reasonably necessary by Multifamily Parcel Owner. In no event shall Multifamily Parcel Owner impose requirements on Lessees of the District Building in a discriminatory manner which do not generally apply to Lessees within the Multifamily Apartment Buildings except that Multifamily Parcel Owner can restrict and regulate the path of travel to access the Multifamily Shared Amenities to prevent access to portions of the Multifamily Apartment Buildings which are not intended for access by the Occupants of the District Apartment Building and, in no event do the Multifamily Shared Amenities include the rooftop amenities located within Multifamily Apartment Building A and Multifamily Apartment Building B. District Parcel Owner shall be obligated to cooperate with Multifamily Parcel Owner in causing District Parcel Owner's Occupants and their guests to comply with the requirements set forth herein and the requirements set forth in the Project Rules and any posted signage related to use of the Multifamily Shared Amenities.

2.6 Utility Easements.

2.6.1 Grant of Easements for Utility Facilities. Declarant hereby establishes for the benefit of itself and all successor Owners of the Multifamily Parcel and the District Parcel a non-exclusive easement for the placement, operation, maintenance and replacement of any Utility Facilities serving the Shared Maintenance Areas (including without limitation the Shared Private Sewer Line, the Private Water Lines, the Shared Fire Hydrant Facilities, and the Shared Fire Line and Fire Pump Equipment) and any Utility Facilities which may be located in the District Parcel which serve the Multifamily Parcel, including without limitation the Multifamily Water Line, and any Utility Facilities which may be located within the Multifamily Parcel which serve the District Parcel, if any, subject to the terms and conditions of this Section 2.6.

2.6.2 Location of Utility Easements. All Utility Facilities shall (to the extent practical) be installed either underground or enclosed within a Building. The Grantor of any such utility easements shall have the right to use the surface of the easement for any purpose not inconsistent with the Grantee's authorized use hereunder.

2.6.3 Utility Facilities Serving Multifamily Parcel and District Parcel. The District Owner shall reasonably cooperate with the Project Operator to permit the maintenance, repair and replacement of the Utility Facilities serving the Shared Maintenance Areas, or any Utility Facilities serving the Multifamily Parcel which may be located on the District Parcel including without limitation the Multifamily Water Line, the Shared Fire Hydrant Facilities, the Shared Fire Line and Fire Pump Equipment, and the Shared Private Sewer Line. In performing such Maintenance Obligations, the Project Operator shall use reasonable efforts to minimize the effects and duration of any interruption in utility services to the District Parcel to the extent reasonably practical. Any planned interruption in utility services (excluding Emergency responses) will be scheduled and coordinated with the District Parcel Owner.

2.6.4 Approvals for Installation or Relocation of Utility Facilities or Other Utility Work. In the event the Project Operator desires to install or relocate Utility Facilities serving the Multifamily Parcel or to replace any Utility Facilities required to be maintained by the Project Operator hereunder that require the exercise of easement rights on the District Parcel which will materially and adversely affect access to the District Building ("Utility Work") the following terms and provisions shall apply. Except as otherwise provided below, the Project Operator shall give the District Owner written notice not less than thirty (30) days' prior to the date the Project Operator desires to commence the Utility Work, which notice shall describe (a) the scope of the Utility Work, (b) the need for such Utility Work, (c) the proposed location for the Utility Work, (d) the anticipated commencement and completion dates for the Utility Work, and (e) the contractor performing the Utility Work. The notice shall also set forth the schedule for the performance of such Utility Work. District Owner must provide its approval within fourteen (14) business days of Project Operator's notice. Prior to commencing any such Utility Work, the Project Operator shall provide to the

District Owner a certificate of insurance evidencing that its contractor has obtained the minimum insurance coverages required under this Declaration. Any Utility Work shall comply with the requirements set forth in this Section 2.6. Project Operator agrees to indemnify, protect, defend and hold harmless the District Owner from and against all Claims brought thereon, arising from or resulting from performance of the Utility Work, provided however, the foregoing obligation shall not apply to Claims based on the negligence or the willful act or omission of the District Owner. Notwithstanding the foregoing, in the event of an Emergency only such notice as is reasonable under the circumstances shall be required to be provided to the District Owner. Nothing contained herein shall require notice to be delivered by the Project Operator to the District Owner for routine maintenance and repairs to the Utility Facilities required to be performed hereunder by the Project Operator, unless the routine, maintenance (non-emergency) is planned to result in a temporary interruption of utility service in which case the Project Operator shall provide advance notice to be District Owner in order to allow the District Owner to provide notice to its Occupants.

2.7 Shared Fire Line and Fire Pump Equipment. Declarant hereby establishes for its benefit and the benefit of all successor Owners of the Multifamily Parcel and for the benefit of the District Parcel Owner and all successor Owners of the District Parcel a non-exclusive easement for the placement, and use of the Shared Fire Line and Fire Pump Equipment and grants to the Project Operator a non-exclusive easement for the maintenance and operation and use of the portions of the Shared Fire Line and Fire Pump Equipment located on the District Parcel and Multifamily Parcel.

2.8 Easements for Encroachments. Each Parcel as the dominant tenement (*i.e.*, the benefitted Parcel) shall have a non-exclusive easement over each adjoining Parcel as the servient tenement (*i.e.*, the burdened Parcel) for minor encroachments of the dominant tenement onto the servient tenement, and the maintenance thereof so long as such minor encroachment exists due to (a) the actual physical location of the Improvements in a burdened Parcel constructed largely within the benefitted Parcel in accordance with the original design, plans and specifications of the applicable Owner, or (b) engineering errors, errors or adjustments in original construction, settlement or shifting of a Building or similar causes, or due to minor variations from the plans approved by the City in the construction of the Improvements. In no event shall a valid easement for encroachment be created in favor of an Owner of a Parcel if said encroachment occurred due to the intentional conduct of said Owner. If a structure is partially or totally destroyed and then repaired or rebuilt, then each Owner of a Parcel agrees that minor encroachments for the same reasons as specified above shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

2.9 Drainage and Stormwater Drainage Facilities. Declarant hereby establishes for the benefit of itself and all successor Owners of the Multifamily Parcel and District Parcel a non-exclusive easement for the placement, operation, maintenance, development and replacement of any Stormwater Drainage Facilities serving such Parcels and to the extent necessary for the placement, operation, maintenance, development and replacement of the Stormwater Drainage Facilities which may be located on each other Owner's Parcel and for the flow of stormwater through any such Stormwater Drainage Facilities. There is hereby established in favor of the Project Operator a non-exclusive easement within the District Parcel for the maintenance, repair and replacement of the Stormwater Drainage Facilities. The District Owner shall cooperate with the Project Operator to permit maintenance, repair, replacement and inspection of the Stormwater Drainage Facilities by the Project Operator as may be deemed reasonably necessary by the Project Operator. Each Owner, in exercising the easement rights herein, shall comply with the restrictions set forth in Section 3.18.

2.10 Maintenance Easements. Declarant hereby establishes, for its benefit and the benefit of all successor Owners of the Multifamily Parcel a non-exclusive easement for ingress and egress over the portions of the District Parcel for access by the Project Operator in connection with the performance of its Maintenance Obligations for the Shared Maintenance Areas and other obligations established hereunder and exercise of its rights by the Multifamily Parcel Owner and its Authorized Users to the extent reasonably required for performing any inspections, maintenance, repair, and/or replacement of the applicable Shared Maintenance Areas, and/or for the performance of any other Maintenance Obligations hereunder and to perform its other obligations imposed under this Declaration and for exercising its rights under this Declaration. To the extent the District Parcel has any maintenance obligations which requires access to

the Multifamily Parcel, Declarant hereby grants to the District Parcel a non-exclusive easement for ingress and egress over the portions of the Multifamily Parcel reasonably necessary to perform such Maintenance Obligations and any other obligations imposed under this Declaration and for exercising its rights under this Declaration.

2.11 Easements for Way Finding and any Other Signage. Declarant hereby establishes for its benefit and the benefit of all successor Owners of the Multifamily Parcel a non-exclusive easement for the placement of signage on the District Parcel required by Governmental Requirements, including without limitation the Public Open Space Signage, and way finding signage within the District Parcel Access Drives and areas adjacent thereto and for the placement of any other Project Signs deemed necessary by the Multifamily Parcel Owner.

2.12 Trash Staging Areas. Declarant hereby reserves for its benefit and the benefit of all successor Owners of the Multifamily Parcel and grant to the District Owner for its benefit and the benefit of all successor Owners of the District Parcel a non-exclusive easement for the placement of trash receptacles on trash collection days within the Trash Staging Areas in compliance with the requirements of Section 3.15 and the Trash Management Plan.

2.13 Exercise of Cure Rights. Declarant hereby establishes for its benefit and the benefit of all successor Owners of the Multifamily Parcel an easement to enforce performance of the District Parcel Owner's Maintenance Obligations hereunder if the District Parcel Owner is not performing such maintenance or otherwise not performing its obligations hereunder. Costs incurred in exercising such cure rights shall be charged to the District Parcel Owner as provided in Section 4.9 below.

2.14 Limitations on Easement Rights. The easement rights granted herein are subject to the limitations set forth below.

2.14.1 Easements of Record. The easements are subject to all covenants, conditions, restrictions, encumbrances, easements, dedications, and rights of way, if any, granted or reserved in, on, over and under the Overall Property as shown on the Final Parcel Map (including without limitation, any public access easements shown on the Final Parcel Map) and any other matters of record including the PAE Dedications and the Shared 759 West Middlefield Access Agreement.

2.14.2 Project Entitlements and Governing Documents. Each of the easements and licenses granted and reserved herein are subject to the Project Entitlements and the Project Rules.

2.14.3 Events and other Closures. Nothing contained herein shall limit or restrict the right of the Multifamily Parcel Owner to limit access over any portion of the Project Exterior Areas for the purposes of accommodating outdoor events (which may include without limitation farmers markets, displays, athletic events, holiday gatherings etc.) and such other purposes related to the use of the Multifamily Parcel and/ or any further development of the Multifamily Parcel so long as (a) such relocation is not restricted by the applicable Governmental Agencies, and (b) reasonable access for pedestrians is otherwise made available.

2.14.4 Limitation on Access Rights in Connection with Maintenance and Repair. The Project Operator shall have the right to temporarily close or restrict access to the Shared Maintenance Areas or other areas on the Parcels upon which easements above are located as may be reasonably necessary in connection with the exercise of any construction, maintenance, repair or replacement rights or obligations under this Declaration, so long as: (a) for the District Parking Area, reasonable alternative arrangements for parking are provided, as deemed practical and feasible by the Multifamily Owner and such closure is coordinated with the District Parcel Owner; (b) for the Access Drives and Shared Walkways, alternative access arrangements are provided so that each Owner has practical and usable access to its Parcel and the Buildings thereon at all times; (c) such temporary closure or restricted access is only for such limited periods of time reasonably necessary to facilitate such construction, maintenance, repair or replacement; and (d) commercially reasonable measures are implemented to minimize any interference



which such closure or restriction may have on the operation and use of and/or access to the Parcels. If due to the nature of the repair, access must be temporarily obstructed, the Project Operator shall (except in the event of an Emergency) provide at least fourteen (14) days' written notice to the District Parcel Owner of such temporary obstruction or closure. Notwithstanding the foregoing, the provisions of Subsections (a) through (d) shall not apply in the event there is a Casualty, in which event, the provisions of Article 7 below shall apply.

2.15 No Separate Transfer. None of the appurtenant easements described above shall be conveyed, transferred, assigned or encumbered separately from the fee or ground leasehold interests in the individual Parcels. Easements that benefit or burden any Parcel shall be appurtenant to that Parcel and shall automatically accompany the transfer or conveyance of such Parcel, even though the description in the instrument of transfer may refer only to the interests in the Parcel as transferred or conveyed. District Parcel Owner shall not grant an easement or easements of the type set forth in this Article 2 for the benefit of any other Person or any property not within the Overall Property at the time of such grant without, in each case, the prior written consent of the Multifamily Parcel Owner; provided, however, that the foregoing shall not prohibit the use of any easements existing on the date of recordation of this Declaration, or the granting or dedicating of easements to Governmental Agencies or to utility or other service providers as may be reasonably required by such Owner.

2.16 Duration of Easements. The easements granted and reserved in this Article 2 in favor of the Owners shall exist in perpetuity, and with respect to any easements granted, are appurtenant to the applicable Parcel (including the ground leasehold estate in the District Parcel) and all future subdivisions thereof and shall inure to the benefit of the Owners and shall burden the Parcels on which the easements are located.

ARTICLE 3  
USE RESTRICTIONS

3.1 Compliance With Applicable Laws and Project Entitlements. Each Owner shall comply with and use its commercially reasonable efforts to cause its Occupants and their Permitted Users to comply with all Applicable Laws and the Project Entitlements to the extent applicable to the Project. No illegal activities shall be conducted within the Project.

3.2 Residential Uses. The Residences in each Building shall be used for residential purposes only provided, however, that any Residence may be used incidentally for the purpose of operating a home based small business if, and only if: (a) the business is operated solely within the Residence; (b) the business is limited to arts and crafts, the rendition of professional services, or other similar entities; (c) the business is operated by the Lessee whose principal residence is the Residence or by a member of such Lessee's family whose principal residence is the Residence; (d) there is no sales activity conducted within the Project Exterior Areas and no customers visiting the Project and no advertising anywhere in the Project; (e) the operation is permitted by and is at all times in compliance with Applicable Laws; and (f) the operation of the business does not result in: (i) the violation of any of the other provisions of this Declaration or the Project Rules; (ii) any unreasonable increase in the flow of traffic within the Project; (iii) any parking problems within the Project; or (iv) any other adverse conditions to the Occupants of the individual Residences. Notwithstanding the foregoing, nothing contained herein shall be deemed to prohibit any home based business specifically required to be allowed by Applicable Law and/or as may be authorized by the District Parcel Owner.

3.3 Leases. All Leases shall be in writing and shall include provisions in the Leases obligating the Lessees to comply with this Declaration and the Project Rules and shall provide that a breach of such covenants is a breach under the Lease. Project Operator shall have the right to levy fines against the District Parcel Owner and/or its Occupants of the District Apartment Building for failure to comply with this Declaration and the Project Rules. District Parcel Owner shall be obligated to pay and/or require payment of such fines by its Lessees and shall include such provisions as are necessary to provide for such payment in any Leases.

3.4 Project Rules. Each Owner shall comply with and shall use commercially reasonable efforts to cause its Occupants to comply with the requirements set forth in the Project Rules. Multifamily Parcel Owner shall have the right to establish the Project Rules; provided, however, that such Project Rules shall be applied uniformly to the District Parcel and to the Multifamily Parcel. Each Owner shall provide a copy of the Project Rules to its Lessees, shall require in its Leases that Lessees comply with such Project Rules and shall provide for collection of fines from Lessees as provided in Section 3.3 above.

3.5 Modifications to Improvements. The covenants and agreements of the District Parcel Owner to operate and maintain its District Apartment Building as a unified and integrated part of the Overall Property and to ensure a consistent quality and level of maintenance within the Multifamily Apartment Buildings was a material inducement to the development of the Overall Property by Declarant. Accordingly, in order to ensure the District Apartment Building and all of the Project Exterior Areas on the District Parcel are operated and maintained with a consistent, cohesive appearance with the Multifamily Apartment Buildings and all of the Project Exterior Areas within the Multifamily Parcel, in no event may the District Parcel Owner make any modifications to the District Apartment Building that are visible from the exterior including any changes to the exterior façade of the District Apartment Building and/or the roof or any changes which materially modify the entry areas and/or any other proposed modifications to Project Exterior Areas on the District Parcel without the approval of the Multifamily Parcel Owner. Multifamily Parcel Owner shall have the right to review and approve proposed modifications or installation of such Improvements by District Parcel Owner to the District Apartment Building and/or the Project Exterior Areas. Prior to making any such Improvements, District Parcel Owner shall provide Multifamily Parcel Owner with complete plans and specifications showing the nature, kind, shape, scope, materials and any other information reasonably required by the Multifamily Parcel Owner (“Plans and Specifications”). Multifamily Parcel Owner shall have thirty (30) days to review such Plans and Specifications. In the event Multifamily Parcel Owner or District Parcel Owner requests a meeting to review and discuss such Plans and Specifications, the Owners shall reasonably cooperate to accommodate such request. Multifamily Parcel Owner shall deliver written approval or disapproval of the Plans and Specifications within such thirty (30) day period after the delivery of the Plans and Specifications to Multifamily Owner. If Multifamily Parcel Owner does not deliver such written approval or disapproval, District Parcel Owner shall provide written notice to Multifamily Parcel Owner of such failure to respond. In no event may the District Parcel Owner make any modifications to the Improvements located within Project Exterior Areas within the District Parcel without the approval of the Multifamily Parcel Owner. Multifamily Parcel Owner shall have fifteen (15) days from the date of receipt of such written notice to provide approval or disapproval. Failure to respond within such additional fifteen (15) day period shall be deemed disapproval of the Plans and Specifications. If Multifamily Owner disapproves such Plans and Specifications or is deemed to have disapproved such Plans and Specifications, the District Parcel Owner and Multifamily Parcel Owner shall meet and confer within fifteen (15) days of delivery of a notice of disapproval or the effective date of a deemed disapproval to resolve the dispute. If the Parties fail to reach agreement on the scope of permitted changes, the matter shall be resolved in accordance with the procedures set forth in Section 8.3.

3.6 Parking Management Plan. Each Owner shall comply with, and shall cause its Permitted User to comply with the Parking Management Plan.

3.7 TMA Membership. Each Owner shall maintain an ongoing membership in the Mountain View Transportation Management Association, at such Owner’s sole cost and expense.

3.8 Insurance Requirements. The Owners shall not do anything that would materially increase the premiums of any policy of insurance maintained by the other Owner or cause any insurance policy to be cancelled, or cause a refusal to renew the same.

3.9 No Outside Storage. Unless approved by the Multifamily Parcel Owner, no materials, supplies, or equipment shall be stored in any area on a Parcel except inside a closed Building or behind a visual barrier screening such area so that said stored items are not visible from adjacent property or streets. Said screening may consist of any architecturally suitable material conforming with the general development of the Project.

3.10 Parking Restrictions.

3.10.1 Use of District Allocated Parking Spaces in Parking Garage. The District Parcel Owner shall comply with and each Owner shall cause each of its Occupants to comply with the obligation to park only within the District Allocated Parking Spaces within the Parking Garage. Any parking in the District Allocated Parking Spaces shall be in compliance with this Declaration and the Project Rules. The Multifamily Parcel Owner shall have the right to tow away (at the vehicle owner's expense) any vehicle parked in violation of the Project Rules and to deny access to any vehicle, where such vehicle is in violation of this Declaration or the Project Rules. The District Parcel Owner shall cause its Occupants to comply with any posted signage in the Parking Garage or on the Access Drives providing access to the Parking Garage.

3.10.2 General Parking and Vehicular Restrictions on Parking Spaces within Project Exterior Areas. No vehicle shall be parked on any portion of the Access Drives or other portions of the Project Exterior Areas other than within designated Parking Spaces except temporarily while loading or unloading as permitted hereunder. Loading and unloading activities for the District Apartment Building shall be required to be performed within the loading and unloading area located within the District Parcel and loading and unloading activities for the Multifamily Apartment Building shall be conducted within the loading and unloading area located within the Multifamily Parcel. No Person shall park, store or keep anywhere on the exterior of the Project any operable or inoperable large commercial vehicle, camping trailer, boat, mobile home, recreational vehicle, motor home or any other similar vehicle as provided in the Project Rules. Project Operator has the right to tow away any vehicle parked in the Project in violation of this Declaration and the Project Rules, and/or to attach violation stickers or notices to such vehicle, so long as the Project Operator complies with Applicable Laws.

3.10.3 Guest Parking. District Parcel Owner shall cause its Occupants to comply with any posted signage and limitations on parking within any District Guest Parking Spaces which may be made available for use by the Multifamily Owner. Pursuant to the Parking Management Plan, an Owner may allow employees to park in its designated Parking Garage Guest Parking Spaces.

3.10.4 Future Resident Parking Spaces. Each Owner shall use the Future Resident Parking Spaces on its Parcel solely for parking by future residents.

3.10.5 Loading Area. Each Owner shall use a designated loading area on its Parcel for loading and unloading purposes and shall cause its Occupants to promptly remove boxes and other debris resulting from such deliveries.

3.11 District Storage Lockers. District Storage Lockers shall be used only for the storage of personal property. In no event shall the District Storage Lockers be used for the storage of any Hazardous Materials or any other noxious, toxic, or odorous substances. Occupants may not store items in the District Storage Lockers in such a manner so as to block fire sprinklers or other fire prevention devices located in any area where the District Storage Lockers are located. The Multifamily Owner, either in its capacity as an owner or in its capacity as the Project Operator, shall not be liable or responsible for any damage for any items stored within the District Storage Lockers including, but not limited to, damage from water intrusion, dust, dirt, theft, or other causes. The District Owner shall ensure its Occupants comply with the requirements of this Section 3.11 and the other provisions of this Declaration and Project Rules related to the use of the District Storage Lockers.

3.12 Signs. No sign or advertisement shall be displayed on or in any Residence within the District Apartment Buildings which is visible from the Project Exterior Areas except signage authorized under the Project Signage Program and the Project Rules.

3.13 Roof and Exterior Façade Installations. Projections of any type are not permitted on the roof of the District Apartment Building, except equipment installed in connection with the initial construction of the District Apartment Building or otherwise approved pursuant to Section 3.5. No equipment of any type

or kind may be installed on the Exterior Façade of any Building or be allowed to protrude through the walls of such Exterior Façade, other than those items installed during the original construction of the Building or otherwise approved pursuant to Section 3.5. Aluminum foil, newspaper, paint, reflective tint or any other material are not permitted as window coverings.

3.14 Trash Disposal. Trash, garbage or other waste shall be deposited only in appropriate receptacles within the Buildings or designated receptacles within the Project Exterior Areas. No Owner shall permit or cause any trash or refuse to be kept on any portion of its Parcel other than in the receptacles customarily used for trash disposal.

3.15 Trash Staging Areas. Each Owner is responsible to ensure that it arranges to have the trash containers for its Building moved to the Trash Staging Area on the trash collection day and to arrange for the prompt removal of the trash containers after such trash has been collected. In transporting the trash containers each Owner is responsible to ensure there are no spills or debris left within the Trash Staging Area. The Owners shall comply with the requirements of Section 4.3.4 relating to trash removal.

3.16 Hazardous Materials. No Owner shall and no Owner shall allow its Occupants and their Permitted Users to release, generate, use, store, dump, transport, handle or dispose of any Hazardous Materials within the Project in violation of Applicable Laws or otherwise permit the presence of any Hazardous Material on, under, or about the Parcels in violation of Applicable Laws. If Hazardous Materials are released within the Project in violation of any Applicable Laws and such release occurred as a direct or indirect result of an Owner's or such Owner's Permitted Users' use, handling, storage or transportation of such Hazardous Materials, such Owner shall be solely responsible and liable for the prompt cleanup and remediation of any resulting contamination and will indemnify, protect, defend and hold the Owners harmless from any and all Claims suffered by or incurred by such parties, except to the extent any other Owner was solely responsible for the release or discharge of Hazardous Materials.

3.17 Balconies. No spas, Jacuzzis or other water features shall be permitted in any balcony area. Laundry shall not be hung on railings or otherwise be allowed to be dried within those portions of the balcony areas that are visible from Shard Drives and Shared Walkways and other areas within the Covered Property located outside of the Building areas within the Covered Property. No vegetation shall be permitted to extend beyond the railings, fences, walls and/or other boundaries of the enclosure for the balcony. All furniture within a balcony area shall be maintained in a clean and attractive condition. Nothing shall be hung from or attached to any balconies railings enclosing such balconies. Furniture, furnishings, umbrellas, plants, equipment and other materials kept or stored on any balcony area shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of the applicable Building. No Owner shall allow its Lessees to use any balcony areas for storage purposes, including, without limitation, the storage of bicycles.

### 3.18 Established Drainage.

3.18.1 Established Drainage. As used in this Section 3.18, "Established Drainage" is defined as the drainage which existed at the time the final grading and the drainage improvements were originally completed by an Owner in conformance with plans approved by the City. Established Drainage refers to both surface drainage and subsurface drainage, if any.

3.18.2 Obstructions to Stormwater Facilities. No Owner shall cause any obstructions or interference with any of the Stormwater Drainage Facilities within the Overall Property. No Owner shall interfere with or alter the Established Drainage in a manner which will prevent the surface drainage from draining into the Stormwater Drainage Facilities. Any plans for the alteration to any of the stormwater facilities within the Overall Property shall be prepared by a licensed civil engineer and reviewed by the City for compliance with the latest stormwater regulations.

3.18.3 Damages. In the event an Owner changes the Established Drainage or causes obstructions or damage to any of the Stormwater Drainage Facilities, the Owner causing the

damage shall be responsible for any damages which might result to the other Owner or its Parcel or to any third party and shall indemnify, protect, defend and hold harmless the non-defaulting Owner from and against any Claims arising from or attributable to any failure by the Owner causing the damage to comply with the requirements of this Declaration.

3.19 Project Signage Program. All Project Signs, way finding signs and all other exterior signage shall comply with the Project Signage Program in the form approved by the City.

ARTICLE 4  
MAINTENANCE AND OPERATION

4.1 Maintenance. Unless the context otherwise requires, as used in this Article 4, “maintenance”, “maintain” or “maintaining” means the operation, inspection, maintenance, repair, restoration and replacement of the areas and facilities designated for maintenance by the Owners. To the extent repair, restoration or replacement is required as a result of damage or destruction under Article 7, then the repair, restoration and replacement shall be governed by the provisions of Article 7.

4.2 Maintenance Obligations of the Project Operator. The Project Operator shall perform the Maintenance Obligations set forth below, and the costs and expenses incurred by the Project Operator shall be included in the Shared Expenses and allocated pursuant to the applicable Allocation Formula, subject to the right of the Project Operator to seek reimbursement as a result of damage caused by an Owner or its Occupants pursuant to Section 4.8. Except for the Parking Garage Expenses and the Shared Expenses incurred for maintenance of the District Courtyard and District Storage Lockers and any expenses incurred in exercising the rights under Section 4.7, all other Shared Expenses shall be allocated based upon the General Allocation.

4.2.1 Project Exterior Areas. The Project Operator shall (a) regularly remove all debris within the Project Exterior Areas and maintain any trash receptacles in a clean and well maintained condition, including without limitation the Trash Staging Area, (b) maintain all Project Signs relating to the Project Exterior Areas, (c) perform all other maintenance reasonably necessary for the maintenance of the Project Exterior Areas in conformance with the Project Maintenance Standards and Governmental Requirements, (d) maintain and keep well-stocked with pet waste disposal bags all animal waste stations within the Project Exterior Areas, (e) remove oil and other stains on any hardscaped areas, and (f) undertake such other Maintenance Obligations as may be determined to be necessary by the Project Operator to comply with the Project Maintenance Standards. The maintenance of the Project Exterior Areas shall include periodic sweeping, debris removal, and repair of damage to any Improvements within the Project Exterior Areas and the restriping of the Future Resident Parking Spaces.

4.2.2 Access Drives. The Project Operator shall perform all routine, day-to-day maintenance and make any repairs necessary to keep the Access Drives in a good condition of maintenance and repair. Such Maintenance Obligations shall include without limitation, (a) maintaining the paved surfaces and curbs of the Access Drives in a smooth and evenly covered condition, which maintenance work shall include, without limitation, restriping, repairing and resurfacing of the Access Drives, using surfacing material of a quality equal or superior to the original surfacing material, (b) maintaining all landscaping and hardscaping within the Access Drives in a clean and attractive appearance and the removal of all oil and other stains thereon, and (c) maintaining all lighting facilities servicing the Access Drives in operable condition, The maintenance of the Access Drives shall include periodic sweeping, debris removal, and repair of damage.

4.2.3 Public Use Areas. The Project Operator shall maintain the Public Use Areas and the Improvements located thereon in good order, condition and repair and in compliance with the Americans with Disabilities Act and the requirements of the PAE Dedications. The City shall have the right to enforce the Maintenance Obligations and other obligations with respect to the Public Use Areas and the Project Operator agrees to indemnify, protect, defend and hold the City harmless as a result of any negligent

acts, errors or omissions in performance of its Maintenance Obligations for the Public Use Areas under this Declaration.

4.2.4 Multifamily Shared Amenities. The Project Operator shall maintain the Multifamily Shared Amenities in a clean and attractive conditions with the regular removal of trash and debris and shall regularly inspect the swimming pool and spa to ensure the quality of the water and the sound operation of the equipment for the operation of the swimming pool and the spa. The Project Operator shall maintain the equipment in the Multifamily Shared Amenities in sound operating condition.

4.2.5 Street Trees. The Project Operator shall maintain the irrigation lines servicing the Street Trees and shall pay all costs of water necessary to irrigate the Street Trees, which costs shall be included in the Shared Expenses.

4.2.6 Shuttle Stop. The Project Operator shall maintain the Shuttle Stop in accordance with all City requirements unless the City or other transit authority performs such maintenance.

4.2.7 Project Exterior Lighting. The Project Operator shall maintain all Project Exterior Lighting, which excludes any lighting fixtures located on the District Building and Multifamily Buildings. Such lighting shall be maintained in accordance with the Landscape and Lighting Plan approved by the City.

4.2.8 Project Landscape Maintenance Areas. The Project Operator shall maintain all Project Landscape Maintenance Areas in a clean and litter-free and weed free condition including all trees and landscaped parkways and landscaped areas and any irrigation systems located herein and any plants, planters and other landscaping located within the Project Exterior Areas free of weeds, debris and litter. Diseased or dead plant material shall be promptly removed and replaced with equal or better specimens. The Project Operator shall maintain the Heritage Trees and perform all other long-term requirements set forth in the Tree Mitigation and Preservation Plan. All other landscaping shall be maintained in accordance with the Landscape and Lighting Plan. All such maintenance shall be performed in accordance with the Project Maintenance Standards. Notwithstanding the foregoing, with respect to the Street Trees, the Project Operator shall only be obligated to maintain the irrigation serving such Street Trees as provided in Section 4.2.5.

4.2.9 Irrigation Serving Parcels. Notwithstanding that each Parcel has its own irrigation systems which is metered to the Owner's Parcel or Building, the Project Operator shall maintain such irrigation systems and ensure they are properly functioning and conform to the requirements of Chapter 32 of the City Code. The District Owner shall cooperate with the Project Operator in connection with such maintenance and shall ensure watering occurs at times and levels required by the Project Operator. All costs and expenses incurred by the Project Operator in maintaining the irrigation systems on the District Parcel shall be allocated based upon General Allocation.

4.2.10 Graffiti. The Project Operator shall promptly remove any graffiti on any Shared Maintenance Areas and shall restore the surface to its condition prior to the application of the graffiti as part of its routine maintenance. All costs and expenses incurred by the Project Operator in removing the graffiti and restoring the surface of the affected Improvements shall be allocated based upon the General Allocation Formula.

4.2.11 Stormwater Drainage Facilities. The Project Operator shall maintain all of the Stormwater Drainage Facilities in a good condition of maintenance and repair and free of any obstructions and debris which will block the flow of water through the stormwater lines or storm drain lines and in accordance with all Applicable Laws and Governmental Requirements. The Project Operator shall inspect the Stormwater Drainage Facilities to ensure any underground chambers and any bioretention filters are not blocked or obstructed and shall clean out sediment and other debris from the underground chambers and any bioretention filters.

4.2.12 Project Signage. The Project Operator shall maintain, clean repair and replace all Project Signs. The Project Operator shall maintain the Public Open Space Signage in accordance with all City requirements and the Project Signage Program.

4.2.13 Parking Garage. The Project Operator shall operate, maintain, repair, clean, the Parking Garage, including without limitation the District Allocated Parking Spaces and adjacent drive aisles, in a first class manner consistent with parking facilities located in similar Class A projects. The obligation of Project Operator to operate, maintain, repair, clean, restore and replace the Parking Garage shall include, but not be limited to, the following, all of which Shared Expenses incurred therefore shall be included in the Parking Garage Shared Expenses and allocated based upon the Allocation Formula for Parking Garage Shared Expenses:

(a) Paved Areas. Maintaining all paved surfaces and access ramps of the Parking Garage in a smooth and evenly covered condition, which maintenance work shall include, without limitation, restriping, repairing and resurfacing of the Parking Garage, using surfacing material of a quality equal or superior to the original surfacing materials;

(b) Removal and Refuse. Removal of all papers, debris, refuse, and sweeping the Parking Garage to the extent necessary to keep it in a clean and orderly condition;

(c) Signs and Markers. Placing, keeping in repair, replacing and repainting any appropriate directional signs, markers and lines in the Parking Garage, including signs designating the District Parking Area and other Parking Garage signage located therein;

(d) Elevators and Stairwells. Maintaining all elevators and stairwells providing access to the Parking Garage;

(e) Electric Vehicle Chargers. Maintaining electric vehicle chargers in an operable condition;

(f) Parking Area Lighting. Operating, keeping in repair, cleaning and replacing when necessary such lighting improvements within the Parking Garage as may be reasonably required;

(g) Utilities. Maintaining, cleaning and repairing any and all utility lines, systems and services located in or serving the Parking Garage and paying the costs for such utilities provided that any utilities which are not separately metered or sub-metered to an area shall be included in the Shared Expenses on an equitable basis as determined by the Project Operator;

(h) Access Control Devices. Maintaining all of the gate and access control devices and any electric vehicle chargers which may be installed; and

(i) Governmental Requirements. Complying with all applicable requirements of Governmental Agencies pertaining to the Parking Garage, including, without limitation, any alterations or additions required to be made to, or safety appliances and devices and procedures required to be maintained in or about, the Parking Garage under any Applicable Laws adopted, enacted or made and applicable to the Parking Garage.

4.2.14 District Courtyard Area. The Project Operator shall clean and maintain the District Courtyard Area in an attractive condition consistent with the other Project Exterior Areas.

4.2.15 Shared Private Sewer Line. The Project Operator shall maintain the Shared Private Sewer Line in sound operating order including inspecting and cleaning out such Shared Private Sewer Line as may be deemed necessary by the Project Operator.

4.2.16 Shared Fire Line and Fire Pump Equipment. The Project Operator shall maintain the Shared Fire Line and Fire Pump Equipment in sound operating order and shall arrange for the inspection thereof as may be required by the City Fire Department.

4.2.17 Shared Fire Hydrant Facilities. The Project Operator shall maintain the Shared Fire Hydrant Facilities in sound operating order.

4.2.18 Utility Facilities. The Project Operator shall maintain all Utility Facilities serving the Shared Maintenance Areas in sound operating order. The District Parcel Owner shall be responsible to pay all expenses payable to the utility providers for any Utility Facilities serving the District Parcel and metered or submetered to the District Parcel. The Multifamily Parcel Owner shall be responsible to pay all expenses payable to the utility providers for any Utility Facilities serving the Multifamily Parcel.

4.2.19 District Storage Lockers. The Project Operator shall maintain the structural components of the District Storage Lockers (excluding any individual locks) and shall repair and replace any damage to such enclosures at the sole expense of the District Owner or require the District Parcel Owner to repair such damage at its expense. In no event shall the Project Operator be responsible for any locks for the District Storage Lockers and/or personal property installed by the Occupants of the District Building within the District Storage Lockers.

#### 4.3 Operational Obligations.

4.3.1 Transportation Plan Requirements. The Project Operator shall coordinate compliance with the Transportation Demand Management Program and shall ensure the Transportation Demand Management Monitoring Reporting Requirements are met including, without limitation, the obligation to ensure a Commute Coordinator is operating as required by the Transportation Demand Management Program. The Project Operator shall serve as the Commute Coordinator. The District Parcel Owner shall cooperate in assisting the Project Operator to fulfill such obligations.

4.3.2 Parking Management Plan. The Project Operator shall coordinate compliance with the Parking Management Plan. The District Parcel Owner shall cooperate in assisting the Project Operator to fulfill such obligations.

4.3.3 Security. The Project Operator may, if it determines to be necessary provide security or other patrols for the Shared Use Areas. By providing such security or patrols, Project Operator is not assuming any liability with respect to any injury or damage that may occur to persons or property within the Project. Any costs for such security shall be included in the Shared Expenses.

4.3.4 Trash Management Plan and Trash Removal. The Owners shall cooperate with the selection of a trash removal company provided the final decision shall be made by the Project Operator (after consultation with the District Parcel Owner) and the Owners shall contract with the same trash removal company so selected to arrange for the removal of separate trash. Trash shall be placed in the Trash Staging Areas on trash collection days and removed from the Trash Staging Area in accordance with the Trash Management Plan and any Project Rules.

4.4 Authorization to Contract. Project Operator is hereby authorized to contract with, in its discretion, responsible persons to perform its management and maintenance responsibilities hereunder which may be Affiliates of Project Operator, and to the extent such contracts are entered into for purposes of performing Project Operator's management and maintenance responsibilities hereunder, Project Operator shall be responsible for ensuring performance by Project Operator's contractors pursuant to the terms of such contracts.



4.5 Owner's Maintenance Obligations.

4.5.1 Maintenance of Buildings. Except for any Shared Maintenance Areas located on a Parcel and other areas which are the responsibility of the Project Operator to maintain as set forth in Section 4.3 above, each Owner shall, after the issuance of a certificate of occupancy for its Parcel, at its own expense, at all times during the term of this Declaration, maintain its Building(s) and Improvements on its Building in conformance with the Project Maintenance Standards and in compliance with the Governing Documents, Applicable Laws and all Governmental Requirements. Such Maintenance Obligations shall include without limitation the periodic cleaning of windows and front entries and lobbies and the maintenance of any areas within the Buildings visible from the Project Exterior Areas in a clean and presentable condition and the maintenance of the Exterior Façade of the Buildings in a clean and attractive condition consistent with the overall quality of the maintenance of all of the Buildings and the regular painting of the Exterior Façade of the Buildings. The District Owner shall ensure at all times that the District Apartment Building is maintained to the same quality and level of maintenance as the Multifamily Apartment Buildings and shall repaint the District Apartment Building as and when required by the Multifamily Parcel Owner to ensure a consistent quality of maintenance and appearance.

4.5.2 Litter and Debris. The District Parcel Owner shall ensure that the Occupants and their Permitted Users do not place litter and debris within the Project Exterior Areas except in the designated receptacles.

4.5.3 District Water Line. The District Parcel Owner shall be solely responsible for the maintenance of the District Water Line and for its repair and replacement.

4.5.4 Multifamily Water Line. The Multifamily Parcel Owner shall be solely responsible for the maintenance of the Multifamily Water Line and for its repair and replacement.

4.5.5 Graffiti Removal. Each Owner shall promptly remove any graffiti on the exterior façade of its Buildings and shall return the surface to its condition prior to the application of the graffiti.

4.6 Property Manager for the District Parcel. To ensure a uniformity of appearance and quality of maintenance of the portions of the District Building which are visible from the exterior of the Project, the District Parcel Owner shall engage a property manager experienced in managing similar first class projects ("Property Manager"), which Property Manager shall have been approved by Multifamily Owner, which approval shall not be unreasonably withheld. The District Parcel Owner shall not reduce or modify the standards for maintenance in any contract entered into with the Property Manager below the standards set forth in this Declaration. The District Parcel Owner hereby grants to the Multifamily Parcel Owner the right to enforce the obligations for maintenance by the Property Manager as to the District Apartment Building and to undertake all other rights granted herein to the Multifamily Parcel Owner to ensure the quality and consistency of maintenance as required under this Declaration in conformance with the Project Maintenance Standards.

4.7 Failure of District Parcel Owner to Maintain.

4.7.1 Failure of District Parcel Owner to Maintain. If District Parcel Owner fails to perform its Maintenance Obligations hereunder, or after commencing any Work fails to diligently prosecute such Work to completion within a reasonable time, Multifamily Parcel Owner may provide to District Parcel Owner a written notice (the "Notice of Deficiency"), which shall briefly specify the conditions which the Multifamily Parcel Owner finds to be deficient, and request that such deficiency be cured within a specified reasonable period of time. If Multifamily Parcel Owner determines that such deficiency continues to exist at the end of the period of time specified in the Notice of Deficiency, the Multifamily Parcel Owner, at its option, may either: (a) enter on and accomplish the maintenance of such portion of the District Parcel that continues to be deficient; (b) contract with another party to accomplish such maintenance; or (c) seek any other remedy available at law or in equity including, without limitation, specific performance or an injunction

to enforce the District Parcel Owner's Maintenance Obligations provided herein. Any of the foregoing remedies may be employed at the option of the Multifamily Parcel Owner, and the failure to employ any of such remedies upon any occurrence giving rise to such remedies shall not be a waiver of the right to employ such remedies in connection with any other occurrence. District Parcel Owner may at any time provide the Multifamily Parcel Owner a written notice regarding any dispute regarding the subject matter of this Section 4.7.1 and the parties shall promptly meet in good faith to resolve the dispute in accordance with the procedures set forth in Section 8.3.

4.7.2 Emergency Maintenance. Notwithstanding the foregoing, if Multifamily Parcel Owner determines that any maintenance deficiency by District Parcel Owner constitutes an Emergency which requires action prior to the expiration of any cure period, Multifamily Parcel Owner may take the actions provided for in this Section without a Notice of Deficiency being given in advance of taking such action, provided that as soon as reasonably practicable after taking the Emergency action the Multifamily Parcel Owner gives a Notice of Deficiency (without providing a cure period) to the District Parcel Owner.

4.7.3 Reimbursement. If Multifamily Parcel Owner elects to cure the maintenance deficiencies by the District Parcel Owner's under Section 4.7.1 or Section 4.7.2, the reasonable costs of accomplishing such maintenance shall be an obligation of the District Parcel Owner, and shall be reimbursed by the District Parcel Owner to the Multifamily Parcel Owner within thirty (30) days after receipt of a statement therefor with interest at the Default Rate accruing from the date such statement is due. If such amounts are not reimbursed when due, the Multifamily Parcel Owner may pursue its remedies under this Declaration and any other remedies available at law for collection of the amounts payable to such Multifamily Parcel Owner.

4.8 Damage Caused by Acts or Omissions of an Owner or its Occupants. Notwithstanding the obligations of the Project Operator to maintain the Shared Maintenance Areas and any other areas described herein, if the need for maintenance of such areas or facilities is caused by the acts or omissions of the District Owner or its Occupants or any of their Permitted Users or any costs incurred by Project Operator in repairing such damage shall be reimbursed by the District Owner to the Project Operator, within fifteen (15) days after receipt of a statement therefore and any failure to pay such amounts when due shall be subject to the rights and remedies of the Project Operator set forth in Article 5 and Article 8. Each Owner shall indemnify, protect, defend and hold the other Owner entirely free and harmless from and against any and all Claims arising from or attributable to any damage caused by any Owner or Owner's Permitted Users to any portions of the Overall Property.

4.9 Duty to Protect Against Mechanics' Liens. In performing their respective Maintenance Obligations and Work as provided in this Declaration, the applicable Owner (for the purposes of this Section 4.9, the "Contracting Party", as applicable), shall promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with contracts for any service, labor or materials provided or supplied to a Parcel or the construction of any Improvements on a Parcel authorized or undertaken by the Contracting Party. The Contracting Party shall not cause or permit any mechanic's lien to be filed against any portion of the Project not owned by such Contracting Party for labor or materials alleged to have been furnished or delivered to the Project or any Parcel by the Contracting Party. If any Contracting Party causes or permits such a lien to be filed, such Contracting Party shall: (a) within ten (10) days after notice to such Contracting Party by an Owner either cause the lien to be discharged or post a bond which protects the title of the affected Owners to their Parcel; (b) indemnify, protect, defend and hold harmless the other Owners, as applicable, from any Claims which may be filed against the Project or the other Owner or another Owner's Parcel for such work or services performed or materials supplied by any architect, engineer or contractor with whom the Contracting Party has contracted or any other Person acting directly or indirectly by, through or under such architect, engineer or contractor supplying services, labor, materials or equipment; and (c) pay all expenses actually incurred by the other Owner in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defending against the foregoing claims and any costs of enforcing this indemnity.

4.10 Meeting and Cooperation. At the request of either Owner, acting on its own behalf or as the Project Operator, the Owners shall meet within thirty (30) days of such request to discuss the status of

the performance of the Maintenance Obligations under this Declaration. The Owners shall reasonably cooperate with each other to address any issues regarding the performance of the Maintenance Obligations hereunder or compliance with the terms of this Declaration.

**ARTICLE 5  
SHARED EXPENSES**

5.1 Reimbursement Obligations. District Parcel Owner shall be obligated to pay its Allocable Share of the Shared Expenses to Multifamily Parcel Owner in accordance with the procedures and requirements set forth in this Declaration.

5.2 Payment of Allocable Share. Commencing as of the Payment Commencement Date, the District Parcel Owner shall commence to pay its Allocable Share of the Shared Expenses incurred by Project Operator.

5.3 Shared Expenses Budget. The Project Operator shall establish an initial Shared Expenses Budget no later than sixty (60) days prior to the date the Project Operator reasonably anticipates the first certificate of occupancy will be issued for either Parcel ("Initial Shared Expenses Budget"). Each subsequent year the Project Operator shall deliver the budget for the Shared Expenses for the applicable Shared Maintenance Areas for such calendar year to the District Parcel Owner at least sixty (60) days prior to each calendar year. In the event any increase to the Shared Expenses is in excess of ten percent (10%) of the Controllable Shared Expenses included in the Shared Expenses Budget for the subsequent year which is not required as a result of any Emergency, the District Parcel Owner shall have the right to approve such Shared Expenses Budget. If District Parcel Owner disputes the amount or basis for the increase to the Controllable Shared Expenses in excess of ten percent (10%), District Parcel Owner may deliver notice to the Project Operator and the Project Operator and District Parcel Owner shall within a reasonable period of time after delivery of such notice (but not later than thirty (30) days after the delivery of the notice) meet and confer to resolve the dispute. If the Owners are unable to resolve the dispute within forty-five (45) days after delivery of the notice from the Project Operator, the dispute shall be resolved in the same manner as provided in Section 8.3 and pending the resolution of the dispute the Owners shall pay the increase. The failure of District Parcel Owner to deliver its objection to the increase in Shared Expenses within thirty (30) days after receipt of the Shared Expenses Budget shall constitute its approval thereof. Upon resolution of the dispute, if it is so determined that such increase was not warranted, the Project Operator shall reimburse such overpayment plus interest at the Default Rate. As used herein "Controllable Shared Expenses" means any Shared Expenses over which the Project Operator can exercise control over the amounts levied, expressly excluding any amounts incurred for insurance premiums paid in connection with the insurance required hereunder to be maintained by the Project Operator, costs for utilities, security and payments made to comply with Governmental Requirements. As used herein, an "Emergency Situation" means: (a) an extraordinary expense required by an order of a court; (b) an extraordinary expense necessary to repair or maintain any portion of the Shared Maintenance Areas where a threat to personal safety or imminent risk of substantial property damage exists on any other area within the Project, or on any property adjacent to the Project where a failure to act could result in, or increase, the liability of the Owner or the Owners; (c) an extraordinary expense necessary to comply with Applicable Laws; and/or (d) an extraordinary expense necessary to repair or maintain any portion of the Shared Maintenance Areas that could not have been reasonably foreseen by the Project Operator in preparing and distributing the Shared Expenses Budget.

5.4 Payments. Shared Expenses shall be paid as of the fifteenth (15th) day of each month.

5.5 Late Payments. If any amounts payable under this Declaration are not paid when due, such amounts shall bear interest at the Default Rate. Any costs of collection, including, without limitation, attorneys' fees, shall also be added to such payment, if applicable.

5.6 Failure to Prepare Shared Expenses Budget. If the Project Operator fails to prepare the Shared Expenses Budget before the expiration of any calendar year, for that or the next calendar year, the

Shared Expense set forth in the Shared Expenses Budget for the preceding year shall continue until the new Shared Expenses Budget is prepared and a copy thereof is delivered to the District Parcel Owner.

5.7 Remedies for Non-Payment. If the District Parcel Owner fails or refuses at any time to pay its share of any of the Shared Expenses when due or any other amounts payable hereunder, then the Project Operator, may, in addition to any other rights and remedies provided for hereunder be entitled to a lien against the District Ground Leasehold Estate of the District Parcel Owner, or after District Ground Lease has terminated the fee title in District Parcel, which lien shall be created in accordance with this Section 5.7.

(a) Creation. A lien authorized by this Section shall be created by recording a written instrument ("Claim of Lien") in the Official Records, which (i) references this Declaration by recording number, (ii) alleges a specific breach of this Declaration, (iii) states the amount owed through the recording date of the Claim of Lien, (iv) contains a legal description of the real property against which the lien is being filed, and (v) is executed and acknowledged by the lien claimant. To the extent a bond equal to 150% of the amount specified in the Claim of Lien is filed in favor of the lien claimant, then such lien may be removed of record to the extent provided in the California Civil Code.

(b) Amount. A lien created pursuant to this Section shall include: (i) the amount stated in the Claim of Lien, (ii) all costs and expenses incurred in creating and foreclosing such lien (including, without limitation, attorneys' fees and costs), (iii) all amounts which become due after the date the Claim of Lien is recorded, whether such amounts arise from a continuation of the default alleged in the Claim of Lien or from some other default under this Cost Sharing Declaration, and (iv) interest on all of the foregoing at the Default Rate.

(c) Priority. The priority of a lien created pursuant to this Section shall be established solely by reference to the date the Claim of Lien is recorded; provided, that such lien shall, in all instances, be subject to and junior to, and shall in no way impair or defeat the lien or charge of any Mortgagee holding any Mortgage recorded prior to the date of the lien.

(d) Extinguishment. If the non-paying party cures its default, and pays all amounts secured by the Claim of Lien created pursuant to this Section, then the party filing such Claim of Lien shall record an instrument sufficient in form and content to clear title to the real property of such non-paying party from the Claim of Lien.

(e) Subordination of Lien to First Mortgages. When a Claim of Lien has been recorded, such Shared Expense shall constitute a lien on the affected real property prior and superior to all other liens, except, (a) all taxes, bonds and other levies which, by law, would be superior thereto, and (b) any First Mortgage now or hereafter placed upon the affected real property subject to Shared Expenses. The sale or transfer of any Parcel pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such Shared Expenses as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner of such Parcel from any Shared Expenses thereafter becoming due or from the lien for any subsequent Shared Expense. Where the Mortgagee of a First Mortgage or other purchaser of a Parcel obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquirer of title, its successors and assigns, shall not be liable for the share of the Shared Expenses chargeable to such Parcel that became due prior to the acquisition of title to such Parcel by such acquirer, except for a share of such charges or Shared Expenses resulting from a reallocation of such Shared Expenses which are made against the Parcels.

ARTICLE 6  
INSURANCE AND INDEMNITY

6.1 Insurance. The District Parcel Owner and Multifamily Parcel Owner shall obtain the insurance described below. Notwithstanding the foregoing, if after the recordation of this Declaration in the Official Records, District Parcel Owner desires to make any modifications to the insurance requirements

set forth herein to conform to the insurance risk management program of the District Parcel Owner, the District Parcel Owner shall notify the Multifamily Owner and the parties shall cooperate in good faith to make changes to the provisions of Article 6 and Article 7 as are mutually agreed upon by the District Parcel Owner and Multifamily Owner each in their reasonable discretion.

6.1.1 Liability Insurance. The District Parcel Owner and the Multifamily Owner shall procure and maintain (or cause to be procured and maintained) in full force and effect throughout the term of this Declaration commercial general liability insurance against claims for personal injury, death or property damage occurring upon, on or about the Project, insuring against all claims for personal injury, death or property damage occurring upon, in or about the Project with combined single limits of at least Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) general aggregate, with excess umbrella coverage of Fifteen Million Dollars (\$15,000,000). The limits of coverage for the foregoing insurance are subject to increase from time to time in the reasonable discretion of the Multifamily Parcel Owner (upon at least sixty (60) days prior notice to the District Parcel Owner) based upon customary level of insurance then being maintained for similar projects. In no event shall the limits of any coverage maintained pursuant to this Declaration be considered as limiting liability under this Declaration. Costs of such liability insurance as to the Shared Maintenance Areas shall be allocated pursuant to Section 1.4.3. The liability insurance obtained by the District Parcel Owner shall name the Multifamily Parcel Owner and its First Mortgagee as additional insureds and the liability insurance by the Multifamily Parcel Owner shall name the District Parcel Owner as an additional insured. An allocable share of the costs incurred by the Multifamily Parcel Owner in obtaining such liability insurance, relating to the performance of its obligations relating to the Shared Use Areas and Shared Maintenance Areas shall be included in the Shared Expenses for which the costs shall be allocated based upon the applicable Allocation Formula. The Multifamily Parcel Owner shall cause its insurance provider to make a reasonable determination of such allocation.

6.1.2 Garage Keeper's Liability Insurance. The Multifamily Parcel Owner shall, if it determines to be reasonably necessary, maintain Garage Keeper's Liability Insurance providing coverage at least as broad as the current ISO garage keeper's liability insurance form or its equivalent including comprehensive and collision liability insurance. Such policy or policies of insurance shall have limits of liability in the amounts set forth in Section 6.1.1 above. The costs for such garage keepers insurance policy shall be included in the Parking Garage Shared Expenses and shall be allocated based upon the applicable Allocation Formula.

6.1.3 Property Insurance.

(a) Shared Maintenance Areas. The Multifamily Owner shall maintain fire and property damage insurance ("Project Property Insurance") for all of the Project Exterior Areas and for the Multifamily Apartment Buildings insuring against loss or damage, pursuant to "All Risk" or "Special Form" property insurance coverage in an amount not less than one hundred percent (100%) of the full maximum insurable replacement cost of the Shared Use Areas ("Replacement Value"). Such coverage may exclude land, excavations, or other items typically excluded from property insurance coverage on properties similar in construction and location. With respect to the Parking Garage and the Multifamily Shared Amenities, the Multifamily Owner shall cause its insurance carrier to separately allocate such costs from the balance of the costs for the property insurance for the Multifamily Apartment Buildings in order to include such costs in the Shared Expenses. The Project Property Insurance shall name the Multifamily Owner as the named insured and the District Parcel Owner as an additional named insured and the First Mortgagee of the District Parcel Owner as a loss payee. Costs of the Project Property Insurance as to the Shared Maintenance Areas shall be allocated pursuant to Section 1.4.3.

(b) Property Insurance for District Apartment Building. The District Parcel Owner shall obtain and maintain, at its expense, fire and property change insurance insuring against loss or damage, pursuant to "All Risk" or "Special Form" property insurance coverage in an amount not less than one hundred percent (100%) of the full maximum insurable replacement cost of the District Apartment Building. Nothing contained herein shall be deemed to require Project Operator to insure any portion of the District Apartment Building.

6.1.4 Insurance Policy Requirements. All insurance policies carried pursuant to this Article shall be issued, placed and maintained with companies rated at least A-VII by AM Best's Insurance Service. In the event any insurer's rating falls below this minimum rating mid-policy year, reasonable provisions shall be taken to replace said insurer as soon as practicable. The policies required in this Article 6 to be obtained shall be primary and non-contributing with any other insurance policy covering the same loss. Each policy shall also contain a waiver of subrogation. Copies of all such insurance policies required to be maintained by an Owner shall, upon the request of another Owner, be provided to the requesting Owner. All insurance shall be maintained with an insurance company(ies) licensed to do business in the State of California.

6.1.5 Cancellation. The policies shall provide that they may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the other Owner in the event of a cancellation for non-payment of a premium without at least ten (10) days' prior written notice to all insureds.

6.1.6 Blanket Insurance. Any insurance required to be carried pursuant to this Article may be carried under a policy or policies covering other liabilities and property of the Owners. Such limits may also be satisfied through a combination of primary and excess policies.

6.1.7 Additional Insurance. Multifamily Owner shall maintain any additional insurance as deemed reasonable by Multifamily Owner and/or as required by Multifamily Owner and the First Mortgagee to be maintained for the Shared Use Areas and as approved by District Parcel Owner, which approval shall not be unreasonably withheld. The costs of maintaining such insurance shall be a Shared Expense allocated pursuant to the provisions of Section 1.4.3.

6.2 Waiver of Subrogation. All policies of insurance required hereunder shall include a clause or endorsement denying the insurer any rights of subrogation against the other Owner to the extent rights have been waived by the insured before the occurrence of injury or loss.

6.3 Mutual Indemnity. Each Owner shall indemnify, protect, defend and hold harmless the other Owner and its managers, officers, directors, members, employees, agents, contractors, partners and Mortgagees ("Indemnified Parties"), from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, or relating to the obligations and rights under this Declaration. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not litigated and/or reduced to judgment. In case any action or proceeding is brought against Indemnified Parties by reason of any of the foregoing matters, the Owner upon notice from Indemnified Parties shall defend the same at Owner's expense by counsel reasonably satisfactory to Indemnified Parties and Indemnified Parties shall cooperate with Owner in such defense. Indemnified Parties need not have first paid any such claim in order to be so indemnified. In addition, Indemnified Parties may require Owner to pay Indemnified Parties' attorneys' fees and costs in defending against or participating in such claim, action or proceeding if Indemnified Parties shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Owner or its counsel.

ARTICLE 7  
CASUALTY AND CONDEMNATION

7.1 Repair and Reconstruction of Improvements by Owners.

7.1.1 Repair to Buildings. If there is a Casualty to the Buildings or other Improvements on a Parcel, subject to the availability of insurance proceeds or approval of any Mortgagee, the Owner shall either repair and replace the Building(s) and other Improvements on its Parcel or remove the damaged Improvements and landscape the portions of the Parcels within which the Building was located and maintain such area in a clean, weed-free, and debris-free condition.

7.1.2 Repair to Project Exterior Areas. In the event of a Casualty or loss to the Project Exterior Areas that are covered by the Project Property Insurance required to be maintained pursuant to Section 6.1.3 above, Multifamily Parcel Owner shall, within a reasonable period of time (as determined in Multifamily Owner's reasonable discretion) from the date of such Casualty, commence to rebuild, restore or repair the Project Exterior Areas to substantially the same condition as it existed prior to the damage or loss in question. Notwithstanding the foregoing, in the event insurance proceeds are not adequate to repair or rebuild the damaged Project Exterior Areas, Multifamily Owner shall still be obligated to rebuild the damaged Improvement and the District Parcel Owner shall pay its Allocable Share (based upon the Allocation Formula for all other Shared Expenses) of the costs of rebuilding that are not covered by insurance proceeds such that the access and other areas within the Project Exterior Areas can still be used for access and other purposes.

7.1.3 Insurance Proceeds. All insurance proceeds received by Multifamily Parcel Owner in the event of total or partial damage or destruction to the Shared Maintenance Areas or any portion thereof, if so elected by the Multifamily Parcel Owner, shall be deposited in a trust account maintained by a bank or other neutral party reasonably selected by the Multifamily Parcel Owner and held by such title company, bank or other neutral party and held pursuant to an escrow agreement or similar instrument, which shall provide, among other things, that the insurance proceeds shall be disbursed to Multifamily Parcel Owner on a commercially reasonable basis to reimburse Multifamily Parcel Owner for the actual out-of-pocket costs incurred by Multifamily Parcel Owner in performing its rebuilding, repair and restoration obligations under this Article 7.

7.1.4 Alternative Parking. In the event the Multifamily Owner elects not to rebuild, restore or repair its Multifamily Apartment Building and/or Parking Garage in accordance with Section 7.1.2 above, then Multifamily Parcel Owner shall cooperate with District Owner to make available, in combination with Parking Spaces that shall first be made available on the District Parcel the number of District Allocated Parking Spaces by constructing surface parking within the District Parcel (to the extent there is space within the District Apartment Building) to accommodate surface parking and such surface parking is allowed by the City, and the balance shall be made available on the Multifamily Parcel (the "Surface Spaces"), to the extent permitted by the City and other applicable Governmental Agencies and to the extent feasible given any other improvements located on the Multifamily Parcel or, alternatively, the Multifamily Parcel Owner shall cooperate with the District Parcel Owner to locate off-site parking of the total number of District Allocated Parking Spaces cannot be provided in combination on the District Parcel and Multifamily Parcel. To the extent not covered by the Project property Insurance, the District Parcel Owner shall be responsible to pay the expenses incurred in installing such Surface Spaces. If replacement Parking Spaces are located on the Multifamily Parcel, Multifamily Parcel Owner shall have the right to remove such Surface Spaces if it elects in the future to rebuild. Upon providing the Surface Spaces, District Parcel Owner shall be obligated during such period that such Surface Spaces are made available to the District Owner to pay the Shared Expenses for installment and maintenance of such Surface Spaces. Notwithstanding the foregoing, however, if and when the Parking Garage is subsequently rebuilt, repaired or restored, District Owner shall again have the right to use the District Parking Area, subject to any reasonable adjustments necessary to address the design and configuration of the restored Parking Garage which may result in some Parking Spaces being provided within the Project Exterior Areas.

7.2 Repair Work. Any repair which is required hereunder shall be undertaken with all due diligence and commercially reasonable efforts, modified as may be required by applicable building codes and regulations in force at the time of such repair.

7.3 Condemnation.

7.3.1 Total Taking. If the Shared Maintenance Areas are taken in their entirety for any public or quasi-public use or improvement by virtue of eminent domain or conveyance in lieu thereof (a "Taking"), this Declaration shall terminate as of the earlier to occur of: (a) the date of the actual commencement of the physical taking of the entirety of the Shared Maintenance Areas; or (b) the date title thereto becomes vested in the condemning authority.

7.3.2 Partial Taking. Except as otherwise provided below, if there is only a partial Taking of the Shared Maintenance Areas, this Declaration shall remain in effect as to the portion of the Shared Maintenance Areas not taken (unless so much of the Shared Maintenance Areas shall be so taken as to render the balance of the Shared Maintenance Areas unsuitable for use by the District Parcel Owner for the uses and purposes contemplated herein, in which event the easements granted herein to the District Parcel Owner shall terminate effective as provided in Section 7.3) but the other easements established hereunder shall continue in effect.

7.3.3 Temporary Taking. In the event of a temporary Taking of all or part of the Shared Maintenance Areas, this Declaration shall not terminate; provided, however, that the easement rights and the obligations related to the portion of the Shared Maintenance Areas so taken shall be suspended during the period of such Taking.

**ARTICLE 8  
ENFORCEMENT**

8.1 Legal Action Generally. If an Owner breaches any provision of this Declaration, (“Defaulting Owner”), then the non-defaulting party may institute legal action against the Defaulting Owner for specific performance, injunction, declaratory relief, damages, or any other remedy provided by law. All remedies herein or at law shall be cumulative and not inclusive. As used herein, any reference to rights or remedies “at law” or “under applicable law” shall also include any rights or remedies “in equity.”

8.2 Remedies Cumulative. The remedies provided in this Article 8 are in addition to any remedies available elsewhere in this Declaration including without limitation the remedies in Article 4 and Article 5. Exercise of one remedy shall not be deemed to preclude exercise of other remedies for the same default, and all remedies may be exercised cumulatively.

8.3 Operational Disputes.

8.3.1 Claim of an Operational Dispute. Any Operational Dispute (defined below) between the Owners, shall be resolved in accordance with the procedures set forth below. As used herein, “Operational Dispute” means the following: (a) any dispute regarding a failure to maintain, repair or replace any portion of the Project in accordance with the terms of this Declaration; (b) any dispute regarding the Shared Expenses Budget or imposition of other monetary charges hereunder; (c) any dispute regarding alterations to the Project by the District Parcel Owner pursuant to Section 3.5; (d) any dispute regarding the compliance with the restrictions set forth in Article 3 or (d) any other dispute in which the disputing Owner(s) agree to resolve in accordance with the procedures set forth in this Section 8.3. The Owners shall use commercially reasonable efforts to resolve any Operational Dispute through the process described in this Section. Upon the occurrence of an Operational Dispute, the Owner claiming an Operational Dispute exists shall provide written notice thereof (“Operational Dispute Notice”) to the other Owner. Within fifteen (15) days following delivery of the Operational Dispute Notice, the Owners shall consult and negotiate with each other in good faith to reach a just and equitable solution satisfactory to all parties to the Operational Dispute (“Meet and Confer Period”). In the event that the Operational Dispute cannot be settled through such discussions within such Meet and Confer Period, except as the Owners may otherwise agree, then the matter shall be referred to and resolved by Resolution Parties as described below.

8.3.2 Selection of Resolution Parties. Each party to the Operational Dispute shall have ten (10) days from the end of such Meet and Confer Period to select an independent property management company, consulting firm or individual qualified to resolve the Operational Dispute that (a) has at least five (5) years’ experience in managing Class A multifamily projects, and (b) is otherwise qualified to resolve the issue in question (each such named management company shall be a “Resolution Party”). Within ten (10) days after the second of the two Resolution Parties have been selected, the two (2) Resolution Parties shall meet and confer to resolve the Operational Dispute and if, within fifteen (15) days after the two (2) Resolution Parties meet and confer the two (2) Resolution Parties are unable to resolve the dispute, the two Resolution Parties shall select a third Resolution Party. If a party fails to make



its respective selection of a Resolution Party within the ten (10) day period provided for above, then the Resolution Party selected by the other party shall select a second Resolution Party to serve on the panel of Resolution Parties.

8.3.3 Resolution of Dispute. The terms of engagement of the Resolution Parties shall include the obligation on the part of the Resolution Parties to (i) notify the parties in writing of their decision within forty-five (45) days from the date on which the last Resolution Party is selected (or such other period as the parties may agree or as set forth herein); and (ii) establish a timetable for the making of submissions and replies. Each Owner shall be entitled to make written submissions to the Resolution Parties, and if a party makes any submission it shall also provide a copy to the other party and the other party shall have the right to comment on such submission (all within the applicable time periods established by the Resolution Parties). The Owners shall make available to the Resolution Parties all books and records relating to the issue in dispute, if applicable, and shall render to the Resolution Parties any assistance requested by the parties. Any decision by the Resolution Parties on any matter submitted shall be based upon what is commonly referred to as the "baseball arbitration" approach whereby the Resolution Parties may only decide in favor of the position presented by either Owner, and may not make any other determination. If the Operational Dispute relates to the performance of the Maintenance Obligations hereunder and Resolution Parties establish that the Owner with the applicable Maintenance Obligation has failed to perform the obligation then that Owner shall promptly commence and diligently complete the applicable maintenance. If the responsible Owner fails to so commence such maintenance within fifteen (15) days after the final determination by the Resolution Parties (or such other reasonable period as may have been determined to be feasible by the Resolution Parties for the commencement of the performance of the maintenance) or any other cure required hereunder, the Owner who prevailed may, upon at least ten (10) days prior notice to the responsible Owner, undertake such maintenance or other cure and in such case the provisions of Section 4.7.3 shall apply. The costs of the Resolution Parties and the proceedings shall be borne by the party against whom the Resolution Parties ruled.

8.3.4 Exclusive Remedy. With respect to any Operational Dispute, the use of the Resolution Parties shall be the exclusive remedy of the Owners and neither Owner shall attempt to adjudicate any dispute in any other forum. The decision of the Resolution Parties shall be final and binding on the Owners and shall not be capable of challenge, whether by arbitration, in court or otherwise, and shall be enforceable by court action.

ARTICLE 9  
TERM AND AMENDMENTS

9.1 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind each of the Parcels and shall inure to the benefit of and be enforceable by the Owners for a term of the later of (a) fifty five (55) years from the date this Declaration is recorded in the Official Records or (b) the expiration of the term of the Ground Lease at which time, if the Ground Lease has been terminated, the covenants, conditions and restrictions shall continue in effect and shall bind the fee interest in the District Parcel for successive periods of ten (10) years each unless an instrument, which has the approval of both of the Owners and their First Mortgagees and the Ground Lessor has been recorded, agreeing to terminate or modify this Declaration in whole or in part.

9.2 Amendment. This Declaration may be amended by Multifamily Parcel Owner to: (a) conform this Declaration to as-built conditions, (b) comply with Applicable Laws, (c) correct errors and (d) make modifications that do not materially and adversely affect District Parcel Owner. To the extent an amendment materially and adversely affects District Parcel Owner, the consent of District Parcel Owner shall be required, which consent shall not be unreasonably withheld. Notwithstanding any provision of this Declaration, including this Article 9, the provisions of this Declaration regarding the shared access easements across each Parcel for the benefit of the other Parcel for parking, ingress and egress (pedestrian, bicycle and vehicular), utilities and other purposes set forth herein and in the PAE Dedications, shall not be amended without the prior written consent of the City of Mountain View.

9.3 Supplementary Declarations. So long as Declarant owns any Parcel within the Project, Declarant may record a Supplementary Declaration for any of the purposes for which a Supplementary Declaration may be recorded, with the approval of any Owner materially and adversely affected by the terms and provisions of the Supplementary Declaration.

ARTICLE 10  
MISCELLANEOUS PROVISIONS

10.1 Enforcement. Violation or breach of any covenant, agreement or provision contained herein shall give to the party in whose favor such covenant, agreement or provision was made, the right to prosecute a proceeding at law or in equity against the Person or Persons who violated or are attempting to violate any such covenant, agreement or provision, to enjoin or prevent them from doing so, to cause such violation to be remedied and/or to recover damages for such violation.

10.2 Binding on Successors. This Declaration and all of the covenants and conditions herein contained shall be binding upon and shall inure to the benefit of the executors, administrators, heirs, assigns and successors of each of the parties hereto.

10.3 Severability. If any term, provision, covenant or condition of this Declaration is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Declaration shall not be affected thereby, and each term, provision and covenant shall be valid and enforceable to the fullest extent permitted by Applicable Laws.

10.4 Reasonable Consents. Except as otherwise set forth in this Declaration, all consents and approvals of any Owner shall not be unreasonably withheld, conditioned or delayed. Any disapproval of or failure of consent to any matter hereunder shall be in writing and shall state in reasonable detail the reason or reasons therefor. Except as expressly provided otherwise in this Declaration, to the extent that the consent of an Owner is expressly required under this Declaration, such Person shall have ten (10) business days to provide notice of approval or disapproval of the item for which consent is required. If an Owner fails to respond within such ten (10) day business period and a notice is delivered which states that in all CAPITAL LETTERS: "FAILURE TO RESPOND TO THIS NOTICE OF REQUEST FOR APPROVAL OF PLANS AND SPECIFICATIONS WITHIN TEN (10) BUSINESS DAYS SHALL RESULT IN A DEEMED APPROVAL OF THE SUBMITTED PLANS AND SPECIFICATIONS." Failure to further respond within such ten (10) business day period shall be deemed approval thereof.

10.5 Attorneys' Fees. In the event legal proceedings are commenced regarding the enforcement of this Declaration, the prevailing party in any such action shall recover, in addition to any relief granted therein, reasonable attorneys' fees from the other party or parties, which fees shall be included in any judgment rendered in such proceedings.

10.6 No Waiver. The waiver or failure to enforce any breach or violation of any covenant herein contained shall not be deemed to be a waiver or abandonment of such covenant, or any waiver of the right to enforce any subsequent breach or violation of such covenant.

10.7 Notice. Any and all notices, demands or other communications required or desired to be given hereunder by an Owner shall be in writing and shall be validly given or made to the other Owner if served either personally or by recognized overnight courier or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested at the address specified below or such other address as may be provided to an Owner.

District Parcel Owner

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Multifamily Parcel Owner  
Mountain View Owner, LLC  
c/o Miramar Capital  
11100 Santa Monica Boulevard, Suite 240  
Los Angeles, CA 90025  
Attn: Perry Hariri  
Email: [phariri@miramarcapital.com](mailto:phariri@miramarcapital.com)

If such notice, demand or other communication is served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication be given by mail, service shall be conclusively deemed given upon receipt thereof (or refusal to accept delivery) as shown on the return receipt therefor, following the deposit thereof in the United States mail addressed to the Owner to whom such notice, demand or other communication is to be given. Any Owner may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other Owner.

10.8 Mortgagee Protection. No portion of this Declaration or any amendment or violation thereof shall operate to defeat or render invalid, in whole or in part, the rights of the beneficiary, insurer, guarantor, or holder of any mortgage or deed of trust encumbering any portion of the Parcels; provided that, after foreclosure of any such Mortgage, the property foreclosed shall remain subject to this Declaration.

10.9 Governing Law. This Declaration is being executed and delivered, is intended to be performed, in the State of California, and to the extent permitted by law, the execution, validity, construction and performance of this Declaration shall be construed and enforced in accordance with the laws of the State of California. This Declaration shall be deemed made and entered into in Santa Clara County.

10.10 Exhibits. All exhibits attached hereto are incorporated herein by reference.

10.11 Mutuality; Reciprocity; Runs With Land. All conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part of the Overall Property; shall create mutual, equitable servitudes and burdens upon the Parcels shall create reciprocal rights and obligations and shall, as to the Owners of the Parcels operate as covenants running with the land, for the benefit of the Parcels.

10.12 Miscellaneous. As used in this Declaration, all words in the masculine, feminine, or neuter gender, and the plural or singular number, shall each be construed to include the others whenever the context so requires. Nothing herein shall be construed to make any other party a joint venturer or partner with other party for any purpose whatsoever.

[Remainder of Page Intentionally Left Blank]

## SMRH DRAFT 10/31/22

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

DECLARANT:

Mountain View Owner, LLC,  
a Delaware limited liability company

By: Mezz LLC, a Delaware limited liability company, its  
sole member

By: CDCF III Fortbay MV, LLC, a Delaware limited  
liability company, its sole member

By: \_\_\_\_\_  
Name: Perry Hariri  
Its: Vice President

CONSENT OF MULTIFAMILY PARCEL OWNER

Mountain View Owner, LLC, a Delaware limited liability company, as the Ground Lessor herein acknowledges that this Declaration shall encumber fee title to the District Parcel.

Mountain View Owner, LLC,  
a Delaware limited liability company

By: Mezz LLC, a Delaware limited liability company, its  
sole member

By: CDCF III Fortbay MV, LLC, a Delaware limited  
liability company, its sole member

By: \_\_\_\_\_  
Name: Perry Hariri  
Its: Vice President

**SMRH DRAFT 10/31/22**

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**SMRH DRAFT 10/31/22**

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

State of California )  
County of \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

# SMRH DRAFT 10/31/22

## LIST OF EXHIBITS

Exhibit "A" ..... Legal Description of Overall Property  
Exhibit "B" ..... Site Plan  
Exhibit "C" ..... Multifamily Shared Amenities  
Exhibit "D" ..... Maintenance Responsibility Allocation Chart



# SMRH DRAFT 10/31/22

## EXHIBIT "A"

Legal Description of Overall Property

[Attached Hereto]

LEGAL DESCRIPTION  
OVERALL PROPERTY  
MOUNTAIN VIEW, CALIFORNIA

MULTIFAMILY PARCEL

REAL PROPERTY SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF MOUNTAIN VIEW, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN PARCEL MAP ENTITLED "777 WEST MIDDLEFIELD ROAD", RECORDED \_\_\_\_\_, 2021 IN BOOK \_\_\_\_\_ OF MAPS, AT PAGE \_\_\_\_\_ IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY.

DISTRICT PARCEL

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF MOUNTAIN VIEW, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

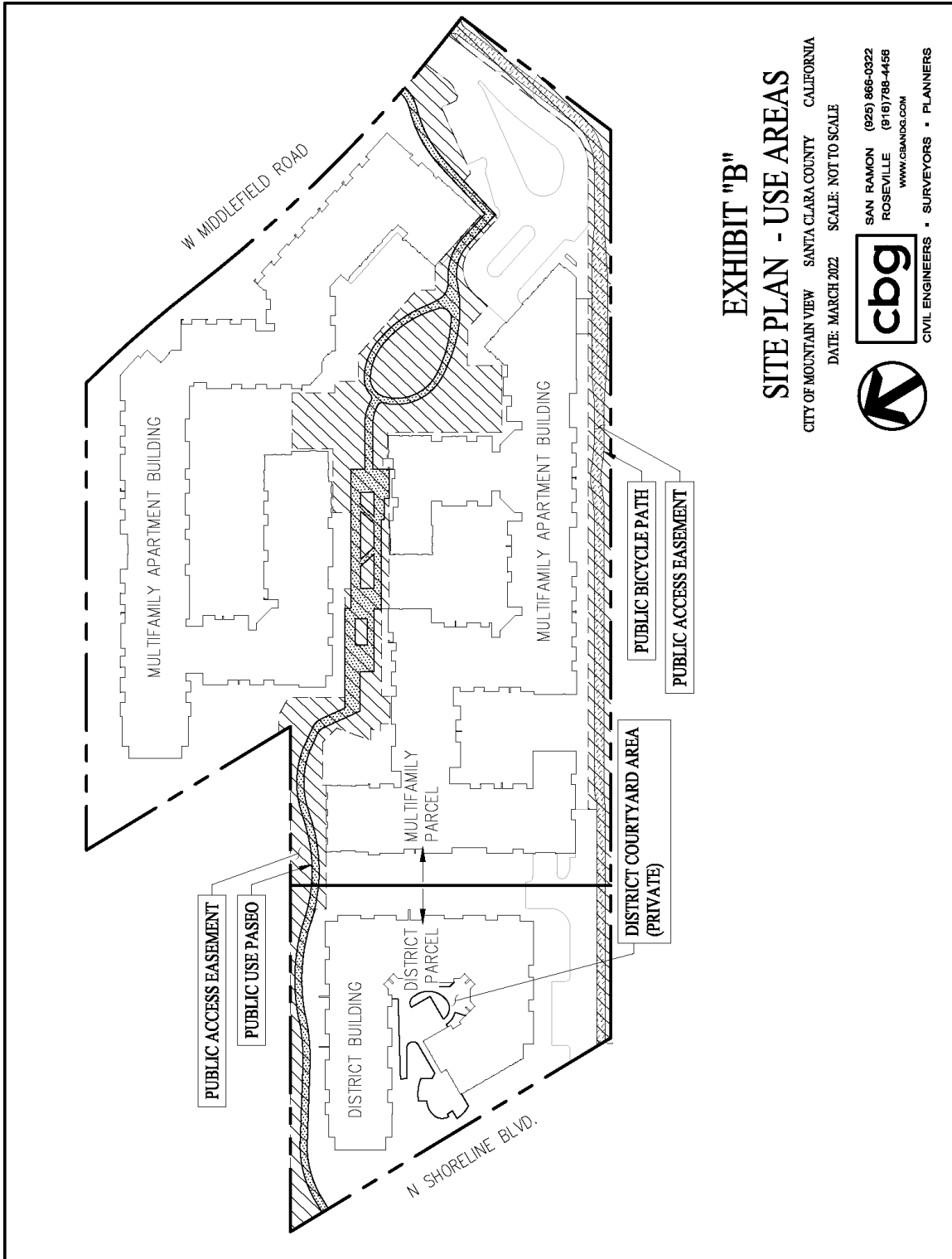
BEING ALL OF PARCEL 2, AS SAID PARCEL 2 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN PARCEL MAP ENTITLED "777 WEST MIDDLEFIELD ROAD", RECORDED \_\_\_\_\_, 2021 IN BOOK \_\_\_\_\_ OF MAPS, AT PAGE \_\_\_\_\_ IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA COUNTY.

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EXHIBIT "B"

Site Plan

All items and location of items are shown for informational purposes only and should not be relied upon for content, precise design or dimension. The actual conditions will control. The attached Site Plan is for illustrative purposes only and depicts approximate locations. In the event of a discrepancy between the references to the areas and the locations shown on the Site Plan and the actual as-built areas and locations, the as-built areas and locations shall control.



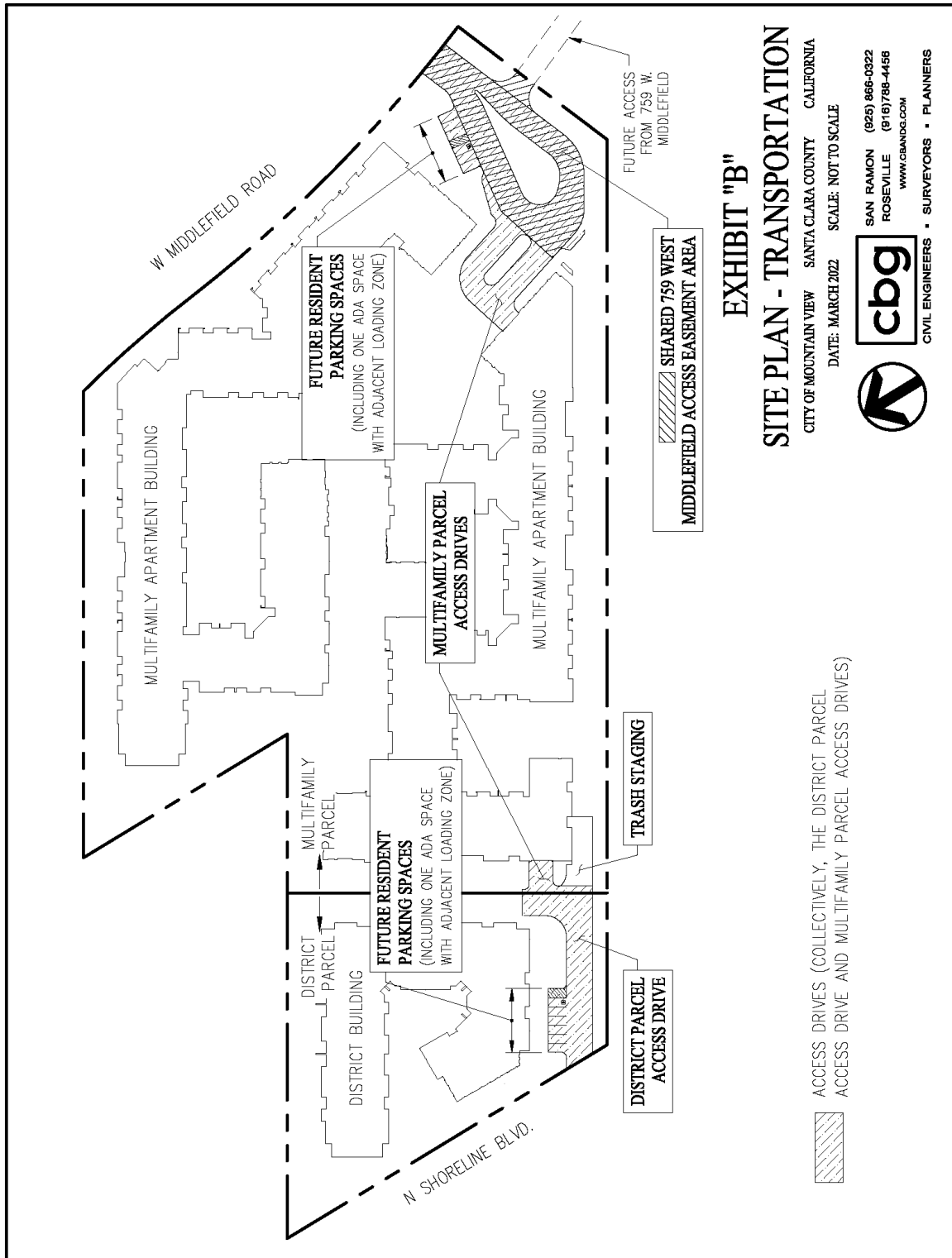
**EXHIBIT "B"**  
**SITE PLAN - USE AREAS**

CITY OF MOUNTAIN VIEW SANTA CLARA COUNTY CALIFORNIA  
 DATE: MARCH 2022 SCALE: NOT TO SCALE



SAN RAMON (925) 866-0322  
 ROSEVILLE (916) 788-4458  
 WWW.CBANG.COM  
 CIVIL ENGINEERS • SURVEYORS • PLANNERS

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**EXHIBIT "B"**  
**SITE PLAN - TRANSPORTATION**

CITY OF MOUNTAIN VIEW SANTA CLARA COUNTY CALIFORNIA  
 DATE: MARCH 2022 SCALE: NOT TO SCALE

SAN RAMON (925) 866-0322  
 ROSEVILLE (916) 788-4458  
 WWW.CBANDG.COM

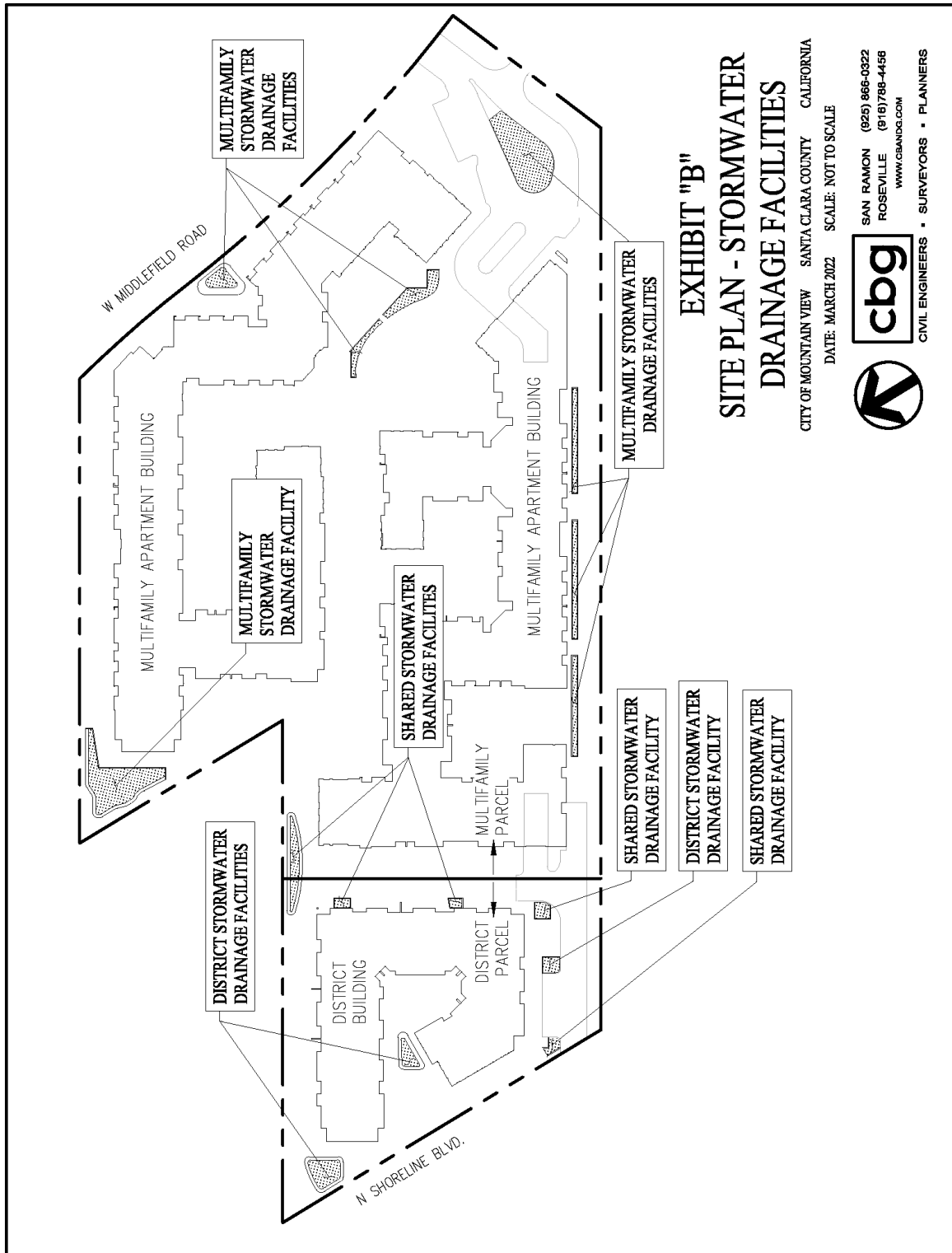


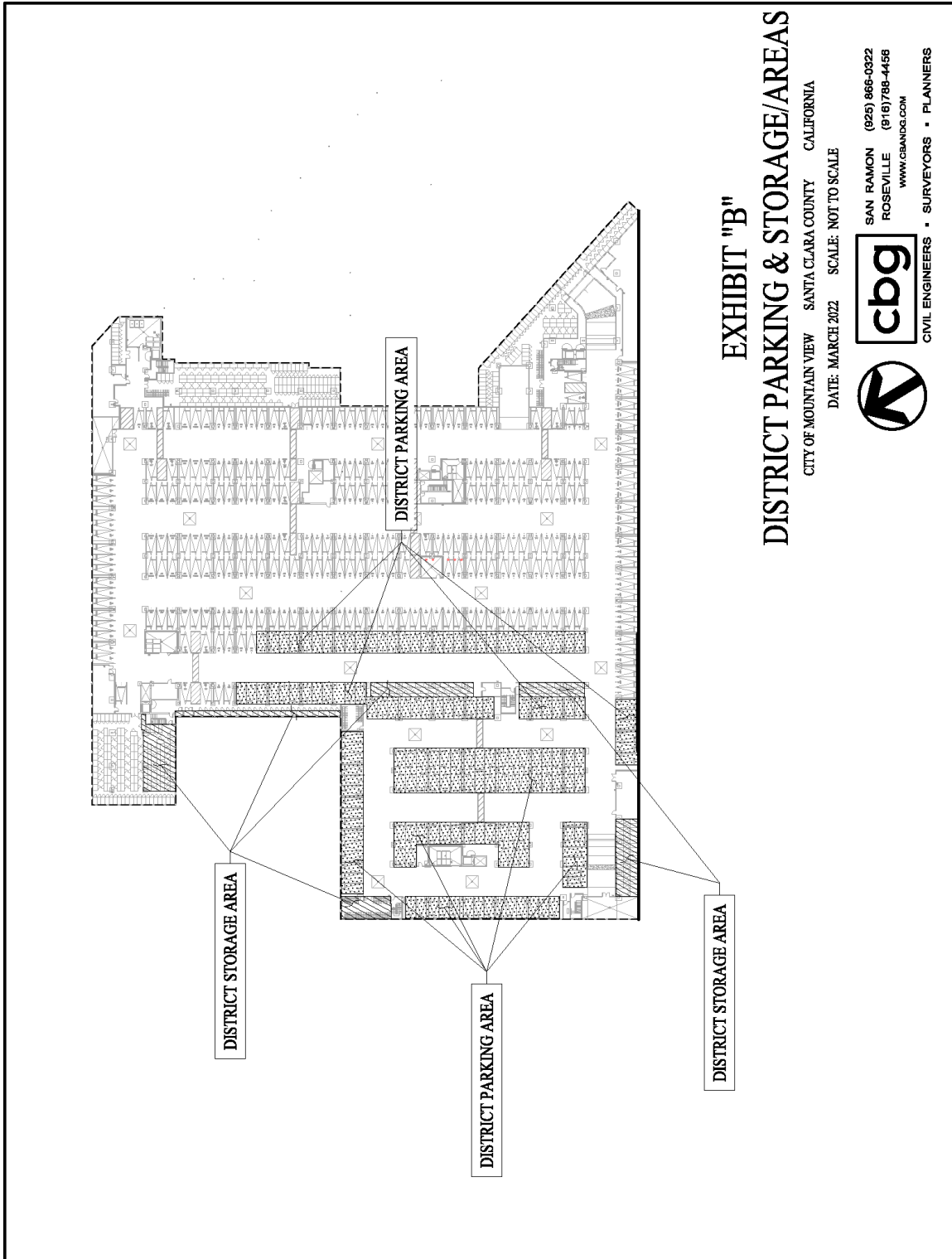
CIVIL ENGINEERS • SURVEYORS • PLANNERS

ACCESS DRIVES (COLLECTIVELY, THE DISTRICT PARCEL ACCESS DRIVE AND MULTIFAMILY PARCEL ACCESS DRIVES)



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**EXHIBIT "B"**  
**DISTRICT PARKING & STORAGE/AREAS**

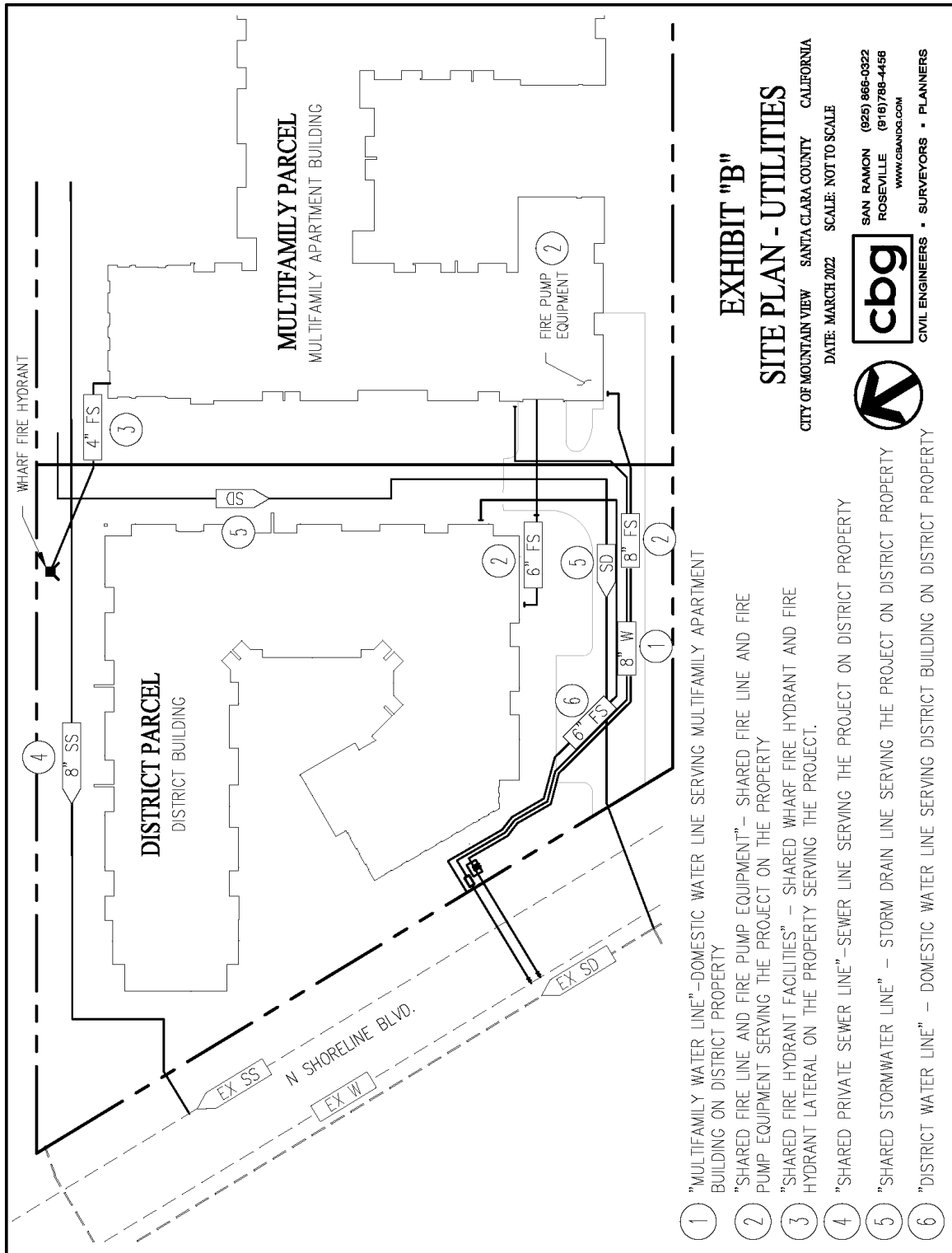
CITY OF MOUNTAIN VIEW SANTA CLARA COUNTY CALIFORNIA  
 DATE: MARCH 2022 SCALE: NOT TO SCALE



**cbg**  
 CIVIL ENGINEERS • SURVEYORS • PLANNERS

SAN RAMON (925) 866-0322  
 ROSEVILLE (916) 788-4458  
 WWW.CBANG.COM

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# SMRH DRAFT 10/31/22

## EXHIBIT "C"

### Multifamily Shared Amenities

#### Building A

##### 1ST STORY

COURTYARD A

POOL

CLUBROOM

DEMO KITCHEN

FITNESS

LOUNGE

PET SPA

PET SPA - PATIO

PRIVATE DINING

RESTROOM

##### 2ND STORY

CLUBROOM

CO-WORKING

RESTROOM

#### Building B

##### 1ST STORY

COURTYARD B1

COURTYARD B2

CO-WORKING

CO-WORKING COURTYARD

FITNESS

KIDS ROOM

RIDESHARE LOBBY

MAKER ROOM

RESTROOM

WELLNESS

WELLNESS - SPA

SPA

##### 2ND STORY

CO-WORKING

FITNESS

EXHIBIT "D"

Maintenance Responsibility Allocation Chart

[Attached Hereto]

## SMRH DRAFT 10/31/22

	LOCATION	MAINTAINING PARTY	ALLOCABLE SHARE
1. Access			
a. Access Drives (collectively, the District Parcel Access Drive and Multifamily Parcel Access Drives).	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
b. Shared 759 West Middlefield Access Easement Area	Multifamily Parcel	Project Operator	Allocation Formula: 100% to Multifamily Parcel (Subject to a partial reimbursement to Multifamily Parcel Owner under the Shared 759 West Middlefield Access Easement Agreement)
2. District Courtyard Area	District Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
3. Fire Line, Fire Generator and Fire Pump Equipment			
a. Shared Fire Line	Multifamily Parcel and District Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
b. District Fire Line	Multifamily Parcel and District Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
c. Multifamily Fire Line	Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
d. Fire Pump Equipment and Fire Generator	Multifamily Building	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
e. Shared Fire Hydrant Facilities	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
4. Multifamily Shared Amenities	Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel

## SMRH DRAFT 10/31/22

	LOCATION	MAINTAINING PARTY	ALLOCABLE SHARE
5. Parking Garage	Multifamily Parcel	Project Operator	Allocation Formula for Parking Garage: 16.4% District Parcel 83.6% Multifamily Parcel
a. District Parking Area	Multifamily Parcel	Project Operator	Allocation Formula for Parking Garage: 16.4% District Parcel 83.6% Multifamily Parcel
b. Parking Garage Guest Parking Spaces (collectively, the District Guest Parking Spaces and Multifamily Guest Parking Spaces)	Multifamily Parcel	Project Operator	Allocation Formula for Parking Garage: 16.4% District Parcel 83.6% Multifamily Parcel
c. Multifamily Guest Parking Spaces	Multifamily Parcel	Project Operator	Allocation Formula for Parking Garage: 16.4% District Parcel 83.6% Multifamily Parcel
d. District Allocated Parking Spaces	Multifamily Parcel	Project Operator	Allocation Formula for Parking Garage: 16.4% District Parcel 83.6% Multifamily Parcel
e. District Guest Parking Spaces	Multifamily Parcel	Project Operator	Allocation Formula for Parking Garage: 16.4% District Parcel 83.6% Multifamily Parcel
f. District Storage Lockers	Multifamily Parcel	Project Operator  (Structural components excluding locks and personal property in the District Storage Lockers and damage caused by District Parcel Owner or its Occupants)	Allocation Formula 100% to District Owner
6. Water Lines			
a. District Water Lines	District Parcel	District Owner	N/A. District Owner maintains at its sole cost and expense.
b. Multifamily Water Lines	Portion of the District Parcel and Multifamily Parcel	Multifamily Owner	N/A. Multifamily Owner maintains at its sole cost and expense.

## SMRH DRAFT 10/31/22

	LOCATION	MAINTAINING PARTY	ALLOCABLE SHARE
7. Project Exterior Lighting (excluding lighting on Buildings)	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
8. Project Landscape Maintenance Areas			
a. Project Exterior Areas	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
b. Heritage Trees	District Parcel and Multifamily Parcel	Project Operator  (Subject to the Tree Mitigation and Preservation Plan)	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
c. Street Trees	District Parcel and Multifamily Parcel	Project Operator maintains the irrigation lines only. City replaces the street trees.	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
9. Project Signs	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
10. Public Use Areas	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
a. Public Use Paseo	District Parcel and Multifamily Parcel	Project Operator  (Subject to the PAE Paseo Dedication)	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
b. Public Bicycle Path	District Parcel and Multifamily Parcel	Project Operator  (Subject to the PAE Bicycle Dedication)	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
c. Public Open Space Signage	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
11. Shared Private Sewer Lines	District Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
12. Shared Walkways	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
13. Shuttle Stop	To be located along Shoreline Boulevard per Conditions of Approval	Project Operator if not maintained by City or Transit Authority)	Allocation Formula: 20% District Parcel 80% Multifamily Parcel

## SMRH DRAFT 10/31/22

	<b>LOCATION</b>	<b>MAINTAINING PARTY</b>	<b>ALLOCABLE SHARE</b>
14. Stormwater Drainage Facilities and Stormwater Lines (includes all Stormwater Drainage Facilities)	District Parcel and Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel
15. Trash Staging Areas	Multifamily Parcel	Project Operator	Allocation Formula: 20% District Parcel 80% Multifamily Parcel