

DEFERRAL AND LIEN AGREEMENT
BY AND BETWEEN
THE NAPA SANITATION DISTRICT
AND
CASITAS OCEANSIDE THREE LP
RELATIVE TO THE DEFERRAL OF CAPACITY CHARGES

This Deferral and Lien Agreement (“Agreement”) is entered into as of _____ (“Effective Date”) by and between the Napa Sanitation District (“District”) and Casitas Oceanside Three LP (“Developer”) (collectively, the “Parties”).

RECITALS

- A. Developer is the fee simple owner of that certain real property located at 2310 California Blvd., 2320 California Blvd., 2330 California Blvd., 2340 California Blvd., 2350 California Blvd., and 2360 California Blvd., in Napa, California ("Property"). The Property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference, and consists of 36 residential units and common area.
- B. The Developer has developed or is developing residential units on the Property.
- C. Developer’s units have been connected, or will be connected to the District’s sewer system, requiring District inspection, sign-off, and authorization to connect.
- D. In connection with the granting of the entitlement to connect, the District has imposed applicable connection fees (hereinafter referred to as “Capacity Charges”) as allowed by the District’s Sewer Use Ordinance.
- E. Developer has requested that the District defer the collection of the Capacity Charges imposed on the Project due to a shortage of cash on hand to pay the full amount of all the charges at once.
- F. The District has determined that deferral of payment of the Capacity Charges is allowed by District policy. The District has agreed, subject to the terms, conditions and limitations of

this Agreement, to defer payment of the following Capacity Charges payable with respect to the Project as more particularly set forth in this Agreement.

G. A memorandum of this Agreement, substantially in the form attached hereto as Exhibit A, dated as of the Effective Date and executed by the Parties will be recorded against each Residential Unit (defined below) in the official records of Napa County.

Now, therefore, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

AGREEMENT

1. Deferred Capacity Charges. The District hereby agrees, subject to the terms, conditions and limitations of this Agreement, to defer payment of the Capacity Charges for the thirty-six (36) units (each a “Residential Unit”) and common area in the Meritage Villas project (“Project.”). The legal description of the Residential Units is attached hereto as Exhibit B.

2. Developer Obligations.

2.1 Developer, on behalf of itself and its successors and assigns, agrees to pay any Capacity Charges applicable to each Residential Unit either:

A. Immediately following issuance of a City of Napa-issued certificate of occupancy (“Certificate of Occupancy”); or

B. Monthly, over a single 12-month period at 4% annual interest, compounded monthly (“Deferred Capacity Charges”), as follows:

i. For the following Residential Units, the 12-month period begins on the Effective Date of this Agreement:

- 2320 California Blvd. #A, APN: 002-220-033
- 2320 California Blvd. #B, APN: 002-220-034
- 2320 California Blvd. #C, APN: 002-220-035
- 2320 California Blvd. #D, APN: 002-220-036
- 2320 California Blvd. #E, APN: 002-220-032
- 2320 California Blvd. #F, APN: 002-220-037

ii. For all other Residential Units, the 12-month period shall begin upon approval and issuance of the Certificate of Occupancy by the City of Napa for that unit.

2.2 The applicable Capacity Charge will be the Capacity Charge in effect on the date that the City of Napa’s Building Final form (also known as the “goldenrod”) is signed by the District inspector, which is also the date that the building is “deemed complete” by the District for District purposes pursuant to Ordinance No. 88 adopted on September 15, 2010. For purposes of this Agreement, the Capacity Charges will be calculated as follows:

(a) If the building is deemed complete between January 1 and December 31, 2011, the Capacity Charge is \$5,660 per EDU.

(b) If the building is deemed complete between January 1 and June 30, 2012, the Capacity Charge is \$6,000 per EDU.

(c) If the building is deemed complete after July 1, 2012, the Capacity Charge will be \$7,000 per EDU, or higher in accordance with the schedule for fee increases in District's Sewer Use Ordinance (No. 87 and No. 88), adopted on September 15, 2010.

2.3 The option to defer payment of the Capacity Charges will be at the option of Developer and is available for both the occupied and unoccupied units in the Project subject to Section 3.2 below.

2.4 If the Developer is delinquent on any payments on Deferred Capacity Charges, the interest rate will increase to the then-current District rate for all delinquent accounts receivable. As of the date of this Agreement, the interest rate is 1% per month.

2.5 If Developer becomes more than 60 days late on any monthly payment due under this Agreement, the amount of Deferred Capacity Charges owed will be recalculated as if the building were deemed complete on the date that the 60-day delinquency occurs. (By way of example only, if Developer were making monthly payments for Deferred Capacity Charges at the \$5,660 per EDU rate, and is more than 60 days delinquent on a monthly payment, and the 60 day mark occurs between January 1 and June 30, 2012, the Capacity Charge owed to the District would be recalculated at the \$6,000 per EDU rate.)

3. Security/Lien.

3.1 A memorandum of this Agreement shall be recorded in the Office of the Napa County Recorder and shall constitute a lien for the payment of the Deferred Capacity Charges binding upon, and running with, the Residential Units. If Developer sells any Residential Unit, that Residential Unit shall not be released of any obligations under this Agreement relating to the Residential Unit.

3.2 The burden of this Agreement shall be released from title to the Residential Unit upon the payment of the Deferred Capacity Charges (or the proportionate amount of the Deferred Capacity Charges applicable to any such portion of the Property). Within fifteen (15) days following payment of the Deferred Capacity Charges (or the applicable proportional amount of the deferred Capacity Charges), the District shall execute a lien release which shall be in a standard form releasing the burden of this Agreement from the title to the Residential Unit .

3.3 Developer will also secure a performance bond for the payment of the Deferred Capacity Charges and shall provide to District a copy of the performance bond.

4. Remedies. Upon Developer's failure to pay Capacity Charges when due or other breach of this Agreement, in addition to its other rights in this Agreement, at law, or in equity, the District may exercise any one or more of the following rights and remedies without prior demand:

a) accelerate and declare the entire unpaid Deferred Capacity Charges due together with all accrued interest thereon, if any, and all other sums owed to the District immediately due and payable; and

b) proceed at law, or in equity, to require Developer to perform its obligations and covenants under this Agreement; and

c) proceed as authorized under California Health and Safety Code Section 5473 *et seq.*, as may be amended from time to time, for the collection of delinquent and unpaid sewer charges.

The remedies provided herein are cumulative and not exclusive of, and do not prejudice any other remedy provided by law.

5. No Offset; Developer's Waivers. Developer hereby waives any rights of offset it now has or may hereafter have against District, its successors and assigns, and agrees to make the payments called for hereunder in accordance with the terms of this Agreement. Developer hereby waives diligence, presentment, protest, and demand, and notice of protest, notice of dishonor and notice of nonpayment of this Agreement, and expressly waives any rights to be released by reason of any extension of time or change in terms of payment, or change, alteration or release of any security given for the payments hereof, and expressly waives the right to plead any and all statutes of limitation as a defense to any demand on this Agreement.

6. No Waiver by District; Remedies Cumulative. No waiver of any breach, default or failure of condition under this Agreement, may be implied from District's failure or delay in declaring a default or exercising any of District's rights or remedies with respect to such breach, default or failure, or from any previous waiver of any similar or unrelated breach, default or failure. Without limiting the generality of the foregoing, District's failure to declare any amount due hereunder does not constitute a waiver of District's right to declare such sum due in the event of any subsequent event that triggers Developer's payment obligations hereunder. Any waiver of any term or provision of this Agreement, or any of the obligations secured thereby must be made in writing and is limited to the express written terms of such waiver. The rights and remedies of the District are cumulative, and the exercise or failure to exercise one or more of such rights or remedies does not preclude the exercise of any right or remedy for the same default or any other default.

7. Rights Not Granted Under Agreement. This Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by District concerning the construction of the Project, or any other project, development or other construction by Developer within the District. This Agreement does not, and shall not be construed to, exempt Developer from paying any fees for any permits, licenses or other

approvals which may be required by the District, and (other than the Deferred Capacity Charges) at the time required by the District, concerning the construction of the Project, or any other project, development or other construction by Developer within the District. This Agreement does not, and shall not be construed to, exempt Developer in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance or operation of the Project, or any other project, development or other construction by Developer within the District. This Agreement does not, and shall not be construed to, exempt Developer or the Residential Units from the application and/or exercise of District power of eminent domain.

8. Subsequent Requests. This Agreement only covers the Residential Units in the Project, and does not grant any right, privilege or obligation to Developer for any other unit or project. For any subsequent projects that are not covered by this Agreement, Developer shall comply with all regulations and amounts applicable to such entitlements at the time of issuance.

9. Indemnification. Developer agrees to indemnify, defend and hold harmless District, its elected and appointed officials, employees, contractors and agents (collectively Indemnitees) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Project, the Capacity Charges or Deferred Capacity Charges, or any other relationship between Developer and District. Developer's obligations under this Section shall survive the making and repayment of the Deferred Capacity Charges and the expiration or termination of this Agreement. Developer's indemnity obligations shall not apply to any costs, losses, claims, or liability caused solely by the willful misconduct or sole negligence of the District, its officers, employees or agents.

10. Challenges to Amount of Capacity Charges. Developer agrees that by entering into this Agreement and accepting the deferral of Capacity Charges as described herein, Developer knowingly and voluntarily waives all such rights to protest the imposition, payment of, or process used to determine the fees or charges identified in this Agreement.

11. Agreement Runs with the Land. All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assignees, representatives, lessees, and all other persons acquiring the Residential Units, or any portion thereof, or any interest therein (for purposes of this section, the "Property" or "Properties"), whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitude and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the property hereunder, or with respect to any owned property: (1) is for the benefit of such properties and is a burden upon such properties; (2) runs with such properties; and (3) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon each party and its property hereunder and each other person succeeding to an interest in such properties.

12. Attorneys' Fees and Costs. Should either Party bring any action or proceeding against the other that in any way relates to or arises due to the existence of this Agreement, then the prevailing party in that action or proceeding shall be entitled to recover from the other party, in addition to all other relief to which the prevailing party may be entitled, the litigation costs and attorneys' fees, in an amount to be determined by the court. The "prevailing party" shall be as determined by the court in accordance with the provisions of California Code of Civil Procedure section 1032. Recoverable litigation costs and attorneys' fees include those incurred by the prevailing party in the enforcement of any judgment or other judicial order, and during the defense of any appeal taken from such underlying judgment or other judicial order.

13. Severability. If any provision or clause of this Agreement, or any application of it to any person, firm, organization, partnership or corporation, is held invalid, such invalidity shall not affect any other provision of this Agreement, and the Agreement shall be construed as if such provisions or clauses did not exist.

14. Modification. This Agreement shall be amended or modified only by an Agreement in writing signed by each of the Parties.

15. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Developer and District and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

17. Time is of the Essence. Time is of the essence in the performance of this Agreement.

18. Notices. All notices required to be delivered under this Agreement or applicable law shall be in writing and delivered in person, or sent by express mail or by United States mail, certified, postage prepaid.

Notice required to be given to District shall be addressed as follows:

NAPA SANITATION DISTRICT
P.O. Box 2480
Napa, CA 94558
Attn: Jeff Tucker, Chief Financial Officer

Notice required to be given to the Developer shall be addressed as follows:

CASITAS OCEANSIDE THREE LP
1785 Hancock Street, Suite 100
San Diego, CA 92110
Attn: Vijay K. Shetty, Regional Project Manager

Either Party may change the address stated herein by giving notice in writing to the other Party, and thereafter notices shall be addressed and transmitted to the new address.

19. Recordation. The District shall cause this Agreement to be recorded with the Napa County Recorder's Office.

NAPA SANITATION DISTRICT

CASITAS OCEANSIDE THREE LP

By: _____

By: _____

Its: _____

ATTEST:

APPROVED AS TO FORM:

EXHIBIT A

FORM OF MEMORANDUM

OFFICIAL BUSINESS
Exempt from recording fees per
Government Code Section 27383

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Napa Sanitation District
P.O. Box 2480
Napa, CA 94558

(SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE)

APN:

MEMORANDUM OF AGREEMENT
TO PAY DEFERRED CAPACITY CHARGES

This Memorandum of Agreement to Pay Deferred Capacity Charges (this “Memorandum”) dated as of [date], is entered into by and between the Napa Sanitation District (“District”) and Casitas Oceanside Three LP (“Developer”).

1. Developer and District have entered into an Agreement (the “Agreement”) to evidence the obligation to pay certain capacity charges with respect to the property located known as APN 002-220-007-000 (the “**Property**”) as more particularly described in Exhibit 1 attached hereto and incorporated herein by this reference.
2. Developer and District have executed and recorded this instrument to give notice of the Agreement and the District’s rights thereunder. Copies of the Agreement are available at the offices of the Napa Sanitation District, 935 Hartle Court, Napa, California, and the Agreement is incorporated by reference in its entirety in this Memorandum. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control.
3. This Memorandum shall be interpreted and enforced in accordance with California law without regard to principles of conflict of laws.
4. The Agreement shall bind and inure to the benefit of the District and its respective successors and assigns. **SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

NAPA SANITATION DISTRICT

By: _____

DEVELOPER

CASITAS OCEANSIDE THREE, LP

By: _____

Title: _____

SIGNATURES MUST BE NOTARIZED.

EXHIBIT B
Legal Description of Property

1587202.31

The land referred to herein is situated in the State of California, County of Napa, City of Napa, and described as follows:

Tract One:

Parcel One:

A Condominium consisting of: (1) a Separate interest in Units 29, Unit 30, Unit 31, Unit 32, Unit 33, Unit 35, Unit 34, Unit 36, in common Building "A" as shown on the Condominium Plan (the "Condominium Plan") attached as Exhibit A to the Apella Declaration of Restrictions (CC&R's) (the Declaration) recorded May 31, 2006 under series no. 2006- 18929 in the records of Napa County, California and as described in the Declaration; and (2) an 8/8ths interest in the Common Area of Condominium Building "A" as described in the Condominium Plan and the Declaration, which condominium is located on the real property described on the Map entitled, "Parcel Map of Apella Subdivision" (the "Map") recorded March 20, 2006 in Book 25 of Maps at Pages 11-12 in the records of Napa County, California.

Excepting and Reserving therefrom the Following:

1. All of the Condominium Units in the Condominium Building described in Parcel One above other than the Units described in Parcel One above.
2. The exclusive right to use all of those areas designated as "Exclusive Use Common Area" as described in the Declaration and Condominium Plan set aside and allocated for the exclusive use of the Owners of Condominiums other than the Condominiums described in Parcel One above.
3. Easements and rights for use, enjoyment, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support, and other purposes as described in the Declaration.

Parcel Two:

Non-Exclusive rights of ingress, egress, and support in, through and over the Building Common Area of the Condominium Building Described as Parcel One above.

Parcel Three:

An Exclusive right to use the area(s) designated as Exclusive Common Area(s) appurtenant to Parcel One above as described in the Declaration and the Condominium Plan.

Parcel Four:

A Non-Exclusive Easement on, in, or over and through the Association Common Area as described in the Declaration for ingress and egress over the private streets and walkways situated thereon, for support from the land under and adjacent to the Condominium Building described in Parcel One above, for access to and use of any Exclusive Use Common Area situated thereon and appurtenant to Parcel One above as described in the Declaration, and for access to an use of (including the right to install, maintain, repair, or replace) any utility of related line and equipment installed within, on or over the Association Common Area in order to provide utility or related service to Parcel One above, all of which are subject to the CC&R's, rights, duties, benefits and burdens described in the Declaration.

APN: 002-220-018 through 002-220-025

Tract Two:

Parcel One:

A Condominium consisting of: (1) a Separate interest in Unit 21, Unit 22, Unit 23, Unit 24, Unit 25, Unit 26, Unit 27 and Unit 28, in common Building "B" as shown on the Condominium Plan (the "Condominium Plan") attached as Exhibit A to the Apella Declaration of Restrictions (CC&R's) (the Declaration) recorded May 31, 2006 under series no. 2006-18929 in the records of Napa County, California and as described in the Declaration; and (2) an 8/8ths interest in the Common Area of Condominium Building "B" as described in the Condominium Plan and the Declaration, which condominium is located on the real property described on the Map entitled, "Parcel Map of Apella Subdivision" (the "Map") recorded March 20, 2006 in Book 25 of Maps at Pages 11-12 in the records of Napa County, California.

Excepting and Reserving therefrom the Following:

1. All of the Condominium Units in the Condominium Building described in Parcel One above other than the Units described in Parcel One above.
2. The exclusive right to use all of those areas designated as "Exclusive Use Common Area" as described in the Declaration and Condominium Plan set aside and allocated for the exclusive use of the Owners of Condominiums other than the Condominiums described in Parcel One above.
3. Easements and rights for use, enjoyment, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support, and other purposes as described in the Declaration.

Parcel Two:

Non-Exclusive rights of ingress, egress, and support in, through and over the Building Common Area of the Condominium Building Described as Parcel One above.

Parcel Three:

An Exclusive right to use the area(s) designated as Exclusive Common Area(s) appurtenant to Parcel One above as described in the Declaration and the Condominium Plan.

Parcel Four:

A Non-Exclusive Easement on, in, or over and through the Association Common Area as described in the Declaration for ingress and egress over the private streets and walkways situated thereon, for support from the land under and adjacent to the Condominium Building described in Parcel One above, for access to and use of any Exclusive Use Common Area situated thereon and appurtenant to Parcel One above as described in the Declaration, and for access to an use of (including the right to install, maintain, repair, or replace) any utility of related line and equipment installed within, on or over the Association Common Area in order to provide utility or related service to Parcel One above, all of which are subject to the CC&R's, rights, duties, benefits and burdens described in the Declaration.

APN: 002-220-010 through 002-220-017

Tract Three:

Parcel One:

A Condominium consisting of: (1) a Separate interest in Unit 13, Unit 14, Unit 15, Unit 16, Unit 17, Unit 18, Unit 19 and Unit 20, in common Building "C" as shown on the Condominium Plan (the "Condominium Plan") attached as Exhibit A to the Apella Declaration of Restrictions (CC&R's) (the Declaration) recorded May 31, 2006 under series no. 2006-18929 in the records of Napa County, California and as described in the

Declaration; and (2) an 8/8ths interest in the Common Area of Condominium Building "C" as described in the Condominium Plan and the Declaration, which condominium is located on the real property described on the Map entitled, "Parcel Map of Apella Subdivision" (the "Map") recorded March 20, 2006 in Book 25 of Maps at Pages 11-12 in the records of Napa County, California.

Excepting and Reserving therefrom the Following:

1. All of the Condominium Units in the Condominium Building described in Parcel One above other than the Units described in Parcel One above.
2. The exclusive right to use all of those areas designated as "Exclusive Use Common Area" as described in the Declaration and Condominium Plan set aside and allocated for the exclusive use of the Owners of Condominiums other than the Condominiums described in Parcel One above.
3. Easements and rights for use, enjoyment, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support, and other purposes as described in the Declaration.

Parcel Two:

Non-Exclusive rights of ingress, egress, and support in, through and over the Building Common Area of the Condominium Building Described as Parcel One above.

Parcel Three:

An Exclusive right to use the area(s) designated as Exclusive Common Area(s) appurtenant to Parcel One above as described in the Declaration and the Condominium Plan.

Parcel Four:

A Non-Exclusive Easement on, in, or over and through the Association Common Area as described in the Declaration for ingress and egress over the private streets and walkways situated thereon, for support from the land under and adjacent to the Condominium Building described in Parcel One above, for access to and use of any Exclusive Use Common Area situated thereon and appurtenant to Parcel One above as described in the Declaration, and for access to an use of (including the right to install, maintain, repair, or replace) any utility of related line and equipment installed within, on or over the Association Common Area in order to provide utility or related service to Parcel One above, all of which are subject to the CC&R's, rights, duties, benefits and burdens described in the Declaration.

APN: 002-220-002 through 002-220-009

Tract Four:

Parcel One:

A Condominium consisting of: (1) a Separate interest in Unit 1, Unit 2 and Unit 3, in common Building "D" as shown on the Condominium Plan (the "Condominium Plan") attached as Exhibit A to the Apella Declaration of Restrictions (CC&R's) (the Declaration) recorded May 31, 2006 under series no. 2006-18929 in the records of Napa County, California and as described in the Declaration; and (2) an 3/3rds interest in the Common Area of Condominium Building "D" as described in the Condominium Plan and the Declaration, which condominium is located on the real property described on the Map entitled, "Parcel Map of Apella Subdivision" (the "Map") recorded March 20, 2006 in Book 25 of Maps at Pages 11-12 in the records of Napa County, California.

Excepting and Reserving therefrom the Following:

1. All of the Condominium Units in the Condominium Building described in Parcel One above other than the Units described in Parcel One above.
2. The exclusive right to use all of those areas designated as "Exclusive Use Common Area" as described in the Declaration and Condominium Plan set aside and allocated for the exclusive use of the Owners of Condominiums other than the Condominiums described in Parcel One above.
3. Easements and rights for use, enjoyment, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support, and other purposes as described in the Declaration.

Parcel Two:

Non-Exclusive rights of ingress, egress, and support in, through and over the Building Common Area of the Condominium Building Described as Parcel One above.

Parcel Three:

An Exclusive right to use the area(s) designated as Exclusive Common Area(s) appurtenant to Parcel One above as described in the Declaration and the Condominium Plan.

Parcel Four:

A Non-Exclusive Easement on, in or over and through the Association Common Area as described in the Declaration for ingress and egress over the private streets and walkways situated thereon, for support from the land under and adjacent to the Condominium Building described in Parcel One above, for access to and use of any Exclusive Use Common Area situated thereon and appurtenant to Parcel One above as described in the Declaration, and for access to an use of (including the right to install, maintain, repair, or replace) any utility of related line and equipment installed within, on or over the Association Common Area in order to provide utility or related service to Parcel One above, all of which are subject to the CC&R's, rights, duties, benefits and burdens described in the Declaration.

APN: 002-220-026 through 002-220-028

Tract Five:

Parcel One:

A Condominium consisting of: (1) a Separate interest in Unit 4 and Unit 6, in common Building "E" as shown on the Condominium Plan (the "Condominium Plan") attached as Exhibit A to the Apella Declaration of Restrictions (CC&R's) (the Declaration) recorded May 31, 2006 under series no. 2006-18929 in the records of Napa County, California and as described in the Declaration; and (2) an 2/3rds interest in the Common Area of Condominium Building "E" as described in the Condominium Plan and the Declaration, which condominium is located on the real property described on the Map entitled, "Parcel Map of Apella Subdivision" (the "Map") recorded March 20, 2006 in Book 25 of Maps at Pages 11-12 in the records of Napa County, California.

Excepting and Reserving therefrom the Following:

1. All of the Condominium Units in the Condominium Building described in Parcel One above other than the Units described in Parcel One above.
2. The exclusive right to use all of those areas designated as "Exclusive Use Common Area" as described in the Declaration and Condominium Plan set aside and allocated for the exclusive use of the Owners of Condominiums other than the Condominiums described in Parcel One above.

3. Easements and rights for use, enjoyment, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support, and other purposes as described in the Declaration.

Parcel Two:

Non-Exclusive rights of ingress, egress, and support in, through and over the Building Common Area of the Condominium Building Described as Parcel One above.

Parcel Three:

An Exclusive right to use the area(s) designated as Exclusive Common Area(s) appurtenant to Parcel One above as described in the Declaration and the Condominium Plan.

Parcel Four:

A Non-Exclusive Easement on, in, or over and through the Association Common Area as described in the Declaration for ingress and egress over the private streets and walkways situated thereon, for support from the land under and adjacent to the Condominium Building described in Parcel One above, for access to and use of any Exclusive Use Common Area situated thereon and appurtenant to Parcel One above as described in the Declaration, and for access to an use of (including the right to install, maintain, repair, or replace) any utility of related line and equipment installed within, on or over the Association Common Area in order to provide utility or related service to Parcel One above, all of which are subject to the CC&R's, rights, duties, benefits and burdens described in the Declaration.

APN: 002-220-029 and 002-220-031

Tract Six:

Parcel One:

A Condominium consisting of: (1) a Separate interest in Unit 7, Unit 8, Unit 9, Unit 10, Unit 11 and Unit 12, in common Building "F" as shown on the Condominium Plan (the "Condominium Plan") attached as Exhibit A to the Apella Declaration of Restrictions (CC&R's) (the Declaration) recorded May 31, 2006 under series no. 2006-18929 in the records of Napa County, California and as described in the Declaration; and (2) a 6/6ths interest in the Common Area of Condominium Building "F" as described in the Condominium Plan and the Declaration, which condominium is located on the real property described on the Map entitled, "Parcel Map of Apella Subdivision" (the "Map") recorded March 20, 2006 in Book 25 of Maps at Pages 11-12 in the records of Napa County, California.

Excepting and Reserving therefrom the Following:

1. All of the Condominium Units in the Condominium Building described in Parcel One above other than the Units described in Parcel One above.
2. The exclusive right to use all of those areas designated as "Exclusive Use Common Area" as described in the Declaration and Condominium Plan set aside and allocated for the exclusive use of the Owners of Condominiums other than the Condominiums described in Parcel One above.
3. Easements and rights for use, enjoyment, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support, and other purposes as described in the Declaration.

Parcel Two:

Non-Exclusive rights of ingress, egress, and support in, through and over the Building Common Area of the Condominium Building Described as Parcel One above.

Parcel Three:

An Exclusive right to use the area(s) designated as Exclusive Common Area(s) appurtenant to Parcel One above as described in the Declaration and the Condominium Plan.

Parcel Four:

A Non-Exclusive Easement on, in, or over and through the Association Common Area as described in the Declaration for ingress and egress over the private streets and walkways situated thereon, for support from the land under and adjacent to the Condominium Building described in Parcel One above, for access to and use of any Exclusive Use Common Area situated thereon and appurtenant to Parcel One above as described in the Declaration, and for access to an use of (including the right to install, maintain, repair, or replace) any utility of related line and equipment installed within, on or over the Association Common Area in order to provide utility or related service to Parcel One above, all of which are subject to the CC&R's, rights, duties, benefits and burdens described in the Declaration.

APN: 002-220-032 through 002-220-037

Tract Seven:

Lot 1 as described on that certain subdivision map entitled "Parcel Map of Apella Subdivision" filed for record in the office of the recorder of Napa County, California, on March 20, 2006 in Book 25 of Maps at Pages 11 and 12, and more particularly defined as the "Association Common Area" in the Declaration described herein.

Excepting and Reserving therefrom the following:

(i) The Condominium Buildings and Condominium Units therein as described in the Apella Declaration of Restrictions (CC&Rs) (the "Declaration") Recorded on May 31, 2006, as Document No. 0018929, in the records of Napa County, California, and in the Condominium Plan attached as Exhibit A to the Declaration (the "Condominium Plan").

(ii) Easements and rights for use, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support or other purposes as described in the Declaration, including, but not limited to, any Exclusive Use Common Area easements or rights.

(iii) Nonexclusive easements over the property conveyed hereunder as the servient tenement in favor of each Condominium described on the Condominium Plan as the dominant tenement for ingress and egress over the private streets and walkways situated on the servient tenement, for support from the land under and adjacent to each Condominium Building, for access and use of the exclusive use common area located therein as described in the Declaration and Condominium Plan, for access to and use of (including the right to install, maintain, repair or replace) any utility or related lines and equipment installed within, on or over the servient tenement in order to provide utility or related service to the dominant tenement, including water, electricity, telephone, gas, cable television, fiber optic cable and/or other telecommunication equipment and sanitary sewer or storm drainage lines and equipment, and for access to and use of the servient tenement by Grantor and its subcontractors and agents to construct, maintain and sell the Condominiums and all related improvements and the easements and rights set forth in the Shared Parking Agreement described in Section 2.17 of the Declaration and any amendments thereto. The rights retained by Grantor and its subcontractors and agents include the right to restrict access to any portion of the servient tenement that is undergoing construction or development activity for safety or other reasons by the construction of fences or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the servient tenement as staging or storage areas for materials and equipment to be

used in connection with the construction of improvements within the Development and to restrict access thereto by means of a fence or otherwise.

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(End of Legal Description)

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