

City of Hercules

*111 Civic Drive
Hercules, CA 94547*



Meeting Agenda

Wednesday, March 11, 2020

7:00 PM

SPECIAL MEETING - 7:00 P.M.

Council Chambers

Planning Commission

*Chair Irina Galieva
Vice Chair Hector Rubio
Commissioner Ken Morrison
Commissioner Susan Tolley
Commissioner Nicole Sacramento*

To view webcast of meetings, live or on demand, go the City's website at www.ci.hercules.ca.us.

I. CALL TO ORDER - ROLL CALL

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMUNICATION

IV. CONSENT CALENDAR

V. PUBLIC HEARINGS

1. [20-192](#) **Proposal from Santa Clara Valley Housing Group for the “HILL TOWN” Project site, located at 4200 San Pablo Avenue, to consider entitlements to allow the development of the 44 acre site for approximately 598 multi-family units (including up to 10% of building ground area for taller architectural features no more than 25' above normal zoning) and 4,200 square feet of retail with passive open space and recreational elements**
Recommendation: Continue the Commission discussion from the March 2, 2020, regular meeting of the Planning Commission, receive a presentation from City staff, invite the applicant to make any follow up statements, ask applicant team or city staff to answer questions, and, if ready to take action, consider adopting Revised Resolution #20-03, recommending Council approval of various components of the project, with or without modification.

Attachments:

[Staff Report for 3-11-20 PC](#)

[Attach 1 - Revised Reso 20-03 on FPDP VTM CUP DRP](#)

[Attach 1.A.1 - Revised Plan Pages](#)

[Attach 1.A.2 - Hilltown FPDP- Civil-Landscape-Architecture-Supplemental](#)

[Attach 1.A.3 - Redlined Plans](#)

[Attach 1.B - Revised Findings of Fact](#)

[Attach 1.C - Revised Hilltown Conditions of Approval for 3-11-20](#)

[Hyperlink to 3-2-2020 Planning Commission with access and links to the entire project record](#)

VI. DISCUSSION / ACTION ITEMS

VII. PLANNING DIRECTOR REPORTS AND ANNOUNCEMENTS

VIII. COMMISSIONER REPORTS AND ANNOUNCEMENTS

IX. ADJOURNMENT

The next Regular Meeting of the Planning Commission is Monday, March 16, 2020 at 7:00 p.m. at Hercules City Hall, 111 Civic Drive, Hercules, CA.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City's website at www.ci.hercules.ca.us then clicking on the Planning Commission meeting you are interested in. You can also receive an e-notice from the City's homepage. Agendas and staff reports may also be obtained by contacting the Planning Department at (510) 799-8244.

Posted: March 10, 2020

COMMISSION STATEMENT OF PURPOSE: The Planning Commission typically meets the first and third Monday of every month; its primary functions are to advise the City Council on policy matters in regard to the growth and development of the City of Hercules and to act on applications for development permits.

SPECIAL ACCOMMODATIONS: In compliance with the Americans with Disabilities Act, if you require special accommodations to participate in a Planning Commission meeting, please contact the City Clerk at 510-799-8215 at least 48 hours prior to the meeting.

AGENDA ITEMS: Persons wishing to add an item to an agenda must submit the final written documentation 12 calendar days prior to the meeting. The City retains the discretion whether to add items to the agenda. Persons wishing to address the Commission otherwise may make comments during the Public Communication period of the meeting.

PUBLIC COMMUNICATION: Persons who wish to address the Commission should complete the speaker form prior to the Commission's consideration of the item on the agenda. Speakers will be called after the project applicant has presented the project.

Anyone who wishes to address the Commission on a topic that is not on the agenda and is relevant to the Commission should complete the speaker form prior to the start of the meeting. Speakers will be called upon during the Public Communication portion of the meeting. In accordance with the Brown Act, the Commission may not take action on items not listed on the agenda. The Commission may refer to staff any matters brought before them at this time and those matters may be placed on a future agenda.

In the interests of conducting an orderly and efficient meeting, speakers will be limited to three (3) minutes.

Anyone may also submit written comments at any time before or during the meeting.

CONSENT CALENDAR: All matters listed under Consent Calendar are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Commission or a member of the public prior to the time the Commission votes on the motion to adopt.

PUBLIC HEARINGS: A public hearing enables the public to present information, opinions, and arguments relevant to the actions of the Commission, and informs the public about the details of the proposal.

At the beginning of an item, the Chair will read the description of that item as stated on the agenda. The staff will then give a brief presentation of the proposed project. The Commission may then ask staff questions about the item.

The Chair will open the public hearing and ask the applicant(s) if he or she wishes to make a presentation or statement. Those persons in favor of the project will then be given an opportunity to speak followed by those who are opposed to the project. The applicant(s) will then be given an opportunity for rebuttal.

The public hearing will then be closed, and the Commission may discuss the item amongst themselves and ask questions of staff. The Commission will then vote to approve, deny, approve in a modified form, or continue the matter to a later date for a decision. The Chair will announce the Commission's decision and advise the audience of the appeal procedure.

Persons who wish to speak on matters set for public hearings will be heard when the Chair calls for comments in support thereof or in opposition thereto. After the hearing is closed, there is no further comment permitted from the audience unless invited by the Chair.

The Commission has decided that no public hearings will begin after 11:00 p.m., and that items still remaining on the agenda after 11:00 p.m. will be held over to the next Commission meeting.

LEGAL CHALLENGES: If you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the meeting or in written correspondence delivered at, or prior to, the meeting. Actions challenging Commission decisions shall be subject to the time limitations contained in the Code of Civil Procedures Section 1094.6.

NOTIFICATION PROCEDURE: Property owners within 300 feet of a proposal will receive a notice of the proposal at least ten (10) days prior to the public hearing. The notice lists the type of application, application number, brief description and location of the project, and the applicant. The City of Hercules subscribes to a service that uses the property owner information from the most recent data on the Contra Costa County Tax Assessor's rolls. Please be aware there often is a time lag for both the tax rolls and this service to be updated.

AGENDA POSTING: The Planning Commission Agenda is posted at least 72 hours prior to the meeting at City Hall, the Hercules Swim Center, Ohlone Child Care Center, Hercules Post Office, and on the City's website (www.ci.hercules.ca.us),

REVIEW OF PUBLIC DOCUMENTS: All Planning applications are public documents, and can be reviewed by the public. These files, however, are not allowed out of the office. Should a member of the public require copies of information contained within the file, a written request must be submitted to the City Clerk's Office. Staff will accommodate the request within ten (10) calendar days. The charge is \$0.20 per page. If you require a complete copy of the file, or if staff cannot accommodate your request within ten (10) calendar days, you must make arrangements to bring in a copier or copy service that can make copies without leaving City Hall.

Environmental Impact Reports, Specific Plans, and other project specific documents are made available for the public to review at City Hall at 111 Civic Drive, Hercules CA. Loan copies (limited supply) are available for review, not purchase, at the Planning Department. These documents must be checked out with staff. You will be asked to provide your name, phone number, and a deposit. Persons will be informed of the date and time the document must be returned. You may check out the loan document, but staff will not make a complete copy of the document. Staff will accommodate the request to make photocopies based upon the current workload and availability of personnel to make copies. Costs are outlined in above paragraph.

SUPPLEMENTAL INFORMATION

AGENDA ITEM V.1

Proposal from Santa Clara Valley Housing Group for the “HILLTOWN” Project site, located at 4200 San Pablo Avenue, to consider entitlements to allow the development of the 44 acre site for approximately 598 multi-family units (including up to 10% of building ground area for taller architectural features no more than 25' above normal zoning) and 4,200 square feet of retail with passive open space and recreational elements

03/11/20

Hill Town

Changes since March 2, 2020 PC Meeting



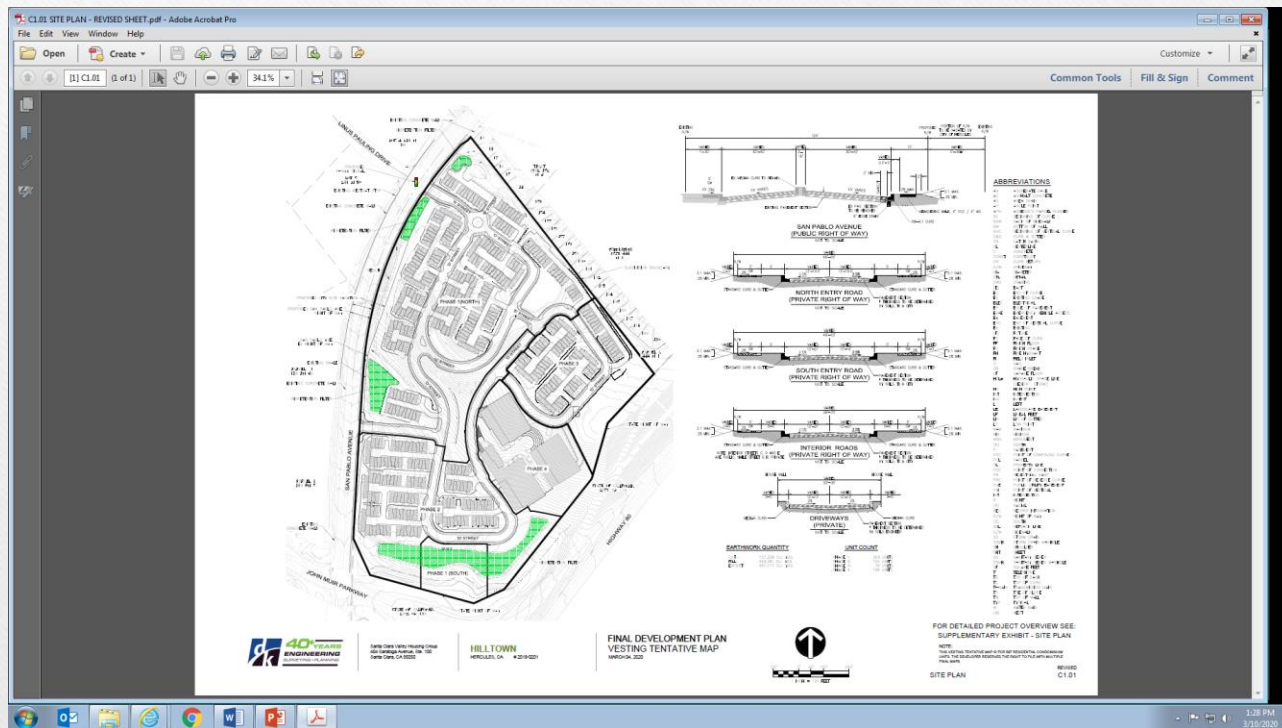
Hill Town Applications

- **CEQA Addendum** to the Updated 2009 Redevelopment Plan EIR (SCH#20018112049).
- **Conformity with General Plan** abandonment of portions of right-of-way San Pablo Avenue.
- **Vesting Tentative Map #VTM 19-01** to create *47 parcels* for residential buildings, and additional common area parcels.
- **Final Planned Development Plan #FPDP 19-01** to ensure consistency with the DPDP in the DOPA 17-01.
- **Design Review #DR 19-02** to ensure consistency with the DPDP in the DOPA 17-01.
- **Conditional Use Permit #CUP 19-01** for retail greater than 2,000 sq.ft. in a P(DP) Zoning District and *architectural appurtenances*.

Applicant Revised Plans

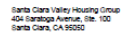
- C1.01 Site Plan
- C2.01 Vesting Tentative Map
- L7.0 Fence and Wall
- Architectural (12-sheets)

Site Plan – Revised



LEGEND

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HILLTOWN
HERCULES, CA #2018-0201

FINAL DEVELOPMENT PLAN
VESTING TENTATIVE MAP
MARCH 03, 2020

REVISÉ
C2.01

Staff Recommended *Additional* Changes – Fence & Wall



Landscape Architecture
850 Bordeaux Way
Suite 200
Napoli, CA 94558
707.224.2299
www.vandertoolen.com

Santa Clara Valley Housing Group
404 Garretts Avenue, Ste. 100
Santa Clara, CA 95050

HILLTOWN
HERCULES, CA # 12218

FINAL DEVELOPMENT PLAN
VESTING TENTATIVE MAP
FEBRUARY 18, 2020



FENCE & WALL PLAN

REVISED
L7.0

Staff Suggested Large Walls

Bay Trail Faux Rock Wall



Original Imagery 5-20-2019



Architecture Revisions

Applicant Changes shown in Exhibit A.1

- Townhome (8- Plex) Styles A, B, C
- Courtyard (12-Plex) Style A, C
- Townhome (Plan 5) – ADU Option
- Podium Perspectives

Continuing Staff Requests as shown in Exhibit A.3

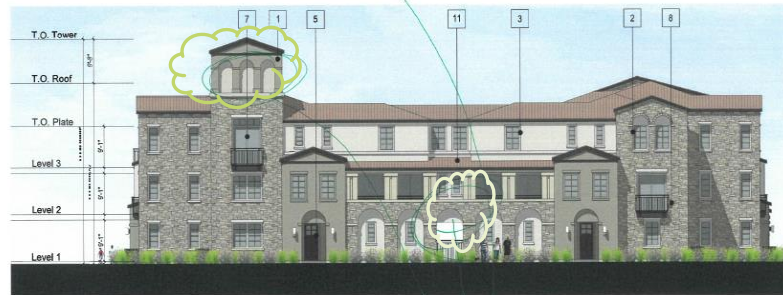
- Courtyard (12-Plex) Style A lacks background detail
- Courtyard (12-Plex) Style A same color to extend to entire facade

Staff Recommended Changes



- Material Legend:
1. Stucco
 2. Stone Veneer
 3. Vinyl Windows
 4. Metal Canopy
 5. Entry Door
 6. Metal Garage Door
 7. Sliding Glass Door
 8. Metal Railing
 9. Brackets
 10. Corbels
 11. Concrete "S" Tile Roof

2 - PERSPECTIVE



1 - ELEVATION



Architecture + Planning
The Leavitt Building
1814 Franklin Street
Suite 400
Oakland, CA 94612
510.277.2910
ktgy.com

Santa Clara Valley Housing Group
454 Fremont Avenue, Ste. 100
Santa Clara, CA 95050

HILLTOWN
HERCULES, CA # 2018-0201

FINAL DEVELOPMENT PLAN
VESTING TENTATIVE MAP
MARCH 6, 2020



*Detail
background*

EXTERIOR ELEVATIONS
COURTYARD 12-FLYER - STYLISH A - TOWER

A3.2.7.1T

Staff Recommend Changes



Material Legend:

1. Stucco
2. Stone Veneer
3. Vinyl Windows
4. Metal Canopy
5. Entry Door
6. Metal Garage Door
7. Sliding Glass Door
8. Metal Railing
9. Brackets
10. Corbels
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2- PERSPECTIVE



Conditions of Approval - Changes

- Subdivision lot unit increase to 47.
- Stairway landing requirement olive grove.
- Clustering of trees site-wide.
- Towers additional detail.
- Appurtenances 10%
- Podium Material board and site conditions inspection for all colors/materials project-wide.
- HOA enforcement of speed for owners, not non-owners.
- Evaluate adjacent storm drain pipe in Caltrans ROW if needed for project.
- Water must be available on-site with first lift asphalt prior to wood onsite.

Findings with Facts - Changes

- PDP

- Finding 2: Private Roadway Public Works Director Findings and Recommendation of Approval.
- Finding 3: Appurtenance Height Limit.

- VTM

- Finding 1: Public Work Director attests to good engineering practice.

- CUP

- Finding 3: Appurtenance Height Limit

Recommendations:

1. APPROVED 3/2/20 - Resolution #20-01 recommending that the City Council approve *CEQA Addendum #IS 19-01* with Mitigation and Monitoring Report Exhibit A.
2. APPROVED 3/2/20 - Resolution #20-01 finding conformity with the *General Plan for vacation of portions of excess property/right-of-way*

Options regarding architecture and remaining project applications:

1. APPROVE - Resolution #20-03 recommending that the City Council approve the Final Planned Development Plan #FPDP 19-01, Design Review Permit #DRP 19-02, Conditional Use Permit #19-01, Vesting Tentative Map #9533, based on Facts and Findings, and subject to Conditions of Approval, map, and full drawing with greenline areas of design packages being modified, and modifications to street and site layout prior to City Council
2. NO ACTION – Take no action on the FPDP, require further architectural modifications.

SUPPLEMENTAL PROPOSED MODIFICATIONS TO HILLTOWN CONDITIONS

59. → **Work Hours:** All contractors shall observe City construction work hours (including all deliveries of materials and maintenance of equipment), unless prior arrangements are approved by the City. Hours of construction shall be from 7:00 a.m. to 5:00 p.m., Monday through Friday. No work shall be permitted on weekends or holidays except with prior consent of the City Engineer. Work hours for construction activities that occur completely within an enclosed structure are allowed to begin at 7:00 am and end at 8:00 pm on weekdays, and from 8:00 am to 5:00 pm on weekends.¶

- ¶
75. → **Speed Limit:** All interior private roads shall be posted at 15 miles per hour and designed for no more than 15 miles per hour. ~~Roadways shall be designed for adequate stopping sight distance at a speed of 15 miles per hour.~~ Applicant/Developer and its successor owners shall install extensive traffic-calming devices consistent with a 15 miles per hour speed limit to the satisfaction of the City Engineer subject to Fire Department approval. Applicant/Developer and its successor owners shall provide for enforcement of vehicle speed limits and means of enforcement to the satisfaction of the City Engineer/Public Works Director, and Police Chief. Speed limit and enforcement requirements shall be specified in the HOA Conditions, Covenants, and Restrictions as required pursuant to Condition 13. The Applicant/Developer shall enforce vehicle speed.....¶

¶

85. → ¶

86. → Applicant shall provide enforcement and implementation of 15 mph speed limit to the satisfaction of the City Engineer, Police Chief, and City Attorney.¶

87. → ¶



CITY OF HERCULES

111 CIVIC DRIVE, HERCULES CA 94547

PHONE: (510) 799-8200

To: City Council
From: Michael Roberts, Public Works Director/City Engineer
Cc: Planning Commission
Re: Hilltown Project – Statement of Findings and Recommendations
Date: March 5, 2020

Sec. 10-2.309(b) of the Hercules Municipal Code (HMC) stipulates the Public Works Director/City Engineer provide a written statement of findings and recommendations for development projects. In accordance with this provision, following is my assessment for Hilltown.

The majority of the Hilltown Project, as its name suggests, is on a fairly steep, south facing slope which is challenging to develop. A built-out environment surrounds the project, with John Muir Parkway immediately to the south, San Pablo Boulevard to the west, the Victoria Crescent residential subdivision to the north, and I-80 to the east, further constraining the site.

Since the approval of the Initial Project Development Plan (IPDP), more stringent stormwater requirements have been mandated by the Regional Quality Control Board, requiring the incorporation of horizontal treatment basins which further exacerbate the topographic constraints. During the more in-depth analysis that typically occurs as part of advancing the project from an IPDP to a Final Project Development Plan (FPDP), the Hercules-Rodeo Fire District's fire code has been incorporated into the design. These impact the street slopes (less steep) and street width (wider) which are more constraining than the City's Engineering Design Standards. These requirements, when coupled with the more in-depth knowledge gained during the advance of the project design, have made it clear that adhering to the City's Engineering Design Standards would make an FPDP that conforms to the approved IPDP, for which the developer has vested rights, impractical, if not impossible.

Per HMC Sec. 10-2.105 Variations, "Whenever the real property involved in any subdivision is of such size or shape or is subject to such title limitations of record or is affected by such topographical location or conditions, or is to be devoted to such use that it is impossible, impractical or undesirable in a particular case for the subdivider fully to conform to the regulations contained in this Chapter, or a Planned Unit Development is proposed, variations from the requirements of this Chapter may be permitted by the City Council provided such variations are in conformity with the spirit and purpose of the Map Act and this Chapter."

Over the past several months, the City's project review team and Developer's team have worked very closely to identify variances that would result in a viable project for the Developer that staff believes meets the spirit and purpose of the subdivision code. They are as follows:

- Private Ownership of Streets – To work within the topographic constraints, the project will require extensive retaining walls adjacent to the interior streets. The retaining walls will require periodic access for inspections and maintenance, which given the compact nature of the site (i.e.

close proximity of residences), would be best performed by the Developer. Additionally, Developers are responsible for maintaining stormwater facilities, which for this site will include placing the piping under the streets. Street ownership will allow the Developer to have full access to them.

- 15 MPH Speed Limit – While the City’s Engineering Standards specify a 25 mph design and posted speed limit, the associated roadway geometrics such as the distance between intersections and curve radiuses would render the project infeasible. A 15 mph speed limit will allow a FPDP to be constructed in substantial conformity to the IPDP.
- Private Speed Limit Enforcement – The City does not enforce speed limits on private streets. Given the proposed lower speed limit and associated sharper curves and closer intersections, coupled with the steep grades and 13 feet wide lanes, staff requested the Developer provide a means of enforcing the speed limit along with conditioning the project to use extensive traffic calming measures. Per the attached memorandum, the Developer has agreed to utilize the property management company on an as-needed basis to enforce the speed limits, including but not limited to the use of a radar gun and citations. A more detailed approach would be developed in the future subject to the City’s approval.

These 3 variances constitute my recommendations for the project.



Santa Clara Valley Housing Group, Inc.

March 4, 2020

To: Mike Roberts

From: Cory Kusich

Re: Traffic Enforcement Plan Hilltown-Hercules

The above referenced project is stated to be served by a private roadway system and the City has recommended a 15 mph speed limit throughout the planned development. It has been requested that we provide our plan for the enforcement of the speed limit of this development.

1. A Homeowner's Association will be created/established with the development in order to own, maintain and manage all common area property, streets, landscaping, detention basin, etc. This HOA will be professionally managed by an outside company with expertise in this field.
2. The Covenants, Conditions and Restrictions (C.C. & R's) can be shown to the City Attorney, Planning and Engineering for their review and approval.
3. It is our intent to include standard language that deals with the Enforcement Assessments, Parking and Vehicular Restrictions as well as potentially violations as nuisance.
4. Attached to this memo are standard pages out of a non descript HOA, referencing the above mentioned sections. To further buttress these standard sections, we would add specific language such as:

"The posted speed limit within this community is 15 mph. Any violation of this speed limit is considered a peril to the safety of others and will result in a fine established by the Board of Directors. Fines will escalate for repeat offenders. The Management Company may utilize radar, patrol, or any other method to enforce the posted speed limit."

404 Saratoga Avenue, Suite 100
Santa Clara, CA 95050-7062
Facsimile: 408-985-6050

Mailing Address:
P.O. Box 58171
Santa Clara, CA 95052-8171

titled "Reserves". Except for Special Assessments levied pursuant to the Section of the Bylaws titled "Reserves", any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitations set forth in **Section 6.7** below. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

6.5 Capital Improvement Assessment. In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of **Section 4.3.7**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 6.7** below.

6.6 Enforcement Assessments. The Association may levy an Enforcement Assessment against any Owner for bringing an Owner or its Unit into compliance with the provisions of the Governing Documents, and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by the Governing Documents and which satisfies Section 7341 of the California Corporations Code and Section 5855 of the California Civil Code, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 6.13.1** of this Declaration, Enforcement Assessments are assessments but they may not become a lien against the Owner's Unit that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.7 Changes to Assessments.

6.7.1 Limitation on Assessments. From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the

In addition to the foregoing, all signs must comply with all applicable laws. Notwithstanding the foregoing, Declarant and Co-Declarant shall have the right to display signs as set forth in ARTICLE 10.

7.7 Parking and Vehicular Restriction.

7.7.1 Authorized Vehicles. The following vehicles are "Authorized Vehicles": standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less and vehicles which are the principal source of transportation for an Owner. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles subject to **Sections 7.7.3 and 7.7.4** below; however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over streets, driveways or sidewalks in the Community or extends beyond the limits of the space where the Authorized Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Association Rules to adapt this restriction to other types of vehicles.

7.7.2 Prohibited Vehicles. The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats) (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) boats, (i) any vehicles or vehicular equipment deemed a nuisance by the Board, and (j) any other vehicles not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept within the Property within the Community or within any Access Easement except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

7.7.3 General Restrictions. All Authorized Vehicles owned or operated by or within the control of an Owner and kept within the Community shall be parked in that Owner's garage. Guest parking shall only be permitted in designated areas within the Community. There shall be no parking in the Community that obstructs free traffic flow, constitutes a nuisance, violates the Association Rules, or otherwise creates a safety hazard. The parking areas within the Community shall be used for guest parking Authorized Vehicles only and shall not be used for storage, living, recreational or business purposes. No maintenance, repair, restoration, or construction of any vehicle shall be conducted on the Property.

7.7.4 Garage Use. The garages shall be used for parking vehicles only and shall not be converted for living, recreational activities, business or storage that would prevent the ability of an Owner, tenant or lessee to park the number of vehicles in the garage that the garage was designed for. Doors to garages shall be kept closed except during the removal or entry of vehicles therefrom or thereto. Each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant or Co-Declarant.

7.8 Mechanic's Liens. No Owner may cause or permit any mechanic's lien to be filed against the Community for labor or materials alleged to have been furnished or delivered to the

16.6 Additional Property Not Subject to Declaration. The Additional Property shall not be subject to any of the rights granted under this Declaration, including but not limited to, easement rights, the rights of use and enjoyment by Owners and the right to enforce this Declaration against such Additional Property, until the conveyance of the first Unit in a Phase of the Additional Property. After such conveyance, the rights granted in this Declaration shall apply only to such Additional Property annexed. Notwithstanding the foregoing, Declarant may elect to commence to pay Regular Assessments on a Phase of Additional Property prior to the conveyance in such Phase to an Owner under a Public Report and, in such case, Declarant shall have the voting rights as to the Condominiums in such Phase pursuant to **Section Error!** Reference source not found. of this Declaration.

16.7 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Community, together with the covenants and restrictions established upon any other property as one plan.

16.8 De-Annexation. Either Declarant may delete all or any portion of the annexed land from the coverage of this Declaration and rescind any Supplementary Declaration, provided that (a) Declarant is the sole Owner of all of the real property described in the Supplementary Declaration to be rescinded or obtains the consent of the fee title Owner of the real property to be de-annexed, (b) Declarant has not exercised any Association vote as an Owner of any portion of the real property to be de-annexed, and (c) assessments have not commenced with respect to any portion of the real property to be de-annexed. Such deletion shall be effective upon the recordation of a written instrument signed by Declarant, in the same manner as the Supplementary Declaration to be rescinded was recorded.

ARTICLE 17 ENFORCEMENT

17.1 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by at least sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

17.2 Enforcement and Nonwaiver.

17.2.1 Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such

covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant, or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

17.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in **Section 17.2.1**, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the applicable notice and delivery requirements and other provisions of California Civil Code Section 4000 *et seq.* relating to such enforcement action.

17.3 Notice of Actions Against Declarant. Any claim, dispute or other controversy between: (i) the Association and/or any Owner(s) and (ii) the Declarant or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this **Section 17.3**) relating to this Declaration, the use, condition, and/or operation of any Improvements or landscaping located within the Community, (individually and collectively the "Claim") shall be subject to the claims procedures set forth in **Exhibit "D"** attached hereto and incorporated herein.

The claims procedures in **Exhibit "D"** do not apply to any action taken by the Association to enforce delinquent assessments.

17.3.1 AGREEMENT TO ARBITRATE. BY EXECUTING THIS DECLARATION, DECLARANT, AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER, AND THE ASSOCIATION AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND ASSOCIATION, OWNER AND DECLARANT ARE GIVING UP ANY RIGHTS DECLARANT, OWNER AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, OWNER AND ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 17.3.1. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

ARTICLE 18 GENERAL PROVISIONS

18.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.