Jon Maginot

From: Deb Skelton
Sent: Tuesday, April 09, 2019 10:59 AM
To: City Council; christopher.diaz@bbklaw.com; Jon Biggs; Chris Jordan; Jon Maginot
Subject: 40 Main Stret
Attachments: 40 Main Street.docx

Dear City Council Members and City Staff,

I'm writing today to ask you to reject the application for 40 Main Street for the following reasons.

- The proposed building does not adhere to the general plan: "Commercial core with small-town village atmosphere created by one- and two-story buildings that have contiguous 25-foot-wide storefronts with large display windows, streetscape furniture on wide sidewalks with a variety of overhangs, awnings, and tree canopies.
- Zoning height is 30 feet, whereas this proposed building is over 66 feet.
- Parking is not adequate, and there will be overflow into residential neighborhoods.
- As best I can tell, there are no vehicle charging stations included. Moving forward, all developments of a certain size should be required to have vehicle charging stations.
- The building does not include housing.
- The development would create the canyon effect.
- Some mistakes were made with the Safeway development; this would be so much worse.
- Our downtown is small; all development should reflect appropriate size and scale.

Please protect our charming downtown area by denying this application.

Sincerely,

Debbie Skelton

Debbie Skelton

Los Altos, CA 94024

4/9/2019

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Sincerely,
Debbie Skelton

Jon Maginot

Subject: FW: 40 Main Street 18-D-07, 18-UP-10
Attachments: 40 Main St.pdf

From: Ben Libbey
Sent: Monday, April 08, 2019 6:08 PM
Cc: Jeannie Bruins <jbruins@losaltosca.gov>; Anita Enander <aenander@losaltosca.gov>; Neysa Fligor <nfligor@losaltosca.gov>; Lynette Lee Eng <lleeeng@losaltosca.gov>; Jan Pepper <jpepper@losaltosca.gov>; Jon Biggs <jbiggs@losaltosca.gov>; Administration <administration@losaltosca.gov>; Daniel.Golub@hklaw.com
Subject: 40 Main Street 18-D-07, 18-UP-10

4/8/2019

Los Altos City Council
1 North San Antonio Road
Los Altos, CA 94022
Jeanie Bruins, Council Member, jbruins@losaltosca.gov; Anita Enander, Council Member, aenander@losaltosca.gov; Neysa Fligor, Council Member, nfligor@losaltosca.gov; Lynette Lee Eng, Mayor, lleeeng@losaltosca.gov; Jan Pepper, Vice Mayor, jpepper@losaltosca.gov; Jon Biggs, Community Development Director, jbiggs@losaltosca.gov; administration@losaltosca.gov;
Via Email

Re: 40 Main Street
18-D-07, 18-UP-10

Dear Los Altos City Council,

The California Renters Legal Advocacy and Education Fund (CaRLA) submits this letter to inform you that the Los Altos City Council has an obligation to abide by all relevant state housing laws when evaluating the above captioned proposal.

Housing Accountability Act (HAA)

California Government Code § 65589.5, the Housing Accountability Act, prohibits localities from denying housing development projects that are compliant with the locality's Zoning Ordinance and General Plan, unless the locality can make findings that the proposed housing development would be a threat to public health and safety. The most relevant section is copied below:

> (j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:
>
> > (1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable

impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

SB 35

SB 35 was passed with the intent of providing streamlined, ministerial permitting for projects that fulfill specific affordability requirements. Projects that qualify can be rejected only if they fail to comply with objective standards.

Pursuant to code § 65913.4(a)(5) "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgement and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal.

SB 35 was intended to accelerate the permitting process for housing projects, recognizing California's dire need for more housing. The law was not intended to allow planning departments unlimited time to raise and withdraw challenges to a project. Pursuant to code § 65913.4(b)(1) a local government must provide documentation of any violations of objective standards to the development proponent within 60 days for projects with less than 150 units. If no documentation is provided within this time period the project is deemed to have satisfied all objective standards.

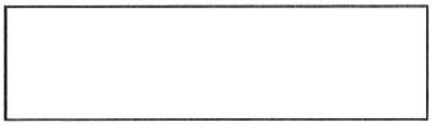
Conclusion

The Applicant proposes to construct 15 transit oriented dwelling units and office space in Downtown Los Altos.

The above captioned proposal is zoning compliant, general plan compliant, and was not found to violate any valid objective zoning or design review standards within 60 days of the permit application. Therefore, your local agency must approve the application.

CaRLA is a 501(c)3 non-profit corporation whose mission is to restore a legal environment in which California builds housing equal to its needs, which we pursue through public impact litigation and providing educational programs to California city officials and their staff.

Sincerely,



Sonja Trauss
Co-Executive Director
California Renters Legal Advocacy and Education Fund

California Renters Legal Advocacy and Education Fund

1260 Mission St

San Francisco, CA 94103

CaRLA

4/8/2019

Los Altos City Council
1 North San Antonio Road
Los Altos, CA 94022
Jeanie Bruins, Council Member, jbruins@losaltosca.gov; Anita Enander, Council Member, aenander@losaltosca.gov; Neysa Fligor, Council Member, nfligor@losaltosca.gov; Lynette Lee Eng, Mayor, lleeeng@losaltosca.gov; Jan Pepper, Vice Mayor, jpepper@losaltosca.gov; Jon Biggs, Community Development Director, jbiggs@losaltosca.gov; administration@losaltosca.gov;
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through public impact litigation and providing educational programs to California city officials and their staff.

Sincerely,

Sonja Trauss
Co-Executive Director
California Renters Legal Advocacy and Education Fund

Jon Maginot

From: Karina Nilsen >
Sent: Tuesday, April 09, 2019 12:02 AM
To: Jon Maginot
Subject: Proposed development at 40 Main St

Dear Mr Maginot,

Los Altos is going through changes, as every city does. The issue is, we have codes in place for developers to respect and observe if we are going to continue an architectural presence that is in keeping with our community.

1. Los Altos commercial district Zoning height is 30 feet. The developers, Sorensen's, insist on 66 feet 4 inches. The structure is imposed right on the lot line, leaving no set back for patio use, or to create human scale. The location, 40 Main Street, is the gateway to Los Altos. What we build there matters in every conceivable way: code compliance, use, architectural uplift to the community, enabling the community to enjoy a piece of nature - a patio - that would be a welcome area for a restaurant.
2. Inadequate parking. Do our residents deserve to have spillover commercial parking leech into their - our - neighborhood? No!
3. Sorensons' tactics include ramrodding process without story polls or planning commission meetings.
4. Sorensons threaten a lawsuit if their out-of-code project is not rubber stamped on April 9. I am informed that the threat is bogus, based on false facts, misapplication of the law.
5. City staff rejected the project, but Sorensons have appealed. Continue to reject the project.
6. Stand firm. Do not allow a developer to ramrod structures through without adhering to the planning process, and conforming to code - height, parking, as well as architectural harmony.

Thank you,
Karina Nilsen

Los Altos 94024

Sent from my iPad

Jon Maginot

From: Chris Jordan
Sent: Tuesday, April 09, 2019 7:47 AM
To: Jon Biggs; Jon Maginot
Subject: Fwd: New Building in Los Altos

Sent from my iPhone

Begin forwarded message:

> **From:** Dorothy Metcalf
> **Date:** April 8, 2019 at 9:57:59 PM PDT
> **To:** council@losaltosca.gov
> **Subject: New Building in Los Altos**
>
> I am opposed to any building that violates our current city ordinances in height, etc. and am equally opposed to the current trend for city council to allow variances to those ordinances. To many residents, myself included, it appears that special interest groups as well as the prospect of financial gains for downtown property holders is behind this push, using the affordable housing requirements as one of their enforcement tools. I am confident reasonable people can find reasonable ways to meet our affordable housing goals without destroying forever the character of our town.
>
> > Although I will not be at the meeting, I fully expect this letter to count as my strong veto of more buildings in Los Altos that do not conform to ordinances in effect.
>
> Respectfully,
> Dorothy Metcalf
> Los Altos

Jon Maginot

From: Lizebeth Burch
Sent: Thursday, April 04, 2019 11:16 PM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs
Subject: Proposed development at 40 Main Street

To Council members and City Staff:

We react with horror to hear that, once again, the character of our town is under threat. To propose a sixty-foot high development in the heart of Los Altos is nothing short of an outrage!

We cannot understand why there is even pressure on the city government to allow this project to continue. It should be dead in the water before even being considered, as it is clearly against building regulations (regardless of what may or may not be within the purview of new State Law 35). In addition, we feel that no efforts have been made as to general public awareness of a proposal for such an enormous building. Is this deliberate on the part of the developer? After the public reaction to the Safeway complex on Main Street, staff and council members should be aware by now that the majority of residents here DO NOT WANT such large structures spoiling the Village atmosphere which is the reason many of us choose to live here, and not in such cities as Palo Alto or Mountain View.

Any proposed buildings so out of scale with the rest of downtown should certainly be subject to intense public scrutiny. The city should be making an extra effort to involve citizens in this decision-making. We feel that *no* projects so far proposed for this site have met public criteria, and certainly NOT this one.

We have mentioned several times that an Architectural Review Committee could be set up, to work in conjunction with city staff and the Council to try and keep proposed developments somewhat "of a piece", and conforming with the general look and
feel of our downtown. Other cities have this; why do we not? Until we do, it is the responsibility of yourselves to be aware of the permanent damage should such structures as this one be permitted.

Please do not allow the charm of our town to be gradually, and irrevocably, eroded.

As I myself am out of the country at this time, I am unable to attend the upcoming hearing on this matter. WE URGE BOTH THE CITY STAFF AND THE COUNCIL TO DEFINITIVELY REJECT ANY PLANS FOR BUILDINGS OVER THE 30-FOOT LIMIT, OR IN OTHER WAYS OUT OF SCALE, IN OUR DOWNTOWN AREA.

Thank you for your careful consideration and action.

Lizebeth Burch
Don Burch

Los Altos

Sent from my iPad

Jon Maginot

From: Anne Arjani
Sent: Friday, April 05, 2019 11:29 AM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Subject: Sorenson's Project: and next door response

Hello, I posted below on the site NextDoor.
I am not a resident of Los Altos, but I assiduously do ALL of my retail shopping there as a resident of the Hills.
I support Sorenson's project because we have a very boring downtown at night.
The Retail and Restaurants need more customers and more lunch business.

Original Nimbyish post:

Teresa Morris
, Heritage Oaks Park 1

66 foot plus building proposed for Downtown Los Altos, in a 30 foot zone

Hello Neighbors, I am sharing the following. Los Altos residents: PUBLIC HEARING Our charming downtown is again under attack. Sorensens are threatening lawsuit if not given immediate approval for 5 story building for 40 Main Street. Zoning height limit is 30 feet, Sorensens are insisting on 66 feet 4 inches (see rendering). Completely inadequate parking, with flow-over into residential neighborhoods. Bully efforts for expedited process without story-polls or Planning Commission hearings. Threatened lawsuit from San Francisco law firm if not approved on April 9. Threat is bogus, based on false facts and misapplication of the law. If approved, this will be the ONLY public hearing. City staff rejected project, but Sorensens have appealed. For details, see city's webpage at https://www.losaltosca.gov/communitydevelopment/page/40-main-street-project To encourage council members to not reverse staff's rejection of the project, send your email now to: council@losaltosca.gov; cjordan@losaltosca.gov; jmaginot@losaltosca.gov; jbiggs@losaltosca.gov; christopher.diaz@bbklaw.com MOST IMPORTANT – appear at council meeting on April 9, 2019 at 7:00 pm and voice your concerns.

- 40 Main Street Project rendition.pdf

Anne Arjani
, Los Altos Hills-Zone 18 Just now
"Our charming downtown is under attack"
If you think our downtown is incredibly perfect and there should never ever be any change from what was developed in the 1960's then you are right.

But, some of us think it could be more vibrant., as in having more people and things to do/see and more varied restaurants, especially at night. It is really hard to be a restaurateur in downtown Los Altos. Rents are high, and there is very little midday lunch business. At night, there is really only one seating. Let us contrast this to downtown Burlingame or a more low key Mountain View, both of which have a thriving Restaurant Scene. This is in part due to

lunch business, (which is something our Restaurateurs can then count on.... and then workers staying over for dinner as well.

I would like to see a more vibrant (read more heavily peopled) downtown. As a general observation, these towns all have more multi-story buildings to provide office space with Retail on the bottom. I think it enhances the downtown scene, not detracts.

Retail: None of us like to hear this, but retail is declining everywhere. How can we help the retailers we have left in downtown? How about giving them more foot traffic from noontime and after work with office workers.

Anne Arjani, Realtor
Keller Williams Realty
505 Hamilton Ave. Ste100
Palo Alto CA 94301
DRE#01454290

cell:
office:
www.ArjaniHomes.com

Your referrals of friends, family and co-workers are the "life" of my business. Thank you.

Jon Maginot

From: Jim Burns
Sent: Thursday, April 04, 2019 3:50 PM
To: Pat Marriott; City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Cc: Jim Burns; Meg Burns
Subject: Re: 66 foot building proposed downtown in 30 foot zone

Hi:

My name is Jim Burns, 30+ year resident of Los Altos. I saw the original three story proposal the Soreness had. It looked visibly acceptable. I don't know the actual details. The new five story is a monstrosity and would look terrible at the entrance to town. It would also be a terrible precedent for future development. Please don't be threatened by lawsuits. If we must go that way, we should defend our town against such strong arm tactics. Please don't accept their proposal.

Thanks, Jim Burns

On Apr 2, 2019, at 5:59 PM, Pat Marriott wrote:

From Teresa Morris.

I received an email with the following information. Bottom line is that a huge building is being proposed downtown and the owners are now threatening lawsuits. This is after being told it is not compliant with the city building codes. It looks as though bullying is the new normal. If you agree that a 66foot plus building in an area zoned for 30 feet, is not okay, please show up at the next council meeting (details below) and send letters to Council members.
There is an attached picture of the proposed building.

PUBLIC HEARING

- Our charming downtown is again under attack.
- Sorensens are threatening lawsuit if not given immediate approval for 5 story building for 40 Main Street
- Zoning height limit is 30 feet, Sorensens are insisting on 66 feet 4 inches (see rendering).
- Completely inadequate parking, with flow-over into residential neighborhoods.
- Bully efforts for expedited process without story-polls or Planning Commission hearings.
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- If approved, this will be the ONLY public hearing.
- City staff rejected project, but Sorensens have appealed. For details, see city's webpage at https://www.losaltosca.gov/communitydevelopment/page/40-main-street-project
- To encourage council members to not reverse staff's rejection of the project, send your email now to: council@losaltosca.gov; cjordan@losaltosca.gov; jmaginot@losaltosca.gov; jbiggs@losaltosca.gov; christopher.diaz@bbklaw.com
- MOST IMPORTANT – appear at council meeting on April 9, 2019 at 7:00 pm and voice your concerns.

<40 Main Street Project rendition.pdf>

Jon Maginot

From: Ron Packard
Sent: Thursday, April 04, 2019 3:35 PM
To: City Council; Chris Jordan; Jon Maginot; christopher.diaz@bbklaw.com
Subject: 40 Main Street Appeal

Dear council and others,

Just a short note on the staff report for the 40 Main Street Appeal to be heard next Tuesday. IMHO, Jon Biggs has done an excellent job. There is one comment he made, however, that I would suggest he and the Council give further thought – which is how the parking district credit is applied. Following is a floor-by-floor chart showing the uses and parking stall requirements:

5th floor – 3 residential units	3 parking stalls
4th floor – 4 residential units	4 parking stalls
3rd floor – 4 residential units	4 parking stalls
2nd floor – 4 residential units	4 parking stalls
1st floor – 5,724 sq. ft. office space	19 parking stalls
Total requirement	34 parking stalls

The Sorensens have assumed that the parking district credit must begin with the 1st floor and work up. Using that approach, the 34 requirement is reduced to 14. But that approach is contrary to the mixed use development code section of LAMC 14.74.150. That states that when there is more than one use in a single building, the parking requirement is the sum total of all the requirements for all the uses. Using that approach, the parking district credit should be applied to all the uses, not just the first floor. Otherwise, the results may be skewed. Consistent with the combined approach, the allocation of the parking district credit would be 1/5 to each floor, resulting in a combined credit of 7 parking spaces (equal to 34/5). This results in a requirement of 27 parking spaces, which is much more realistic of the situation and consistent with the City's objective zoning standards.

Ron

P.S., If you like to see the actual code provisions, here they are:

14.74.110 - Office uses in CRS/OAD, OA, CN, CD, CD/R3, CRS and CT Districts.

For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area. Parking shall be required for any net square footage in excess of one hundred (100) percent of the lot area and for those properties which did not participate in a public parking district and shall be not less than one parking space for each three hundred (300) square feet of net floor area.

14.74.150 - Mixed use development.

Where more than one use is included in one building or on a single parcel, the parking requirements shall be the sum total of the requirements of all the uses; provided, however, when determined by the city that a conflict in demand for parking will not occur, parking requirements may be combined. Appropriate legal documents, as approved by the city attorney, shall be executed when such combination is approved. Any use or building requiring five-tenths or more parking space shall be deemed to require a full space.

Jon Maginot

From: Rose Manrao
Sent: Thursday, April 04, 2019 10:22 AM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Subject: Proposed Sorenson Bulding Project at 40 Main Street

Dear Council Member,

I ask that you please not reverse the staff's decision to disallow this project. I have resided in Los Altos since 1985. I have seen thing the downtown area of Los Altos change over the years, some for the better, some not. I had always enjoyed coming downtown to support the local community until these last couple years. Now it almost impossible to find a parking space especially if coming around lunch time.

If you allow Sorenson to build this mixed use building it is going to further worsen the problem. Even though their plans show 25 parking spaces, this is all likelihood would not be enough when taking into account visitors to the residential portion of the building and employees for the office section.

The 30ft height zoning limit is there for a reason. It maintains the consistency of structures and the beauty of a village-like downtown.

Please uphold your staff's decision to disapprove the project. Don't let Sorenson bully the council into approving their appeal. If they succeed others with follow. Soon downtown Los Altos will look like the area on San Antonio Rd between El Camino Real and California Street.

Thank you.

Rose Manrao

Jon Maginot

From: Eric Levenson
Sent: Wednesday, April 03, 2019 4:15 PM
To: Jon Maginot
Subject: FW: 66 foot plus building proposed downtown in 30 foot zone

From: Eric Levenson
Sent: Wednesday, April 03, 2019 4:06 PM
To: City Council <council@losaltosca.gov>; Chris Jordan <cjordan@losaltosca.gov>; Chris Jordan <cjordan@losaltosca.gov>; Jon Biggs <jbiggs@losaltosca.gov>; christopher.diaz@bbklaw.com
Subject: 66 foot plus building proposed downtown in 30 foot zone

I want to express my strong objections to the efforts of developers to break the city zoning restrictions with the 5-story, 66 foot, building permit to be discussed on 4/9/19.

There is a reason why the residents of Los Altos have set these zoning restrictions in place, and it is undemocratic in the extreme, notwithstanding SB35, to throw over these restrictions to enable some developers to make what would certainly be a very handsome gain ... at least for them!

I moved to Los Altos in 1975 and have watched as giant "tech" companies continue to expand in the area, bringing more and more congestion to our neighborhoods all the while refusing to expand their operations out of the space-limited peninsula. Enough with the population density! There are other places within 100 miles that would love to have Google, Yahoo, Facebook, Apple, yada-yada. How about the life-style of the current residents of Los Altos? If developers continue to overturn or change our established zoning limits to make a buck, you can kiss goodbye to the "village" and say hello to downtown NYC!

I'll be there on Tuesday with my wife and friends and it will be the first city council meeting I've ever attended (so be nice to me).

Sincerely,

Eric Levenson

Los Altos, CA 94024

Jon Maginot

From: Alain Gronner
Sent: Wednesday, April 03, 2019 2:36 PM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs
Cc:
Subject: About the project on 40 Main St

Hello,

I wish to express my support for granting a building permit to Sorensens despite the fact that the proposed building height significantly exceeds the height specified in the current applicable zoning regulations.

While I have no economic interest what-so-ever in this issue, as a long time residential property owner in Los Altos, I feel strongly that it is important for builders to be able to offer new construction lodging at prices affordable to those who wish to live in the proximity of the industry located in nearby towns. With the increasing cost of land, developers and builders have no choice but to build in height to add floor space and to challenge zoning regulations drafted at a time where build-able land was much cheaper.

By holding fast to previously adopted zoning regulations and keeping the housing density low, we are effectively making it harder for this industry to keep attracting the talent it critically needs to continue its growth. As a nation, we are so lucky to have an industry that does so substantially contribute to our economy, our security and quality of life. Collectively, we should try reduce the obstacles this industry faces. One way to do this is to have our residential zoning regulations reflect the needs of the times we live in and specifically to encourage the introduction of higher density housing in our midst. In so doing our town will clearly be acting to further our national interest.

Amending and/or updating the current zoning regulations to allow the granting of a building permit to Sorensens would be a great start.

Thank you in advance for your consideration.

Respectfully,

Alain Gronner

Jon Maginot

From: Stephanie Vargo
Sent: Wednesday, April 03, 2019 3:22 PM
To: Jon Maginot
Subject: Reject Sorensen Proposal for 5 story, 60 ft. Building

To Whom It May Concern:

I am a 20 year resident of Los Altos and a registered and active voter.

I was pleased to hear that the Los Altos City Council rejected the Sorenson's proposal for the non-compliant building being proposed for Main Street.

I understand they are using bullying tactics to try to get a 5 story, 60 ft building approved on Main Street.

This proposal is dramatically outside the boundaries of current zoning guidelines and doesn't address any of the auxiliary issues like street parking. Not to mention this location is a primary focal point for the entrance to town with significant visual impact.

I respectfully request that the Los Altos City Council continue to hold your ground on this proposal and reject the Sorenson's 5 story building proposal for Main Street.

Best Regards,
-Stephanie
, Los Altos

Sent from my iPad

Jon Maginot

From: victor ringel
Sent: Wednesday, April 03, 2019 9:16 AM
To: Jon Maginot
Subject: 40 main st.

A building of the size proposed will change the small town, intimate appeal of Los Altos. It will also create a greater parking problem thereby hurting local retailers and restaurants.
can this letter be read at the meeting? I am traveling.
Sincerely, Vic Ringel

Sent from Yahoo Mail for iPhone

Jon Maginot

From: Ron Packard
Sent: Monday, April 08, 2019 1:08 PM
To: City Council; Chris Jordan; Jon Maginot; christopher.diaz@bbklaw.com; Jon Biggs
Subject: RE: 40 Main Street Appeal
Attachments: 2019-04-08 Ron Packard letter to Council.pdf; 2007-03-22 Summary - Four Alternatives.pdf; 2011-01-28 Investor - We are in deep shit with these guys.pdf; 2012-01-19 Staff report to PC.pdf; 2012-04-23 VGP's email re parking.pdf; 2012-05-31 Attorney's letter to City.pdf; 2012-06-04 Architect's letter to City.pdf; 2012-06-12 staff report to CC.pdf; 2013-03-08 Email from S. Atkinson to Uesugi.pdf; 2014-09-17 Truscott declaration.pdf; 2017-09-25 Order Confirming Arbitration Award.pdf; 2018-01-04 Judgment.pdf; 2018-01-04 Order striking other complaints.pdf; 2018-06-07 minutes of PC meeting.pdf; 2018-06-07 PC staff report.pdf

Dear Council members and staff,

Enclosed please find my letter and various backup information for the hearing tomorrow night. I respectfully request that the letter and the attachments be included in the administrative record for the hearing. Two of the attachments will be send in batches due to their size.

Thanks, Ron Packard

Pro Forma Summary - Four Alternatives

	Current Zoning	Two Story Office	Three Story Office/Residential	Three Story Office
Investment	2,800,000	2,800,000	2,800,000	2,800,000
Cash Returned on Takeout	1,100,000	1,000,000	1,100,000	1,100,000
Floor Area First Floor	7,841	7,449	7,449	7,449
Floor Area Second Floor	0	6,665	6,665	6,665
Residential Area Third Floor	0	0	5,489	0
Office Area Third Floor	0	0	0	5,489
FAR	95%	180%	250%	250%
Parking/thousand over lot size	4	3	3	3
Parking/Res. Unit	n/a	n/a	2	n/a
Parking in lieu fee per stall (projected)	35,000	35,000	35,000	35,000
Required Stalls	none	19	25	35
Underground Stalls	none	20	20	20
Projected Parking Fee	none	none	174,500	540,900
Gross Rents per month				
First Floor	5.00	5.00	5.00	5.00
Second Floor	n/a	5.00	5.00	5.00
Third Floor	n/a	n/a	n/a	5.50
Resid Sale price/Ft.			640	
Resid Sale Price	n/a	n/a	3,513,000	n/a
Assumed Cap. Rate	4.5%	4.5%	4.5%	4.5%
Projected Value	7,561,000	13,610,000	17,123,000	19,432,000
Price per office foot	$964	$964	$964	$991
Total Projected Costs	5,059,000	7,701,919	8,164,000	9,977,000
Projected profits	2,502,000	5,908,000	8,958,924	9,455,000
Percentage Profit	33.1%	43.4%	52.3%	48.7%
Investor Projected Profits	1,251,000	2,954,000	4,480,000	4,728,000
ROI (Project)	45%	106%	160%	169%

From: tom malgesini <zini60@gmail.com>
To: dtnero@aol.com
Subject: Re: Investors Report
Date: Fri, Jan 28, 2011 8:32 am

We are in deep shit with these guys. I can easily check with Sequoia on the negotiation. Jason has done many loans with Tuolumne Capital and he would tell me. What the hell have they spend $200K on thus far for development costs?

On Thu, Jan 27, 2011 at 10:21 PM, <dtnero@aol.com> wrote:

> Yes - I'll summarize my notes. Please send yours along so I can fill in any gaps that I may have.
>
> I agree that we should share our notes and thoughts with the Corrigans and get all of us on the same page.
>
> Also, while I agree that getting them out as the manager might not be the best step, I get more concerned each time we meet with them. We're nearly 4 years into this project and the outlook for entitlement and for the completion of the project remain highly uncertain.
>
> To date and before an entitlement is even secured - they have spent nearly $800,000 - including $500,000 for management fees. Their schedule today shows that there is an additional $350K in pre-dev and soft costs. I estimate that approx. $200K has been spent to date on pre-development costs. The total of $550K is close to 2X the $286K they projected for soft cost for the 3-story office property
>
> Further, the fact that Ted selectively omits information from us, and I assume others, coupled with numerous misrepresentations and outright lies, leads me to believe that we will need to continue to police their actions until this property is sold.
>
> If they are willing to deal with their own partners this way, I'm really concerned that they have and would in the future use deception / fraud to forge ahead to secure additional financing. If they get it and pay themselves back the $200k they have loaned in, then we have little recourse outside of suing them to get mgt fees back that they have already taken - especially if this sold right after entitlement was obtained.
>
> Lastly - based on our experience with them to date, do we really want them overseeing a $7 million dollar construction project?
>
> Question - the hard money lender that they mentioned at Sequoia - do you think he would discuss / confirm that Ted and Jerry had an approval for $996K but declined it based on the terms that were offered - 2pts and 10 pct rate?
>
> Dan
>
> Sent via BlackBerry by AT&T

From: tom malgesini <zini60@gmail.com>
Date: Thu, 27 Jan 2011 19:34:59 -0800
To: <dtnero@aol.com>
Subject: Re: Investors Report

Hi Dan: Waiting for the year end tax report is also a key element of proving their misrepresenting #'s. I think we should document the meeting notes and set up another meeting with the Corrigans in the coming weeks. They were working on reaching out to another member and lets see if we can get 40% support. Once we meet with them and digest the latest quarterly report, we will have more data to base our next steps on. I am not sure that removing them prior to entitlement is the right thing. If we were successful at this, someone would need to step in and spend lots of time on this project.
Will you document the meeting with all of your financial notes included? Funny how Ted did not know how much they were paid for management until today. I have never had this problem before.
-tom

On Thu, Jan 27, 2011 at 5:37 PM, <dtnero@aol.com> wrote:

At this time I think we give them 2 weeks to produce the letter before we act. My expectation is that Ted writes the quarterly letter and misrepresents several matters of importance. After doing so - I think will need to point out such misrepresentations to them again and to copy as many other members as possible - stressing to the other members our concern as to their ability to continue to manage the project in the best interests of all member. Then we'll have to make a determination as to (1) whether or not we can obtain enough support to either remove them (Gunn Mgt) as the Manager and / or (2) to force them to sell the building once the entitlement is approved or (3) take legal action whereby we sue them for violating the agreement - undertaking prohibited transactions and violating the reporting requirements / misappropriating funds - i.e. overpayment of the management fees / misrepresenting and providing fraudulent financial information and lastly entering into transaction with the Manager that are and were not done at fair market value, specifically rental payments due to 40 Main from Gunn Mgt and Ted for their use of space at 40 Main.

Thoughts?

-----Original Message-----
From: tom malgesini <zini60@gmail.com>
To: dtnero@aol.com
Sent: Thu, Jan 27, 2011 4:53 pm
Subject: Re: Investors Report

Yes, what a surprise to see this. Addressing items that show he violated the contract are maddening as he goes into legalize.....

On Thu, Jan 27, 2011 at 11:18 AM, <dtnero@aol.com> wrote:

FYI - I guess it wasn't that **"just anyone could put money onto a company"** and that this actually was a transaction and a loan from them subject to member approval.

From the Financing Section of the last quarterly letter received from Ted/Jerry - in bold:

Financing.

An affiliate of Borel Bank, our current lender, experienced some severe losses in Inland Empire real estate in late 2008 and in 2009. For this reason, commercial loans have been downgraded in the eyes of the bank and, despite our good record with the bank, they would like us to find another lender or, alternatively, make a significant payment to reduce the outstanding balance and pay certain amounts of interest in advance. The extension would only take us through July, 2011. We had requested a 24 month extension with no reduction in principal. **The credit line is "maxed out" at $575,000 and currently, Jerry and I are loaning the LLC funds sufficient to pay for day-to-day operations. The terms of this loan are interest only at 6%, payable monthly (from rental proceeds).**

We are seeking new financing from a number of possible lenders. However, these are challenging times and (despite verbal assurances of loan officers) we have no actual assurance that sufficient financing can be arranged with a bank. Accordingly, one partner suggested that we ask the partners if they would be willing to loan funds to the partnership (this is not a "cash call"). A recent appraisal of the property (we do not yet have the hard copy available) will show that the value is at $1,925,000. Thus, a loan of $1,000,000 would be at about 52% loan to value. Loan payments will be from rent proceeds.

If you are interested, please let us know the maximum amount of the loan that you would like to make and what terms you would suggest. Our current loan is at 6%. Banks which are expressing interest are offering about the same rate.

M E M O R A N D U M

DATE: January 19, 2012

TO: Planning Commission

FROM: David Kornfield, Planning Services Manager

SUBJECT: 11-D-01 & 11-UP-01—40 MAIN STREET

RECOMMENDATION

Recommend to the City Council: a) adoption of a Mitigated Negative Declaration of environmental impact, and b) denial of design review and use permit applications 11-D-01 and 11-UP-01 subject to the listed findings.

PROJECT DESCRIPTION

This is a design review and use permit application for a three-story office building at 40 Main Street. The following table summarizes the project details:

GENERAL PLAN DESIGNATION:	Downtown Commercial
ZONING:	CRS/OAD, Commercial Retail Sales/Office Administrative Design
PARCEL SIZE:	7,841 square feet
MATERIALS:	Slate roof, cement plaster and concrete block siding, wood trim, stone veneer, fabric awnings

	Existing	Proposed	Allowed/Required
FLOOR AREA:	2,127 square feet	17,567 square feet*	N/A
SETBACKS:			
Front	--	0 feet	0 feet
Left Side	--	5 to 10 feet	0 feet
Right Side	--	0 feet	0 feet
Rear	--	0 feet	2 feet
HEIGHT:	16 feet	35 feet	30 feet
PARKING:	4 spaces	0 spaces	28 spaces

* For parking purposes the proposed building contains a net of 16,275 square feet. The net parking square footage excludes stairways and shaft enclosures.

BACKGROUND

At its third review of the project the Architecture and Site Review Committee voted 2-1 to recommend approval of the design application subject to positive findings (see Attachment A). In their action, a majority of the Committee stated that they had no problem with a three-story building, that the paseo was good and provided a setback from the adjacent single-story building, that a variety of design and fine-grain details were appropriate, that the pedestrian scale was acceptable, that the gables were compatible and that the tower worked well at the arrival zone to the downtown area.

A Committee member spoke in opposition to the project stating that the building was five feet taller than that allowed by Code and that was a significant concern in the downtown core, that the three-story vertical massing was inappropriate, the that the third floor should be minimized either by setting it back or by using a sloping roof, that the design would benefit from a more distinctive and traditional architectural design and that the balconies should be more functional and that the bulk and mass were not compatible with the Downtown Design Guidelines or the General Plan.

Attachment B contains the most recent staff report to the Committee (and the prior staff reports) and provides the design review context and background.

DISCUSSION

Parking Analysis

The most significant issue with this project is its lack of parking. The project replaces the 2,127-square-foot office building with a 17,565-square-foot office building without providing any on-site parking. The 28 space parking deficit is a significant issue since the project is adjacent to Parking Plaza No. 10, which is an impacted plaza.

Per the zoning ordinance, this project must provide parking spaces for the net floor area in excess of 100 percent of the floor area ratio. The first 100 percent of floor area is exempt from providing parking since the project is within the parking plaza district. For parking purposes the net proposed floor area is 16,275 square feet. Subtracting the lot area of 7,841 from the net proposed floor area of 16,275 square feet leaves 8,434 square feet of office space that must be parked at a ratio of one space for every 300 square feet. This equals a zoning requirement to provide 28 parking spaces.

From another perspective the project creates an effective need of 47 parking spaces over the existing building. Subtracting 2,127 square feet (the existing building) from the net proposed floor area of 16,275 equals an increase of 14,148 square feet over the existing building. Using the office parking ratio this equals an effective difference of 47 parking spaces.

The parking deficit is an important subject because the lack of parking is a significant issue for the downtown area in general and specifically in the vicinity of the project. Plaza 10, which is the most proximate parking area for the site, is one of the most heavily used plazas downtown. During the

peak hours of Noon to 2 PM, Plaza 10 is at or above the 85 percent capacity, which is considered full (see the Parking Analysis discussion in the July 6, 2011 memorandum, and Attachments C through F of that report for the relevant parking plaza studies). At 85 percent occupancy, Plaza 10 would have only 14 parking spaces available. While only technically requiring 28 parking spaces the project would create an effective demand of 47 parking spaces over the existing building.

The applicant submitted a parking demand study suggesting that the project should have a requirement of 32 spaces based on a ratio of 1.97 spaces per 1,000 square feet (see Attachment C). This study makes a case that a lower parking ratio should be used in a shared parking environment. This type of analysis only makes sense to consider when a project has a mix of uses that have different demands and/or timing such as with residential and office space and a discrete parking area used only by the building. For example, in a mixed-use residential and office project the office use will need its full parking during the day and especially its mid-day peak, where as the residential uses need their parking typically during the evening and weekend. In the context of a single-use building putting a demand on a plaza parking system that has multiple, similar users, using a lower parking ratio for an individual project does not make sense.

The parking disparity is also a matter of fairness. The zoning code sets an expectation or requirement that is a development constraint. If the City waives or lowers its standards for a particular project without a sufficient basis then it benefits a property owner with a special privilege affording more development than would normally be allowed.

The City Council has been especially sensitive to lost parking spaces downtown. Generating a parking demand from a project without providing sufficient parking is the equivalent of losing parking spaces. While the significant parking difference created the project by itself is a basis to deny the project, a parking exception may only be allowed in the context of a development incentive (discussed below).

Zoning and Design Issues

In addition to the parking deficit, the project exceeds the 30-foot height limit by five feet. The 35-foot tall ceiling of the upper floor leaves little room to vary the roof forms of the building to properly relate building to the village character and the scale of adjacent structures. From a staff perspective, the third floor is significantly taller than the adjacent structures and should be softened in its appearance to relate better to the surroundings such as with sloping roof forms and by setting it back from the sides and front. This is especially important next to the adjacent single-story structure. Since the upper ceiling is so tall in relation to what is allowed, there is little room to vary the roof forms or parapet walls to appropriately reduce its bulk.

A varied roof line and reduced scale is desired both by the CRS/OAD design controls (Code Section 14.54.130) and the Downtown Design Guidelines (Section 3.2.7). If such scaling cannot be achieved, then it is even more important that the project benefit from the use of a more traditional architectural style with a greater connection to the architectural fabric of the downtown area (Downtown Design Guidelines, Section 3.2.2).

From a staff perspective the tower element appears somewhat monumental in its context and out of character. Although the site is in the "arrival zone" to the downtown area (Downtown Design Plan, Page 9), it is not located at the entry or at a corner where more monumental elements are appropriate (Downtown Design Guidelines, Page 41). The tower element is allowed by the zoning code at its proposed 45-foot height limit; however, it presents an issue of scale in its relationship to the adjacent single-story structure.

There are also concerns about the integrity of the balcony elements: while some of the balconies have an effective, useful depth such as on the front and south elevation, some of them are shallow, plant-on elements such as on the tower and rear elevations where there are missed opportunities to provide authentic balconies that help relate the building's use to the street level. The second and third floors on the rear building elevation encroach into the required two-foot building setback too.

The building mass is articulated in some desirable ways to relate to the human scale. The approximately 23-foot wide bays on the front elevation relate well to the finer grain of the buildings in the area. The height of the first story arches, overhangs and awnings relate well to a human scale as well as the character of the adjacent buildings. The building elevations generally have variation and depth, and avoid large blank wall surfaces. The project's exterior materials and finishes convey quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, arcades and structural elements.

Landscaping is generous and inviting in the front yard and paseo areas. The colored concrete paseo paving is designed to complement the building and parking areas, and to be integrated with the building architecture and the surrounding streetscape. The project re-landscapes the Main Street frontage, has planters within the paseo and rear yard. The plan shows special stained concrete paving in the paseo area accenting the pass-through and the octagonal tower element.

Signage is designed to complement the building architecture in terms of style, materials, colors and proportions. The concept shows main tenant signage in the Main Street arches, blade signs and distinctive paseo markers.

The project's mechanical equipment is located on the roof and set back appropriately and therefore appropriately screened from public view. The service, trash and utility areas are located well inside the building and hidden by a wooden door off the rear elevation, which is consistent with the building architecture in materials and detailing.

Notwithstanding the Architecture and Site Review Committee's recommendation there are significant issues related to the size of the building and its lack of parking, and the project's height difference and its relationship to the immediate surroundings.

Use Permit

The zoning code requires granting a use permit for the project since the building exceeds 7,000 square feet. The purpose of the use permit is to give the City more discretion for large buildings in the downtown core in relation to village character and to consider potential traffic impacts.

The proposed office building is a desirable use. The proposed location of the office building in the combined CRS/OAD District is appropriate since it does not take away from the retail viability of the nearby core and has the potential to add additional customers. As designed the project can accommodate a 12-foot ceiling that allows for the potential retail use in the future. According to the traffic report (see Attachment D) the project will not significantly degrade street intersection level of service.

There is some question as to the project's village character and its scale and relationship to the adjacent structures. The parking disparity is a significant concern that may substantially affect convenience and prosperity of the area in that the project will likely impact the nearby parking plazas negatively and make parking more difficult for the area and drive away retail customers. Parking may also undesirably spill over into the nearby residential areas. For these reasons staff recommends against granting the use permit.

Development Incentives

The project includes a paseo on its south side. Paseos are generally a desirable element in accordance with the Downtown Design Plan and the Downtown Design Guidelines. Paseos provide an important pedestrian connection to the parking plazas. The proposed paseo, however, is nearby an existing paseo, which weakens its use somewhat. The most recent design shows more interesting features in the paseo such as landscaped trellises and an opening to the garden next door. The project's entry lobby to the upper floors is located off the paseo which helps activate the element with the building users too. The paseo's basic 10-foot width responds to the Guidelines (Section 3.1.1), however the building is designed with five-foot overhangs at the second and third stories that diminish the space. Additionally, the tower element at the front narrows the paseo entry to approximately six feet which differs substantially from the paseo Guideline with of 10 feet.

The paseo element qualifies the project for consideration of a development incentive. The proposed development incentives include the aforementioned parking and height exceptions as well as a rear yard setback variance for the second and third stories that do not provide the required two-foot setback. To grant the development incentives the Council must find that they:

- Are not detrimental or injurious to properties in the vicinity, that the benefit to the City is appropriate compared to the cost to the developer;

- That the project and any mitigation will provide public benefit; and

- That the project and mitigation are consistent with the General Plan and promote or accomplish the objectives of the Downtown Design Plan.

The parking, height and setback exceptions may be injurious to properties in the vicinity because of the project's likely negative parking impacts. The cost to the developer to provide such an element is minimal since the paseo provides the building's main entry to the upper levels and must be developed anyway for this type of building design. Otherwise, without a paseo, a significant part of the first level would be devoted to access to the building core for a multi-story building. Furthermore, the proposed development exceptions have the effect of foregoing the developer's need to build the required 28 parking spaces. At a typical cost of $40,000 per parking space, this equals a windfall of over a million dollars to the developer avoid constructing the required parking.

Downtown Parking Incentives

It has been noted by the applicant that the City has waived parking for other recent downtown projects. This is not an accurate comparison. The following projects have been approved by the City within the past few years that had parking issues:

Within the Public Parking District

- One Main Street – Enchante Hotel

The City granted a development incentive in exchange for the proposed outdoor plaza area to waive a small number of parking spaces, which will be needed in the evenings when there is significant available downtown public parking. The hotel generates minimal mid-day parking demand. The parking demand generated by an office is right at the peak mid-day period.

- 160 First Street – Safeway Market

City Council has considered allowing Safeway to join the public parking district by building and contributing 154 parking spaces to the district. The concept being that during the holiday seasons and other special events that overflow Safeway customers can use the public parking spaces, and vice versa during off-peak market shopping periods. This agreement is contingent upon knowing that Safeway will only need these additional spaces during off-peak parking plaza periods.

Outside the Public Parking District

- 343 Second Street – Packard Foundation Office

The office campus provides 67 of its required 151 parking spaces and the Foundation contributed a sum of $3.4M in community contribution in lieu of the difference in parking cost. The Foundation also entered into an agreement that requires them to build a parking garage if they do not meet their Transportation Management Program trip reduction goals via ride sharing and other alternative transportation means. It is a well developed program with extensive monitoring requirements that the City believes can be achieved.

- 129 First Street – Styler's Floor Covering

  They received a variance to build a 2,685-square-foot, one-story building and provide seven parking spaces where 14 would otherwise be required. Staff supported the variance in that a bulk-retail type business like Styler's – e.g., furniture and appliance stores, etc – are typically assessed a lowered parking requirement but Los Altos' parking regulations did not provide this acknowledgement. Following the project approval, which provides the actual parking the business needs, the parking regulations where amended to require one space per each 500 square feet of gross floor area for "extensive retail" versus one space per each 200 square feet of gross floor area for "intensive retail."

All other downtown projects have been required, at a minimum, to meet their parking demand requirements. Clearly, the cases noted above are exceptional and any similar situations where shared parking demand can be achieved should continue to be considered.

Environmental Review

Staff prepared an Initial Study of environmental impacts for this project (see Attachment D). Based on the project's lack of significant effects we prepared a Mitigated Negative Declaration. The main considerations included traffic, noise and air quality.

The transportation analysis concluded that the project will add a net increase of 170 weekday vehicle trips over the existing building. This increase in trips equates to a net increase of approximately 25 peak-hour trips in the morning and evening. There was no level of service change indentified for any nearby intersections. The Traffic Commission concurred with the transportation report's conclusions that the project's traffic impacts are negligible (see Attachment E).

The acoustical study concluded that the project's anticipated mechanical equipment will comply with the City's noise limit of 60 decibels at the property lines. Due to its small scope and location the project is under the air quality thresholds for green house gas emissions and particulate emissions.

The identified measures to keep the effects as less than significant include provisions to control the dust during the demolition and site preparation, and to assess any discovery of prehistoric resources, to control storm water runoff during construction.

To date staff has received one letter with regard to the environmental review (see Attachment F). The stated concerns fall outside the parameter of the environmental review statutes. For instance, a lack of parking and its potential impacts were removed from the State's environmental checklist of potential effects; and those effects are better assessed by the City during entitlement process. The stated aesthetic impacts of the project are subject to the City's design review process rather than an environmental matter.

Cc: 40 Main Street, LLC, Owners
Uesugi & Associates, Architect

Attachments

A. September 14, 2011 Architecture and Site Review Committee Minutes
B. September 14, 2011 Memorandum to the Architecture and Site Review Committee
C. Applicant's Parking Demand Analysis
D. Initial Study of Environmental Impacts and Mitigated Negative Declaration
E. Traffic Commission Memorandum
F. E-mail Comment Regarding Environmental Review

FINDINGS

11-D-01—40 Main Street

1. With regard to the design review, the Planning Commission finds in accordance with Section 14.78.040 of the Municipal Code that:

    a. The proposal does not meet the General Plan, Downtown Design Guidelines and ordinance design criteria adopted for the CRS/OAD district in that the paseo element does not adequately justify reducing the parking requirements and increasing the height limit to the degree requested; the paseo design does not meet the Guidelines, and that the project lacks a proper attention to the downtown village character;

    b. The proposal lacks an appropriate architectural integrity and appropriate relationship with other structures in the immediate area in terms of height, bulk and design;

    c. Building mass is articulated to relate to the human scale, both horizontally and vertically. Building elevations have variation and depth and avoid large blank wall surfaces;

    d. Exterior materials and finishes convey quality, integrity, permanence and durability, and materials are used effectively to define building elements such as base, body, parapets, bays, arcades and structural elements;

    e. Landscaping is generous and inviting and landscape and hardscape features are designed to complement the building and parking areas and to be integrated with the building architecture and the surrounding streetscape. Landscaping includes substantial street tree canopy, either in the public right-of-way or within the project frontage;

    f. Signage is designed to complement the building architecture in terms of style, materials, colors and proportions;

    g. Mechanical equipment is screened from public view and the screening is designed to be consistent with the building architecture in form, material and detailing; and

    h. Service, trash and utility areas are screened from public view, or are enclosed in structures that are consistent with the building architecture in materials and detailing.

2. With regard to the use permit, the Planning Commission finds according to Section 14.80.60 of the Municipal Code that:

    a. That the proposed location of the conditional use is desirable or essential to the public health, safety, comfort, convenience, prosperity, or welfare;

b. That the proposed location of the conditional use is not in accordance with the objectives of the zoning plan as stated in Chapter 14.02 of this title because the project's potential parking impacts are not providing for community growth along sound lines;

c. That the proposed location of the conditional use, under the circumstances of the particular case, will affect the convenience and prosperity of persons residing or working in the vicinity since the project will likely cause a substantial shortage of parking;

d. That the proposed conditional use does not comply with the regulations prescribed for the district in which the site is located and the general provisions of Chapter 14.02;

e. That the proposed use and/or structure is not in scale with the existing development and does not enhance the unique village character of the CRS District; and

f. That the proposed use and/or structure will not cause degradation in the level of service of the streets and intersections within the CRS District.

3. With regard to the development incentives, the Planning Commission finds in accordance with Section 14.54.180 of the Municipal Code that:

a. The granting of the exceptions will be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the area because of the project's lack of parking and the negative effects of reducing the parking supply;

b. The benefit to the City derived from granting the exception is not an appropriate mitigation when considered against the cost to the developer;

c. The project and mitigation will result in a negligible public benefit to the downtown; and

d. The resultant project and mitigation are not consistent with the general plan and promote or accomplish objectives of the downtown design plan in that the project's parking impacts outweigh the benefits of adding additional office workers to the downtown area.

From: Von Packard
Sent: Monday, April 23, 2012 12:45 PM
To: vcarpenter@losaltosca.gov
Cc: David@CasasRealEstate.com; megan.satterlee@gmail.com; jfishpaw@losaltosca.gov; marcia.somers@losaltosca.gov; kkleinbaum@losaltosca.gov; JWalgren@losaltosca.gov; jolie.houston@berliner.com
Subject: Parking RFP

Dear Mayor Carpenter and Council members,

In case the agenda item for the RFP for a downtown parking plan is pulled for separate discussion, I would like to share a few comments:

1. I have personally attended a number of the A&S and Planning Commission meetings on the proposed development of 40 Main. In almost every meeting, the developers have been asked by the governing body to scale back the design and provide parking. At the next meeting, however, instead of doing so, they have made only cosmetic changes and then railed against the staff for being unfair. Again the developers have even been told that they were not listening. I could not understand why this was happening until our architect, who designed the gateway building at Edith and First Street, met with their architect in San Francisco to review their prior and current plans. It became obvious that the architects for 40 Main have been severely restrained by the developers to merely come up with variations of the same design plan, not allowing a new design that complies with the city or commission requirements. In my opinion, the developers have been very unfair to city staff.

2. It does not seem appropriate that this agenda item should be used as a vehicle by the developers of 40 Main Street to ask for major development concessions on their requirement to provide off-site parking.

3. The concept of re-striping the parking plazas with narrower parking stalls is not new. It was previously considered and rejected.

4. Jeff Morris proposed similar narrowing of parking stalls for his project, but that was rejected. He is being required to live by the rules, as should the developers at 40 Main.

5. It would be a major policy decision to allow improvements on public land to accrue to the personal financial benefit of an individual property owner. If the master plan for downtown parking involves re-striping, shouldn't that be for the benefit of the entire community, and not one property owner?

6. During the last council meeting, the developer of 40 Main suggested that all downtown projects in recent years have required some form of parking accommodation. Any such suggestion is misleading, as evidenced by the following:

    (a) The prior Bank of the West building at 240 Third Street was approved by the Council on April 22, 2008, without any parking reductions or accommodations. In fact, the developer is providing 56 parking spaces, when only 55 were required.

    (b) The old Post Office building at 100 First Street was approved by the Council on August 24, 2010, without any parking reductions or accommodations.

(c) The prior Adobe Hospital at 396 First Street was approved for redevelopment by the Council on May 24, 2011, without any parking reduction or accommodations.

(d) The project at First and Main has been submitted to the City, without any parking reductions or accommodations.

The only exceptions have been three situations which are very unique. (1) The Packard Foundation, which is a charitable organization making hundreds of thousands of dollars of grants to our community each year, paid the City some $3,400,000, and guaranteed that it would build additional parking if it does not meet its limited parking projections. (2) The Safeway project received a special parking arrangement, but it is paying the City $500,000 and providing well over 100 shared parking stalls for joint public use. It is also a major downtown draw and sales tax generator. (3) The Enchanté Hotel is receiving a waiver of 10 parking spaces, since it is anticipated that the guest parking will be at its peak when downtown parking is at its lowest, in the late evening and overnight. In addition, the hotel is anticipated to be a huge occupancy tax generator.

7. Their proposed parking solution for Plaza 10 is inaccurate and misleading. Of their claimed 36 increase in parking spaces, sixteen are on Fourth Street, and not within the Parking Plaza. Changes to public streets should not be counted, but analyzed separately as to street safety, etc. Five additional spaces are a result of undercounting the current number of parking places as 87, whereas City documents indicate and actual spaces are 92. The plan ignores the requirement for access to the large garbage roll-out bins currently located behind 4 Main, and which will be needed at the rear of 40 Main and other buildings and will likely take up 4-5 spaces. Further, their proposal does not seem to include adequate access to the Wells Fargo driveway, proposed Passeo, the Condo entry currently existing at the East side, and general passage-ways from one aisle of the Plaza to the other. The suggestion that "Note that the office peak will occur *after* the lunch hour restaurant peak" is inaccurate, since most office employees do not wait until *after* lunch to show up at their offices. Bike racks are claimed, but not shown — nor is space provided for such. The net gain within Plaza 10 might be 4-7 parking stalls, in exchange for a huge environmental cost, far less desirable parking, increased door dings, and a congested atmosphere.

8. I concur that a well-thought out downtown parking study (including Plaza 10) would be helpful. It is important, however, that the City not rush the consultants because seasonal and/or other factors might have a major impact and need to be studied out carefully. As to the development of 40 Main, there is no reason why a decision as to that non-compliant proposal should have to wait.

Thank you for your consideration of the above,

Von Packard

Matteoni
O'Laughlin
& Hechtman
LAWYERS

Norman E. Matteoni
Peggy M. O'Laughlin
Bradley M. Matteoni
Barton G. Hechtman
Gerry Houlihan

May 31, 2012

The Honorable Mayor Val Carpenter
and City Council Members
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022

Re: 40 Main Street; Your File Numbers 11-D-L1 & 11-UP-01;
EIR Required

Dear Mayor Carpenter and Members of the City Council:

This office represents 4 Main Street LLC, the owners of the office building adjacent to 40 Main Street. The owners of 40 Main Street are seeking the approvals needed to construct a three-story office building. This would be the first three-story office building to be approved for Main Street, Los Altos, and would set a very negative precedent of disregarding the compatibility, parking, and height limitation requirements. It is our position that the project is inconsistent with City regulations in so many respects that it should be outright denied. If the City Council is not inclined to outright deny the application, however, then we object to the recommended mitigated negative declaration (MND).

The matter is brought to hearing before you with certain recommendations from your Planning Commission, including a recommendation to adopt the MND for the proposed project. For the reasons stated hereafter, due to the numerous inconsistencies between the project as proposed and applicable City regulations, approval of the MND would violate CEQA. If it is the City Council's desire to approve the project as proposed, it must first cause to be prepared a legally adequate Environmental Impact Report (EIR) and approve that EIR along with a Statement of Overriding Considerations,

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because that is the only mechanism recognized by CEQA to allow project approval despite unmitigated significant environmental impacts such as presented by the project proposed for 40 Main Street.

A. The Fair Argument Standard

Because adoption of a negative declaration has a "terminal effect on the environmental review process," the standard for requiring an EIR is very low: the negative declaration must be set aside whenever substantial evidence supports a "fair argument" that an impact may occur. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under such circumstances, it is enough to establish that a significant impact may occur; "contrary evidence is not adequate to support a decision to dispense with an EIR." (*Sierra Club v. County of Sonoma* (1994) 6 Cal.App.4th 1307, 1316; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 998, 1003.

The threshold for finding the "fair argument" is exceedingly low:

> "The court reviewing an agency's decision not to prepare an EIR in the first instance must set aside the decision if the administrative record contains substantial evidence that a proposed project might have an environmental impact: in such a case, the agency has not proceeded as required by law.... Under this 'fair argument' standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *(Sierra Club v. County of Sonoma, supra,* at 1317-1318.)

> "Because a negative declaration ends environmental review, the fair argument test provides a low threshold for requiring an EIR." *(Ocean View Estates Homeowners Association, Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 399.)

Based upon evidence already in the administrative record, there presently exists a fair argument that the project as currently proposed may cause significant environmental impacts of at least three types: land use inconsistencies; parking and aesthetics. Each of those is discussed separately below.

B. Land Use and Planning

The CEQA Guidelines checklist describes the environmental inquiry regarding land use and planning as follows:

> Would the project: . . . (b) conflict with any land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the General Plan, Specific Plan, local council program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?"

The MND before you concludes that this impact is less than significant with mitigation. That view, however, is necessarily based upon an overly flexible interpretation of the City's General Plan, Zoning Ordinance and Design Guidelines.

To find an accurate and detailed description of the inconsistencies between the project as proposed and the City's regulations, one need look no further than Mr. Kornfeld's January 9, 2012 memorandum to the Planning Commission. In that memorandum, Mr. Kornfeld correctly described the following conflicts from either Planning Staff perspective or, in some instances, relating comments of members of the Architectural and Site Review Committee: Building 5' taller than allowed by code; bulk and mass incompatible with the Downtown Design Guidelines or the General Plan; parking does not meet code requirements; tower element inconsistent with Downtown Design Guidelines; paseo does not meet code requirements or satisfy the findings for the grant of a development incentive; lack of appropriate architectural integrity; the conditional use does not comply with the regulations prescribed for its district; and the structure is not in scale with existing development.

Despite the existence all of these inconsistencies, the Planning Commission recommended approval of the MND. This appears to have been based on a view of the City's regulations being so flexible that they can absorb virtually any deviation from the standards set forth in those regulations. That interpretation would make the regulations themselves meaningless. It would be an abuse of discretion for the City Council to view its General Plan, Zoning Ordinance or Design Guidelines in this manner.

It appears to be the Planning Commission's view, for example, that an exception or variance can be granted regarding the height of the building and its third floor massing, and since the City's regulations recognize the availability of the exception or variance procedure, there is no inconsistency with the City regulations so long as the variances are granted. Following that logic, there is no maximum height for structures in the City, just a generally suggested height, which any applicant can exceed by obtaining a variance.[1]

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[1] As a tangential matter, it should be noted that it would be an abuse of discretion for the City to grant a variance to 40 Main Street for its height and third floor massing. State law requires that

Similarly, it appears to be the Planning Commission's perspective that virtually any regulation can be circumvented using the development incentive process. While staff is of the opinion that the development incentive findings cannot be made (and we concur with staff's analysis in that regard), your Planning Commission nonetheless appears to believe that the availability of the development incentives program has the ability to make project features which are on their face inconsistent with regulations somehow consistent with these regulations. It is our assertion that an inconsistency is an inconsistency.

There is certainly a fair argument that the project as proposed is inconsistent in many respects with the City's land use regulations. In addition to the above, you will also be receiving letters from architect Steve Borlik, and from Von G. Packard, listing additional land use and planning conflicts. At a minimum, to demonstrate consistency with those regulations in light of the need for variances and development incentives, it would be necessary for the City to establish at the CEQA stage that facts exist to support the granting of the variances and that the development incentive findings can be made. As we have asserted in this letter evidence that the variance findings cannot be made, and by reference to the staff report, architect's letter, and neighbor's letter evidence that the development incentive findings cannot be made, we have set forth a fair argument of substantial unmitigated land use and planning impacts, and an EIR is required.

C. Parking Impacts

Mr. Kornfeld's memorandum also properly provides substantial evidence that the project as proposed will cause a parking impact. However, that memo takes the position that parking does not constitute an environmental impact because the inquiry of whether the project would "result in inadequate parking capacity" was removed from the State's most recent environmental checklist of potential effects. While the Natural Resources Agency removed that language from the environmental checklist in its most recent amendment to the checklist, Mr. Kornfeld has read too much into that amendment.

The amendment of the CEQA checklist was the culmination of a lengthy process by the Natural Resources Agency, primarily focused on addressing greenhouse gasses in the context of CEQA, but also addressing other issues,

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such a variance be based upon unique characteristics of the site that, in the absence of the variance, deprive the property owner of rights enjoyed by other properties in the same zoning district (Government Code Section 65906). It appears from the administrative record that no such showing could be made, and therefore allowing 40 Main Street to exceed the code requirements regarding height and third floor massing would constitute a grant of special privilege.

including parking. In its *Initial Statement of Reasons (July 2009, p. 68),* the Natural Resources Agency described the following reasons for eliminating the "parking questions" from the CEQA checklist:

> ". . . The proposed amendments would eliminate the existing question (f) related to parking capacity. Case law recognizes that parking impacts are not necessary environmental impacts. [Citation omitted.] So therefore the question related to parking is not relevant in the initial study checklist. As noted above, however, if there is substantial evidence indicating adverse environmental impacts from the project relating to parking capacity, the lead agency must address such potential impact regardliess of whether the checklist contains parking questions." (*Id,* emphasis added.)

Regarding the proposed project, Mr. Kornfeld correctly described in his memo the adverse environmental impacts from the proposed project relating to parking capacity. Based on the City's own study, Plaza 10 is at or above 85% capacity during the peak midday hours. As a result, there is insufficient parking capacity to satisfy the 28 parking space City code determined need of the proposed project (and even more of a shortfall when considering the effective 47 stall need of the proposed project). On this point, see also the Pang Engineers, Inc. study dated 2/25/2008, and the Pang Engineers, Inc. Peer Review dated 1/6/2012.

Consequently, because the parking shortfall undeniable has a potential environmental impact associated with the project, that impact must be analyzed notwithstanding the absence of the "parking question" from the CEQA checklist. Here, substantial evidence exists supporting a fair argument that the project as proposed will create a substantial unmitigated parking impact in the area. That impact must necessarily be the subject of a complete analysis in the EIR before the City can consider approving the project as proposed.

D. Aesthetic Impact

Aesthetics is one of the categories included in the CEQA environmental checklist. Included within the aesthetics section of the checklist is the following inquiry:

> Would the project: : . . (c) substantially degrade the existing visual character or quality of the site and its surroundings?"

This required inquiry clearly requires an analysis of the aesthetic compatibility of the proposed project with the surrounding land uses. That being so, it is not

enough to say that the aesthetic impacts of the project are subject to the City's design review process rather than an environmental matter.

Instead, the aesthetics of this project in the context of its surroundings are an environmental matter, as reflected in the CEQA checklist. The aesthetic impacts identified in Mr. Kornfeld's memo, the architect's letter, the photo simulations, and the letter of Von G. Packard, along with those described elsewhere in the record create a fair argument that the project as proposed will cause a significant aesthetic impact. CEQA requires that a full analysis of that impact be provided in an EIR.

E. Statement of Overriding Considerations

It is our belief that when the land use inconsistencies, parking capacity shortfall and aesthetics are fully analyzed in an EIR, that EIR will conclude that the proposed project will cause a significant environmental impact which cannot be reduced to a level of insignificance absent substantial modifications to the project. In that event, one of two things must occur. Either the project applicant must modify the project so that it (a) is no longer inconsistent with land use regulations, (b) provides the required number of parking spaces, and (c) is not aesthetically incompatible with its surroundings, or the City must adopt a Statement of Overriding Consideration.

Very truly yours,

Barton Hechtman

BARTON G. HECHTMAN

BGH/jm

cc: 4 Main Street Partners, LLC

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June 4, 2012

The Honorable Mayor Val Carpenter
and City Council Members
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022

Re: 40 Main Street, Los Altos

Dear Mayor Carpenter and Members of the City Council:

This firm was been involved in the Los Altos downtown for many years. It was engaged by the owners of 4 Main Street, Los Altos, over a decade ago regarding different aspects of their building, and I am writing this letter on their behalf. In addition, we were the architects who designed the building at 20 First Street, Los Altos, at the corner of Edith and First Street. As such, we are very familiar with the City's procedures and requirements regarding its downtown. As a Los Altos resident of more than 15 years, I also share a particular interest in the success of the Los Altos downtown.

Earlier this year I traveled to San Francisco with the business manager of 4 Main and one of the owners to meet with the Architect for the proposed development at 40 Main. This meeting was pursuant to one of the conditions set by the Planning Commission in its January 19, 2012 action regarding the 40 Main proposal. The purpose of this letter is to review some aspects of the project and to comment on the most recent application.

1. **Parking**.

The project fails to provide the required parking. The significance of this is that the application could be denied based on this issue alone. Approval would be inconsistent with the City's plans, the needs of the downtown, and would set a precedent that could eventually result in shoppers avoiding the Los Altos downtown. It should be noted that under the current proposal, in addition to the deficit, there would be a real net loss of parking, since the existing driveway and on-site parking in the back of 40 Main, which together allows up to five cars, would be lost.

2. **Height**.

The proposed project does not comply with the required height limitations. This is of such a concern that the application could be denied. The applicant proposes exceeding the height by almost 5 feet (34'-11"). Allowing excess of the 30' code prescribed height limit sets a precedent for additional similar-height buildings in the Main corridor by creating a loop-hole to incentivize future projects. The only basis for proposing the exception for the height limitation appears to be the goal of obtaining a third floor of rentable square footage. Approval would set a negative precedent in addition to being inconsistent with the rest of Main Street.

The 30' code height limit necessitates that the "head height" of windows on the uppermost floor be below that 30' level. Window heights strongly affect the perceived height of a building, thus this proposal appears contrary to the intent of the code. By ignoring the 30' limit, and substituting the parapet limit instead, the raised 3rd floor window heights as viewed from street level would be allowed to extend well above the 30' limit. Arguments suggesting that the variance of the interior ceiling height is not noticed at the exterior façade are not correct. The excess height and bulk created is contrary to the code limitation both in literal and perceived terms.

Finally, the applicant cites the need for a "gateway" for their project. There already is, however, a gateway building at the entrance of Main Street and W. Edith, which is 4 Main Street. It was built to be a welcoming gateway, with considerable landscape space in front devoted to providing an open ambience to the village. There is no need for a second "gateway," particularly one which would be higher and further from San Antonio Road. If special consideration is contemplated for developing "near" the gateway, then arguments should favor strict, rather than relaxed compliance with codes and standards of the Main Street corridor enhancing public presentation of the downtown scale, character and village charm.

3. **Compatibility and perceived bulk**.

As proposed, the building is still not compatible with the downtown, and has a perceived three-story bulk that is out of place. Comparing the overall height of the proposed hotel to 40 Main can be misleading, since the top floor of the hotel is hidden within the roof structure, the perceived height being primarily the eave line, which is at two-stories for both 4 Main and 1 Main. The condition from the Planning Commission, which we consider generous, is to: "Reduce the bulk and mass of the third floor appreciably such that the project is more consistent with the buildings at 1 Main Street (hotel) and 4 Main Street." The applicant's newly revised plan fails to comply with this condition. The slight set-back of the third floor is not "appreciable," and fails to achieve the goal of being more consistent with the buildings at 1 Main Street (proposed hotel) and 4 Main Street. This failure of consistency remains due to the fact that the new proposal is substantially the same as previous versions; its eave/cornice line is substantially taller than those of surrounding buildings, so it continues to present an appearance of incompatible bulk.

The proposed project also fails to comply with one of the most important elements of the Design Guideline criteria, which is "…Externalizing the character of the downtown…" The proposed

building is different in both bulk and actual size, and therefore does not reflect or externalize that same "small-town village" character. Instead, it could abruptly change it.

When in San Francisco, I was shown a collection of plans the applicant had submitted to the City over several years. Such a collection might draw sympathy if it showed the applicant had tried different approaches to comply fully with the requirements of the City. As an architect, however, it became clear to me that the many applications have been minor variations of the same overall plan retaining substantially the same size and bulk. The most current application still maintains the bulk of the outer structure of the building, primarily removing only internal 2nd floor area, thus making no change to the bulk, and possibly allowing the square footage to be added at a future date.

4. **Paseo & Tower**.

Although the paseo is offered as a design incentive, used to justify overlooking the challenging problems with parking and height restriction limitations, it fails to meet the city's minimum standards and recommendations for a paseo. In my opinion the proposed paseo should be on the 4 Main Street side. The 4 Main building was originally designed to capture natural light. There is a potential design benefit to both buildings in recognizing rather than ignoring these large existing light wells with the new design. The light wells on the 4 Main building provide opportunities for "punctuation and articulation" in developing a successful paseo. The Downtown Design Guidelines call for paseos to be a minimum of 10' in width, and encourage courtyards which remain open to the sky. The narrow six foot width of the proposed paseo at the Main Street sidewalk is functionally substandard, and the overhangs from floors above decrease the benefit substantially. Even as the light wells of 4 Main do not meet all of the requirements for courtyards, it is obvious that they would contribute constructively to a successful paseo between the two buildings.

The 45' tower element may need to be eliminated. If the tower is intended to be the expression of a gateway, it should be closer to W. Edith Ave., not further within the village. The tower element would be more complementary to the two story height of 4 Main than the adjacent one story building. We were told by the applicant's Architect that the tower was originally created to be complimentary to a now defunct proposal at 1 Main. So, it now seems out of place, a remnant with no balancing reference, its height and scale potentially out of proportion with neighboring buildings. I believe both the tower and paseo would be more successful on the W. Edith side of the proposed development.

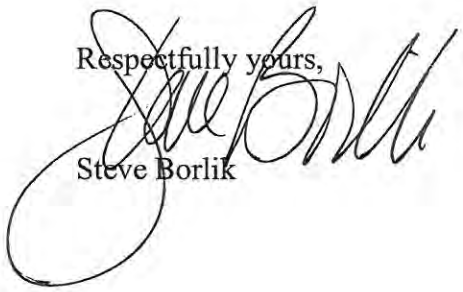
5. **Summary**.

In summary, the current proposal is contrary to the City's compatibility requirements, height limitations, and parking requirements. These would set a precedent for the downtown core that could be a detriment to the retail environment. While we would like to see a development proceed at 40 Main Street, it needs to comply with the City's codes and policies with regard to the issues raised above. Instead of continuing the current application and expend City resources, we recommend that it be denied.

The Los Altos Downtown Urban Design Plan recommends "presenting an outward appearance, consistent with the small-scale pedestrian core." It also says that entry zones to the downtown should be designed so as to "give a distinct identity to the Village." The Los Altos Downtown "village character" is referenced throughout the Plan; it is recognized as something which cannot be duplicated in a modern shopping mall.

The Plan concludes by saying that "Success will require a focused effort on the part of City decision-makers, Downtown merchants, as well as continued support by the community." On behalf of 4 Main Street, and as an Architect, I ask the City Council and Staff to consider this question in evaluating the application: Does the considered proposal for new development capitalize on an opportunity to realize the framework for updating the village in a way that retains the "small-scale, historic character that no mall or shopping center can match" which is so highly regarded within the Downtown Urban Design Plan? In my professional opinion, the answer is "no."

Respectfully yours,



Steve Borlik

DATE: June 12, 2012

AGENDA ITEM # 7

AGENDA REPORT

TO: City Council

FROM: David Kornfield, Planning Services Manager

SUBJECT: 40 Main Street

RECOMMENDATION:

Deny a Mitigated Negative Declaration and deny design review and use permit applications per the listed findings

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SUMMARY:

Estimated Fiscal Impact:

Amount: None

Budgeted: Not applicable

Public Hearing Notice: January 19, 2012

Previous Council Consideration: April 24, 2012

CEQA Status: Mitigated Negative Declaration

Attachments:

1. Planning Commission Minutes dated January 19, 2012
2. Memorandum to the Planning Commission dated January 19, 2012, including Initial Study and Mitigated Negative Declaration
3. Packard letter dated June 1, 2012
4. Hechtman letter dated May 31, 2012
5. Borlik letter dated June 4, 2012
6. Chamber of Commerce letter dated June 5, 2012

BACKGROUND

This is a design review and use permit application for a new office building at 40 Main Street. The scope of the project allows the adoption of a Mitigated Negative Declaration of environmental impact, although this has been challenged per the attached Hechtman letter discussed below. The site is located downtown in the CRS/OAD District near Main Street and Edith Avenue, within an arrival zone as defined by the Downtown Design Plan, subject to the Downtown Design Guidelines, and inside the public parking plaza district adjacent to Parking Plaza No. 10.

The project offers a pedestrian paseo from the parking plaza to the Main Street sidewalk as a public benefit and, in turn, seeks development exceptions for parking, height and rear yard setback. Development incentives are allowed when: they are not detrimental to or injurious to persons or property; when the public benefit to the City is appropriate when considered against the cost to the developer; and, when the project and mitigation are consistent with the General Plan and help accomplish the Downtown Design Plan objectives. The project had a parking shortfall of 28 parking spaces as presented to the Planning Commission. As revised for the City Council, the project has a deficit of 17 parking spaces by zoning (discussed below). The building exceeds the permitted height limit by approximately five (5) feet to facilitate the third level. The proposed second and third levels encroach two feet into the required rear yard setback and over the pedestrian paseo.

At its January 19, 2012 meeting, the Planning Commission recommended adoption of the Mitigated Negative Declaration consistent with the project's considered environmental impacts (see Memorandum to the Planning Commission). In separate motions, the Planning Commission recommended approval of the design review and use permit applications and provided direction to:

1. Reduce the bulk and mass of the third floor appreciably such that the project is more consistent with the buildings at 1 Main Street (the proposed hotel) and 4 Main Street;

2. Support the development incentive for the paseo and reduce the parking deficit to 15 parking spaces as calculated by the zoning code;

3. Encourage the applicant to work with the property owners at 4 Main Street to enhance the relationship between the buildings; and

4. Allow the ceiling height incentive at 35 feet to provide flexibility in the design for the arrival zone to the downtown.

The applicant changed the plans in reply to the Planning Commission direction as follows:

- Reconfigured the northern corner of the third level to square the wall with the street and allow for a wall off-set and gable roof eave on the side;

- Recessed part of the third level wall facing Main Street by approximately four feet and increased the balcony depths facing Main Street; and

- Reduced the net floor area of the second story by approximately 2,500 square feet by creating a mezzanine at the second level.

Additionally, the applicant submitted for City review a proposal to re-stripe the parking on Fourth Street and an offer of a developer's contribution to help fund a renovation of Parking Plaza No. 10.

DISCUSSION

Planning Commission Direction

The revised plans reduce the size of the third level by 140 square feet of gross floor area which is appreciable. However, there is some question as to the effectiveness of that reduction in terms of changing the mass and bulk of the building to relate better to the surroundings, especially when considering the potential change in bulk and massing that could be made to reduce the building's net floor area by 3,900 square feet (the equivalent to 13 parking spaces) to meet the Planning Commission's parking condition. The building is also 35 feet tall in a district with a 30-foot height limit. While the Planning Commission supported a height exception to allow a 35-foot ceiling, this was to give the applicant certainty that the taller ceiling could be an appropriate exception and allow design flexibility in addressing the project's parking, bulk and mass issues. From a bulk and mass perspective, the revised building design presents essentially the same building that was a significant Planning Commission concern in terms of relationship to the surrounding, smaller-scale buildings.

The project has a shortage of 17 parking spaces based on the zoning requirements. Although the revised plans reduce the net floor area of the building in an effort to meet the Planning Commission's direction, as calculated, the project remains approximately 560 square feet over the net size necessary to comply with the 15 parking space limit recommended by the Planning Commission:

- The zoning code requires a project in this district to provide parking spaces for the net building area in excess of the first 100 percent of the lot area (Section 14.74.100 of the Municipal Code). For parking purposes, the proposed net building area totals 12,900 square feet. Subtracting the first 100 percent of the lot area, or 7,841 square feet, from the net building area equals a building area of 5,059 square feet that must provide parking. Dividing 5,059 square feet by 300 (the parking requirement of one space for every 300 square feet of office area) equals a parking requirement of 17 spaces.

Despite the zoning analysis, the project creates an increase in parking demand. The revised building creates a real need of approximately 36 parking spaces over the existing building (the net difference of floor area divided by the office parking requirement, or, 10,773 square feet divided by 300). The attached memorandum to the Planning Commission describes the parking analysis in more detail.

Since the creation of the Downtown Development Plan, projects have received relatively minor development incentives for their public benefits. The hotel at 1 Main Street, for example, received a development incentive equivalent to 10 parking spaces for the off-peak-parking hotel use and a setback exception in exchange for developing an important public plaza recommended by the Downtown Design Plan at the entry to the downtown. Safeway, for example, received a setback exception along Foothill Expressway and a parapet height incentive to screen mechanical equipment in exchange for re-developing an anchor use, rebuilding their share of the First Street streetscape improvements and contributing approximately 150 parking spaces to the public parking plaza system.

Based on a lack of compliance with the Planning Commission's direction, staff prepared findings to deny the project. Should the City Council determine that the applicant's revised plans meet the Planning Commission direction, or are otherwise acceptable in terms of design, use and development exceptions, then staff recommends that the Council articulate positive findings and direct staff to prepare the appropriate findings and conditions for adoption.

Public Parking Changes and Developer's Contribution

The applicant previously submitted a plan to reconfigure Parking Plaza No. 10 in an effort to increase the parking supply. Subsequently, the applicant submitted a proposal to change the on-street parking on Fourth Street to potentially increase the on-street parking supply near the project, which should be considered with the downtown parking management study. The applicant also submitted a proposal to contribute $300,000 to redevelop Parking Plaza No. 10 if the project is approved without requiring the approximately 2,500-square-foot atrium. The developer's proposal to financially contribute to increasing the public parking is in effect the same as an in-lieu parking fee, which is a development benefit that the City has not established yet. Council determined that changes to the parking plazas will be studied comprehensively as part of the City's upcoming Parking Management Plan for downtown.

Environmental Review

As outlined in the California Environmental Quality Act (CEQA) Environmental Checklist published on January 1, 2011, inadequate parking, while potentially inconvenient, is no longer automatically considered an environmental impact. A parking shortage still may fall within the purview of CEQA if there is substantial evidence that a significant secondary environmental impact may occur as a result of an identified lack of parking.

While parking exceptions might be granted within the scope of a Mitigated Negative Declaration as a matter of implementing the City's development incentive regulations, staff recommends considering the matter further if there is support for the project. Staff is in receipt of a letter making a fair argument that there is evidence that the project will create an unmitigated parking impact (see Hechtman letter).

If the project is otherwise acceptable, then the City Attorney recommends a third-party legal evaluation of the Mitigated Negative Declaration to evaluate if an Environmental Impact

Report is necessary. However, the project still has considerable issues related to considering the parking shortfall and height overage as they relate to development incentives and the project's compliance with the City's General Plan, Downtown Design Plan, Downtown Design Guidelines and zoning code. If these issues cannot be supported then the Mitigated Negative Declaration should be denied and there is no need to evaluate it further.

FISCAL IMPACT

None

PUBLIC CONTACT

The City received a letter from an adjacent property owner raising concerns about the project's environmental review, parking shortage, paseo design, building height, and compatibility and bulk. The City also received a letter from an attorney expressing a concern about adopting the Mitigated Negative Declaration in light of the project's potential parking impacts. Lastly, the City received a letter from the Chamber of Commerce supporting the project.

The applicant has received a copy of this report.

Notices were mailed to all property and business owners within 500 feet of the project, and posted at the project site for each of the Architecture and Site Review and Planning Commission meetings.

Posting of the meeting agenda serves as notice to the general public.

ALTERNATIVE

Procedurally, the City Council could approve the project if it found that the design review, use permit and development incentives were appropriate. With that alternative, however, staff recommends further evaluation of the Mitigated Negative Declaration, and, if supported, adding a condition requiring any development contribution, if desired, prior to the issuance of building permit. Additionally, conditions such as design requirements or net or gross floor area reductions could be added to be addressed for a final review by the Planning Commission and/or the City Council.

FINDINGS

11-D-01 & 11-UP-01—40 Main Street

1. With regard to the Environmental Review, the City Council finds that the Mitigated Negative Declaration is not in accordance with the California Environmental Quality Act because there is a fair argument, based in the record, that the project may have a potentially significant effect related to a parking shortfall, and that appropriate alternatives and mitigations have therefore not been considered or incorporated.

2. With regard to the design review, the City Council finds in accordance with Section 14.78.040 of the Municipal Code that:

   a. The proposal does not meet the General Plan, Downtown Design Guidelines and ordinance design criteria adopted for the CRS/OAD district in that the public benefit of the pedestrian paseo element does not adequately justify reducing the parking requirements and increasing the height limit to the degree requested; the paseo design does not meet the Downtown Design Guidelines, and the project lacks a proper attention to the downtown village character; and

   b. The proposal lacks an appropriate architectural integrity and appropriate relationship with other structures in the immediate area in terms of height, bulk and design in that it appears significantly taller and out-of-scale with the existing and approved structures in the immediate vicinity.

3. With regard to the use permit, the City Council finds according to Section 14.80.60 of the Municipal Code that:

   a. The proposed location of the conditional use is not in accordance with the objectives of the zoning plan as stated in Chapter 14.02 of this title because the project's potential parking impacts do not provide for community growth along sound lines;

   b. The proposed location of the conditional use, under the circumstances of the particular case, will affect the convenience and prosperity of persons residing or working in the vicinity since the project will likely cause a substantial shortage of parking;

   c. The proposed conditional use does not comply with the regulations prescribed for the district in which the site is located and the general provisions of Chapter 14.02; and

   d. The proposed use and/or structure is not in scale with the existing development and does not enhance the unique village character of the CRS District.

4. With regard to the development incentives, the City Council finds in accordance with Section 14.54.180 of the Municipal Code that:

   a. The granting of the exceptions will be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the area because of the project's lack of parking and the negative effects of reducing the parking supply;

   b. The benefit to the City derived from granting the exception is not an appropriate mitigation when considered against the cost to the developer;

   c. The project and mitigation will result in a negligible public benefit to the downtown and the parking shortage and height exceptions may cause undesirable parking and visual impacts; and

   d. The resultant project and mitigation are not consistent with the general plan and do not promote or accomplish objectives of the downtown design plan in that the project's parking impacts outweigh the benefits of adding additional office workers to the downtown area.

March 8, 2012

VIA EMAIL

Erin Uesugi
Architect
RE: 40 Main Meeting on March 2, 2012

Dear Erin,

Ron Packard forwarded to me your email of yesterday, and this is our response. We too enjoyed the visit, and appreciated your candor and hospitality during the meeting.

We do not agree entirely, however, with your outline of our concerns. First, as Ron stated in his email to Ted prior to the meeting, we had hoped to have the meeting after you had made some headway with complying with the other requirements of the Planning Commission – providing parking and reducing the third floor. When Ron asked you about these items, you stated that you had been told by the Sorensens to ignore the parking issue, and that the third-floor issue was still in discussion without anything ready to show us. We were therefore somewhat disappointed, since we brought our architect with us and felt that the meeting would have been more productive if the parking had been addressed, and some concepts regarding the third-floor reduction were available to share.

As we mentioned to you, Steve Borlik was the listed architect of the two-story office building at W. Edith and First Street, lives in Los Altos, and has a good sense of the development needs and desires of our town. As to the items you raised in your email, allow me to restate the key concerns raised by us during the discussion:

1. Parking.

We stated that parking was the number one concern, and that the Sorensens should provide all the parking as required, irrespective of any limited exception the Planning Commission suggested. The parking lot behind our joint buildings is the most congested, and any thoughts of obtaining parking elsewhere in the village makes no practical sense. When you informed us, however, that you had been told by the Sorensens to ignore the parking issue, we did not go into greater detail regarding the parking problems.

2. Height.

We stated that the height was a major problem for multiple reasons. One, we felt that, and our architect confirmed, that there is already a gateway building at the entrance of Main and W. Edith, which is 4 Main Street. It was built to be a welcoming gateway. While we were not the developers, we understand that it was not allowed to be three stories above ground, so one floor was placed underground. A great deal of land was devoted to providing a gateway with an welcoming and open ambience to the village. Based on this, having a second building inside the gateway which is prouder in terms of height would be architecturally imbalanced. Normally, a gateway is the tallest structure, not shorter than the next structure. As such, it was our position that 40 Main Street should be shorter, not taller, than 4 Main Street. In addition, we were concerned that allowing 40 Main to be taller than allowed, merely to satisfy your clients' demands for more rentable square footage, would set a very negative precedent for the rest of Main and State Streets.

Your assistant argued that the height limitations for this zone are different than that for the CRS zone, and showed Ron the zoning ordinances. Ron pointed out that the zoning ordinances

she was looking at were some four years old, predating subsequent rezoning changes. He again expressed concern that the height requirements are functionally the same for both the OAD/CRS and CRS zones, and allowing the Sorensons a significant variance based on an overvalued assessment of the paseo benefit, which as designed does not fully comply with the required width, would result in subsequent demands by many other owners along Main and State Streets for equality in allowing three stories, in disregard of the parking and height requirements. We also asked if going over the 30' code height limit could create additional similar-height buildings in the Main corridor, using the same parapet justification. You said "no, this will be the only building of this height." If this is true, it would also make the building an anomaly, rather than a reflection of the downtown character. If not true, it opens up a large height loop-hole and incentive for everyone.

Finally, we also pointed out that the code's 30' height limit would necessitate that the "head height" of windows on the uppermost floor be below that 30' limit, by 1-1/2 to 2 feet. This also very strongly affects the perceived height of a building, and suggests a clear intent of the code. By ignoring the 30' limit, and substituting the parapet limit instead (as a justification for raising window heights above 30' and creating a 3rd floor), you are going contrary to this code limitation on scale.

3. Compatibility and perceived Bulk.

We also raised the issue that the proposed building is not compatible with the downtown, and has a perceived bulk that is out of place. We expressed concern that comparing the overall height of the proposed hotel to 40 Main is misleading, since the top floor of the hotel is buried within the roof structure. As our architect pointed out, the perceived height is primarily the eve line, which is at 2-stories for both 4 Main and 1 Main. The proposed design for 40 Main has the eve line jumping up substantially, which gives an appearance of being incompatible and bulky. Accordingly it was pointed out that your power point slide on comparing the heights is misleading.

It was during this discussion when you said things that caused us to understand that your hands had been tied by the developers in your prior re-designs, since they insisted on a certain rentable square footage on the third floor. You may have misunderstood our sympathy towards you as the architect, since it was obvious to us that the numerous iterations of the plans you showed us were substantially the same in size and bulk from the beginning, and that you were/are limited by the owners insistence on certain square footage of rentable space, as opposed to making good faith attempts to comply with the city's zoning or guidance to downsize the project.

Your presentation review and slides highlight the Downtown Design Guideline criteria, trying to make the claim that the project conforms with substantially all the criteria. In our opinion, however, you missed one of the most overriding criteria, which is (from your slide) "…externalizing the character of the downtown…," which is to further the core character of the downtown with its smaller scale village/downtown feel. The proposed building is quite different in both actual size, bulk and feel, and therefore does not reflect or *externalize* that same "small-town village" character. Instead, it would abruptly change it.

4. Paseo.

Our architect explained various reasons why the paseo should be on the 4 Main Street side. For instance, the 4 Main building was originally designed to capture natural light and there is a potential design benefit to both buildings in recognizing rather than ignoring these large light wells in the new design. The light wells on the 4 Main building provide opportunities for "punctuation" and articulation in developing a successful paseo. He also expressed concerns that

the width of the proposed paseo is pinched to only six feet at the Main Street sidewalk, and functionally is substandard.

The 45' tower element, if it were to remain as a paseo entrance, is more complementary to the two story building at 4 Main than the adjacent one story buildings. If a tower is to be the expression of a gateway, it should be closer to W. Edith Ave., not further, as if excluding 4 Main from the town itself. There was also a discussion regarding whether or not the tower element was needed. You stated that the tower element was something of a remnant feature, originally designed in "response" to a similar element of the now abandoned office design at 1 Main, and that since that design is not longer applicable, the elimination of the tower element at 40 Main could be considered. As is, 40 Main would stand as a tower only unto itself.

5. Photo-simulations.

Towards the end of the meeting, I stated that since the developer had failed to provide renderings for the various angles of the building in context of existing buildings, we had engaged an outside person to prepare photo simulations. Since you said at the Planning Commission meeting that they were somewhat misleading, I asked you at the meeting in your office to please let us know how they were misleading so that they can be corrected. Our intent is to present them as accurately as possible. Because the mass and height is of critical concern to both the City and community, and because you are asking for significant variances in this regard, I suggested that such photo-simulations with existing structures, at the angles and viewpoints we attempted, should be provided with future submissions to accurately sense the appropriateness of the scale to the existing downtown corridor.

6. Miscellaneous Items.

During our meeting, I also noted that the existing SW balcony of 4 Main is being overshadowed and overlapped by the abutting 3-story wall of proposed 40 Main structure. You stated that this has never been brought up and a step-in of 40 Main at that location had never been considered. The Paseo shift would also address this issue.

To be clear, your suggestion that Ron said that the development needed to be 3-stories is not accurate. We certainly did not, and do not, acknowledge the project's "need" for a 3-story development. To the contrary, the zoning (in terms of required first story height and overall height limitations) will permit only a 2-story development unless the developers place the first floor underground, as our building's prior owners /developers were required to do. Ron did state that he was not opposed to a 3-story development so long as the owners place one floor underground and provide all the required parking.

You have also suggested that Ron felt that the downtown did not have any need for greater vibrancy. That also is not accurate. Indeed, it is contrary to his years of efforts at the forefront of rezoning much of the non-core area to allow greater downtown density and vibrancy. As to the core of the downtown (Main and State Streets), he does believe that the residents of Los Altos prefer that portion of their downtown to be charming and retain, as described in various city documents including the General Plan, a "small-town village atmosphere." The proposed bulky structure at 40 Main would be contrary to this desire for the inner core of our village downtown.

I hope this better clarifies our concerns. Thank you again for your hospitality during the meeting.

Sincerely,
Scott Atkinson

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Attorney for Plaintiff Old Trace Partners, L.P.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

OLD TRACE PARTNERS, L.P., a California Limited Partnership,

Plaintiff,

v.

THEODORE G. SORENSEN, individually and dba Gunn Management Group, Inc.; GERALD J. SORENSEN, individually and dba Gunn Management Group, Inc.; GUNN MANAGEMENT GROUP, INC., a California corporation, and DOES 1 to 20,

Defendants.

Case No.: _114CV266849_____

DECLARATION OF ALAN TRUSCOTT IN OPPOSITION TO PETITION TO COMPEL ARBITRATION AND TO STAY THE ACTION

Date: September 30, 2014
Time: 9:00 AM
Dept.: 5
Before: Honorable Carol Overton
Date Complaint Filed: June 19, 2014

I, Alan Truscott, do hereby declare as follows:

1. I make the statements herein based on my personal knowledge, except where set forth on information and belief, which statements I believe to be true, and I could and would competently testify thereto if called as a witness.

2. I invested $142,000 and became a 5% ownership member of 40 Main Street Offices, LLC (the "Company").

3. I have now received and read a copy of the complaint which the Corrigans (via Old Trace Partners, L.P.) filed against the Sorensens and their management company Gunn Management. The allegations made by the Corrigans are correct.

4. The Corrigans are not alone in their belief that the Sorensens are untrustworthy and dishonest. It is not just the delay in time that has cause my concern, but looking at the allegations in the complaint brought to light for me the many false or reckless statements made by the Sorensens when I made my investment. These were statements that I relied on in making the investment.

5. For instance, three of the projected alternative projects involved putting 20 parking stalls underneath the building. I have no expertise on these matters, and relied on the assurances by the Sorensens that such would be possible. In fact, I thought that approval was all but made by the City. The last members' meeting was held in May 2011 at the First Republic Bank conference room. The Sorensens assured us that the pro forma projections were still good. Just a year later, during his failed city council run, I learned that those statements were false. One of the Sorensens told the Planning Commission that it was not possible to put 20 parking stalls underground. They claimed to be parking experts, so they either lied to me in May 2011 or they lied to the Planning Commission the following year. This is even more aggravating since they claimed that the projections were based on conservative estimates.

6. At that same May 2011 meeting, they refused to answer almost any question from the investors, claiming that it was not on the agenda they prepared. They guaranteed that there would be further investor meetings, and guaranteed that we would all have a say or vote going forward. Since then they have not held any meetings with all the investors despite my pleadings to bring together the entire investment group, but they have refused. I tried to talk the Sorensens into holding an investor group meeting at least a half dozen times, and always was told "no."

7. At the time I made my investment, they also told me in the prospectus that under the current zoning and without any variances or special benefits, a project could still be built with a profit of over $2.5 million, which would be almost double our money. I now understand that during that failed campaign, Gerald J. Sorensen told voters in a recorded forum that it was impossible to make a profit under current zoning. That means that he either lied to me or lied to the voters. Either way, he cannot be trusted.

8. I certainly do not have unlimited funds, and soon will have a couple of children to put through college. I had hopes that this $142,000 investment would help in this effort. On one occasion I approached the Sorensens about just selling the property, but they had no interest in doing that. Just a few weeks ago Theodore G. Sorensen called me and said that if I wanted to sell my interest, he could possibly arrange for a buyer, but that I could only expect market value which would probably be around $50,000. I told him I was not interested.

9. I now understand that the Sorensens are claiming that any and all disputes must go to arbitration, but at the same time are claiming that the arbitrator only has the powers granted to him/her as contained in the Operating Agreement. That has never been my understanding. My understanding is that the arbitration clause only applies to matters over which the arbitrator has authority to decide, otherwise having issues that cannot be resolved go to arbitration is a waste of time.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, and that this Declaration was entered into on this 17TH day of September, 2014, in Los Altos, California.

Alan Truscott

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

	Case No. 114CV266849
	ORDER
OLD TRACE PARTNERS, L.P., a California limited partnership, et al., Plaintiffs/Petitioners, vs. THEODOR G. SORENSEN, individually and dba, GUNN MANAGEMENT GROUP, INC. et al., Defendants/Respondents and Counterclaimants	

On September 21, 2017, the above-entitled matter came on hearing in Department 13 before the Honorable James L. Stoelker on Respondents' and Counter-claimants' Petition to Vacate Contractual Arbitration Award and on Claimants' Petition to Confirm Arbitration Award. Attorneys Julienne Nucum and Ronald Packard appeared for claimant. Attorney William C. Milks, III appeared on behalf of respondents. The matter having been briefed, argued and submitted, the court rules as follows:

The Petition to Confirm the Arbitration Award is GRANTED. The Petition to Vacate the Arbitration Award is DENIED.

Respondents base their Petition to Vacate the award on provisions within Code of Civil Procedure section 1286.2, namely, subsections (a)(1), (a)(4) and (a)(6). In fact, the statutory exceptions found in CCP section 1286.2 (a) are the exclusive grounds for vacating an arbitration award.

Under CCP section 1286.2 (a) (4), respondents claim that the arbitrator exceeded his powers "in finding liability in the absence of substantial evidence to support his findings". In essence, respondents are claiming that the arbitrator's decision was wrong – contrary to the evidence and legally unjustified. However, *Moncharsh v. Heily & Blase* (1992) 3 Cal. 4th 1, 33 makes it absolutely clear that "existence of an error of law apparent on the face of the award that causes substantial injustice does not provide grounds for judicial review". Therefore, arbitrators do not exceed their powers because of errors in law or fact or because they assign erroneous reasons for their decision. For that reason, it is unnecessary and useless for this court to review the merits of the arbitrator's decision. Pursuant to the contractual arbitration agreement, the arbitrator had power to make a decision on all the issues represented in this award.

Under CCP section 1286.2 (a) (1), respondents contend there was "corruption" in the arbitration because respondents were not advised of the role of Ronald Packard as "intimately involved in the arbitration proceedings" as required by JAMS Rules 12 and 15. From the evidence presented, this court is satisfied that disclosure of the nature of Packard's participation was not compelled by JAMS Rules. Further, respondent early on, not later than August 12, 2016, was put on notice of Packard's identity and, thereafter, had the ability to and did further investigate. Finally, there is no showing how the claimed non-disclosure of Packard's involvement could have had any impact on the ultimate decision of the arbitrator.

Under CCP section 1286.2 (a) (6) respondents claim that the arbitrator in this case had an obligation and failed to make a disclosure of any and all grounds for disqualification. Here, those grounds were the arbitrator's prior relationship with one of the principals of the claimant limited partnership. It appears from the declarations that the prior contact consisted of a very brief attorney-client relationship with one the principles of the limited partnership over 30 years ago. It is entirely understandable that the arbitrator had no recollection or actual awareness of

that relationship. Further, this court is very skeptical that such an ancient and minor contact could have affected the arbitrator's ability to be fair and impartial in this case. All appropriate procedures were taken within the JAMS rules to investigate the sufficiency of the disclosures when the arbitrator became aware of the suggestion of impropriety.

Claimant argues that respondent has waived objections to the arbitration award pursuant to the authority found in *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 395. The evidence presented in declarations suggests strongly that respondents had a clear understanding of the arbitrator's prior relationships and, understandably, considered them inconsequential until they found the ultimate ruling unsatisfactory. Only then did they raise the issue in an effort to avoid the arbitration award. These circumstance should be considered a waiver.

This decision does not address in detail all the arguments made by respondents, nor does it have an obligation to do so. Nevertheless, all of respondents' contentions have been considered and found insufficient to vacate the arbitration award.

Dated: 9/22/17

Hon. James L. Stoelker
Superior Court Judge

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION

Ronald D. Packard
Four Main Street
Suite 200
Los Altos CA 94022

RE: **Old Trace Partners, L.P. vs T. Sorensen, et al**
Case Number: **2014-1-CV-266849**

PROOF OF SERVICE

ORDER was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on September 25, 2017. CLERK OF THE COURT, by Robert Gutierrez, Deputy.

cc: Julienne Nucum 210 North 4th street Ste 200A San Jose CA 95112
William C Milks 960 San Antonio Rd Ste 200A Palo Alto CA 94303

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

OLD TRACE PARTNERS, L.P., a California limited partnership; DANIEL T. NERO; KIMBERLY A. NERO; PAUL L. KLEIN, JR.; MARY ELLEN KLEIN; ALAN E. TRUSCOTT; and FICK INVESTMENT GROUP, a California general partnership,

Plaintiffs,

v.

SORENSEN, THEODORE G., individually and DBA Gunn Management Group, Inc.; GERALD J. SORENSEN, individually and DBA Gunn Management Group, Inc.; GUNN MANAGEMENT GROUP, INC., a California corporation; 40 MAIN STREET OFFICES, LLC, a California limited liability company; and DOES 1-20, inclusive,

Defendants.

Case No. 114CV266849

Unlimited

[~~PROPOSED~~] JUDGMENT

Pursuant to the Order of this Court confirming the Arbitration Award, entered on September 25, 2017, JUDGMENT is hereby entered as follows:

1. The acquisition by Old Trace Partners, L.P., Daniel T. Nero, Kimberly A. Nero, Paul L. Klein, Jr., Mary Ellen Klein, Alan E. Truscott, and Fick Investment Group ("Plaintiffs") of each of their membership in 40 Main Street Offices, LLC is voided due to the negligent misrepresentations and breach of promise by Theodore G. Sorensen, Gerald J. Sorensen, Gunn Management Group, Inc., and 40 Main Street Offices, LLC ("Defendants"); and
2. The agreements relating to each of Plaintiffs' investments in 40 Main Street Offices, LLC and the development of the real property known as 40 Main Street in Los Altos, California are rescinded as to each of them.

All Defendants are jointly and severally liable to Plaintiffs and must pay to Plaintiffs:

1. Damages in the amount of $1,136,000;
2. Interest from May 10, 2007 through May 9, 2017 in the amount of $1,136,000;
3. Interest from May 10, 2017 through January 4, 2018 in the amount of $74,384.66, plus interest in the amount of $311.23 per day thereafter until entry of this Judgment, and then simple interest at 10% per annum on the full amount of this Judgment until it is satisfied in full;
4. Attorneys' fees as of June 20, 2017 in the amount of $335,897.50; and
5. Costs in the amount of $32,908.71.

Defendants' liability is reduced by the amount of $48,855 in connection with their petition to compel arbitration. Defendants shall take nothing on their cross-claims in the arbitration. As a

result, the total Judgment in favor of Plaintiffs, as of January 4, 2018, net of the offset, is for $2,666,325.87.

Pursuant to the Arbitration Final Award confirmed by this Court, Plaintiffs shall also be entitled to past and future attorneys' fees and costs incurred in enforcing the Final Award and this judgment, including, but not limited to, post judgment motions, contempt proceedings, garnishment, levy, debtor and third-party examinations, discovery, and bankruptcy litigation in accordance with the express provisions of Section 14.20 of the Operating Agreement. The award of attorneys' fees and costs shall accrue interest in accordance with Code of Civil Procedure § 685.010.

Judgment is So Entered.

Dated: 1/4/18

HON. PETER H. KIRWAN
Judge of the Superior Court

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

JAN 22 2018

Clerk of the Court
SUPERIOR COURT OF CA COUNTY OF SANTA CLARA
BY _____ DEPUTY
Jude Trazo

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

OLD TRACE PARTNERS, L.P., et al., Plaintiffs, vs. THEODORE G. SORENSEN, et al., Defendants.	Case No. 2014-1-CV-266849 ORDER RE: MOTIONS TO STRIKE; DEMURRER; AND MOTION TO ENTER JUDGMENT

The Court's sua sponte motion to strike all of the post-arbitration pleadings as well as the motion to strike, demurrer, and motion to enter judgment by plaintiffs Old Trace Partners, L.P., Daniel Nero, Kimberly Nero, Paul Klein, Jr., Mary Ellen Klein, Alan Truscott, and Fick Investment Group came on for hearing before the Honorable Peter H. Kirwan on January 4, 2018 at 9:00 a.m. in Department 19. The matters having been submitted, the Court finds and orders as follow:

Plaintiffs Old Trace Partners, L.P., Daniel Nero, Kimberly Nero, Paul Klein, Jr., Mary Ellen Klein, Alan Truscott, and Fick Investment Group (collectively, "Investors") invested in defendant 40 Main Street Offices, LLC (the "LLC") for the purpose of acquiring and developing a commercial office building in Los Altos, California based on representations by defendants Theodore Sorensen and Gerald Sorensen, executives of defendant Gunn Management Group,

Inc. (collectively, along with the LLC, "Managers"), about the feasibility and profitability of the project. When the project did not progress according to plan, Investors sought to stop participating in the project and withdraw their investment, and so they filed this lawsuit.

The Court recounted the procedural history of this lawsuit in detail in its previous order of December 12, 2017, and so it will not be fully repeated herein. In brief, upon petition by Managers, the Court (Hon. Overton) ordered the parties to arbitration based on an arbitration clause in the Operating Agreement for the LLC. JAMS conducted the arbitration, and the arbitrator issued an award in favor of Investors and against Managers. The Court (Hon. Stoelker) granted Investors' petition to confirm the award and denied Managers' corresponding petition to vacate it. Following the issuance and confirmation of the award, Managers continued to file various pleadings asserting claims against Investors, JAMS, and attorney Ronald Packard.

Currently before the Court are several challenges by Investors to the post-arbitration pleadings. First, Investors filed a motion to strike consisting of "two subparts": (1) a motion to strike "all pending cross-complaints against [Investors]," identified as those filed on August 11 and October 3, 2017; and (2) a special motion to strike the third, fourth, and fifth causes of action in the cross-complaint filed on October 3, 2017, pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP statute. Second, Investors filed a demurrer to all five causes of action in the cross-complaint filed on October 3, 2017. Additionally, Investors filed a motion to enter judgment on the confirmed arbitration award. These matters prompted the Court to consider the propriety of all of the post-arbitration pleadings, not just the pleadings asserting claims against Investors. Consequently, on December 12, 2017, the Court continued the hearings on these matters to January 4, 2018 to give the parties notice and an opportunity to be heard on this issue.

In the order continuing the hearings, the Court clearly articulated its intention to strike the post-arbitration pleadings filed by Managers and set forth, in detail, the legal and factual bases for its contemplated course of action to give the parties adequate notice thereof. The Court incorporates by reference and briefly summarizes, but does not reproduce verbatim, its reasoning below.

First, the Court explained the procedural basis for its contemplated action. Specifically, under Code of Civil Procedure section 436, "[t]he court may, upon a motion made pursuant to Section 435, *or at any time in its discretion*. . . [s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." Second, the Court explained the post-arbitration pleadings were not drawn or filed in conformity with the law because the Code of Civil Procedure does not authorize the filing of initial or amended pleadings after the completion of arbitration. Continued post-arbitration litigation, beyond confirming or vacating the arbitration award, exceeds the scope of authorized proceedings. The Court invited the parties to submit supplemental briefing on whether all the post-arbitration pleadings, not just the pleadings challenged by Investors, should be stricken for the reasons articulated.

The parties timely submitted supplemental briefs. Managers filed a supplemental brief objecting to the Court's intended action. Although not invited to do so, Managers also submitted a supplemental declaration in which defendant Theodore G. Sorensen, who is apparently an attorney, vouches for his interpretation of the arbitration clause in the Operating Agreement. Investors and Mr. Packard submitted supplemental briefs reflecting their support for the Court's proposal. Finally, JAMS submitted a statement of non-opposition concurring in the Court's evaluation of its vestigial jurisdiction following the arbitration. In sum, only Managers oppose striking the post-arbitration pleadings. The Court thus considers whether Managers present any persuasive arguments or authority to support the conclusion that the post-arbitration pleadings should not be stricken.

Managers do not cite any authority or advance any arguments that directly or indirectly support the conclusion that the post-arbitration pleadings were properly filed and should not be stricken. Their supplemental brief contains too many logical, legal, and factual errors to recount herein. Even looking beyond these errors, Managers do not otherwise identify and substantiate any legal or factual premise from which the Court can independently conclude the post-arbitration pleadings are permissible.

Instead, Managers adopt the unsupported conclusion that the post-arbitration pleadings are proper as the premise for a series of disjointed statements about the doctrine of res judicata. For example, Managers address a case cited by the Court in its previous order. Specifically, in explaining the impropriety of the post-arbitration pleadings, the Court quoted *Brock v. Kaiser Foundation Hospitals* (1992) 10 Cal.App.4th 1790 to show the role of a court before and after arbitration. Managers now assert "the Court has deviated from the holding in *Brock*. . ." and must consider the res judicata effects of the arbitration award to determine whether to strike the post-arbitration pleadings. (Supp. Brief at p. 4:2-17.) First, Managers misrepresent the holding and significance of that case. In *Brock*, the appellate court held the trial court improperly dismissed a lawsuit and arbitration during the pendency of the arbitration because the lawsuit was stayed and it otherwise lacked the authority to terminate the arbitration proceedings. (*Brock, supra*, 10 Cal.App.4th at pp. 1801, 1807.) Thus, *Brock* does not support Managers' assertion that the Court must evaluate the res judicata effects of the arbitration. Furthermore, as is apparent from the actual holding in *Brock* as well as the contents of the Court's previous order, Managers misrepresent the nature and extent of the Court's reliance on *Brock*. *Brock* is informative, but it does not dictate and the Court did not directly apply its holding here because there is no ongoing arbitration. Otherwise, Managers cite *Lehto v. Underground Construction Company* (1977) 69 Cal.App.3d 933, but they do not cite any particular page of the appellate decision and it in fact directly contradicts their position because, in that case, the party that lost the arbitration thereafter filed a separate lawsuit, not an amended pleading. In summary, Managers do not demonstrate the post-arbitration pleadings were drawn and filed in conformity with the law and, thus, should not be stricken.

Based on the foregoing and for the reasons set forth in the order of December 12, 2017, the Court concludes it may strike all of the post-arbitration pleadings. It follows that Investors' motion to strike and demurrer are moot. Consequently, the only outstanding matter for the Court to resolve is Investors' motion to enter judgment.

Investors' motion to enter judgment is predicated on their motion to strike and demurrer. They ask the Court, upon disposing of the post-arbitration pleadings, to enter judgment

forthwith. Significantly, Investors do not cite and the Court is otherwise unaware of any authority authorizing a motion to enter judgment. In actuality, the proper procedural vehicle for obtaining an enforceable judgment following arbitration is a petition to confirm the arbitration award. (*Loeb v. Record* (2008) 162 Cal.App.4th 431, 449-50.) "If an award is confirmed, judgment shall be entered in conformity therewith." (Code Civ. Proc., § 1287.4.) The Court (Hon. Stoelker) already granted Investors' petition and confirmed the arbitration award. Thus, it is indisputable that judgment must be entered in conformity with the confirmed arbitration award. To be sure, now that the Court has stricken the improper post-arbitration pleadings, there can be no doubt that there is nothing left to do in this case other than enter a final form of judgment.

The California Rules of Court do not explicitly address how judgment should be entered upon confirmation of an arbitration award. When parties participate in judicial arbitration, as distinct from the private arbitration conducted here, the clerk enters the award as a judgment after 60 days if the parties have not filed a request for trial de novo or a request for dismissal. (Cal. Rules of Court, rule 3.827(a)-(c).) Upon the conclusion of a court trial, a court will either prepare and serve a proposed judgment or order a party to prepare, serve, and submit a proposed judgment. (See Cal. Rules of Court, rule 3.1590(f)-(i).) Here, Investors prepared, served, and submitted a proposed judgment. The Court reviewed the proposed judgment and finds it conforms to the arbitration award. Accordingly, although Investors' motion is not the proper procedural vehicle for entering judgment here, the Court will sign the judgment.

In conclusion, the Court rules as follows. First, the post-arbitration pleadings asserting claims against Investors, Mr. Packard, and JAMS are STRICKEN. Second, Investors' motion to strike and demurrer are DENIED AS MOOT. Although the motion to enter judgment is DENIED, the Court finds the proposed judgment conforms to the arbitration award and signs it forthwith.

Date: January 4, 2018

Peter H. Kirwan
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA	**FILED** Date: January 9, 2018 REBECCA FLEMING Chief Executive Officer Clerk Superior Court of CA County of Santa Clara By: _____ I. STEWART, Deputy
Plaintiff: OLD TRACE PARTNERS, LP, et al.,	
Defendant: THEODORE G. SORENSEN, et al.,	
PROOF OF SERVICE BY MAIL OF: ORDER RE: MOTIONS TO STRIKE; DEMURRER; AND MOTION TO ENTER JUDGMENT	**Case Number: 2014-1-CV-266849**

CLERK'S CERTIFICATE OF SERVICE: I certify that I am not a party to this case and that a true copy of this document was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on : JANUARY 9, 2018

Rebecca Fleming, Chief Executive Officer/Clerk

BY _____, Deputy
I. STEWART

RONALD D. PACKARD, ESQ.
PACKARD PACKARD & JOHNSON
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465 CALIFORNIA STREET, SUITE 500
SAN FRANCISCO, CA. 94104

MINUTES OF A REGULAR MEETING OF THE PLANNING COMMISSION OF THE CITY OF LOS ALTOS, HELD ON THURSDAY, JUNE 7, 2018 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, ONE NORTH SAN ANTONIO ROAD, LOS ALTOS, CALIFORNIA

ESTABLISH QUORUM

PRESENT:	Chair Bressack, Vice Chair Samek, Commissioners Bodner, Enander, Lee, and McTighe
ABSENT:	Commissioner Meadows
STAFF:	Community Development Director Biggs

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. **Planning Commission Minutes**
   Approve the minutes of the April 19, 2018 Study Session and Regular Meeting, the May 3, 2018 Regular Meeting, and the May 17, 2018 Study Session.

Action: Upon motion by Commissioner McTighe, seconded by Commissioner Bodner, the Commission approved the Consent Calendar. The motion for the April 19, 2018 Study Session was approved (3-0-3) by the following vote:
AYES: Bressack, Enander, McTighe
NOES: None
ABSTAIN: Bodner, Lee and Samek
ABSENT: Meadows

The motion for the April 19, 2018 Regular Meeting was approved (4-0-2) by the following vote:
AYES: Bodner, Bressack, Enander, McTighe
NOES: None
ABSTAIN: Lee and Samek
ABSENT: Meadows

The motion for the May 3, 2018 Regular Meeting was approved (4-0-2) by the following vote:
AYES: Bodner, Bressack, Enander, McTighe
NOES: None
ABSTAIN: Lee and Samek
ABSENT: Meadows

The motion for the May 17, 2018 Study Session was approved (3-0-3) by the following vote:
AYES: Bressack, Enander, McTighe
NOES: None
ABSTAIN: Bodner, Lee and Samek
ABSENT: Meadows

PUBLIC HEARING

2. **13-D-14, 13-UP-03, An Exception for Public Benefit Request, and A Proposed Mitigated Negative Declaration – 40 Main Street Offices, LLC – 40 Main Street**
Commercial Design Review, Use Permit, an Exception for Public Benefit Request, and A Proposed Mitigated Negative Declaration for a revised three-story office building having 16,619 square feet of gross floor area that replaces the existing one-story office building containing 2,127 square feet. The project includes the removal of existing structures, site improvements, plants, and landscaping. The proposed structure is approximately 38 feet in height measured to the highest point of the building and approximately 45 feet to the top of a tower element. The project proposes a pedestrian paseo connecting parking plaza 10 to Main Street as a public benefit. For this proposed public benefit, the applicant is seeking development incentives in the form of increases in the maximum building height, reduction in the number of on-site parking spaces, and a reduction in the rear yard setback requirement for the upper floors. The project requires use permit, and design review approval in addition to acceptance of the pedestrian paseo as a public benefit that supports the requested exceptions to the height, parking, and rear yard setback requirements. This project has been revised following its consideration by the Planning Commission on June 15, 2017. A Mitigated Negative Declaration is being proposed. The Planning Commission will consider the project, along with the environmental review, and develop a recommendation to the City Council. *Project Planner: Biggs*

Community Development Director Biggs presented the staff report recommending that the Commission hold a public hearing and develop a recommendation to the City Council.

Project architect Bill Maston presented the revised plans of the proposed building and noted he was available to answer questions and adjust address issues identified by the Commissioners.

Public Comment
Los Altos Hills resident Robert Sandor gave his support for the project, said he comes to downtown Los Altos every day, that it is a beautiful building to look at, and the City is too slow to make changes.

Los Altos resident Michael Hudnall stated his concern with spill over parking from the project into his neighborhood, concern with the 20-25 parking space shortage for the project, added the use permit doesn't account for the parking deficit, noted the Downtown Vision proposed to adjust the white dot parking program, which may impact adjoining residential districts, and recommended that the parking exception be rejected.

Los Altos resident Jane Tansuwan stated her concern with spill over parking into her neighborhood.

Los Altos business owner, Brendon Pratt of The Pratt Center, stated that he rents next door and selected this location for the parking and convenience to services that are offered in the Downtown and added he sees clients eight hours a day who all seek to find a parking space. He feels as a tenant of a neighboring building that he is a small business owner who is caught in the middle or a larger set of issues.

Los Altos resident Mike Abrams gave his support for the project, the Downtown Vision effort, and said there is a mandate that encourages more office development.

Los Altos Hills resident Jerry Wittenauer gave his support for the project, said it was a fine addition and gateway building for the downtown, that the changes are positive, and agrees with fostering vitality in downtown.

Los Altos resident and business owner of a tech company, Jim Hill, gave his support for the project and agreed with the last two speakers. He added that he is looking for a place to raise a business, was able to find a parking space in the plaza even during Farmer's Market, and finished by noting he likes the architecture of the proposed building.

Los Altos business owner Sara Saatchi spoke with concern about the impact the proposed project will have on her business, noted that she currently has to parking some distance from her office, which is in the building next door and parking is a concern – more parking, not less, is needed.

Los Altos resident and owner of Enchanté Hotel, Abby Ahrens, noted that the hotel brings in $250,000 in Transient Occupancy Tax revenue to the City of Los Altos every year. She said the project developers have ignored the planning code and brought back the same plan time after time and that she changed the third story on the hotel to meet zoning code.

Los Altos business owner Kathleen Hugino stated that the project would make parking even more difficult and impacted in an already full parking plaza and can't imagine where people will have to park.

Los Altos resident Robert Gluss stated that the size of the building is still quite massive and it will dwarf the surrounding buildings, clashes with the downtown area, and is concerned that the project would result in more parking along Edith Avenue, which will cause a safety issue.

Commission discussion about the project then followed public comment.

ENVIRONMENTAL REVIEW – PROPOSED MITIGATED NEGATIVE DECLARATION

Action: A motion by Commissioner McTighe, seconded by Commissioner Enander, to recommend to the City Council that adoption of the Mitigated Negative Declaration be denied failed on a 3-3 vote.
AYES: Enander, Lee, and McTighe
NOES: Bressack, Bodner, and Samek
ABSENT: Meadows

Action: A motion by Commissioner Bodner, seconded by Vice Chair Samek, to recommend to the City Council that the Mitigated Negative Declaration be adopted failed 3-3 on a 3-3 vote.
AYES: Bressack, Bodner, and Samek
NOES: Enander, Lee, and McTighe
ABSENT: Meadows

The Planning Commission could not achieve consensus on a recommendation to the City Council on the Mitigated Negative Declaration that is proposed for this project. For the record Commissioner Enander noted she could not recommend adoption of the Mitigated Negative Declaration because she had concerns with the adequacy of the circulation study that had been done for the project. There was consensus from the two other dissenting Commissioners on this point.

Commissioners McTighe and Enander withdrew their motion to recommend denial of the use permit and design review applications after the project architect, Bill Maston requested that the Commission refer and continue the project to future meeting.

Project architect Bill Maston asked the Commission for specific feedback on the project so that he could review development of a revised proposal to bring back at a later meeting.

Action: Upon motion by Commissioner McTighe, seconded by Commissioner Enander, the Commission voted 4-2 to continue the project to a future meeting, with no specific date, and provided the following feedback:

- Minimize vertical walls;
- Explore making the building more horizontal in nature to compliment the horizontal nature of the built environment in the Downtown;
- Carefully evaluate the mass, scale, and height of the building;
- Carefully evaluate the Downtown design guidelines and recognize that compliance with these are not a public benefit;
- Pull back the front of the building, as its height along Main Street in incongruous with other buildings in the Downtown;
- Adjust the mix and interplay of exterior materials is as the amount of stucco and hard surfaces displayed in the proposed plan result in a very monolithic structure;
- Reduce the mass of the building;
- Eliminate or significantly reduce the third story;
- Develop a project with appropriate interior ceiling heights – more in line with class A office space;
- Eliminate the tower element;
- Set back the upper floors of the building from the wall plains on the first level;
- Develop an appropriate transition between the proposed building an its neighboring buildings;
- Recognize this is not a gateway site into the Downtown;
- Develop an appropriate transition into the Downtown;
- Reconsider placement of pedestrian paseo and recognize it is a benefit to the proposed building and not much of a public benefit;

The motion was approved (4-2) by the following vote:
AYES: Bodner, Lee, McTighe, and Samek
NOES: Bressack and Enander
ABSENT: Meadows

COMMISSIONERS' REPORTS AND COMMENTS

Commissioners' Reports was continued to the next meeting since Commissioner Meadows was the representative at the last City Council meeting.

Commissioners noted the Joint Study Session on the parking regulations with the City Council for June 12, 2018 and the 8:00 p.m. start time.

POTENTIAL FUTURE AGENDA ITEMS

None noted.

ADJOURNMENT

Chair Bressack adjourned the meeting at 9:02 P.M.

_____

Jon Biggs
Community Development Director

JUNE 15, 2017 CALENDAR

Agenda Item #

AGENDA REPORT SUMMARY

Meeting Date: June 7, 2018

Subject: 40 Main Street, Commercial Office Building

Prepared by: Jon Biggs, Community Development Director

Attachment(s):
A. Project Plans
B. Applicant Memo Dated May 30, 2018
C. Applicant Chart of Compliance with Downtown Urban Design Plan
D. June 15, 2017 Planning and Transportation Commission Packet for 40 Main Project
E. Project Plans Reviewed at June 15, 2017 Planning and Transportation Commission Meeting

Initiated by:
40 Main Street Offices, LLC

Fiscal Impact:
None Anticipated

Environmental Review:
A Mitigated Negative Declaration is Proposed

Policy Question(s) for Consideration:

- Does the proposed building exhibit a design, style, massing, and articulation appropriate for the Downtown?
- Will granting the use permit result in a use and project that is appropriate for the Downtown?
- Does the proposed pedestrian paseo provide a public benefit that warrants granting the requested height, on-site parking, and rear yard setback exceptions the applicant is seeking?
- Has the environmental analysis adequately evaluated the project's potential impacts and does it provide mitigations that sufficiently reduce identified impacts to a less than significant level?

Summary:

- Applicant proposes a three-story office building on a 6,950 square foot site. In addition to design review and use permit approval, the applicant is requesting exceptions to the height limit, on-site parking requirement, and rear yard setback requirement in exchange for a public paseo that is offered as a public benefit.

- An initial study (environmental review in accordance with the California Environmental Quality Act) has been completed for this project. The initial study identified that the project had the potential for significant impacts to the environment in the areas of Air Quality, Cultural Resources, and Hydrology/Water Quality. Mitigations measures have been developed

that are intended to reduce the identified impacts to a less than significant level and a Mitigated Negative Declaration is proposed.

June 2017 Hearing

The project at 40 Main was last considered by the Commission in June of 2017. The item was continued to allow the applicant an opportunity to modify the project and, as offered by the applicants, time to develop plans for improvement to Public Parking Plaza Ten (10) that would increase the number of parking spaces and improve circulation within the Plaza. The adopted minutes of the June 15, 2017 Planning and Transportation Commission read as follows:

> In response to written comments, Commissioner Bodner noted that there was no reason for her to recuse herself and that she has not formed an opinion on the project before the Planning and Transportation Commission meeting.
>
> Community Development Director Biggs presented the staff report recommending denial of the project and its permit applications to the City Council.
>
> Project representative Bill Maston gave a presentation of the project, showed 3D renderings of the project, and talked about the benefit of providing a paseo.
>
> Public Comment
>
> - Los Altos Hills Resident Robert Sandor gave his support and said he was pleased with the look and style of the building, that the design fits well with the village character, and that it will be positive for downtown.
> - Downtown business tenant Brendan Pratt of the Pratt Center stated his concerns about parking and the impact the project will have on Plaza 10, that he has been in business for 17 years and chose the building because of its proximity to other downtown businesses, that finding parking is already difficult for his clients, and noted that two restaurants will re-open again.
> - Downtown business owner and tenant Von Packard of 4 Main Street gave his opposition stating that the changes that need to be made to the project have not been made and if the project is brought into compliance with Code, he could look at supporting it.
> - Resident Mike Abrams noted his support for the following reasons: it's clear that our downtown restaurants and merchants would benefit from additional Class A office space and more feet on the street; and the project proposal has gone on long enough and the City needs to work with the developer to work out the issues to get the project approved.

- Resident Anabel Pelham gave her support for the paseo, said to fix up Plaza 10, that the project will add vibrancy, and gives the opportunity to get out and about with safe lighting for seniors.
- Resident Steven Yarbrough said that project will affect him, but he is in favor, that the builder's recommendation to revise Plaza 10 is a brilliant idea, disagreed with staff's conclusion of stucco not being an appropriate material for downtown, and the criticism of bulk because the building would complement the hotel across the street.
- Resident William Milks gave his support for the project and changes to Plaza 10 and stated that he was unaware of a parking issue because he has no problem finding parking when he frequents downtown.
- Resident Nancy Walsh stated that Plaza 10 needs to be upgraded and the City should consider it since the developer is willing to pay for it.
- Resident Pat Marriott stated that she was part of the Downtown Buildings Committee that created a checklist so all projects would be treated equitably, gave her support for the 3D modeling and story poles, that almost all other projects downtown have received parking exceptions form the City, and that the design fits the village character.
- Resident Mike Conner gave his support for the project stating that Los Altos has improved and should continue to improve with projects, such as this one that fits the village character and it would add to the gateway to downtown.
- Resident Francis Murray gave his support, said that this is an important project and an example of why exceptions are needed, and agreed with the revisions to Plaza 10 that are proposed.
- Resident Jim Wing said his CEQA concerns were in the Initial Study in the transportation section of the report because the data used is too old and the report should be revised. He stated that the PTC reviewed this data on June 16, 2011 and could not explain the discrepancies (see letter submitted). He stated that we need a good set of current data, that the paseo will not be used by residents, and that Wells Fargo has an access easement across the driveway to Plaza 10.
- Resident Michael Hudrall stated he was very concerned with the parking waiver being requested by the project, any parking overflow into his neighborhood, and cut through traffic. He said he was worried about the cumulative impacts of new downtown projects and the Downtown Vision and stated that a comprehensive analysis is needed. He was not in favor of the paseo as a public benefit.
- Resident Bart Nelson stated that the three issues that need action are the rear yard setback, the height of the building and parking. He was in favor of reworking the plazas to provide the needed additional parking.
- Resident Andrea Eaton stated that staff needs to help development projects through the process and find the positives of the project, not just the negatives in

the staff report. She gave her support for the project and said the application of parking waivers on projects feels inconsistent and restriping the plaza is an excellent idea and the City should find a way to make that possible.

- Downtown business tenant and dentist, Thanh Chan of Main Dental, stated that he's been at this location for 10 years and has seen many changes for the good of downtown and supports this project. He said that because there is no access to good foot traffic, there is a turnover of five to eight businesses a year. He also noted that employees are occupying the parking spaces for customers in the plazas.
- Resident Alex Glew stated his support for the project, that the scale is appropriate, makes a nice entrance to the City, that the interpretation of rules has become absurd and makes development unfair, the restriping of the plaza is a great idea, and Los Altos needs more Class A office space.
- Resident David Duperrault gave his support for the project and stated that Jerry Sorenson has given a lot to this community. He further stated the need to talk about the public benefit of the paseo as a public plaza/space because vehicles, pedestrians and bicycles conflict at the Wells Fargo driveway.
- Mountain View Resident Wyatt Allen gave his support for the project, stated that the parking issue is very minor, the project was designed to be attractive and has the village ambience, the use of stucco is reasonable, the Wells Fargo access is problematic, and the office use is appropriate because retail really struggles downtown.
- Resident David Rock gave his support for the project stating that the building fits in with the village character on Main Street, was in favor of the restriping of the plaza to get more parking spaces at the applicant's expense, the project meets 23 of the 24 Downtown Design Guidelines, the City should not be obsessed over stories when the focus should be related to height, the obsession with interior heights of buildings is baffling, and we need Class A office downtown because there are lots of requests for it.
- Unincorporated Los Altos resident Mark Rogge gave his support for the project, stated the need for more office downtown, that office workers will avail themselves of services and restaurants downtown, that the property is already part of the original parking district and has already paid into and provided parking, and that the public benefit of the paseo is important.
- Realtor, resident and Enchanté Hotel owner Abigail Ahrens stated she was happy that the project didn't use a sloped roof.
- Downtown business tenant for the Christian Science Reading Room, Katherine O'Toole, stated her support for the paseo and the width of it to provide a public benefit.
- Resident Jon Baer stated he wants Class A office, but does not want this project approved. He was concerned with the use of cheap materials, the height, and

setbacks that are too narrow and too low. He further stated that the restriping of the plazas need to go with the growth of the downtown.

- Downtown business tenant Scott Atkinson stated his opposition to the project noting that the community standards and costs were known by the applicant at the time submittal, that the community should not foot the bill for the parking, taking away does not justify this, and horizontal parking is difficult.

Commission Discussion

The Commission discussed the project and voiced concerns regarding the story poles not accurately representing the project proposal. The parking proposal for Plaza 10 needs to be included with the application and studied. All the commissioners were in support of the office use with a conditional use permit.

Some of the design concerns mentioned included: this is not a coherent architectural design; there are problems with the design materials as well as bulk and mass; a third story works here, but may need to be set back further in the roof/dormers; not an appropriate location of the tower because it is too cramped; needs more open space in the front of the building; the paseo is too narrow; stucco is acceptable if done right where the pilasters will accentuate vertical elements and there needs to be more horizontal lines; the paseo is not enough of a public benefit to offset what the developer is getting; but a redo of the parking plaza 10 would be an adequate benefit; need clarity of the parapet and how it relates to the building height; use more natural and higher quality materials; lack of on-site parking is unacceptable; the fly over presentation was not realistic and does not match the rendering provided to the Commission; and the tower creates an artificial corner that does not need to be there.

Action: Upon motion by Commissioner Enander, seconded by Vice-Chair Bressack, the Commission continued design and use permit applications 13-D-14 and 13-UP-03 to a date uncertain and wanted to see all changes made to address the project issues. The motion was approved by the following vote: AYES: Bressack, Bodner, Enander Meadows, Oreizy and Samek; NOES: None; ABSTAIN: None; ABSENT: McTighe. (6-0)

Background

The project site, a single parcel, is an interior lot of 6,950 square feet and is improved with a one-story office building containing 2,127 square feet of floor area. The site is bordered by Main Street

at the east, commercial buildings to the north and south, and a parking plaza with its travel aisle network to the west. The site is within the City's public parking plaza system in the Downtown.

As with the last proposal, the proposed project includes the removal of existing structures, site improvements, plants, and landscaping. The proposed structure is approximately 38 feet in height measured to the highest point of the building and approximately 45 feet to the top of a tower element. There are no on-site parking spaces being proposed. The project proposes a pedestrian paseo connecting Public Parking Plaza 10 to Main Street as a public benefit. For this proposed public benefit, the applicant is seeking development incentives in the form of increases in the maximum building height, reduction in the number of on-site parking spaces, and a reduction in the rear yard setback requirement for the upper floors. The project requires use permit, and design review approval in addition to acceptance of the pedestrian paseo as a public benefit that supports the requested exceptions to the height, parking, and rear yard setback requirements.

Revised Project

The applicants have submitted a revised project and are seeking a positive recommendation from the Planning Commission to the City Council on the design review and use permit applications in addition to the requested exceptions to the height limit, on-site parking requirement, and rear yard setback requirement in exchange for a public paseo that is offered as a public benefit.

The project has been revised to reduce the gross floor area within the building from 17,428 square feet to 16,619 square feet. The net square footage of the structure per current code requirements is 14,719 square feet. The off-street parking requirement for an office use in a building with this square footage net would be 26 spaces based on current parking requirements.

The revised plan set includes options for modifications to Public Parking Plaza Ten (10). However, the applicants have indicated, see May 30, 2018 Applicant Memo (Attachment B) that, given events of the past twelve (12) months, they are seeking to simplify their application and have withdrawn their proposal to modify this plaza as an additional public benefit. In addition to the Pedestrian Paseo, the applicants have provided a table that lists and the Urban Design Concepts found in the Downtown Urban Design Plan and how the proposed project complies with its concepts (Attachment C).

The design of the project has been revised to reduce the overall square footage of the building and integrate the architectural elements in a more cohesive form to reduce its massing and provide more interest in the overall design of the building and a more consistent and uniform relief of the surfaces at the street façade. The third floor has been pulled back at the front to provide more a greater setback at this level. A balcony has also been introduced on the third floor at the portion of the building facing Parking Plaza 10, which reduces the massing at the elevation and adds some

architectural interest. As noted earlier, the gross square footage of the project has been reduced from 17,428 square feet to 16,619 square feet.

The June 15, 2017 agenda packet is included with this agenda report as Attachment 'D'. This packet includes the proposed mitigated negative declaration, along with its supporting documents, and other information relevant to this project and the applications under consideration.

Recommendation

Staff recommends the Planning Commission review the revised project and determine if the guidance provided by the Commission in June of 2017 has been heeded and then develop a recommendation to the City Council.

Jon Maginot

From: Ron Packard <
Sent: Monday, April 08, 2019 1:11 PM
To: City Council; Chris Jordan; Jon Maginot; christopher.diaz@bbklaw.com; Jon Biggs
Subject: RE: 40 Main Street Appeal (Email #2, with Final Award)
Attachments: 2017-07-24 Final Award.pdf

Email #2, with Final Award

From: Ron Packard
Sent: April 8, 2019 1:08 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal

Dear Council members and staff,

Enclosed please find my letter and various backup information for the hearing tomorrow night. I respectfully request that the letter and the attachments be included in the administrative record for the hearing. Two of the attachments will be send in batches due to their size.

Thanks, Ron Packard

JAMS ARBITRATION CASE REFERENCE NO. 1110017521

Old Trace Partners, L.P.,
Claimant(s),

And

Sorensen, Theodore, et al.
Respondent(s).

FINAL AWARD

PRELIMINARY

1. An Interim Final Award was issued in this matter on February 8, 2017. The Interim Final Award is attached hereto as Exhibit A and incorporated herein as though set forth in full.
2. The Respondents subsequently filed a motion requesting that the court amend the Award on the grounds that the Interim Award erroneously awarded interest from the dates of investments (May 2007) rather than from the date the rescission demand (or its equivalent) was made by way of the filing of a complaint in June 2014 (California Civil Code Section 1691). On February 8, 2017, in order to permit full briefing by counsel, the motion to amend was denied without prejudice and a briefing schedule was issued for hearing on that motion as well as issues related to interest computations, costs, and attorneys' fees.
3. The Motion to Amend and related issues involving interest, fees and costs, was heard on April 12, 2017 at 9:00 a.m. Counsel appeared in person: Julienne Nucum, Esquire, Preston Wong, Esquire, Ronald Packard, Esquire,, for Claimants and William Milks, Esquire and Kathryn Barrett, Esquire, for Respondents. Issues relating to attorneys' fees, costs, and interest were also fully briefed and heard on April 12, 2017. The Arbitrator's decision on all issues heard on that date was signed on April 23, 2017 and is attached hereto as Exhibit B. The said Order provided for a final award to be

Exhibit C

issued subject to any other overlooked or fee issues to be raised by any party. By such attachment, the arbitrator confirms each and every provision in Exhibits A and B, except as modified in this Final Award.

On or about May 17, 2017, Claimants filed their comments regarding certain issues and on or about June 2, 2017, Respondents filed their comments requesting certain modifications to the Order of April 23, 2017 and in addition **for the first time moved to disqualify the Arbitrator.**

Following JAMS Rules and protocol, the undersigned ceased work on the Final Award and the matter was stayed pending ruling on the disqualification motion. The disqualification Motion was processed administratively by JAMS pursuant to the JAMS Rules which all parties agreed to at the time the arbitration was commenced. Following briefing by both claimants and respondents, the motion to disqualify was denied. A copy of said final decision is attached hereto as Exhibit C, and by such attachment incorporated herein as though set forth in full. Thereafter, a further request to disqualify was made and Exhibit D attached hereto reflects the further denial.

With regard to the facts underlying the disqualification motion, at the time the Arbitrator was appointed herein, the Respondents had pending an appeal before the 6th District Court of Appeal and it was understood that the Arbitrator could not act until the appeal was decided. In making his disclosures after appointment, the only names of the parties known to the Arbitrator were the Respondents' names and the entity named Old Trace Partners. It was only after the appeal was dismissed that the Arbitrator became aware of identity of the general partner of Old Trace Partners in preparation for a hearing where the issue of the Arbitrators' scope of jurisdiction and powers were raised. In preparation for that hearing, the arbitrator became aware that Wilfred Corrigan was the general partner of Old Trace Partners, LLP and that he was likely the father of a juvenile whom the Arbitrator may have represented in a juvenile court traffic matter more than thirty years previously as an attorney before being appointed to the Superior Court. All parties by counsel were advised of that fact on or

about January 7, 2016, in writing and confirmed they had received the notice of further disclosure on January 8, 2016 from counsel in person that they were aware of the notice and its contents and that there were no objections to the Arbitrator continuing to serve as a neutral Arbitrator.

The Arbitrator could not recall the name of the juvenile (or any other details of the juvenile case) and in fact did not learn who it was until the beginning of the arbitration hearing itself when all parties were present and all became aware that it was Eric Corrigan who self-identified.

The Arbitrator had not seen or spoken to any of the members of the Corrigan family other than in the normal course of the arbitration hearing itself, does not know them, and has no personal or other relationship with any of them, and has had no contact with any of them since the matter was submitted at the close of the arbitration hearing. It is purely fortuitous and remarkable that given the passage of time that the arbitrator even recalled the matter which apparently occurred during the very early 1980s. The notice provided by the Arbitrator on January 7, 2017, is attached hereto as Exhibit E.

There was absolutely no favoritism shown to any party and the decisions made in the arbitration were based on the facts found to be true and the applicable law. There were no ex parte communications with parties or counsel prior to, during, or after the arbitration hearing, everything that occurred in the arbitration hearing room occurred in open fashion in the presence of all persons in the hearing room. There were no other communications at any other time with any party or witness in the arbitration.

The Arbitrator learned that Wilfred Corrigan had a heart condition during the arbitration hearing itself in connection with a request that Mr. Corrigan be permitted to testify by telephone. The Arbitrator expressed sympathy for Mr. Corrigan at that time as he would for any person suffering from a heart condition. Notwithstanding a

lawyer's perception and innuendo, it had nothing to do with any prior relationship- none existed.

It is also significant that at a hearing on July 19, 2017, Respondents' lead counsel acknowledged that they do not accuse the arbitrator of bias or prejudice in any way in connection with the proceedings or the award itself.

Claimants seek an award of attorneys' fees incurred after the Interim Final Award in connection with the motion concerning interest, fees and the disqualification of the Arbitrator. Respondents object to the fees as being unreasonable in their entirety and with regard to the opposition to the disqualification motion, contend that the disqualification motion was not part of the dispute between the parties. It is noted that the disqualification motion sought to set aside and vacate the Award and in fact is clearly attacking the Award and is a dispute between the parties. The award of fees below to Claimants for work after the Interim Final Award does include fees for opposition to the disqualification of arbitrator attempt.

CONCLUSION

Claimants are entitled to the following award:

1. Damages: $1,136,000.00 principal plus simple interest at the legal rate (10%). Interest from May 10, 2007 through May 09, 2017 is calculated as $1,136,000.
2. Interest shall continue to accrue on principal at the legal rate (10% simple interest) from May 10, 2017 until a final judgment is entered in a court having jurisdiction over the matter. Post judgment simple interest shall accrue at the legal rate from the date of the judgment in accordance with California law.
3. Attorneys' fees for work by Julienne Nucum: $172,510.00.
4. The previous indication of an additional sum of $8325.00 for attorney's fees of Preston Wong's was in error. Claimants concede that sum was included in the billings submitted by Ms. Nucum and paid by claimants.
5. Attorneys' fees for post interim award work by Julienne Nucum and Preston Wong in the sum of $10,140 through June 21, 2017.

6. Attorneys' fees for work performed by Ronald Packard: $136,360.00 plus $16,887.50 post Interim Award and $200.00 costs through June 20, 2017.
7. Claimants' Costs as follows: Deposition Reporters - $20,483.71.00; Arbitration transcript reporters' fees are not recoverable pursuant to the terms of the agreement of the parties.
8. Other costs and expenses $11,400.00 incurred by Claimants.
9. The sum of $6,246.05 for JAMS arbitration fees advanced by claimants on behalf of respondents has been credited back to claimants by JAMS.
10. The sum of $825.00 representing fees owed to Jeffry Luney for deposition time which was an obligation of respondents which has not been paid.
11. Claimants shall also be entitled to future attorneys' fees and costs incurred in enforcing this final award, including post judgment motions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, and bankruptcy litigation in accordance with the express provisions of paragraph 14.20 of the Operating Agreement.

RESPONDENTS' AWARD

1. An award of attorneys' fees as sanctions in the sum of $4,512.50 against Claimants for failure to comply with Request for Productions of Documents, as reserved.
2. Respondents also are entitled to attorneys' fees in the sum of $43,001.25, parking costs in the sum of $6.25 and filing fees in the sum of $1,335.00 in connection with the necessity of the petition to compel arbitration.
3. Respondents take nothing on their cross complaint.

This is a Final Award pursuant to the arbitration agreement between the Parties which incorporates the terms herein as well as the terms and findings of Exhibits A, B, C, D and E., attached hereto, and by such attachment incorporated herein as though set forth in full.

IT IS SO ORDERED.

Date: July 21, 2017

Hon. Jack Komar (Ret.)

JAMS ARBITRATION CASE REFERENCE NO. 1110017521

Old Trace Partners, L.P.,
Claimant(s),

and

Sorensen, Theodore, et al.,
Respondent(s).

FINAL INTERIM AWARD

PRELIMINARY

This matter came on for regularly scheduled arbitration hearing on October 31, 2016 pursuant to notice and agreement of the parties. The matter was heard on the following dates:

October 31, November 1 through 4, November 14, 16, 17, 18, 19 & 22, 2016.

Counsel appearing for the parties were as follows:

Claimants/Counter Respondents: Julienne Nucum, Esquire, Preston Wong, Esquire, and Ronald Packard, Esquire.

Respondents/Counter-Claimants: William Milks, Esquire, Kathryn Barrett, Esquire, and David Duperrault, Esquire.

The arbitration agreement is contained in the 40 Main Street Offices Limited Liability Company Operating Agreement, as restated and amended on or about October 30, 2012. Portions of the amended and restated agreement are in dispute in this proceeding. The parties were ordered to arbitration in Case Number 11CV2066849, by Order of court dated November 17, 2014.

The law of the State of California and the JAMS Comprehensive Rules apply.

EXH. "A"

PARTIES

Claimants are each member investors in a Limited Liability Company, 40 Main Street Offices, LLC, a company which was formed to purchase real property and to develop a commercial office building on the property in Los Altos, California. The individual claimants are Old Trace Partners, L.P., Daniel Nero, Kimberly Nero, Paul L. Klein, Jr., Mary Ellen Klein, Alan E. Truscott, and Fick Investment Company.

The Respondents are Theodore Sorensen, Jerry Sorensen, 40 Main Street Offices, LLC, and Gunn Management Group, Inc. Respondents have alleged 65 affirmative defenses including the statute of limitations, and have counter claimed.

Following the completion of evidence, at the request of the parties, closing, opposition, and reply briefs were submitted as to all claims and counterclaims. The matter was deemed submitted on January 23, 2017 following the submission of such briefs. [1]

SUMMARY OF CLAIMS

The Claimants filed an action in the Santa Clara County Superior Court in Action Number 114CV266849, alleging causes of action which may be summarized as fraud and misrepresentation, breach of contract, false promises, breaches of fiduciary duties, violations of the Business and Professions Code, and false promises, seeking damages, an accounting, a constructive trust, declaratory relief, and a receivership.

Respondents have counter claimed alleging in essence that the Claimants interfered with their ability to develop the subject office building, breached the agreement by filing an action in

[1] Respondents were granted an extension of their opposition page limits to 35 pages. In addition, Respondents filed a separate document styled evidence objections which were, in effect, contrasting perceptions of the evidence and not truly legal objections. These so-called objections are merely argument and have little or no significance to the findings in the Interim Award. They should have been included within the 35 page limits.

the Superior Court, and violated the implied covenant of good faith and fair dealing, and seek both economic damages, liquidated damages, and punitive damages.

WITNESSES CALLED

The following witnesses were called to testify under oath: Erik Corrigan, Daniel Nero, Anna Christine Davis, Alan Truscott, James Walgren, Jeffrey K. Luney, Von G. Packard, Stephen Fick, Paul Butterfield, Gerald Sorensen, Paul Klein, Jeffrey Warmouth, Gerald Sorensen, Theodore Sorensen, Dennis Young, Michael Connor, Erin Uesugi, William Matson, Alfonso Diaz, Ronit Nodner, John Mordo, James J. Hill, Jr.

SUMMARY OF INTERIM FINAL AWARD

Claimants are entitled to an award vacating each of their investments based upon negligent misrepresentations of fact upon which they individually relied and which induced their investments in 40 Main Street Offices, LLC. The initial Operating Agreement signed by the Claimants, and any amendments and restatements of the same are vacated and set aside as to the Claimants, damages are awarded against respondents, jointly and severally, in the amount of the investment each Claimant made with interest from the dates of their investment at the legal rate. Claimants are also entitled to attorneys' fees and costs incurred. Arbitration fees are not included as costs in conformity with Article 14.10.5 of the Operating Agreement. Punitive damages are not awarded - there is no actual or subjective fraudulent intent - the misrepresentations are negligent. The reasons for the award are as follows below.

Respondents' counter claims are denied except that respondents are entitled to actual attorneys' fees and costs incurred in enforcing the arbitration provisions of the agreement.

PROCEDURAL HISTORY

Claimants initially filed their action in the Superior Court in Santa Clara County on June 19, 2014. An Amended Complaint was filed on September 25, 2014. Respondents filed a motion in Superior Court requesting that the court proceedings be stayed and that the matter be ordered to arbitration. In opposition to the Petition, Claimants contended that the arbitrator did not have authority to grant the relief requested in the Complaint, pointing to the limitation on the powers of the arbitrator contained in the arbitration agreement. On November 17, 2014, the Court granted the Petition and ordered the matter to Arbitration, and stayed the court action, providing that the arbitrator would decide any arbitrability issue in the first instance.

Following the granting of the Petition to Compel Arbitration, Respondents filed a motion asking the trial court for an immediate award of liquidated damages against Claimants for breaching the agreement to arbitrate under Paragraph 14.10 of the Amended and Restated Operating Agreement. The Trial Court, denied the motion, on the grounds that the matter was stayed, and that the claim for damages sought by Respondents was thus beyond the jurisdiction of the Court and was a matter to be decided by the arbitrator. Respondents appealed the denial to the Court of Appeal, thereby staying any further action by either the trial court or the arbitrator for a full year. The Court of Appeal entered an order dismissing the Respondent's appeal on November 16, 2015 as having been taken from a non-appealable order.

Claimants filed a motion to determine the scope of the arbitration proceedings herein and in particular to determine the legal effect of a provision in the Original and Restated Operating Agreements of the company relating to the scope of the powers of the arbitrator. Following briefing, the arbitrator rendered a decision defining the scope of the arbitrator's jurisdiction in the matter for the following reasons, which is hereby confirmed.

MOTION REGARDING THE SCOPE OF THE ARBITRATOR'S POWERS

At the time of the investment, all parties signed the initial Operating Agreement which set forth the rights and duties of the parties and specifically provided that "except as otherwise

provided in this agreement, any dispute, controversy or claim arising out of or related to this Agreement, or any breach thereof, including without limitation, that any claim that this Agreement, or any part hereof, is *invalid, illegal or otherwise voidable, or void*, shall be submitted . . . . to binding arbitration . . ." (Emphasis added). Operating Agreement Section 14.10

Following the Trial Court Order, Claimants filed their claims before JAMS seeking arbitration in compliance with the Court Decision, but still contended that the matter should be tried in Court because the arbitrator's powers were limited by the terms of the Operating Agreement. Respondents disputed that interpretation, and the arbitrator accordingly scheduled a hearing to consider the respective positions of the parties. The parties briefed their respective positions on the issue.

Claimants argued that the scope of the Arbitrator's powers must first be decided by the Court and that any matters properly to be decided by the arbitrator would then be remanded by the Court to the arbitrator for decision. The Claimants also requested that the Court be permitted to determine whether the amended and restated Operating Agreement is valid.

Respondents opposed the motion, argued that all issues must be decided by the arbitrator, and requested that the arbitrator immediately order specific performance of the claim for damages (liquidated) be paid by Claimants for breach of the obligation to submit the matter to arbitration.

The Superior Court had ruled that the determination of the scope of the powers of the arbitrator delineated in the arbitration agreement is an issue for the arbitrator to decide in the first instance and not the court contrary to claimants' arguments. The Claimants repeated their arguments here.

The language of the Arbitration provisions in the agreement is plain and clearly requires that ". . . any dispute or claim arising out of the Operating Agreement, including breaches thereof, or claims that it (the operating agreement) is voidable or void, or otherwise invalid, be submitted to arbitration" as set forth in Paragraph 14.10 in both the original and the restated agreements.

The clause in question that Claimants' contended limited the ability of the arbitrator to grant the relief requested (assuming Claimants successfully proved their case) is set forth in the

arbitration provisions. Paragraph 14.10.3 of the original and Paragraph 14.10.2 of the Amended and Restated Operating Agreements, provides as follows:

> The arbitrator shall not have any power to alter, amend, modify or change any of the terms of this Agreement nor to grant any remedy which is either prohibited by the terms of this Agreement, or not available in a court of law.

The language of the Agreement and the principles of applicable law provide the arbitrator all the powers needed to fully adjudicate any and all claims alleged in the Complaint under the powers set forth in the arbitration clause in Paragraph 14.10 in the Operating Agreement. There is a clear difference between the power to amend or revise any term of an agreement (not granted to the arbitrator) as opposed to the power as granted to the arbitrator to decide issues of void, or voidable provisions based on fraud or misrepresentation under California law. Paragraph 14.10.4 of the agreement. In effect, the agreement provides that the court has the same powers as a court.

Note that Paragraph 14.12 of the Agreement provides that if a part of the Agreement is found to be invalid for any reason the rest may be enforceable. Again, that power is not limited to a court and can be ruled upon by the arbitrator.

The arbitrator concluded following oral argument and consideration of the briefs that the arbitrator has all the powers necessary to fully adjudicate all the claims contained in the complaint which was filed in the superior court and remanded to be heard in arbitration.

Certain powers of a court may not be exercised by an arbitrator. That, however, does not preclude the parties' agreement to submit the issue to the arbitrator who may make findings of fact and submit the request based thereon to the court for implementation if the facts justify the action. See Marsch v. Williams, 23 Cal. App. 4th 238 (1994) which holds that only a court has the power to appoint a receiver.[2] See also Paragraph 14.10.1 of the Operating Agreement which specifically authorizes court action for appointment of a receiver.

[2] Whether this rule would justify parties who are bound to arbitrate filing an action initially in court is not an issue that must be decided in view of other findings below.

MOTION FOR LIQUIDATED DAMAGES

By noticed motion, the Respondents sought an immediate order in this arbitration that Claimants be assessed liquidated damages for their filing of the law suit in Superior Court rather than seeking arbitration. The arbitrator deferred the issue concluding that there were several issues to be decided before that claim should be determined, including the validity of the amended and restated Operating Agreement and deferred it to the date of the arbitration, noting that the claim for liquidated damages is part of the Respondents' counter-claim.

As Respondents had at the Trial Court, they sought an order for Claimants to pay liquidated damages to Respondents for breach of the Arbitration Agreement pursuant to Paragraph 14.10 of the Amended and Restated Operating Agreement, citing Acosta v. Kerrigan 150 C.A. 4th 1124 as authority for the principle that a Court (or arbitrator) can award attorneys fees to a successful petitioner seeking an remand to arbitration of an action filed in superior court without waiting for a final resolution. The Acosta matter is not determinative of the issue.

Acosta was not a liquidated damages case; it involved attorney's fees and costs in connection with a motion to enforce an arbitration provision. Enforcement of Liquidated damages for breach of contract may implicate other issues as required in Civil Code Section 1671(b). See also Ridgley v. Topon Thrift and Loan Assn (1998) 17 Cal. 4th 970, Greentree Financial Group v. Execute Sports, Inc. (2008) 163. Cal. App. 4th 495.

The Court, and the arbitrator, as the case may be, have discretion as to the timing of the determination of such an award but in this instance, it required considerably more evidence and an opportunity of Claimants to adequately respond to the claim for the breach of contract. The determination of the enforceability of the liquidated damages provision is not totally dependent on the outcome of the dispute between the parties as to the claims set forth in the statement of claims by claimants and stands alone in some respects.

The demand for an order requiring Claimants to pay Respondents pursuant to the liquidated damages provision was denied without prejudice as being premature and without a sufficient foundation. The claim will be considered anew based upon the evidence submitted by the parties in the arbitration hearings themselves. That claim is renewed here in the counter claim of Respondents.

UNDISPUTED FACTS

Respondents Theodore and Jerry Sorensen identified real property located at 40 Main Street in Los Altos, California, as a potential development site for a new building and decided to seek investors for a development project at that location. In the spring of 2007, they prepared a written Project Plan and used the plan as promotional material to seek investors in a private offering. The project plan was revised and ultimately proposed the creation of a three story Class A office building with an estimated 20 parking stalls in the basement. The project plan also included alternate proposals for single story and two story alternatives.

Respondents Theodore and Jerry Sorensen created a Limited Liability Company, 40 Main Street Offices, LLC, (hereinafter Main Street), as an investment vehicle to acquire title to the property and to build the office building and a corporation named Gunn Management Group, Inc. (hereinafter Gunn), to manage the development project.

All of the alternatives for the development contemplated a total initial investment of $2,840,000 and the creation of the 40 Main Street Offices, LLC, to own the development. The LLC would have 10 units of ownership, a unit being valued for initial investment purposes at $284,000. Any one such unit could be owned by several individuals. The LLC provided that the project would be managed by Gunn Management Group, Inc., of which Theodore Sorensen, a California Licensed attorney, was President and Gerald Sorensen was Vice President.

CLAIMANTS CONTENTIONS AND CAUSES OF ACTION

A. FRAUD AND NEGLIGENT MISREPRESENTATION BY RESPONDENTS

The Project Plan was finalized and presented to claimants and other investors. Claimants allege the plan contained false statements which fraudulently induced them to invest in the project. Paraphrasing, the alleged false statements, may be summarized as follows:

1. That a Downtown Zoning Committee (DZC) recommended to the City Council that the subject property was included in a proposal to extend the floor area ratio to 250%. If the recommendation had been made and adopted, it would have modified the zoning requirements for the 40 Main Street Building to permit a larger building.

In fact, the evidence established that the so-called FAR recommendation was in a committee *draft* from the previous year and that the draft did not include any reference to the area which would include the subject property. The committee recommendation which was ultimately sent to the City Council did not ever include the 40 Main Street property. The FAR ratio for that area was never changed.

2. That Los Altos Planning Director had stated that the proposed conceptual design fit into the proposed zoning regulations.

   There were no proposed zoning changes recommended for the area involving the subject property. Further, Mr. Walgren denied that he said such or that he was ever shown the four proposed design alternatives which were contained in the Project Plan. At no time was he ever told that the parties contemplated a three-story design with underground parking. Walgren also testified that he always reiterated to the Sorensen's that a three story office building was not acceptable nor was a mixed use building (which was one of the three story alternatives). Mr. James Walgren, then Planning Director, who was also a member of the Downtown Zoning Committee, testified that he was never told about proposed underground parking or the four alternative proposed buildings. The Town of Los Altos has a thirty foot height limit and that is inconsistent with a three story building (a thirty foot height limit would allow only 10 feet per story). Mr. Walgren also testified that a 45 foot high building was not supportable.

3. The proposed layout for the three story building can provide approximately 20 below grade parking spaces.

   The evidence established that it would be impossible to place 20 parking stalls in the proposed three story building basement without stacked or tandem parking and valet service - none of which would be permitted under zoning ordinances, then or now. Respondents failed to perform any due diligence of consequence with regard to underground parking before making the representation. As early as August of 2007, respondents learned from an architect that the most basement parking spaces that could

be built would be a maximum of 12 (13 with tandem parking). That was confirmed the next year by a second architect.

It was not until 2012 that respondents finally stated publicly that underground parking was not economically feasible even though the evidence established that it was known, or should have been known, to respondents even before the plan was proposed.

4. That any of the four alternatives would produce a profitable venture when completed and sold. This relates to negligence and failure to investigate the reasonableness of the proposed options. It also ties into the issue of false promise. Any of the three-story options would exceed city height limits and during the ten year development process would always require a variance from the city. No other options by way of an application were ever presented to the city for approval.

B. FALSE PROMISE

The making of a promise without any intention to perform the promise may constitute fraud. Here it was represented by the Respondents that if one of the three-story options would not be approved, one of the other options (one or two story building) would be pursued and either would be profitable. The evidence to support this cause of action is non-performance of any of the other alternatives even when confronted with continual rejection of the three story plan. This was alleged to be a fraudulent promise based solely on circumstantial evidence that no effort was ever made to implement another option even when it became clear that there was continued opposition to the original three story plan. Other than the failure to ever try to obtain approval of the other options, no other evidence established that this was a false promise. See further discussion of this cause of action below.

C. BREACH OF FIDUCIARY DUTIES AND BREACH OF CONTRACT

The following allegations are alleged to constitute breach of the operating agreement and breach of fiduciary obligations owed by the promoters, managers, and officers of the company:

1. The $70,000 commission on acquisition of the property at 40 Main Street paid to the Sorensens who are not real estate brokers was improper and not adequately disclosed to the investors.
2. Improper front-loading of and retroactive payment of management fees and rent.
3. Overvaluation of project for determining management fees.
4. Failure to inform members which it became apparent that parking underground was not an option with continuing misrepresentation of underground parking even after it was clear it was not feasible.;
5. Failure to properly maintain accountings and books and records of the financial position of the LLC.(quarterly reports) and budget approvals.
6. Failure to comply with annual reporting and budgeting requirements of the LLC.
7. Failure to follow GAAP accounting principles thereby breaching bank requirements and jeopardizing bank loans.
8. Amendment of operating agreement to oust minority members, in effect. Not permitting reasonable opportunity to discuss and consider. Failure to fully disclose contents of the amendments.
9. Use of Indemnity provisions for attorney's fees in violation of amended statute provisions regarding breach of fiduciary duties.

RESPONDENTS' OPPOSITION TO CLAIMS

1. No standing to bring certain causes of action: 5th (breach of fiduciary), 6th (breach of contract), 7th (constructive trust), 8th (accounting), (9th (Declaratory relief), 10th (B & P 17200) , and 11th (receivership), must be brought as a derivative action.
2. No evidence of fraud or falsity or damages.
3. Statute of Limitations bars the causes of action.
4. Laches.
5. Equitable Estoppel.
6. Unclean Hands
7. Receiver cannot be created by arbitration award.

DISCUSSION

As to the Claimants' 1st (Fraud) 2nd (Misrepresentation), 3rd (Concealment), and 4th (False Promise) Causes of Action, these are direct actions alleging wrongful conduct in the form of pre-investment inducements that caused loss and damage to the claimants as individuals. Those causes of action are not derivative in nature but reside with the members. Any recovery therefore is to the members who have the burden of proving fraud and misrepresentation. The proper respondents as to those causes of action are the individuals who may have made such improper representations. The company may be a party to the extent that it was the recipient of the investments made by the claimants.

The managers and officers who are accused of mismanagement and breach of the fiduciary obligations belonging to the company as a matter of law do not owe a duty directly to the members. Corp. Code 17051 (d) (3), 17709.02. Effective 1/11/2014. See also PacLink Communications International, Inc., v. Superior Court (2001) 90 Cal. App. 4th 958. An action for damages to the Limited Liability Company, as with a corporation, may only be brought by members of the LLC against those causing the damage by filing a derivative action in the name of the company under circumstances when the company refused or fails to act.

The allegations of breach of fiduciary here do mostly relate to the fiduciary obligations owing to the company by its officer or managers. While claimants contend that the case has been treated by both sides as a direct action, in fact from an early point respondents have contended that much of the pleadings should be derivative and that there is no standing to bring them as direct actions. Until the final briefing neither party presented the issue for consideration in the arbitration.

While sellers of memberships in an LLC or a corporation generally do not have fiduciary obligations to purchasers, depending on the circumstances, such promoters do have a duty to advise the buyers that they are receiving money from the seller of the property to the LLC and not to conceal or disguise such payments so that it is not otherwise brought to the attention of the investors. Promoters must disclose their self-interest if the funds they will receive are from the monies invested by the investors. Here, the Sorensens' received a $70,000 commission when they acquired the property for the LLC and did not identify it as such other than in obscure

terms. It is noted that while an LLC acquiring real property might well pay a commission to a licensed real estate broker, neither Sorensens established that they were licensed brokers. Several members expressed the belief that the $70,000 as described in the books and records was a commission paid to third parties for the acquisition by the company of the property and had they known the true facts, they would not have invested.

The Sorensens valued their right to 50% of the profits in the company as "Profit Interest Holders" on the basis that they were making a contribution to the company which value was the combination of their right to buy the property for themselves and the $70,000 commission combined. Full disclosure would have been to disclose in writing that the Sorensens had a contractual right to acquire the property at 40 Main Street and that they would receive a commission from the LLC in consideration of assigning the right to purchase the property to the LLC. But that injury is to the LLC to which a fiduciary duty is clearly owed by the Sorensens and not to the members itself (although lack of knowledge of that type of self-dealing was a factor in several parties making their investment in the LLC) and does fall within the category of concealment.

As to the other causes of action which belong to the LLC, the issue is whether the pleadings are sufficient to allege that this action is by the LLC sufficient to permit the award of whatever damages there may be to the LLC from the Respondents. Those damages would be the commission received by the Sorensen's for the acquisition of the real property located at 40 Main Street; the allegedly improperly assessed management fees; damages from the failure to provide accountings and budgets; damages from the failure to obtain approval before loaning funds to the LLC, and damages for the failure to provide quarterly reports to the members.

As a matter of law, the Sorensens were not fiduciaries to the claimants. There is no basis in law for an individual claim by Claimants for such alleged violations. Each of those causes of action allege facts that establish damage to the company and not to its members under the law. The Limited Liability Company would in fact have a cause of action for such alleged conduct.[3]

[3] The Members representing 60% of the voting rights of the company have signed after the fact confirmation of all acts of the individual respondents which are the source of the allegations of wrongdoing by the officers and

In order to bring such an action when the company fails to do so require compliance with certain statutory requirements as set forth in California Corporations Code Section 17709.2. The action here is against the company and others and fails to plead any such compliance.

There is ample evidence that the terms of the operating agreement were not complied with in terms of reporting requirements, disclosures of advances made by the managers, failures to maintain proper accountings, questionable computations of management fees, and other operational violations. But none of those matters can be the subject of a personal law suit by a minority of members other than under Jones v. H.F. Ahmanson (1969) 1 Cal. 3rd 93 for breach of a fiduciary obligation arising under unusual circumstances, for example, disadvantaging a minority by a majority interest. The relief requested cannot be granted without joining all the other members who constitute a majority of members. The proper cause of action could be for a dissolution of the company and damages under the terms of the corporations' code. Under ordinary circumstances, that would give the majority members a right to buy out the interests of the minority with protection of all interests under the terms of the law. Alternatively, if the company had suffered damages, a derivative law suit will permit all members, whether they joined in the law suit or opposed it, to in effect, receive the benefit to which they all may be entitled (except the wrong doers, if any).

FRAUD AND FALSE PROMISE VIOLATIONS

The evidence does not support findings of intentional fraudulent acts or a specific intent to defraud. But it does reflect a careless use of language which fits within the category of negligent misrepresentations and potentially an action based on a false promise.

Making a statement of fact known to be untrue (or without having investigated the validity of the same can be the equivalent of an intentional misstatement if done recklessly, without knowledge of whether or not the fact represented is true or not) is an element of fraud

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managers of the company. That would not foreclose a derivative law suit by non-consenting members such as claimants here had such a derivative suit have been filed.

and deceit. Civil Code Section s 1709 and 1710(1). For example, a statement that "a proposed layout for a proposed underground parking garage can provide approximately 20 spaces in the below ground area . . ." as a fact without knowing whether or not it is feasible because of a failure to investigate the issue, may be the equivalent of an intentional false statement in the context in which it is made if made with an intent to defraud. In this case, the statement relates to what kind of building may be built, valuing the completed building, and the ability to obtain permit approval because of parking requirements, all of which is a material inducement to make an investment in the project.

Negligent misrepresentation is "a positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though one believes it to be true." California Civil Code Section 1572(3).

The misrepresentation of underground parking occurred because of a failure to investigate. There may not have been a subjective intent to defraud but a misrepresentation made recklessly, even with a "hope" that it can be accomplished, but no real belief in the certainty of it, is sufficient to constitute a negligent misrepresentation, if the misrepresentation is material and causes conduct by party to who the representation is directed- in this case investments in the project. See Christiansen v. Roddy (1986) 86 Cal. App. 3rd 788.The evidence here establishes is that there was a failure to adequately investigate, it was relied upon by each of the Claimants. And evidence establishes that there are other negligent misrepresentations.

Other representations that were based on facts that were neither true nor reasonably based include that the extension of the Floor Area Ratio to 250 as applied to the 40 Main Street property (paraphrasing) was virtually a "done deal", the feasibility of building a three story building in concept that would exceed the zone height limits of 30 feet, was within the city's proposed recommended changes, with a **favorable** likelihood of a zoning amendment or waiver, and that if three story concept could not be built, a one or two story building would be profitable and would be pursued. Taken together, these representations were false and based upon the evidence presented,

Claimants relied on the facts represented and would not have invested had they known the true facts. The law is clear that a misrepresentation of a fact, as opposed to opinions, is actionable, whether negligently or intentionally made. And while some of the statements of expectation in the "plan" were clearly opinion, underlying all were what purported to be facts. Bobak v. Mackey (1951) 107 Cal. App. 2nd 55. The defendant represented that land was zoned C-2 when in fact it was zoned R-3, which prevented manufacturing use.

A period of almost 10 years has elapsed, there have been numerous obstacles to the construction of a three story building, and it has still not been approved although the same proposal as previously submitted and rejected has been resubmitted. Whether it will ever be approved by the city is not determinative of the outcome of this claim. The LLC has been mismanaged and has been economically damaged although the non-claimant majority (60%) have apparently waived the right to sue on behalf of the company against the managers and officers of the company. The investor claimants are entitled to rescind, to receive their investments back as damages with interest at the legal rate.

While the prospectus lists multiple risks to be considered by investors, the risks do not vitiate false statements or statement made to induce the investment which may have been made without a sufficient basis for believing in the truth of the statements.

FALSE PROMISE

While the "prospectus" stated four alternatives, the primary plan intended was the three story plan with office and or residential which presumably would present the greatest return on investment. While the three story plan was repeatedly denied by the City of Los Altos because of height and parking issues, no action was ever taken to implement a lesser plan which the evidence establishes could have been built and completed long ago. The officers and managers of the company had a duty develop the property in accordance with their representations to the investors. The testimony from respondents that they told the city they would build whatever they would be allowed to build does not satisfy that obligation. It is not the duty of the city to present

a plan for the company to build. The fact that no alternatives were every presented by the respondents represents a failure of their duty. That fact lends some credence to the claim that the other two alternatives were never intended to be built.

But the mere failure to perform without any other corroborating evidence is generally deemed to not be sufficient for a finding that the promise was not intended to be performed at the time it was made. Here there is no other evidence. See Tenzer v. Superscope (1985) 39 Cal. 3d 18.

As to the causes of action for breach of contract, declaratory relief, and breach of fiduciary, while some of the conduct alleged to be wrongful and reflects violations of a managerial and fiduciary duty to the company, all are clearly a violation of a duty owed to the company as discussed above. However, the prospectus itself essentially was a promise to investors that one of the proposed building options would be built within a reasonable period of time. The investors all accepted that offer by investing in the company. The failure to do so constitutes a breach of that promise which, while it may not reach the level of a fraudulent promise, is inevitably a breach of the contractual promise. Because the promise is material, and a constructive condition, the breach will support a decision by the promisee to withdraw from the contract and seek damages which, under those circumstances would be the same damages assignable to the claimant for a negligent representation inducing the purchase of the membership.

AMENDMENTS TO THE OPERATING AGREEMENT

Amendments to the restated operating agreement clearly impact the rights of the claimants who are minority members, individually, and the approval by the majority implicates the duty that majority members of a corporation, partnership, and Limited Liability Company owe to minority members,

The majority members may not act to injure the rights of the minority members by company action or modification of the operating agreement. See Jones v. H.F. Ahmansom & Co., (1969) 1 Cal.3d 93. In deciding the issues, the arbitrator must evaluate both the intent and the effect of such conduct by the majority. Several of the modifications of the operating agreement were specifically designed and intended to deprive the minority members of rights to inform themselves as to management and operational issues. All members have a right to determine whether there was mismanagement and violations of the fiduciary duties of the officers and managers. The reporting requirements by the managers and officers was designed to ensuring that the members were informed and to permit approval of budgets and other decisions.

The amendment authorizing the respondents to indemnify themselves for attorneys' fees and costs from company funds equally violates the minority interests since the allegations are of fraud, breach of fiduciary, and violations of the operating agreements. While such indemnification might be appropriate were the managers to prevail, since they have not prevailed, payment of such expenses is a furtherer impropriety. It is noted the indemnity provisions were never presented for signature to the minority parties here. Again, however, the injury caused by the indemnity provisions is to the company and not the members individually.

In particular, the method of obtaining approval of the amendment demonstrates an attempt by the majority (at the time) to marginalize the minority who were raising legitimate concerns about the operation of the company, including the failure to abide by the reporting requirements, budget approvals, availability of records and documents maintained by the LLC., with the imposition of draconian penalties for violations of the LLC, real and imagined.

Without simultaneously presenting the amendments and the justification for them to the two leading minority parties, Old Trace and Nero, at a time other than normal business hours, the proposed amendments were sent to the other 80% of members' interests, urging that they be approved and, in effect, stating that must be signed immediately and returned for the good of the company and to protect member's investments. At that urging, most were signed and returned the evening sent. None who signed and were called to testify by Respondents testified that they

knew what they were signing or even that they read or understood the documents or the reasons for the amendments before signing. They were signed solely on the urging of Theodore Sorensen on his representation that if they did not sign them, they stood to lose their investments. The next day, copies of the amendments were sent to Old Trace and Nero with no expectation they would be approved.

It appears that the entire construct of the amendments was designed to provide a basis for ousting the minority members from the company with minimal cost. It is noted that subsequently, an additional 20% of members interests who had approved the modifications without reading them, at the behest of respondents, joined the claimants in this action and in their opposition to the management of the Respondents here. Their testimony as to how the amendments were presented was consistent- no explanation and that the amendments were not read before signing them. Apart from the method of creating the amendments, the provisos themselves are severe and draconian in effect and some lack certainty and clarity.

LIQUIDATED DAMAGES

1. Civil Code Section1671(b) provides, in effect, that the party seeking to invalidate a liquidated damages provision has the burden of establishing that it was unreasonable at the time the agreement was made. It is noted that Section 1671 (b) refers to provisions in a contract where the parties have agreed to liquidated damages. Clearly the parties here did not so agree to those provisions and should not be bound by terms that were inserted without an opportunity to consider them or to ensure that those who did approve them read and considered them.

   It is also unclear by the language of the provision itself as to the number of multiples that can be assessed if, as here, more than one member files or joins a single law suit. The lack of any relationship to actual damages is demonstrated by Respondents' own claim for $250,000 for having filed the law suit in Superior Court. Clearly such an amount is unreasonable as reflecting actual damages.

2. The $50,000 liquidated damages is unreasonable and is nothing more than a penalty. It bears no relationship to actual damages or costs. Reasonably moving a court to compel arbitration should not require attorneys' fees of $50,000. And certainly not $250,000 which would be the cost of all five claimants who were involved in the court proceedings. Costs and fees incurred in moving to compel arbitration are readily capable of calculation. It is noted that in this case when the trial court granted the motion to compel arbitration, Respondents exacerbated their expenses by appealing the court decision.

3. While the burden is on the party opposing the liquidated damages provision to show that the provision is unreasonable, the Arbitrator is satisfied from the circumstances presented that such a penalty, especially as framed in this matter, is unreasonable, in particular as viewed in conjunction with the other amendments which may best be described figuratively if not literally as the midnight changes.

4. Filing a law suit by a member of a limited liability company (even to seek dissolution of the company) against the company forces an involuntary sale of the members interest at a substantially reduced price reduced further to 90% less damages tantamount to a forfeiture, even if justified.

STATUTE OF LIMITATIONS

Respondents assert by way of an affirmative defense that the action by claimants is barred by the statute of limitations. All of the evidence submitted by Respondents addressing the knowledge of the Claimants at a period more than three and four years prior to initiation of the action in superior court relate to the actual manipulation of the company, including the management fees, the failure to present a budget for approval, the regular reports required by the Operating agreement, the approval of advances to the company, and the like, all of which

aroused suspicions but no knowledge sufficient to cause the statute of limitations to begin running.

None of the facts known to claimants relate to any knowledge of the false representations which induced the investment in the company in the first instance, including the height issues, the underground parking, the city zoning requirement that would have to be waived since contrary to the prospectus there was no evidence it would be amended.

The knowledge of those causes of action which might belong solely to the company against its managers aroused suspicions in the members, but the falsity of the representations, negligent or intentional, were neither known to nor suspected by claimants. Moreover, Respondents always assured claimants that all was well and that matters were progressing as late as 2011 up to January 2012 and beyond.

When it became apparent later in 2012, when the claimants began to probe the issues more closely, respondents immediately began to circle the wagons, creating first an unlawful amendment that permitted them to restrict information to which the Claimants would otherwise have access, and then putting in place an amended and restated operating agreement with draconian consequences to any efforts by members who were questioning the value of the operational efforts of the respondents with the intent of ousting the questioning members. That was later followed by an ex post facto approval of the acts of the officers and managers by members who have not joined in this action (without a specification of what acts were being "forgiven.". It is noted than a number of such non-dissenting members are close Sorensen family members and close friends of the Sorensens.

Thus, while the knowledge pointed to by respondents affecting the statute of limitations relates to the "derivative actions" none of it established the type of "on notice" knowledge relating to the intentional or negligent misrepresentations nor the "false promise" or breach of the promises in the prospectus.

Moreover, continued assurances by respondents to claimants which caused the claimants to defer filing a claim or a cause of action justifies delayed deferral or accrual of the cause of actions and continued concealment of the actual functioning of the company adds to the justification for any delays as to those causes of action.

COUNTER CLAIM BY RESPONDENTS

Respondents have filed a counter-claim against all claimants alleging a violation of the Amended and Restated Operating Agreement of 40 Main Street, LLC.

The specific provisions of the amended operating agreement which Respondents claim are violated by Claimants, are as follows:

1. Breach of the Amended and Restated Operating Agreement.
    a. Breach of 5.1.1.1: Interfering with the LLC operation and management of the company.
    b. Breach of 14.10: Refusing to arbitrate- filing law suit (liquidated damages).
    c. Breach of 14.26: Disclosing confidential information to third parties.

2. The Acts alleged as violations are as follows:
    a) All Claimants (Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein, and Fick for engaging Ronald Packard as counsel to obstruct and interfere with the management and development of the project as proposed; Packard authoring an ordinance which was adopted in October 2012 altering the height provisions affecting 40 Main Street; Multiple other acts by Packard in opposition to the 40 Main Street project;
    b) Erik Corrigan contacting Bridge Bank and interfering with the LLC relationship with the bank;
    c) Dan Nero contacting Bridge Bank through his attorney and interfering with the LLC relationship with the bank;

d) Sean Corrigan interfering with the LLC efforts to seek approval by communicating negative information about the LLC to Council person Mordo

e) Truscott, Fick and Klein for interference.

DISCUSSION

Respondents' counterclaims of specific violations of the provisions of the Amended Operating Agreement require a discussion of several matters preliminarily before addressing the acts themselves:

1. The validity of claimants' causes of action for fraud and misrepresentation;
2. The validity of the amendments;
3. The conduct complained of;
4. The liquidated damage provisions.

As found in the decision above regarding the fraud and misrepresentation provisions, there is insufficient evidence of intentional fraud by even a preponderance of the evidence. On the other hand, the respondents were found to have made factual representations that were not justified by the information they possessed and without any basis for a reasonable belief they were true. That falls within the definition of a negligent misrepresentation. The evidence also supports the conclusion that claimants relied on the representation made at the time of their investments.

Claimants in their complaint, which is the basis for the claims in arbitration, seek a finding that the Operating Agreement is null and void. The finding herein that the representations were false, and that the respondents were responsible for making negligent representations which induced the claimants to invest in the company, justifies the award setting aside the investment agreement, ordering rescission, and damages to claimants. That finding nullifies not only the original agreement which is claimed to be violated, but also the amended and restated agreement with its severe penalties and consequences.

As the membership in the company is rescinded because of the misrepresentations, the Operating agreement and its amendments are voided. Voiding and setting aside the operating agreement and the amended and restated operating agreement, since there is no cause of action by respondents outside the operating agreement, it is technically unnecessary to evaluate the other grounds of opposition to the counter claim. Notwithstanding, the other issues will be discussed.

First, the validity of the Amendments:

The method and timing of adoption suggests that it was an effort by the managers and promoters to insulate themselves from any inquiry by concerned members who were dissatisfied by the operational management of the company and who believed that the managers were fraudulently or otherwise making decisions adverse to the best interest of the company and its members.

It had been more than five years from the time of the creation of the company and an application for a permit to develop the property had been rejected by the city council as nonconforming to the city zoning requirements. Regular reports had not been submitted to the members in accordance with the operating agreement. Annual budgets had not been submitted and requests for books, records, and check records had not been produced in compliance with the operating agreement.

It had become apparent to the managers and officers of the company, and to some other members, that there was dissatisfaction by some members who might be willing to take some action against the company and its officers. As reflected above, severe and to some extent illegal and unenforceable provisions were placed in a proposed amended operating agreement.

The method of adoption of these provisions was surreptitious and coercive. The proposed amendments were circulated somewhat late in the day by e-mail to all but the Old Trace and Nero claimants with a follow up telephone to some urging the members to sign immediately to protect their investments. There was no discussion of the details of the amendments with the members who signed. There had been discussion among some of the members and the officers

and managers that Nero and Old Trace were going to adversely affect the company. The Old Trace and Nero claimants only received the proposed amendments after they had been approved by a supermajority of members. The approval was given near the end of October 2012.

It is noted that a meeting was held on October 17, 2012 among all investors, called by members to discuss the project. Respondents failed to attend though they had notice of the meeting. The meeting was followed by a letter from Sean Corrigan to all, including respondents, setting forth the agenda that had been discussed, concerns about operational decisions, and some proposed solutions. See Arbitration Exhibit 37.

The amendments to the operating agreement, obviously drafted by an attorney for the respondents, followed in less than 2 weeks. The objective was to stifle concerns and prevent inquiry among the dissenting members or any action by members to rectify, modify, amend, or end the project.

Although the operating agreement permitted amendments upon an affirmative vote by a super majority, and 80 % approved these provisions, the method of approval did not permit all voices to be heard, or for reasonable discussion, and it is noted that among the so-called super majority, 20% were votes by members who are now claimants here, and among the other approval voters, over 25% are respondents or close relatives of respondents. If those 25% are not independent but subject to control of the respondent s, there is not a supermajority in favor of the amendments.

The specific provisions precluding right of examination of the books and records, imposing severe penalties for violations by way of monetary and involuntary buy-outs, bear no reasonable relationship to any actual harm and on the face of it are purely punitive.

The involuntary buy-out for filing a law suit is at 90% of the fair market value at the time of the violation. Of course, respondents have already received the full benefit of the investment dollars of claimants as well as of borrowed money.

As discussed above, the so called liquidated damages bear no resemblance to estimated actual damages and are unreasonable. By the terms of the amendments, if a member files a law suit in superior court, the company is entitled to a liquidated damage amount of $50,000 against each member who files the law suit. In this case respondents seek $250,000 against the 5 claimants. Moving to compel arbitration against 5 united plaintiffs is on its face not 5 times more expensive or time consuming than a motion to compel on the same grounds against one plaintiff.

Imposing a $50,000 penalty against a member who is trying to ascertain the propriety of conduct of the operating company can only be a penalty to deter inquiry. Particularly here where all the testimony was that no tangible damage was suffered by anything done by any member.

Causation: Assuming that all of the conduct complained of in fact violated the Operating Agreement, has the LLC suffered any damages as a consequence? The failure to obtain approval for the proposed three story office building was caused by the failure to propose a building that met city zoning standards or acceptable provisions for waivers of some zoning provisions. There were two predominant causes that the evidence established as the cause for the rejection of the application to the city: city height limitations and the inability to satisfy city parking requirements, which could not be satisfied by a three-story building, and the refusal to propose a lesser building which could have been approved within a short period of time after formation of the company.

Other claimed violations include the engagement by claimants of Ronald Packard as consultant, and then attorney of record in these proceedings in the fall of 2012. Mr. Packard is and was an avowed opponent of the three story project who not coincidentally was an adjacent property owner whose property would be affected by the 40 Main Street building as proposed. Claimants by 2012, more than 5 years after the formation of the LLC and after the failure to get approval of respondents for the three story concept, were questioning the propriety of the management of the company and its books and records, and were considering what alternative might be available to them. A member of an LLC is not barred from seeking remedies if the member is reasonable justified in believing there is mismanagement or fraud by the managers or officers of the company. This was the period of time when they had also learned that a usable 20

car parking garage was not feasible. Respondent argues that this conduct violates the Section 5.1.1.1 of the Amended Operation Agreement.

Members who spoke with bank officers had an absolute right to talk with them because of the risks to their investment dollars if the bank foreclosed or defaulted the loans. One way of protecting one's interest is by acquiring a loan before it is defaulted. While the inquiry concerning acquiring the banks' loan could have nefarious intent, it may also be a proper protective effort which would gave the member more ability to protect his interest in the company.

Speaking with council members even in a disparaging way about the building is alleged to have occurred in 2016. It is noted that in 2016 the case was being fully litigated in arbitration and respondents had already advised claimants that they were no longer members of the company and were subject to the involuntary termination of their membership.

The wisdom of engaging an avowed opponent as counsel who has an interest in the case once litigation is contemplated or commenced is questionable but such counsel was not called as a witness. Such counsel, it should also be noted, was a former mayor of the city and sat on the city council as a member during a portion of the time the project was pending. He had a strong bias against the proposed building but it was a bias he was entitled to have as an adjacent property owner. Claimants had a right to defend themselves and their investment in the project. Mr. Packard had early on expressed objection to the building as proposed in discussions with Theodore Sorensen and expressed his opposition to the height and concerns about the parking problems. The evidence does not establish that hiring Mr. Packard as an attorney had anything to do with the disapproval of the building application. Nor did it have any effect on Mr. Packard's already formed objection to the building.

While the evidence established that Mr. Packard as a councilman and an adjacent property owner recused himself from any part of the city's processes in considering the 40 Main Street plan and there was no physical or other evidence of improper conduct by him at any time, the fact that the other council members were undoubtedly aware of his opposition, might have

influenced the council planning department, planning commission, and the council in not approving the three story plan. Whether that is true or not, there was no evidence presented to establish any impropriety by Mr. Packard as a public official although that has no real bearing on the outcome of this arbitration.

The ordinance affecting the height limits might have made it more difficult to justify the three story version of the building, but by its terms when introduced by Mr. Packard expressly did not include his or the property at 40 Main Street, noting that with or without the amended ordinance, the 40 Main Street building was nonconforming as to both height and parking. There also is no evidence that claimants had anything to do with the enactment of the ordinance.

Much of the complained of activity of claimants regarding the bank, city council members, and the like, occurred well after the 2012 rejection of the plan by the city and continued even during the arbitration proceedings at a time when the claimants had asserted causes of action for fraud and misrepresentation and were questioning the validity of the amendments to the operating agreement.

Respondent who are seeking damages against the claimant include the Sorensens. The Sorensen's have no standing in their own names to sue the members for damages as pleaded. If the claimants were liable for liquidated or other damages, their liability would be to the company and not to its managers or employees in their own right.

Confidential Information and Privacy rights of the LLC. Certain information that was private information and writings of the company was used by claimants in discussions with third parties who had some relationship to the project and who might have some relationship to the project in the future. None of those contacts had any economic or other known impact on the company or the project. Because the liquidated damages provisions are not enforceable, either because of their method of approval, or because they do not constitute proper liquidated damages and are a penalty, or because they are subject to the rescission based on misrepresentation and fraud at the inception, and because no actual damages are proved, even assuming that such disclosures were a violation by claimants, respondents are not entitled to an award for any such violation. The same is true of any other alleged violations by the claimants of the operating agreement.

LACHES AND ESTOPPEL

There is no factual evidence establishing any of the affirmative defenses of laches, estoppel, or unclean hands, that would preclude the action by claimants.

CONCLUSION

Claimants are entitled to an Award voiding their acquisition of a membership in the 40 Main Street Offices, LLC based upon the negligent representations made by the Sorensens, setting aside and rescinding the 40 Main Street Development Agreement as to them, , and a return of their investment with interest at the legal rate from May of 2007. Claimants are entitled to an Award of attorneys' fees and costs. Costs do not include the arbitration costs.

Claimants were wrong in filing the action in view of the agreement to arbitrate disputes notwithstanding that the agreement is set aside as to claimants . As the arbitrator is reserving jurisdiction to determine attorneys' fees to be awarded to claimants, it also finds that respondents are entitled to actual attorneys' fees and costs incurred in enforcing the arbitration provision.

Claimants seek an award that the entire Operating Agreement be set aside for fraud and misrepresentation and mismanagement. If all of the members had joined in the law suit, that relief could be available along with the appointment by the Court of a receiver to take charge of the company. However, 60% of the members have not joined in this action and the company remains a viable company for all purposes. Claimants however are entitled to an award finding that they are may rescind the acquisition of their memberships in the company and, by way of damages, a return of their investment with interest at the legal rate from May of 2007.

This Award is an Interim Final Award. The arbitrator retains jurisdiction to issue a Final Award, computing interest, fees, and costs and any other ancillary or collateral relief justified by the findings herein.

IT IS SO ORDERED.

Date: February 8, 2017

Hon. Jack Komar (Ret.)
Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Michelle Penuliar, not a party to the within action, hereby declare that on February 10, 2017, I served the attached Final Interim Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Jose, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on February 10, 2017.

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JAMS ARBITRATION CASE REFERENCE NO. 1110017521

Old Trace Partners, L.P.,
Claimant(s),

and

Sorensen, Theodore, et al.,
Respondent(s).

ORDER ON MOTION TO AMEND FINAL INTERIM AWARD, COMPUTATION OF INTEREST ON AWARD, AND AWARD OF ATTORNEYS' FEES AND COSTS

PRELIMINARY

An Interim Final Award was issued in this matter on February 8, 2017. The Respondents subsequently filed a motion requesting that the court amend the award on the grounds that Interim Award erroneously awarded interest from the dates of investments (May 2007) rather than from the date the rescission demand (or its equivalent) was made by way of the filing of a complaint in June 2014 (California Civil Code Section 1691).

On February 8, 2017, the motion to amend was denied without prejudice and a briefing schedule was issued for hearing on that motion as well as issues related to interest computations, costs and attorneys' fees.

The matter came on for hearing on April 12, 2017 at 9:00 a.m. Counsel appeared in person: Julienne Nucum, Esquire and Preston Wong, Esquire, for Claimants and William Milks, Esquire and Kathryn Barrett, Esquire, for Respondents.

The matters having been fully briefed by both sides, and oral argument having been made, it is ordered as follows:

1. The motion to amend is denied. There is no statutory basis for amending the award and the award is correct on the merits. Although the arbitrator expressed some concern about the difference between the legal rate of interest and the market rates, the arbitrator is satisfied that using the legal rate of interest, even if it were not

EXH. "B"

compelled, would make the claimants whole as the law requires in a rescission/damage case. But, the interest award of the legal rate from the date of the damages is compelled by both the law and, as importantly, the 40 Main Street, LLC, operating agreement, Paragraph 14.20.

2. Respondents motion to strike the supplemental briefing which was due on April 19, 2017 at 12:00 p.m. based on alleged late filing is denied. The time stamp on the e-mail filed papers show it was timely received by JAMS at 11:51. A.M. on April 19th. The other objections, although to some extent meritorious are to evidence and arguments that have no impact on the decision here and will not be addressed individually.

3. In reviewing the law concerning the finality of arbitration awards, it is clear that the primary basis upon which a final award may be modified or amended is statutory. While Code of Civil Procedure Section 1284 provides the basis for correcting an award, as opposed to amending it on the merits, referencing Code of Civil Procedure sections 1286.2 and 1286.4, the principal basis for such a correction is that there is a miscalculation in computing numbers, **or a** mistake in describing a party, thing, or property referred to in the award. See also JAMS RULE 24(j).

Aside from such miscalculations or misdirection, additional specified grounds include an imperfection in the form of the award affecting the merits of the controversy, and if an arbitrator exceeds his powers. Also, fraud and the like will always permit an amendment or setting aside of an award on both statutory and common law principles. See also, Emerald Aero LLC v. Kaplan (2017), 4th District Court of Appeal-D070579, where there was no proper notice of claims and the award exceeded written notice of claims to respondent, with the court decision based, in effect, on lack of procedural due process and breach of the arbitration agreement.

In reviewing the notice of claims and the intensive briefing by both parties, both before and after the Interim Final Award, the arbitrator is satisfied that the parties were well aware of the claims and defenses thereto, and that all contractual and due process requirements have been satisfied and that there are no other errors within the statutory structure that would justify the amendment of the award of the interest as

damages for the breaches and the misrepresentations as found in the Interim Final Award.

The award of interest as damages is based on the fact that the damage to claimants occurred upon payment to respondents of their investment in the LLC which provides the grounds for rescission as well as the right to recover damages. Civil Code Section 1692. See Runyan v. Pac. Air Industries (1970) 2 Cal. 304. See also Civil Code Section 3287(a). The damages here are also founded in tort in view of the factual misrepresentations upon which the rescission is based. See Code of Civil Procedure Sections 3288 and 3291. This rule is in contradistinction to the damage rule in rescission cases governed solely by Civil Code 3287(b). But here the wrongdoing of respondents is in the negligent misrepresentations (tort) and breaches of promises. Claimants were clearly damaged by such conduct and the clear amount of damages was the amount of their investment.

Perhaps, most importantly, Paragraph 14.20 of the operating agreement specifically provides **" that any judgment or order entered . . . shall contain a specific provision(s) (sic) providing for the recovery of . . . . prejudgment interest from the date of the breach at the maximum rate of interest allowed by law."** The Interim Final Award did in fact specify an interest rate on the damages at the "legal rate". The legal rate by definition is 10% simple interest per annum. The California Constitution sets the legal rate at 7% but the legislature is authorized to set interest rates on judgments up to 10%. The "legal rate" is 10%. That in fact is the maximum interest rate allowed by law in the circumstances of this case.

See also Al-Husry v. Nilson Farms Mini-Market (1984) 25 Cal. App. 4th 641, finding that an award of 5% interest on a return of a deposit should have been 10%. Here, also, the claimants have been damaged from the moment they made their investments and are entitled to damages from the date of the investment. The various statutory provisions do provide for the claimants to be made whole.

Civil Code Section 3281 provides for recovery of damages for detriment suffered by the act of another, and Section 3287 provides that if the damages are a sum certain, or such that can be made certain, at the time the damage is sustained, the injured

party is entitled to interest from that date. Civil Code Section 3289(b) provides for interest at 10%.

The evidence is that the return on money by way of interest on bank deposits or loans over the years since 2010 has not varied by much. Counsel for both parties acknowledge that banks pay interest on accounts at generally less that 1% per annum. Evidence submitted by counsel for respondents contends that interest rates should be at .81% per annum. To use that rate of interest on damages is contrary to both the law and the specific language of the agreement between the parties.

Therefore, in considering what interest rate to apply as damages, the arbitrator selected the statutory rate and while recognizing that market interest rates were low for the last ten years, all expectations by both the promoters (respondents) and the investors (claimants) were that there would be a very substantial return on the investments. And, while no specific rate of interest was promised, the testimony at arbitration was that Respondents in calculating their management fees used a much higher rate of return on the investment. A 10% return was not unlikely. However, notwithstanding this discussion, statutory law and the operating agreement would be controlling in any event. Discussions and objections as to what the expectations of the investors may have been are not relevant or determinative as to the amount of interest to which the prevailing party must receive for breach and misrepresentations.

4. COSTS

Paragraph 14.20 of the operating agreement provides for the recovery by the prevailing party of "all reasonable fees, costs and expenses . . . including . . . reasonable attorneys' fees and expenses." "Costs" are not otherwise defined and are therefore found to be costs as defined and limited in Code of Civil Procedure Section 1033.5

Expert witness fess and transcript costs as well as court reporter fees incurred during the arbitration hearing itself are not recoverable unless ordered by the court (or arbitrator) or otherwise agreed to be the parties in the contractual provisions creating the arbitration. No such order was requested or made by the arbitrator in this matter.

A) All attorneys' fees and costs which are reimbursable to claimants, however incurred in the attempted recovery of the damage claims here, are recoverable and will be attributed to the claims generally and will not be apportioned to particular facets of any claim. It is noted that the litigation involved multiple theories of recovery and defenses by both claimants and respondents and the evidence and efforts by all parties were not separable and apportionable to any particular cause of action or theory of recovery.

The fees and costs to be recovered here may only include costs and fees which claimants incurred in the litigation. To the extent that an attorney did not bill for time, *and* no obligation was incurred for such work by claimants, such fees or costs are not a recoverable fee. The discussion of "pro bono public work" is misplaced. This was not a public interest case and the claimants were clearly not indigent. This was a claim for fraud, misrepresentation, contract, etc., and the prevailing party is entitled to reasonable fees and costs incurred; such must be fees and costs incurred for which claimants are obligated. The *right* to an award of fees and costs belongs to claimants; not their counsel, though to the extent that the party is obligated to counsel, or to the extent that a statutory right to attorneys' fees accrues, counsel may sue for and collect the same.

B) The fees claimed and costs incurred by claimants appear to be reasonable and necessary other than as indicated above and set forth hereinafter.

1. Claimants' attorneys' fees shall be reduced by the sum of $13,550.50 which is an amount of billed by claimants in connection with the opposition to motion to compel arbitration. While counsel claims that only $8,157.50 should be deduced, the law suit should never have been filed and examining the billings it is not clear that any amount of time early on was not related to the court action and the need to compel arbitration up to the time of the improvident appeal by respondents.
2. Preston Wong's unbilled time of 256.9 hours. Counsel orally argued at the hearing on the motion that it was understood by their agreement with claimants that claimants would be obligated to pay such sums as are received by claimants for attorneys' fees even though not billed in

the course of the litigation. No evidence or sworn declaration has been provided to establish such a basis for awarding unbilled fees and the cover letter to the written fee agreement provides specifically for billings for attorneys' fees on a very regular basis by the 15th day of each month.

The discussion of lode star computations and "pro bono publico" work is inapposite to the case and issues before the arbitrator. This was not a pro bono case and it was not a "public interest" case as that term is used in Code of Civil Procedure Section 1021.6. Each of the cases cited by counsel for claimants involves either a public interest law suit or a statutory basis for recovery of fees by an attorney who has taken on representation pro bono public. None of those circumstances appear here.

The basis for recovery of attorneys' fee pursuant to the agreement of the parties is to reimburse a prevailing party for its reasonable and necessary fees incurred in connection with the litigation by the very terms of the operating agreement of the LLC. The actual fees incurred must, of course, be reasonable and necessary to the representation. The use of lode star computations in this type of circumstance is merely to determine actual time reasonably spent by counsel for which the client may be liable or entitled to recover attorney fees incurred.

The application usually is to public interest litigation which the proponent has recovered for the public interest and seeks to have his attorney compensated. Under those circumstances, the beginning discussion always relates to the lode star computation and a determination whether that sum is reasonable or whether it should be reduced or enhanced.

Here, the right to recover fees is the right to recover fees reasonably incurred by the named claimants for which they have either paid or are obligated to pay attorneys' fees as expressed in the Operating Agreement. The work done by Mr. Wong, notwithstanding his

competent and professional representation is not a fee that may be recovered from Respondents unless it was an obligation of claimants. The only previous billings of claimants for Mr. Wong's work appears to be 30.3 hours that were billed to claimants and which we're paid pursuant to the fee agreement and which were reasonable and necessary at $250.00 hourly for a total of $8325. Claimants are entitled to reimbursement of that amount as prevailing parties. The balance of the fees claimed for Mr. Wong's unbilled work are not supported by the evidence submitted and the arbitrator will reserve jurisdiction to consider further evidence after the order and award herein.

3. Ronald Packard attorneys' fees as claimed are both reasonable and necessary and claimants are entitled to be reimbursed in the claimed amount of $136,344 and $200 for costs. The fees claimed were reasonable and necessary and were the obligation of claimants and claimants as prevailing parties are entitled to recover the same.
4. Julienne Nucum attorney's fees in the sum of $172,510.00 are reasonable and necessary along with costs of $11,400.00 and are obligations of claimants for which they are entitled to reimbursement as prevailing parties.
5. Expert witness fees, court transcript fees, and court reporter fees for the arbitration are not recoverable under Code of Civil Procedure 1033.5 and the terms of the agreement between the parties.. Deposition fees and costs are recoverable in the undisputed amount of $29,483,71. Also recoverable are paralegal fees incurred in the sum of $3150.00 for the services of Maria Miranda which are found to be reasonable and necessary.
6. Respondents must reimburse Mr. Jeffrey Luney the sum of $825 which they neglected to pay for his deposition time.
7. The fees claimed by respondents must be limited to the fees and costs claimed incurred by them in seeking to compel arbitration. The

fees and costs related to the appellate process after the court ordered the matter to arbitration were not justified as part of the motion to compel arbitration. That was an attempt to seek further fees from the court in advance of the arbitration itself. Total fees to Respondent were for work performed totaling $43,001.25 and parking costs of $6.25 and court filing fees.

CONCLUSION

Claimants are entitled to the following award:

1. Damages: $1,136,000.00 principal plus interest at the legal rate (10%) from May 10, 2007 computed through April 11, 2017 as $1,184,483.44. plus daily interest of $311.23 per date after April 11, 2017 until the date of the final award.
2. Attorneys' fees for work by Julienne Nucum: $172,510.00 plus $5330.00 post interim award.
3. Attorneys' fees for work by Preston Wong: $8,325.00 plus $ 1050.00. The claimed balance of $66,475.00 is reserved subject to the production of evidence establishing that such fees are an obligation of claimants except $1,050.00 post interim award.
4. Attorneys' fees for work performed by Ronald Packard: $136,360.00 plus $4,288.00 post Interim Award and $200.00 cost.
5. Costs as follows: Deposition Reporters - $20,483.71.00;
6. Costs and expenses $11,400.00

This Order is final 30 days from the date below unless any party establishes during that time that the award overlooks an issue and subject to the reserved issue of Preston Wong's fees beyond those billed to the claimants which may be raised by any party during that said 30 day period. Note: any evidence provided in support of the fee claim must be under oath by declaration under penalty of perjury and subject to cross examination. At the expiration of thirty days, the arbitrator will issue the Final Award which will encompass both the terms of the Order here as well as the provisions of the Final Interim Award.

IT IS SO ORDERED.

Date: APRIL 27, 2017

Hon. Jack Komar (Ret.)

SERVICE LIST

Case Name: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference #: 1110017521
Panelist: Komar, Jack ,

Hear Type: Arbitration
Case Type: Business/Commercial

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PROOF OF SERVICE BY E-Mail

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Josephine Care, not a party to the within action, hereby declare that on May 03, 2017, I served the attached Order on Motion to Amend Final Interim Award, Computation of Interest on Award, and Award of Attorneys' Fees and Costs on the parties in the within action by electronic mail at San Jose, CALIFORNIA, addressed as follows:

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Parties Represented:
Old Trace Partners, L.P.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on May 03, 2017.

Josephine Care
JAMS
jcare@jamsadr.com

NOTICE TO ALL PARTIES June 20, 2017

RE: **Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.**
Reference #: 1110017521

Dear Counsel,

Respondent's request to disqualify the arbitrator in this matter was referred to the National Arbitration Committee for review and decision. Pursuant to JAMS Comprehensive Arbitration Rule 15, we have reviewed the submissions from the parties and determined that the disqualification should be denied.

Judge Komar (Ret.) properly issued his initial disclosures at the time of his appointment in 2015. In January, 2016, Judge Komar issued a supplemental disclosure regarding his 30 year old former representation of Mr. Corrigan's son. This supplemental disclosure was timely, sufficiently detailed and properly notified the parties of his recollection of the representation. On a call following this supplemental disclosure, the arbitrator confirmed counsel received the disclosure. Having received no objection to this supplemental disclosure, nor any further inquiry related to the disclosure (other than possibly the name of Mr. Corrigan's son), the arbitration continued. The matter was heard over ten days in October and November of 2016. Thereafter the arbitrator issued an interim award and entertained motions with respect to the award. An additional order on the interim award was issued in May 2017. Respondents moved for disqualification in June 2017.

Respondent's basis for disqualification in this matter relates to a trivial, unrelated and sufficiently old matter so as to subject the parties to significant prejudice if allowed to be the basis to remove the arbitrator at this late date and following a decision on the merits. JAMS has determined that the arbitrator's disclosure was sufficient to alert the parties to the past representation. Respondent did not object and did not inquire further. As such, Respondent's objection raised over 18 months later is untimely and is deemed waived (See, JAMS Comprehensive Arbitration Rule 27(b).).

Finally, no evidence of bias has been presented to justify removal of the arbitrator at this late stage of the proceedings, especially in light of the significant prejudice to the parties of removing an arbitrator following the hearing and decision.

Taking into account the materiality of the facts and the significant prejudice to the Parties, the disqualification is hereby denied.

Sincerely,

Sheri Eisner
General Counsel
Co-Chair, National Arbitration Committee

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EXH "C"

SERVICE LIST

Case Name: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Hear Type: Arbitration
Reference #: 1110017521
Case Type: Business/Commercial
Panelist: Komar, Jack ,

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PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Josephine Care, not a party to the within action, hereby declare that on June 20, 2017, I served the attached Letter Dated 6/20/17 from Sheri Eisner, Esq. on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Jose, CALIFORNIA, addressed as follows:

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Parties Represented:
Old Trace Partners, L.P.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on June 20, 2017.

Josephine Care
jcare@jamsadr.com

NOTICE TO ALL PARTIES July 10, 2017

RE: **Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.**
Reference #: 1110017521

Dear Counsel,

We have reviewed the parties' various correspondence regarding my June 20th letter. The decision of JAMS as reflected in that letter is final and will not be revisited. (See, Comprehensive Rule 15.) The matter will proceed without further delay. Any further issues with respect to this matter should be directed to the Court upon confirmation or vacatur proceedings.

Sincerely,
Sheri Eisner
Sheri Eisner
General Counsel
Co-Chair, National Arbitration Committee

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EXH. "N"

SERVICE LIST

Case Name: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Hear Type: Arbitration
Reference #: 1110017521
Case Type: Business/Commercial
Panelist: Komar, Jack ,

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PROOF OF SERVICE BY E-Mail

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Josephine Care, not a party to the within action, hereby declare that on July 10, 2017, I served the attached Letter dated 7/10/17 from Sheri Eisner, Esq. on the parties in the within action by electronic mail at San Jose, CALIFORNIA, addressed as follows:

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Parties Represented:
Old Trace Partners, L.P.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on July 10, 2017.

Josephine Care
JAMS
jcare@jamsadr.com

From: Josephine Care <jcare@jamsadr.com>
Date: January 7, 2016 at 9:48:30 AM PST
To: "julienne@mirandanucum.com" <julienne@mirandanucum.com>, "bmilks@sbcglobal.net" <bmilks@sbcglobal.net>
Cc: Jack Komar <jkomar@jamsadr.com>
Subject: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al. - REF# 1110017521

Dear Counsel,
This supplemental disclosure is being sent on behalf of Judge Komar.

Thank you.

In reviewing the Motion and the opposition papers on January 6, 2015, it came to my attention that the general partner of Claimant, Old Trace Partners, is a gentleman named Wilfred Corrigan. Over 30 years ago, in the early 1980's, before my appointment as a Judge, I was engaged to represent the son of a Wilfred Corrigan in juvenile traffic court in San Mateo County in connection with a traffic ticket received by the son. The matter was resolved without trial after one appearance. I did not represent Mr. Corrigan but I recall one meeting with both parents. I did not obtain any confidential information from them nor have an attorney client relationship with them. I do not know for certain, but I will assume that Wilfred Corrigan is the same Corrigan as above.

The Old Trace case is not connected in any way with that prior incident . I have no bias or prejudice in any way in this case, nor any predisposition as to how this case should be decided. Nor would the fact of the prior situation have any impact on how this case is decided.

I would also note that one of the attorneys who was a draftsman, allegedly, in the underlying documents is Harry Price, a lawyer who appeared in my court several times in disputed matters during the 24 plus years I sat as a Superior Court Judge. Nothing that occurred there would have any impact on any decision I might make in this case.

I make the above statement in the interests of a full disclosure.

Hon. Jack Komar (Ret.)

Josephine Care
Senior Case Manager

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EXH. "E"

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Lindsay Andersen, not a party to the within action, hereby declare that on July 25, 2017, I served the attached Final Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Jose, CALIFORNIA, addressed as follows:

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Parties Represented:
Old Trace Partners, L.P.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on July 25, 2017.

Lindsay Andersen
landersen@jamsadr.com

Jon Maginot

From: Ron Packard
Sent: Monday, April 08, 2019 1:30 PM
To: City Council; Chris Jordan; Jon Maginot; christopher.diaz@bbklaw.com; Jon Biggs
Subject: RE: 40 Main Street Appeal (Email #2, with Final Award)
Attachments: 2017-09-18 Packard Decl. in support of anti-SLAPP (pp. 1-100).pdf

Email #3, with Packard Decl. (part 1)

From: Ron Packard
Sent: April 8, 2019 1:11 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal (Email #2, with Final Award)

Email #2, with Final Award

From: Ron Packard
Sent: April 8, 2019 1:08 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal

Dear Council members and staff,

Enclosed please find my letter and various backup information for the hearing tomorrow night. I respectfully request that the letter and the attachments be included in the administrative record for the hearing. Two of the attachments will be send in batches due to their size.

Thanks, Ron Packard

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Attorney for Claimant Old Trace Partners, L.P.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

OLD TRACE PARTNERS, L.P., et al.,
Plaintiffs,
v.
SORENSEN, THEODORE G., et al.,
Defendants/Respondents.

THEORORE G. SORENSEN, GERALD J. SORENSEN, GUNN MANAGMENET GROUP, INC., and 40 MAIN STREET OFFICES, LLC.
Plaintiffs,
v.
RONALD D. PACKARD, and DOES 1 - 25
Defendants.

Case No. 114CV266849

Unlimited

DECLARATION OF RONALD D. PACKARD IN SUPPORT OF ANTI-SLAPP MOTION

Hearing Date: October 21, 2017
Time: 9:00 AM
Department: 8
Before: Honorable Maureen A. Folan

I, Ronald D. Packard, do hereby declare as follows:

1. I am one of the attorneys representing Plaintiff Old Trace Partners, L.P. ("Old Trace") in the original action, and am the defendant in this lawsuit filed against me. I make the statements herein based on my personal knowledge, and I could and would competently testify thereto if called as a witness.

2. Attached hereto as Exhibit 1 is a copy of the Final Award issued by the arbitrator, retired Judge Jack Komar, on July 21, 2017. Attached to is it the Final Interim Award as Exhibit A,

the Order on Motion to Amend Final Interim Award as Exhibit B, and the two Decisions by the JAMS National Arbitration Committee ruling on the request to disqualify Judge Komar as the arbitrator.

3. My two brothers and I purchased in 1999, through Four Main Street Associates, LP, the office building at 4 Main Street, Los Altos, which has a basement level, and two stories above ground. In 2007, Ted and Jerry Sorensens, via their various companies, (hereinafter collectively the "Sorensens") purchased the property at 40 Main Street, which is next door to ours. Plaintiff 40 Main Street Offices, LLC ("Company"), owns the real property at 40 Main Street, Los Altos. The Company is managed exclusively by Plaintiff Gunn Management, a corporation formed for that purpose and owned exclusively by Ted and Jerry Sorensen. The governing document for the Company was the Operating Agreement of 40 Main Street Offices, LLC. Later, the Sorensens amended such agreement with the Amended and Restated Operating Agreement of 40 Main Street Offices, LLC, a true and correct copy of which is attached hereto as Exhibit 2. Attached hereto as Exhibit 3 is an example of the Subscription Agreement, also signed by the investors.

4. Sometime after the purchase of their property in 2007, I was invited and met with Ted Sorensen at his office at 40 Main Street. He stated that he wanted my support for his development plans, which he showed me. His proposal was for a large non-conforming three-story office building, without providing the required parking. During the meeting, I politely asked him if the proposal could be two stories so that it conforms to the zoning and is more in harmony with the area. He raised his voice insisting that it had to be three stories. I was so surprised by his aggressive and adamant response that I calmly said, "Well then, maybe I should push for a one-story building." His response came as a complete surprise to me. He all but yelled to me, saying "Are you threatening me?" No one had ever said that to me, and I am not used to being yelling at. Somewhat startled and trying to calm the waters, I quickly and calmly said "No," and then explained that they really should go for a conforming two-story structure consistent with the zoning and neighborhood. We continued the review of the plans for some time thereafter without any further outburst by him or comments by either of us regarding the height.

5. On or about January 21, 2011, the Company filed with the City of Los Altos a development application for that property. Their application was for the non-conforming three-story building that went very slowly through the approval process, due to their refusal to conform to the zoning requirements. During that time, my brother Von Packard would appear at various city hearings and voice his opposition. The Sorensens made various accusations of wrongdoing against me, and seemed to insist that all the owners of 4 Main Street had to remain quiet while they pursued their demands with the city for a nonconforming structure. My understanding at that time and still is that the courts and the California Attorney General have stated that an elected official does not give up his Constitutional rights of free speech just because he agrees to public service. I understand that there are specific laws and rules that prohibit a council member from speaking on certain matters while sitting on the dais along with other similar rules with various expectations, but I complied with all of them. If there were any questions, I consulted with the city attorney and conducted myself in complete conformance with her recommendations.

6. During their application process, it appeared to my brother Von Packard and me that the relative heights of the two buildings were inaccurately conveyed in the architectural rendering prepared by the Sorensens' architect. As a result, we engaged an outside service to take photographs and then superimpose their proposed buildings based on the actual heights as indicated on their application plans. It was only during discovery in the arbitration that I learned that when the architect was doing these sketches, Ted Sorensen instructed them that "we want to make Packard's building look like it is taller than it actually is – not shorter. I think that any rendering will be looked at as gospel when it comes to comparing the building heights." Exhibit 4. Thereafter, the Sorensens have consistently used that misleading rendering to compare the building heights, and to this day, have a large billboard in front of their property with that rendering.

7. During my entire term on the Los Altos city council, which ended in December 2012, not once did I speak to any council member, commissioner, city staff, city attorney or city manager about the merits or demerits of the Sorensens' proposed project at 40 Main. The Sorensens' application came before the city council on June 12, 2012, with the result of unanimous

denial. As indicated in the video and the minutes of that meeting (both of which are available on the city's website), prior to any discussion and voting, I recused myself due to a conflict of interest, stepped down from the dais and left the room. During the public comment, there were some who made accusations that I had spoken to and attempted to influence the vote of the council members or staff, which I assumed were accusations promoted and spread by the Sorensens. After the public comment, several council members stated that they had never had any communications with me regarding the Sorensens' application, and, to the contrary, I was known to jump up and leave the room if the topic was raised. The Sorensens' application was unanimously disapproved by all the remaining council members on the grounds that it was in violation of various zoning laws.

8. Since the denial of their application, the Sorensens have engaged in an intense demonization campaign against me, claiming that I violated conflicts of interest laws and engaged in various wrongdoing, all because I was on the Los Altos city council and did not support their proposed 3-story development that would have violated both height and parking requirements. Their attacks actual intensified after the expiration of my nine-year term of the city council in December 2012.

9. As my term was going to expire and I was termed-out in December 2012, Jerry Sorensen ran for election to the Los Altos city council, and spoke at many forums with an emphasis on his frustrations in getting approval for his 40 Main Street application. During the election, David Casas, a former mayor of Los Altos, received from one of the Sorensens' investor an email sent by Ted Sorensen stating that his brother, Jerry, was running for office in order "to counteract the political advantage that Mr. Packard used . . .." This was covered in the local press. Attached hereto as Exhibit 5 is a copy of the email sent by Mr. Casas to the various local press enclosing Ted Sorensen's email. When I twice successfully ran for election to the Los Altos city council, I did not seek a political advantage for my office building at 4 Main Street (it was not even an issue), and I consider their stated purpose to have been unethical and distasteful. There were six candidates for three seats, and Jerry Sorensen lost, coming in fifth place.

10. In late 2014, Ted Sorensen pulled papers to run for a seat on the Los Altos city

council, which was mentioned in the local press, but he later decided not to run.

11. Two years later in September 2014, Ted Sorensen filed a lengthy and rambling complaint against me with the California Fair Political Practices Commission (FPPC), with no supporting documents (other than supposedly one photograph that I never received). It was verified under penalty of perjury by him. He caused the filing to be covered in the local press and made to look as though I had been a dishonest lawmaker, with quotes from him. A copy of his first complaint is attached hereto as Exhibit 6.

12. After I received from the FPPA a copy of his first complaint with a request to respond, I provided to the FPPA a detailed thirteen-page explanation and thirty exhibits (over 200 pages) of meeting agendas and minutes, a copy of which (less the attachments) is attached hereto as Exhibit 7. Upon receipt of my explanation, the FPPC dropped the complaint and did not pursue it.

13. Ted Sorensen then filed a second verified complaint in October 2014 with the FPPC, this time with at least thirty claims of violations, again consisting of mere allegations, conclusions and without any supporting exhibits. But they were sure to have similar press coverage and quotes to make me look like I had been an unethical politician. A copy of that complaint is attached hereto as Exhibit 8. The FPPC did not even send to me a copy of the second complaint with a request to respond, but, apparently *sua sponte*, dropped the matter.

14. In my opinion, the *modus operandi* of the Sorensens has been to demonize anyone who does not support their proposed non-conforming project. They so badgered the new City Manager, Marcia Somers, insisting that that they had been treated unfairly, that she eventually submitted fifteen of their demands to a respected government/land use attorney with SheppardMullin in San Francisco, for his peer review opinion. On June 5, 2014, he issued his written opinion captioned "Peer Review of 40 Main Street Project," a copy of which is attached hereto as Exhibit 9. In that opinion, he systematically dismantled almost all of their positions, and did not support one. For instance, beginning with Issue 1, the summary states in part as follows: "The Sorensens state that there is confusion about whether the 2012 zoning amendments apply to the CR/OAD zoning district. (Jan. 20 Memorandum; Feb. 3 Letter.) In our view, as detailed below,

there is no ambiguity."

15. I emailed a copy of this 2014 SheppardMullin peer review, a public record, to the various investors of the Sorensens. Thereafter, several of their investors joined in the lawsuit/arbitrations against the Sorensens. I had also sent a cc to the Sorensens, who have since vigorously argued before the arbitrator, Judge Komar (retired), that my doing so was wrongful, but each time their demands and requests have been denied by him. One such order denying their request to remove me was the Order dated September 24, 2016, a copy of which is attached hereto as Exhibit 13.

16. On another front, the Sorensens had spoken many times with the Deputy District Attorney (DDA) of Santa Clara County, prodding him to file criminal charges against me, but he likewise refused to do so and dropped the matter. Exhibit 10 for the arbitration transcript for Jerry Sorensen's testimony. Attached here to as Exhibit 11 is a copy of the August 25, 2015, letter from the DDA stating that the matter will not be pursued "due to insufficient evidence."

17. In early 2015, the City of Los Altos formed a parking committee, and Ted Sorensen was originally selected to be a member. While that changed, he remained involved, and many subcommittees meeting were illegally held at the Sorensens' offices, due to lack of proper public notice. Jerry Sorensen videotape recorded almost all of the general committee meetings and posted them on the internet. Towards the end of 2015, I began to be suspicious that the parking committee was violating the Brown Act by failing to satisfy the open government laws. As a result, on February 9, 2016, the Friends of Los Altos (a non-profit organization in which I am involved) submitted a letter documenting our concerns to the City Council during their public meeting. In general, we requested that the City Council conduct an initial investigation, and if there appears to be Brown Act violations, then the parking committee be suspended until there can be a more thorough investigation by a third party. A copy of our letter (less the attachments) is attached hereto as Exhibit 12.

18. An initial investigation was conducted, and it was determined that there were likely Brown Act violations. As a result, the City Manager, Marci Somers, issued a suspension letter for

any further meetings of the parking committee, pending a more detailed review by an outside expert.

19. The city referred the matter again to the third-party attorney with SheppardMullin in San Francisco, who likewise determined that there were Brown Act violations. The City council adopted a formal Resolution No. 2016-10 regarding his findings and that there were Brown Act violations, a copy of which is attached hereto as Exhibit 14.

20. Towards the end of October 2012, I received an unsolicited telephone call from one or both of the Corrigans (of Old Trace Partners, L.P.). They wanted to engage my services as their attorney regarding 40 Main Street. Consistent with my normal practice, during that first telephone conversation there was a discussion and agreement that we create a prospective attorney client relationship between them and myself with regarding to their investment in 40 Main Street. Prior to that time, I had no attorney-client relationship with them. I was reluctant to become involved, but a year later did so since they, and the various investors, had lost trust in the Sorensens and did not want to be involved in the investment even if an application were approved by the city. At some time in late 2013, I had my initial contact with Dan Nero. During that initial contact, and consistent with my normal practice, we discussed and agreed that there would be a prospective attorney-client relationship between him and me. Prior to that time, I had no attorney-client relationship with him.

21. At those times, I was aware of professional Rule 3-310 regarding avoiding the representation of adverse interests unless there is an informed written consent. The rule allows a client to select an attorney that has a conflict of interests, but requires there to be both a written disclosure of the conflict of interests and a written waiver of those conflict of interests, i.e., an informed written consent.

22. When Julienne Nucum first began representing the Corrigans and Dan Nero, which I believe was in or around May 2014, I was engaged by her as her consultant and non-testifying expert. I have continued in that role to the present.

23. In or about September 2014, I was contacted by Alan Truscott, Steven Fick, and Paul Klein. During my initial contact with each of them, we agreed that there would be a

prospective attorney-client relationship. Prior to that time, I had no attorney-client relationship with any of them.

24. In or about July 2016, my role as a prospective attorney became an actual attorney for each of the plaintiffs/claimants in their litigation against the Company, yet I still was not an attorney of record, but continued as a non-testifying expert for Ms. Nucum.

25. On June 19, 2014, Old Trace filed an action in this Court, which was amended on September 25, 2014, to include 40% of the Sorensens' investors, which action was against all the Plaintiffs in the present lawsuit against me. This lawsuit was covered in the local press. The claims by those investors included (a) that the Project Plan contained various false material statements relied upon by them in making their investment decision, which were either knowingly false (intentional fraud), or made with reckless disregard to the truth (negligent misrepresentation, a form of fraud) (b) false promise, and (c) breach of fiduciary duties and breach of contract.

26. That matter was ordered to arbitration on November 17, 2014. In compliance, the suing investors promptly made their demand for arbitration with JAMS and paid their initial fee of $400, upon which JAMS sent a Commencement Letter. The suing investors desired to move forward promptly. Defendants, on the other hand, began a series of delay tactics. First, they filed a motion in this Court requesting a premature award of $250,000 in liquidated damages which was denied since jurisdiction had been transferred to the Arbitrator. Then, Defendants submitted the same motion for reconsideration. That request was also denied, and this Court's Order of April 27, 2015, included the following: "the Court expects the parties to commence the arbitration proceeding forthwith. Defendants were insistent that this dispute go to arbitration at the outset of this litigation, and there is not good reason to delay the arbitration." Defendants then filed an appeal that the Sixth District would eventually dismiss.

27. Once Judge Komar was selected as Arbitrator, the Sorensens' sent to JAMS a letter in 2015 stating that the arbitration was premature since there was a pending appeal, but they did not notify JAMS that the appeal was from a categorically non-appealable order. (See Exhibit 15 for a copy of their letter.) At the time, I considered these to be inappropriate delay tactics, but they did

result in a delay of the arbitration for almost a year.

28. On July 10, 2016, the Sorensens filed within the arbitration proceedings their Answer and Counterclaims, which included many of the claims now made against Packard in this current litigation. Attached hereto as Exhibit 16 is a copy of thereof. These Counterclaims were adjudicated during the 10-day arbitration hearing. The Sorensens lost all of these claims. The arbitrator allowed the Sorensens to take for a full day my deposition, which they did on October 17, 2016. The arbitrator later required me to provide a privilege log, accompanied by a declaration explaining any of the privileges claimed, which I did. A copy of the privilege log and declaration are attached hereto as Exhibits 32 and 33, respectively.

29. There was testimony during depositions and the hearing about the Operating Agreement and the Subscription Agreement.

30. On October 21, 2016, right before filing their renewed motion to disqualify me as an attorney for the investors in the arbitration, the Sorensens filed a complaint against me. A copy of the amended complaint is attached hereto as Exhibit 21 (limited to first five pages, in the interest of brevity). It was used as an exhibit in support of their renewed Motion to Disqualify that was filed on October 26, 2016. A copy of their renewed motion is attached hereto as Exhibit 18, mentioned on page 3 line 22-25, and attached as Exhibit 2. I considered the lawsuit at that time, and still do, as being a bogus lawsuit filed merely to support their motion to disqualify.

31. On October 31, 2016, the first day of the arbitration hearing, Judge Komar allowed the Sorensens' counsel to argue the renewed motion to disqualify, but he again denied their request. A copy of the relevant transcript is attached hereto as Exhibit 19. During the ten-day arbitration hearing, the Sorensens made various accusations that I had engaged in wrongdoing. One example is Jerry Sorensen's testimony that I had broken the law and the Brown Act by speaking to a Planning Commissioner. Attached hereto as Exhibit 20 is an excerpt from his testimony. Judge Komar ruled in his Final Award that "there was no physical or other evidence of improper conduct by him at any time" and the "there was no evidence presented to establish any impropriety by Mr. Packard as a public official . . .." (Final Award, p. 27 & 28.) I was particularly pleased with this, since the

arbitration was the only time the Sorensens were required to present actual evidence, not just their *ad hominems*, and Judge Komar was not persuaded.

32. After the arbitration hearing was completed, I informed the Sorensens' counsel that I would be filing an anti-SLAPP motion on their new lawsuit against me, and proposed alternate dates for the hearing. Instead of providing me dates, they amended the complaint on January 26, 2017, a copy of which is attached hereto as Exhibit 21. I was somewhat dumbfounded that they would include in the complaint the fact that I had brought to light the parking committee's violations of the Brown Act (¶ 87); and that I had spoken to the city council on their January 24, 2017, meeting, as did one of the Sorensens (¶ 91). This reaffirmed to me that the Sorensen's myopic-view is that only persons who support their project can speak on it, and if I speak against it, even at a city council meeting, they are entitled to sue me based in part on that.

33. Thereafter, I filed the anti-SLAPP motion based on their amended complaint, set the hearing for March 14, 2017 before Department 8. A copy of the motion is attached hereto as Exhibit 22. In support of the motion, Sean Corrigan filed a declaration in which he stated that after the ten days of arbitration, "I am all the more convinced that the Sorensens cannot be trusted, that they have repeatedly used Ron Packard as their scapegoat to cover up their own wrongdoing, and that I made the correct choice by selecting Mr. Packard to be involved in the arbitration." A true and correct copy of this declaration is attached hereto as Exhibit 23. Dan Nero, another investor and subsequent client, explained that he "had been told by the Sorensens that [I] was a dishonest and manipulative person. At present, I have now come to believe that their demonization of Ron Packard was not correct, but that the persons who are dishonest and manipulative are the Sorensens." A true and correct copy of this declaration is attached hereto as Exhibit 18.

34. In the anti-SLAPP motion I filed, I believed that I had made the required prima facie showing, and I had serious doubts that the Sorensens could make their required probability showing. Instead of making such a showing, the Sorensens dismissed their lawsuit on March 1, 2017. A copy of the Request for Dismissal is attached here to as Exhibit. 24.

35. For many years Ted and Jerry Sorensen have placed themselves in the public

spotlight promoting their project at 40 Main Street, Los Altos, and for general "revitalization" of the Los Altos downtown.

36. Attached hereto is a copy of an article from the Los Altos Town Crier, as widely read newspaper in Los Altos, dated August 5, 2009, regarding parking in downtown Los Altos, a copy of which is attached hereto as Exhibit 25. In the article, the Sorensens are quoted extensively, and considerable coverage for Ted Sorensen's co-authored report "The New Science of Parking," which he presented to the city's then downtown development committee. Part of the article is their promotion of parking meters for the Los Altos downtown, and I am correctly quoted as saying that I thought that was "a very bad idea."

37. Attached hereto is a copy of an article from the Los Altos Town Crier, dated August 17, 2010, regarding a presentation made by Jerry Sorensens entitled "Vibrant Downtown: The Heart and Soul of America's Communities," a copy of which is attached hereto as Exhibit 26. They made one or more personal presentations in public forums, which was covered in the local press. It also mentions that he is a member of a local group, Los Altos 2015. Both Ted and Jerry Sorensen are quoted in the newspaper article.

38. Attached hereto as Exhibit 27 is a truncated copy of a PowerPoint presentation prepared by Jerry Sorensen called "Vibrant Downtown, The Heart and Soul of America's Communities, Reaching the Boiling Point." (In the interest of brevity, only the first 5 pages are included.) He presented this, or a variation of it, to various public forums in Los Altos.

39. During the multi-year application process for the Sorensens' project at 40 Main Street, Los Altos, they have been frequently mentioned and quoted in the newspapers, both in the Los Altos Town Crier, and in the Palo Alto Daily Post. They have made presentations to public meetings before the Los Altos Chamber of Commerce, promoting their project. This has continued up to the present.

40. The complaints made by Ted Sorensens against me that he filed with the FPPC were both covered in the local press, which I understood were at their request.

41. Jerry Sorensen ran for a seat on the Los Altos City council in 2012, and there was

considerable public discussion and press regarding him and his candidacy.

42. As recently as this Summer, 2017, their proposal was before the Planning & Transportation Commission, and there were well over a dozen letters from the public opposing their plans. I obtained a copy of these from the city's official website for that agenda item, and are copied hereto as Exhibit 28. (In the interest of brevity, only the first 5 pages are included.)

43. On or about June 13, 2017, I posted an article on Nextdoor.com. It was of such public interest that there were some 70 public comments or replies. A copy of that post and replies (limited to first five pages, in the interest of brevity) are attached as Exhibit 29. On or about July 10, 2017, I posted another article on Nextdoor.com. It was of such public interest that there were some 71 public comments or replies. A copy of that post and replies (limited to first five pages, in the interest of brevity) are attached as Exhibit 30. This is a high public interest in any developments downtown, particularly any that are over three stories high.

44. I believe that Judge Komar found the Sorensens guilty of fraud, based on my understanding that "guilty" is not limited to criminal matters, and "fraud" is not limited to intentional fraud, but also includes negligent misrepresentations. Attached hereto as Exhibit 34 is a copy of the transcript of the hearing before Judge Komar on July 19, 2017.

45. The following is set forth in the RESPONDENTS' OPPOSITION TO CLAIMANTS' POST-HEARING BRIEF filed by Plaintiffs on January 9, 2017, in the arbitration before Judge Komar:

> The evidence shows that Claimants are guilty of unclean hands due to their multiple breaches of Amended and Restated Operating Agreement and their obligation of good faith and fair dealing by wrongfully filing a lawsuit, interfering with the business of the Company (especially by enlisting in Packard's opposition to develop the Property), and disclosing confidential Company information to third parties, and as detailed in Respondents' Closing Statement filed on December 19, 2016. Consequently, Claimants cannot recover on their causes of action.

46. Attached hereto as Exhibit 35 is a copy of the first couple pages of Memorandum of Points and Authorities in Support of Defendants' Opposition to Plaintiff's Petition to Confirm and Defendants' Petition to Vacate Contractual Arbitration Award, dated September 21, 2017.

I declare under the penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and that this Declaration was entered into on this 18th day of September 2017 in Los Altos, California.

RDnQ

Ronald D. Packard

Exhibit 1

JAMS ARBITRATION CASE REFERENCE NO. 1110017521

Old Trace Partners, L.P.,
Claimant(s),

And

Sorensen, Theodore, et al.
Respondent(s).

FINAL AWARD

PRELIMINARY

1. An Interim Final Award was issued in this matter on February 8, 2017. The Interim Final Award is attached hereto as Exhibit A and incorporated herein as though set forth in full.
2. The Respondents subsequently filed a motion requesting that the court amend the Award on the grounds that the Interim Award erroneously awarded interest from the dates of investments (May 2007) rather than from the date the rescission demand (or its equivalent) was made by way of the filing of a complaint in June 2014 (California Civil Code Section 1691). On February 8, 2017, in order to permit full briefing by counsel, the motion to amend was denied without prejudice and a briefing schedule was issued for hearing on that motion as well as issues related to interest computations, costs, and attorneys' fees.
3. The Motion to Amend and related issues involving interest, fees and costs, was heard on April 12, 2017 at 9:00 a.m. Counsel appeared in person: Julienne Nucum, Esquire, Preston Wong, Esquire, Ronald Packard, Esquire,, for Claimants and William Milks, Esquire and Kathryn Barrett, Esquire, for Respondents. Issues relating to attorneys' fees, costs, and interest were also fully briefed and heard on April 12, 2017. The Arbitrator's decision on all issues heard on that date was signed on April 23, 2017 and is attached hereto as Exhibit B. The said Order provided for a final award to be

Exhibit C

issued subject to any other overlooked or fee issues to be raised by any party. By such attachment, the arbitrator confirms each and every provision in Exhibits A and B, except as modified in this Final Award.

On or about May 17, 2017, Claimants filed their comments regarding certain issues and on or about June 2, 2017, Respondents filed their comments requesting certain modifications to the Order of April 23, 2017 and in addition **for the first time moved to disqualify the Arbitrator.**

Following JAMS Rules and protocol, the undersigned ceased work on the Final Award and the matter was stayed pending ruling on the disqualification motion. The disqualification Motion was processed administratively by JAMS pursuant to the JAMS Rules which all parties agreed to at the time the arbitration was commenced. Following briefing by both claimants and respondents, the motion to disqualify was denied. A copy of said final decision is attached hereto as Exhibit C, and by such attachment incorporated herein as though set forth in full. Thereafter, a further request to disqualify was made and Exhibit D attached hereto reflects the further denial.

With regard to the facts underlying the disqualification motion, at the time the Arbitrator was appointed herein, the Respondents had pending an appeal before the 6th District Court of Appeal and it was understood that the Arbitrator could not act until the appeal was decided. In making his disclosures after appointment, the only names of the parties known to the Arbitrator were the Respondents' names and the entity named Old Trace Partners. It was only after the appeal was dismissed that the Arbitrator became aware of identity of the general partner of Old Trace Partners in preparation for a hearing where the issue of the Arbitrators' scope of jurisdiction and powers were raised. In preparation for that hearing, the arbitrator became aware that Wilfred Corrigan was the general partner of Old Trace Partners, LLP and that he was likely the father of a juvenile whom the Arbitrator may have represented in a juvenile court traffic matter more than thirty years previously as an attorney before being appointed to the Superior Court. All parties by counsel were advised of that fact on or

about January 7, 2016, in writing and confirmed they had received the notice of further disclosure on January 8, 2016 from counsel in person that they were aware of the notice and its contents and that there were no objections to the Arbitrator continuing to serve as a neutral Arbitrator.

The Arbitrator could not recall the name of the juvenile (or any other details of the juvenile case) and in fact did not learn who it was until the beginning of the arbitration hearing itself when all parties were present and all became aware that it was Eric Corrigan who self-identified.

The Arbitrator had not seen or spoken to any of the members of the Corrigan family other than in the normal course of the arbitration hearing itself, does not know them, and has no personal or other relationship with any of them, and has had no contact with any of them since the matter was submitted at the close of the arbitration hearing. It is purely fortuitous and remarkable that given the passage of time that the arbitrator even recalled the matter which apparently occurred during the very early 1980s. The notice provided by the Arbitrator on January 7, 2017, is attached hereto as Exhibit E.

There was absolutely no favoritism shown to any party and the decisions made in the arbitration were based on the facts found to be true and the applicable law. There were no ex parte communications with parties or counsel prior to, during, or after the arbitration hearing, everything that occurred in the arbitration hearing room occurred in open fashion in the presence of all persons in the hearing room. There were no other communications at any other time with any party or witness in the arbitration.

The Arbitrator learned that Wilfred Corrigan had a heart condition during the arbitration hearing itself in connection with a request that Mr. Corrigan be permitted to testify by telephone. The Arbitrator expressed sympathy for Mr. Corrigan at that time as he would for any person suffering from a heart condition. Notwithstanding a

lawyer's perception and innuendo, it had nothing to do with any prior relationship- none existed.

It is also significant that at a hearing on July 19, 2017, Respondents' lead counsel acknowledged that they do not accuse the arbitrator of bias or prejudice in any way in connection with the proceedings or the award itself.

Claimants seek an award of attorneys' fees incurred after the Interim Final Award in connection with the motion concerning interest, fees and the disqualification of the Arbitrator. Respondents object to the fees as being unreasonable in their entirety and with regard to the opposition to the disqualification motion, contend that the disqualification motion was not part of the dispute between the parties. It is noted that the disqualification motion sought to set aside and vacate the Award and in fact is clearly attacking the Award and is a dispute between the parties. The award of fees below to Claimants for work after the Interim Final Award does include fees for opposition to the disqualification of arbitrator attempt.

CONCLUSION

Claimants are entitled to the following award:

1. Damages: $1,136,000.00 principal plus simple interest at the legal rate (10%). Interest from May 10, 2007 through May 09, 2017 is calculated as $1,136,000.
2. Interest shall continue to accrue on principal at the legal rate (10% simple interest) from May 10, 2017 until a final judgment is entered in a court having jurisdiction over the matter. Post judgment simple interest shall accrue at the legal rate from the date of the judgment in accordance with California law.
3. Attorneys' fees for work by Julienne Nucum: $172,510.00.
4. The previous indication of an additional sum of $8325.00 for attorney's fees of Preston Wong's was in error. Claimants concede that sum was included in the billings submitted by Ms. Nucum and paid by claimants.
5. Attorneys' fees for post interim award work by Julienne Nucum and Preston Wong in the sum of $10,140 through June 21, 2017.

6. Attorneys' fees for work performed by Ronald Packard: $136,360.00 plus $16,887.50 post Interim Award and $200.00 costs through June 20, 2017.
7. Claimants' Costs as follows: Deposition Reporters - $20,483.71.00; Arbitration transcript reporters' fees are not recoverable pursuant to the terms of the agreement of the parties.
8. Other costs and expenses $11,400.00 incurred by Claimants.
9. The sum of $6,246.05 for JAMS arbitration fees advanced by claimants on behalf of respondents has been credited back to claimants by JAMS.
10. The sum of $825.00 representing fees owed to Jeffry Luney for deposition time which was an obligation of respondents which has not been paid.
11. Claimants shall also be entitled to future attorneys' fees and costs incurred in enforcing this final award, including post judgment motions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, and bankruptcy litigation in accordance with the express provisions of paragraph 14.20 of the Operating Agreement.

RESPONDENTS' AWARD

1. An award of attorneys' fees as sanctions in the sum of $4,512.50 against Claimants for failure to comply with Request for Productions of Documents, as reserved.
2. Respondents also are entitled to attorneys' fees in the sum of $43,001.25, parking costs in the sum of $6.25 and filing fees in the sum of $1,335.00 in connection with the necessity of the petition to compel arbitration.
3. Respondents take nothing on their cross complaint.

This is a Final Award pursuant to the arbitration agreement between the Parties which incorporates the terms herein as well as the terms and findings of Exhibits A, B, C, D and E., attached hereto, and by such attachment incorporated herein as though set forth in full.

IT IS SO ORDERED.

Date: July 21, 2017

Hon. Jack Komar (Ret.)

JAMS ARBITRATION CASE REFERENCE NO. 1110017521

Old Trace Partners, L.P.,
Claimant(s),

and

Sorensen, Theodore, et al.,
Respondent(s).

FINAL INTERIM AWARD

PRELIMINARY

This matter came on for regularly scheduled arbitration hearing on October 31, 2016 pursuant to notice and agreement of the parties. The matter was heard on the following dates:

October 31, November 1 through 4, November 14, 16, 17, 18, 19 & 22, 2016.

Counsel appearing for the parties were as follows:

Claimants/Counter Respondents: Julienne Nucum, Esquire, Preston Wong, Esquire, and Ronald Packard, Esquire.

Respondents/Counter-Claimants: William Milks, Esquire, Kathryn Barrett, Esquire, and David Duperrault, Esquire.

The arbitration agreement is contained in the 40 Main Street Offices Limited Liability Company Operating Agreement, as restated and amended on or about October 30, 2012. Portions of the amended and restated agreement are in dispute in this proceeding. The parties were ordered to arbitration in Case Number 11CV2066849, by Order of court dated November 17, 2014.

The law of the State of California and the JAMS Comprehensive Rules apply.

EXH. "A"

PARTIES

Claimants are each member investors in a Limited Liability Company, 40 Main Street Offices, LLC, a company which was formed to purchase real property and to develop a commercial office building on the property in Los Altos, California. The individual claimants are Old Trace Partners, L.P., Daniel Nero, Kimberly Nero, Paul L. Klein, Jr., Mary Ellen Klein, Alan E. Truscott, and Fick Investment Company.

The Respondents are Theodore Sorensen, Jerry Sorensen, 40 Main Street Offices, LLC, and Gunn Management Group, Inc. Respondents have alleged 65 affirmative defenses including the statute of limitations, and have counter claimed.

Following the completion of evidence, at the request of the parties, closing, opposition, and reply briefs were submitted as to all claims and counterclaims. The matter was deemed submitted on January 23, 2017 following the submission of such briefs. [1]

SUMMARY OF CLAIMS

The Claimants filed an action in the Santa Clara County Superior Court in Action Number 114CV266849, alleging causes of action which may be summarized as fraud and misrepresentation, breach of contract, false promises, breaches of fiduciary duties, violations of the Business and Professions Code, and false promises, seeking damages, an accounting, a constructive trust, declaratory relief, and a receivership.

Respondents have counter claimed alleging in essence that the Claimants interfered with their ability to develop the subject office building, breached the agreement by filing an action in

[1] Respondents were granted an extension of their opposition page limits to 35 pages. In addition, Respondents filed a separate document styled evidence objections which were, in effect, contrasting perceptions of the evidence and not truly legal objections. These so-called objections are merely argument and have little or no significance to the findings in the Interim Award. They should have been included within the 35 page limits.

the Superior Court, and violated the implied covenant of good faith and fair dealing, and seek both economic damages, liquidated damages, and punitive damages.

WITNESSES CALLED

The following witnesses were called to testify under oath: Erik Corrigan, Daniel Nero, Anna Christine Davis, Alan Truscott, James Walgren, Jeffrey K. Luney, Von G. Packard, Stephen Fick, Paul Butterfield, Gerald Sorensen, Paul Klein, Jeffrey Warmouth, Gerald Sorensen, Theodore Sorensen, Dennis Young, Michael Connor, Erin Uesugi, William Matson, Alfonso Diaz, Ronit Nodner, John Mordo, James J. Hill, Jr.

SUMMARY OF INTERIM FINAL AWARD

Claimants are entitled to an award vacating each of their investments based upon negligent misrepresentations of fact upon which they individually relied and which induced their investments in 40 Main Street Offices, LLC. The initial Operating Agreement signed by the Claimants, and any amendments and restatements of the same are vacated and set aside as to the Claimants, damages are awarded against respondents, jointly and severally, in the amount of the investment each Claimant made with interest from the dates of their investment at the legal rate. Claimants are also entitled to attorneys' fees and costs incurred. Arbitration fees are not included as costs in conformity with Article 14.10.5 of the Operating Agreement. Punitive damages are not awarded - there is no actual or subjective fraudulent intent - the misrepresentations are negligent. The reasons for the award are as follows below.

Respondents' counter claims are denied except that respondents are entitled to actual attorneys' fees and costs incurred in enforcing the arbitration provisions of the agreement.

PROCEDURAL HISTORY

Claimants initially filed their action in the Superior Court in Santa Clara County on June 19, 2014. An Amended Complaint was filed on September 25, 2014. Respondents filed a motion in Superior Court requesting that the court proceedings be stayed and that the matter be ordered to arbitration. In opposition to the Petition, Claimants contended that the arbitrator did not have authority to grant the relief requested in the Complaint, pointing to the limitation on the powers of the arbitrator contained in the arbitration agreement. On November 17, 2014, the Court granted the Petition and ordered the matter to Arbitration, and stayed the court action, providing that the arbitrator would decide any arbitrability issue in the first instance.

Following the granting of the Petition to Compel Arbitration, Respondents filed a motion asking the trial court for an immediate award of liquidated damages against Claimants for breaching the agreement to arbitrate under Paragraph 14.10 of the Amended and Restated Operating Agreement. The Trial Court, denied the motion, on the grounds that the matter was stayed, and that the claim for damages sought by Respondents was thus beyond the jurisdiction of the Court and was a matter to be decided by the arbitrator. Respondents appealed the denial to the Court of Appeal, thereby staying any further action by either the trial court or the arbitrator for a full year. The Court of Appeal entered an order dismissing the Respondent's appeal on November 16, 2015 as having been taken from a non-appealable order.

Claimants filed a motion to determine the scope of the arbitration proceedings herein and in particular to determine the legal effect of a provision in the Original and Restated Operating Agreements of the company relating to the scope of the powers of the arbitrator. Following briefing, the arbitrator rendered a decision defining the scope of the arbitrator's jurisdiction in the matter for the following reasons, which is hereby confirmed.

MOTION REGARDING THE SCOPE OF THE ARBITRATOR'S POWERS

At the time of the investment, all parties signed the initial Operating Agreement which set forth the rights and duties of the parties and specifically provided that "except as otherwise

provided in this agreement, any dispute, controversy or claim arising out of or related to this Agreement, or any breach thereof, including without limitation, that any claim that this Agreement, or any part hereof, is *invalid, illegal or otherwise voidable, or void*, shall be submitted . . . . to binding arbitration . . ." (Emphasis added). Operating Agreement Section 14.10

Following the Trial Court Order, Claimants filed their claims before JAMS seeking arbitration in compliance with the Court Decision, but still contended that the matter should be tried in Court because the arbitrator's powers were limited by the terms of the Operating Agreement. Respondents disputed that interpretation, and the arbitrator accordingly scheduled a hearing to consider the respective positions of the parties. The parties briefed their respective positions on the issue.

Claimants argued that the scope of the Arbitrator's powers must first be decided by the Court and that any matters properly to be decided by the arbitrator would then be remanded by the Court to the arbitrator for decision. The Claimants also requested that the Court be permitted to determine whether the amended and restated Operating Agreement is valid.

Respondents opposed the motion, argued that all issues must be decided by the arbitrator, and requested that the arbitrator immediately order specific performance of the claim for damages (liquidated) be paid by Claimants for breach of the obligation to submit the matter to arbitration.

The Superior Court had ruled that the determination of the scope of the powers of the arbitrator delineated in the arbitration agreement is an issue for the arbitrator to decide in the first instance and not the court contrary to claimants' arguments. The Claimants repeated their arguments here.

The language of the Arbitration provisions in the agreement is plain and clearly requires that ". . . any dispute or claim arising out of the Operating Agreement, including breaches thereof, or claims that it (the operating agreement) is voidable or void, or otherwise invalid, be submitted to arbitration" as set forth in Paragraph 14.10 in both the original and the restated agreements.

The clause in question that Claimants' contended limited the ability of the arbitrator to grant the relief requested (assuming Claimants successfully proved their case) is set forth in the

arbitration provisions. Paragraph 14.10.3 of the original and Paragraph 14.10.2 of the Amended and Restated Operating Agreements, provides as follows:

> The arbitrator shall not have any power to alter, amend, modify or change any of the terms of this Agreement nor to grant any remedy which is either prohibited by the terms of this Agreement, or not available in a court of law.

The language of the Agreement and the principles of applicable law provide the arbitrator all the powers needed to fully adjudicate any and all claims alleged in the Complaint under the powers set forth in the arbitration clause in Paragraph 14.10 in the Operating Agreement. There is a clear difference between the power to amend or revise any term of an agreement (not granted to the arbitrator) as opposed to the power as granted to the arbitrator to decide issues of void, or voidable provisions based on fraud or misrepresentation under California law. Paragraph 14.10.4 of the agreement. In effect, the agreement provides that the court has the same powers as a court.

Note that Paragraph 14.12 of the Agreement provides that if a part of the Agreement is found to be invalid for any reason the rest may be enforceable. Again, that power is not limited to a court and can be ruled upon by the arbitrator.

The arbitrator concluded following oral argument and consideration of the briefs that the arbitrator has all the powers necessary to fully adjudicate all the claims contained in the complaint which was filed in the superior court and remanded to be heard in arbitration.

Certain powers of a court may not be exercised by an arbitrator. That, however, does not preclude the parties' agreement to submit the issue to the arbitrator who may make findings of fact and submit the request based thereon to the court for implementation if the facts justify the action. See Marsch v. Williams, 23 Cal. App. 4th 238 (1994) which holds that only a court has the power to appoint a receiver.[2] See also Paragraph 14.10.1 of the Operating Agreement which specifically authorizes court action for appointment of a receiver.

[2] Whether this rule would justify parties who are bound to arbitrate filing an action initially in court is not an issue that must be decided in view of other findings below.

MOTION FOR LIQUIDATED DAMAGES

By noticed motion, the Respondents sought an immediate order in this arbitration that Claimants be assessed liquidated damages for their filing of the law suit in Superior Court rather than seeking arbitration. The arbitrator deferred the issue concluding that there were several issues to be decided before that claim should be determined, including the validity of the amended and restated Operating Agreement and deferred it to the date of the arbitration, noting that the claim for liquidated damages is part of the Respondents' counter-claim.

As Respondents had at the Trial Court, they sought an order for Claimants to pay liquidated damages to Respondents for breach of the Arbitration Agreement pursuant to Paragraph 14.10 of the Amended and Restated Operating Agreement, citing Acosta v. Kerrigan 150 C.A. 4th 1124 as authority for the principle that a Court (or arbitrator) can award attorneys fees to a successful petitioner seeking an remand to arbitration of an action filed in superior court without waiting for a final resolution. The Acosta matter is not determinative of the issue.

Acosta was not a liquidated damages case; it involved attorney's fees and costs in connection with a motion to enforce an arbitration provision. Enforcement of Liquidated damages for breach of contract may implicate other issues as required in Civil Code Section 1671(b). See also Ridgley v. Topon Thrift and Loan Assn (1998) 17 Cal. 4th 970, Greentree Financial Group v. Execute Sports, Inc. (2008) 163. Cal. App. 4th 495.

The Court, and the arbitrator, as the case may be, have discretion as to the timing of the determination of such an award but in this instance, it required considerably more evidence and an opportunity of Claimants to adequately respond to the claim for the breach of contract. The determination of the enforceability of the liquidated damages provision is not totally dependent on the outcome of the dispute between the parties as to the claims set forth in the statement of claims by claimants and stands alone in some respects.

The demand for an order requiring Claimants to pay Respondents pursuant to the liquidated damages provision was denied without prejudice as being premature and without a sufficient foundation. The claim will be considered anew based upon the evidence submitted by the parties in the arbitration hearings themselves. That claim is renewed here in the counter claim of Respondents.

UNDISPUTED FACTS

Respondents Theodore and Jerry Sorensen identified real property located at 40 Main Street in Los Altos, California, as a potential development site for a new building and decided to seek investors for a development project at that location. In the spring of 2007, they prepared a written Project Plan and used the plan as promotional material to seek investors in a private offering. The project plan was revised and ultimately proposed the creation of a three story Class A office building with an estimated 20 parking stalls in the basement. The project plan also included alternate proposals for single story and two story alternatives.

Respondents Theodore and Jerry Sorensen created a Limited Liability Company, 40 Main Street Offices, LLC, (hereinafter Main Street), as an investment vehicle to acquire title to the property and to build the office building and a corporation named Gunn Management Group, Inc. (hereinafter Gunn), to manage the development project.

All of the alternatives for the development contemplated a total initial investment of $2,840,000 and the creation of the 40 Main Street Offices, LLC, to own the development. The LLC would have 10 units of ownership, a unit being valued for initial investment purposes at $284,000. Any one such unit could be owned by several individuals. The LLC provided that the project would be managed by Gunn Management Group, Inc., of which Theodore Sorensen, a California Licensed attorney, was President and Gerald Sorensen was Vice President.

CLAIMANTS CONTENTIONS AND CAUSES OF ACTION

A. FRAUD AND NEGLIGENT MISREPRESENTATION BY RESPONDENTS

The Project Plan was finalized and presented to claimants and other investors. Claimants allege the plan contained false statements which fraudulently induced them to invest in the project. Paraphrasing, the alleged false statements, may be summarized as follows:

1. That a Downtown Zoning Committee (DZC) recommended to the City Council that the subject property was included in a proposal to extend the floor area ratio to 250%. If the recommendation had been made and adopted, it would have modified the zoning requirements for the 40 Main Street Building to permit a larger building.

In fact, the evidence established that the so-called FAR recommendation was in a committee *draft* from the previous year and that the draft did not include any reference to the area which would include the subject property. The committee recommendation which was ultimately sent to the City Council did not ever include the 40 Main Street property. The FAR ratio for that area was never changed.

2. That Los Altos Planning Director had stated that the proposed conceptual design fit into the proposed zoning regulations.

   There were no proposed zoning changes recommended for the area involving the subject property. Further, Mr. Walgren denied that he said such or that he was ever shown the four proposed design alternatives which were contained in the Project Plan. At no time was he ever told that the parties contemplated a three-story design with underground parking. Walgren also testified that he always reiterated to the Sorensen's that a three story office building was not acceptable nor was a mixed use building (which was one of the three story alternatives). Mr. James Walgren, then Planning Director, who was also a member of the Downtown Zoning Committee, testified that he was never told about proposed underground parking or the four alternative proposed buildings. The Town of Los Altos has a thirty foot height limit and that is inconsistent with a three story building (a thirty foot height limit would allow only 10 feet per story). Mr. Walgren also testified that a 45 foot high building was not supportable.

3. The proposed layout for the three story building can provide approximately 20 below grade parking spaces.

   The evidence established that it would be impossible to place 20 parking stalls in the proposed three story building basement without stacked or tandem parking and valet service - none of which would be permitted under zoning ordinances, then or now. Respondents failed to perform any due diligence of consequence with regard to underground parking before making the representation. As early as August of 2007, respondents learned from an architect that the most basement parking spaces that could

be built would be a maximum of 12 (13 with tandem parking). That was confirmed the next year by a second architect.

It was not until 2012 that respondents finally stated publicly that underground parking was not economically feasible even though the evidence established that it was known, or should have been known, to respondents even before the plan was proposed.

4. That any of the four alternatives would produce a profitable venture when completed and sold. This relates to negligence and failure to investigate the reasonableness of the proposed options. It also ties into the issue of false promise. Any of the three-story options would exceed city height limits and during the ten year development process would always require a variance from the city. No other options by way of an application were ever presented to the city for approval.

B. FALSE PROMISE

The making of a promise without any intention to perform the promise may constitute fraud. Here it was represented by the Respondents that if one of the three-story options would not be approved, one of the other options (one or two story building) would be pursued and either would be profitable. The evidence to support this cause of action is non-performance of any of the other alternatives even when confronted with continual rejection of the three story plan. This was alleged to be a fraudulent promise based solely on circumstantial evidence that no effort was ever made to implement another option even when it became clear that there was continued opposition to the original three story plan. Other than the failure to ever try to obtain approval of the other options, no other evidence established that this was a false promise. See further discussion of this cause of action below.

C. BREACH OF FIDUCIARY DUTIES AND BREACH OF CONTRACT

The following allegations are alleged to constitute breach of the operating agreement and breach of fiduciary obligations owed by the promoters, managers, and officers of the company:

1. The $70,000 commission on acquisition of the property at 40 Main Street paid to the Sorensens who are not real estate brokers was improper and not adequately disclosed to the investors.
2. Improper front-loading of and retroactive payment of management fees and rent.
3. Overvaluation of project for determining management fees.
4. Failure to inform members which it became apparent that parking underground was not an option with continuing misrepresentation of underground parking even after it was clear it was not feasible.;
5. Failure to properly maintain accountings and books and records of the financial position of the LLC.(quarterly reports) and budget approvals.
6. Failure to comply with annual reporting and budgeting requirements of the LLC.
7. Failure to follow GAAP accounting principles thereby breaching bank requirements and jeopardizing bank loans.
8. Amendment of operating agreement to oust minority members, in effect. Not permitting reasonable opportunity to discuss and consider. Failure to fully disclose contents of the amendments.
9. Use of Indemnity provisions for attorney's fees in violation of amended statute provisions regarding breach of fiduciary duties.

RESPONDENTS' OPPOSITION TO CLAIMS

1. No standing to bring certain causes of action: 5th (breach of fiduciary), 6th (breach of contract), 7th (constructive trust), 8th (accounting), (9th (Declaratory relief), 10th (B & P 17200) , and 11th (receivership), must be brought as a derivative action.
2. No evidence of fraud or falsity or damages.
3. Statute of Limitations bars the causes of action.
4. Laches.
5. Equitable Estoppel.
6. Unclean Hands
7. Receiver cannot be created by arbitration award.

DISCUSSION

As to the Claimants' 1st (Fraud) 2nd (Misrepresentation), 3rd (Concealment), and 4th (False Promise) Causes of Action, these are direct actions alleging wrongful conduct in the form of pre-investment inducements that caused loss and damage to the claimants as individuals. Those causes of action are not derivative in nature but reside with the members. Any recovery therefore is to the members who have the burden of proving fraud and misrepresentation. The proper respondents as to those causes of action are the individuals who may have made such improper representations. The company may be a party to the extent that it was the recipient of the investments made by the claimants.

The managers and officers who are accused of mismanagement and breach of the fiduciary obligations belonging to the company as a matter of law do not owe a duty directly to the members. Corp. Code 17051 (d) (3), 17709.02. Effective 1/11/2014. See also PacLink Communications International, Inc., v. Superior Court (2001) 90 Cal. App. 4th 958. An action for damages to the Limited Liability Company, as with a corporation, may only be brought by members of the LLC against those causing the damage by filing a derivative action in the name of the company under circumstances when the company refused or fails to act.

The allegations of breach of fiduciary here do mostly relate to the fiduciary obligations owing to the company by its officer or managers. While claimants contend that the case has been treated by both sides as a direct action, in fact from an early point respondents have contended that much of the pleadings should be derivative and that there is no standing to bring them as direct actions. Until the final briefing neither party presented the issue for consideration in the arbitration.

While sellers of memberships in an LLC or a corporation generally do not have fiduciary obligations to purchasers, depending on the circumstances, such promoters do have a duty to advise the buyers that they are receiving money from the seller of the property to the LLC and not to conceal or disguise such payments so that it is not otherwise brought to the attention of the investors. Promoters must disclose their self-interest if the funds they will receive are from the monies invested by the investors. Here, the Sorensens' received a $70,000 commission when they acquired the property for the LLC and did not identify it as such other than in obscure

terms. It is noted that while an LLC acquiring real property might well pay a commission to a licensed real estate broker, neither Sorensens established that they were licensed brokers. Several members expressed the belief that the $70,000 as described in the books and records was a commission paid to third parties for the acquisition by the company of the property and had they known the true facts, they would not have invested.

The Sorensens valued their right to 50% of the profits in the company as "Profit Interest Holders" on the basis that they were making a contribution to the company which value was the combination of their right to buy the property for themselves and the $70,000 commission combined. Full disclosure would have been to disclose in writing that the Sorensens had a contractual right to acquire the property at 40 Main Street and that they would receive a commission from the LLC in consideration of assigning the right to purchase the property to the LLC. But that injury is to the LLC to which a fiduciary duty is clearly owed by the Sorensens and not to the members itself (although lack of knowledge of that type of self-dealing was a factor in several parties making their investment in the LLC) and does fall within the category of concealment.

As to the other causes of action which belong to the LLC, the issue is whether the pleadings are sufficient to allege that this action is by the LLC sufficient to permit the award of whatever damages there may be to the LLC from the Respondents. Those damages would be the commission received by the Sorensen's for the acquisition of the real property located at 40 Main Street; the allegedly improperly assessed management fees; damages from the failure to provide accountings and budgets; damages from the failure to obtain approval before loaning funds to the LLC, and damages for the failure to provide quarterly reports to the members.

As a matter of law, the Sorensens were not fiduciaries to the claimants. There is no basis in law for an individual claim by Claimants for such alleged violations. Each of those causes of action allege facts that establish damage to the company and not to its members under the law. The Limited Liability Company would in fact have a cause of action for such alleged conduct.[3]

[3] The Members representing 60% of the voting rights of the company have signed after the fact confirmation of all acts of the individual respondents which are the source of the allegations of wrongdoing by the officers and

In order to bring such an action when the company fails to do so require compliance with certain statutory requirements as set forth in California Corporations Code Section 17709.2. The action here is against the company and others and fails to plead any such compliance.

There is ample evidence that the terms of the operating agreement were not complied with in terms of reporting requirements, disclosures of advances made by the managers, failures to maintain proper accountings, questionable computations of management fees, and other operational violations. But none of those matters can be the subject of a personal law suit by a minority of members other than under Jones v. H.F. Ahmanson (1969) 1 Cal. 3rd 93 for breach of a fiduciary obligation arising under unusual circumstances, for example, disadvantaging a minority by a majority interest. The relief requested cannot be granted without joining all the other members who constitute a majority of members. The proper cause of action could be for a dissolution of the company and damages under the terms of the corporations' code. Under ordinary circumstances, that would give the majority members a right to buy out the interests of the minority with protection of all interests under the terms of the law. Alternatively, if the company had suffered damages, a derivative law suit will permit all members, whether they joined in the law suit or opposed it, to in effect, receive the benefit to which they all may be entitled (except the wrong doers, if any).

FRAUD AND FALSE PROMISE VIOLATIONS

The evidence does not support findings of intentional fraudulent acts or a specific intent to defraud. But it does reflect a careless use of language which fits within the category of negligent misrepresentations and potentially an action based on a false promise.

Making a statement of fact known to be untrue (or without having investigated the validity of the same can be the equivalent of an intentional misstatement if done recklessly, without knowledge of whether or not the fact represented is true or not) is an element of fraud

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managers of the company. That would not foreclose a derivative law suit by non-consenting members such as claimants here had such a derivative suit have been filed.

and deceit. Civil Code Section s 1709 and 1710(1). For example, a statement that "a proposed layout for a proposed underground parking garage can provide approximately 20 spaces in the below ground area . . ." as a fact without knowing whether or not it is feasible because of a failure to investigate the issue, may be the equivalent of an intentional false statement in the context in which it is made if made with an intent to defraud. In this case, the statement relates to what kind of building may be built, valuing the completed building, and the ability to obtain permit approval because of parking requirements, all of which is a material inducement to make an investment in the project.

Negligent misrepresentation is "a positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though one believes it to be true." California Civil Code Section 1572(3).

The misrepresentation of underground parking occurred because of a failure to investigate. There may not have been a subjective intent to defraud but a misrepresentation made recklessly, even with a "hope" that it can be accomplished, but no real belief in the certainty of it, is sufficient to constitute a negligent misrepresentation, if the misrepresentation is material and causes conduct by party to who the representation is directed- in this case investments in the project. See Christiansen v. Roddy (1986) 86 Cal. App. 3rd 788.The evidence here establishes is that there was a failure to adequately investigate, it was relied upon by each of the Claimants. And evidence establishes that there are other negligent misrepresentations.

Other representations that were based on facts that were neither true nor reasonably based include that the extension of the Floor Area Ratio to 250 as applied to the 40 Main Street property (paraphrasing) was virtually a "done deal", the feasibility of building a three story building in concept that would exceed the zone height limits of 30 feet, was within the city's proposed recommended changes, with a **favorable** likelihood of a zoning amendment or waiver, and that if three story concept could not be built, a one or two story building would be profitable and would be pursued. Taken together, these representations were false and based upon the evidence presented,

Claimants relied on the facts represented and would not have invested had they known the true facts. The law is clear that a misrepresentation of a fact, as opposed to opinions, is actionable, whether negligently or intentionally made. And while some of the statements of expectation in the "plan" were clearly opinion, underlying all were what purported to be facts. Bobak v. Mackey (1951) 107 Cal. App. 2nd 55. The defendant represented that land was zoned C-2 when in fact it was zoned R-3, which prevented manufacturing use.

A period of almost 10 years has elapsed, there have been numerous obstacles to the construction of a three story building, and it has still not been approved although the same proposal as previously submitted and rejected has been resubmitted. Whether it will ever be approved by the city is not determinative of the outcome of this claim. The LLC has been mismanaged and has been economically damaged although the non-claimant majority (60%) have apparently waived the right to sue on behalf of the company against the managers and officers of the company. The investor claimants are entitled to rescind, to receive their investments back as damages with interest at the legal rate.

While the prospectus lists multiple risks to be considered by investors, the risks do not vitiate false statements or statement made to induce the investment which may have been made without a sufficient basis for believing in the truth of the statements.

FALSE PROMISE

While the "prospectus" stated four alternatives, the primary plan intended was the three story plan with office and or residential which presumably would present the greatest return on investment. While the three story plan was repeatedly denied by the City of Los Altos because of height and parking issues, no action was ever taken to implement a lesser plan which the evidence establishes could have been built and completed long ago. The officers and managers of the company had a duty develop the property in accordance with their representations to the investors. The testimony from respondents that they told the city they would build whatever they would be allowed to build does not satisfy that obligation. It is not the duty of the city to present

a plan for the company to build. The fact that no alternatives were every presented by the respondents represents a failure of their duty. That fact lends some credence to the claim that the other two alternatives were never intended to be built.

But the mere failure to perform without any other corroborating evidence is generally deemed to not be sufficient for a finding that the promise was not intended to be performed at the time it was made. Here there is no other evidence. See Tenzer v. Superscope (1985) 39 Cal. 3d 18.

As to the causes of action for breach of contract, declaratory relief, and breach of fiduciary, while some of the conduct alleged to be wrongful and reflects violations of a managerial and fiduciary duty to the company, all are clearly a violation of a duty owed to the company as discussed above. However, the prospectus itself essentially was a promise to investors that one of the proposed building options would be built within a reasonable period of time. The investors all accepted that offer by investing in the company. The failure to do so constitutes a breach of that promise which, while it may not reach the level of a fraudulent promise, is inevitably a breach of the contractual promise. Because the promise is material, and a constructive condition, the breach will support a decision by the promisee to withdraw from the contract and seek damages which, under those circumstances would be the same damages assignable to the claimant for a negligent representation inducing the purchase of the membership.

AMENDMENTS TO THE OPERATING AGREEMENT

Amendments to the restated operating agreement clearly impact the rights of the claimants who are minority members, individually, and the approval by the majority implicates the duty that majority members of a corporation, partnership, and Limited Liability Company owe to minority members,

The majority members may not act to injure the rights of the minority members by company action or modification of the operating agreement. See Jones v. H.F. Ahmansom & Co., (1969) 1 Cal.3d 93. In deciding the issues, the arbitrator must evaluate both the intent and the effect of such conduct by the majority. Several of the modifications of the operating agreement were specifically designed and intended to deprive the minority members of rights to inform themselves as to management and operational issues. All members have a right to determine whether there was mismanagement and violations of the fiduciary duties of the officers and managers. The reporting requirements by the managers and officers was designed to ensuring that the members were informed and to permit approval of budgets and other decisions.

The amendment authorizing the respondents to indemnify themselves for attorneys' fees and costs from company funds equally violates the minority interests since the allegations are of fraud, breach of fiduciary, and violations of the operating agreements. While such indemnification might be appropriate were the managers to prevail, since they have not prevailed, payment of such expenses is a furtherer impropriety. It is noted the indemnity provisions were never presented for signature to the minority parties here. Again, however, the injury caused by the indemnity provisions is to the company and not the members individually.

In particular, the method of obtaining approval of the amendment demonstrates an attempt by the majority (at the time) to marginalize the minority who were raising legitimate concerns about the operation of the company, including the failure to abide by the reporting requirements, budget approvals, availability of records and documents maintained by the LLC., with the imposition of draconian penalties for violations of the LLC, real and imagined.

Without simultaneously presenting the amendments and the justification for them to the two leading minority parties, Old Trace and Nero, at a time other than normal business hours, the proposed amendments were sent to the other 80% of members' interests, urging that they be approved and, in effect, stating that must be signed immediately and returned for the good of the company and to protect member's investments. At that urging, most were signed and returned the evening sent. None who signed and were called to testify by Respondents testified that they

knew what they were signing or even that they read or understood the documents or the reasons for the amendments before signing. They were signed solely on the urging of Theodore Sorensen on his representation that if they did not sign them, they stood to lose their investments. The next day, copies of the amendments were sent to Old Trace and Nero with no expectation they would be approved.

It appears that the entire construct of the amendments was designed to provide a basis for ousting the minority members from the company with minimal cost. It is noted that subsequently, an additional 20% of members interests who had approved the modifications without reading them, at the behest of respondents, joined the claimants in this action and in their opposition to the management of the Respondents here. Their testimony as to how the amendments were presented was consistent- no explanation and that the amendments were not read before signing them. Apart from the method of creating the amendments, the provisos themselves are severe and draconian in effect and some lack certainty and clarity.

LIQUIDATED DAMAGES

1. Civil Code Section1671(b) provides, in effect, that the party seeking to invalidate a liquidated damages provision has the burden of establishing that it was unreasonable at the time the agreement was made. It is noted that Section 1671 (b) refers to provisions in a contract where the parties have agreed to liquidated damages. Clearly the parties here did not so agree to those provisions and should not be bound by terms that were inserted without an opportunity to consider them or to ensure that those who did approve them read and considered them.

   It is also unclear by the language of the provision itself as to the number of multiples that can be assessed if, as here, more than one member files or joins a single law suit. The lack of any relationship to actual damages is demonstrated by Respondents' own claim for $250,000 for having filed the law suit in Superior Court. Clearly such an amount is unreasonable as reflecting actual damages.

2. The $50,000 liquidated damages is unreasonable and is nothing more than a penalty. It bears no relationship to actual damages or costs. Reasonably moving a court to compel arbitration should not require attorneys' fees of $50,000. And certainly not $250,000 which would be the cost of all five claimants who were involved in the court proceedings. Costs and fees incurred in moving to compel arbitration are readily capable of calculation. It is noted that in this case when the trial court granted the motion to compel arbitration, Respondents exacerbated their expenses by appealing the court decision.

3. While the burden is on the party opposing the liquidated damages provision to show that the provision is unreasonable, the Arbitrator is satisfied from the circumstances presented that such a penalty, especially as framed in this matter, is unreasonable, in particular as viewed in conjunction with the other amendments which may best be described figuratively if not literally as the midnight changes.

4. Filing a law suit by a member of a limited liability company (even to seek dissolution of the company) against the company forces an involuntary sale of the members interest at a substantially reduced price reduced further to 90% less damages tantamount to a forfeiture, even if justified.

STATUTE OF LIMITATIONS

Respondents assert by way of an affirmative defense that the action by claimants is barred by the statute of limitations. All of the evidence submitted by Respondents addressing the knowledge of the Claimants at a period more than three and four years prior to initiation of the action in superior court relate to the actual manipulation of the company, including the management fees, the failure to present a budget for approval, the regular reports required by the Operating agreement, the approval of advances to the company, and the like, all of which

aroused suspicions but no knowledge sufficient to cause the statute of limitations to begin running.

None of the facts known to claimants relate to any knowledge of the false representations which induced the investment in the company in the first instance, including the height issues, the underground parking, the city zoning requirement that would have to be waived since contrary to the prospectus there was no evidence it would be amended.

The knowledge of those causes of action which might belong solely to the company against its managers aroused suspicions in the members, but the falsity of the representations, negligent or intentional, were neither known to nor suspected by claimants. Moreover, Respondents always assured claimants that all was well and that matters were progressing as late as 2011 up to January 2012 and beyond.

When it became apparent later in 2012, when the claimants began to probe the issues more closely, respondents immediately began to circle the wagons, creating first an unlawful amendment that permitted them to restrict information to which the Claimants would otherwise have access, and then putting in place an amended and restated operating agreement with draconian consequences to any efforts by members who were questioning the value of the operational efforts of the respondents with the intent of ousting the questioning members. That was later followed by an ex post facto approval of the acts of the officers and managers by members who have not joined in this action (without a specification of what acts were being "forgiven.". It is noted than a number of such non-dissenting members are close Sorensen family members and close friends of the Sorensens.

Thus, while the knowledge pointed to by respondents affecting the statute of limitations relates to the "derivative actions" none of it established the type of "on notice" knowledge relating to the intentional or negligent misrepresentations nor the "false promise" or breach of the promises in the prospectus.

Moreover, continued assurances by respondents to claimants which caused the claimants to defer filing a claim or a cause of action justifies delayed deferral or accrual of the cause of actions and continued concealment of the actual functioning of the company adds to the justification for any delays as to those causes of action.

COUNTER CLAIM BY RESPONDENTS

Respondents have filed a counter-claim against all claimants alleging a violation of the Amended and Restated Operating Agreement of 40 Main Street, LLC.

The specific provisions of the amended operating agreement which Respondents claim are violated by Claimants, are as follows:

1. Breach of the Amended and Restated Operating Agreement.
    a. Breach of 5.1.1.1: Interfering with the LLC operation and management of the company.
    b. Breach of 14.10: Refusing to arbitrate- filing law suit (liquidated damages).
    c. Breach of 14.26: Disclosing confidential information to third parties.

2. The Acts alleged as violations are as follows:
    a) All Claimants (Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein, and Fick for engaging Ronald Packard as counsel to obstruct and interfere with the management and development of the project as proposed; Packard authoring an ordinance which was adopted in October 2012 altering the height provisions affecting 40 Main Street; Multiple other acts by Packard in opposition to the 40 Main Street project;
    b) Erik Corrigan contacting Bridge Bank and interfering with the LLC relationship with the bank;
    c) Dan Nero contacting Bridge Bank through his attorney and interfering with the LLC relationship with the bank;

d) Sean Corrigan interfering with the LLC efforts to seek approval by communicating negative information about the LLC to Council person Mordo

e) Truscott, Fick and Klein for interference.

DISCUSSION

Respondents' counterclaims of specific violations of the provisions of the Amended Operating Agreement require a discussion of several matters preliminarily before addressing the acts themselves:

1. The validity of claimants' causes of action for fraud and misrepresentation;
2. The validity of the amendments;
3. The conduct complained of;
4. The liquidated damage provisions.

As found in the decision above regarding the fraud and misrepresentation provisions, there is insufficient evidence of intentional fraud by even a preponderance of the evidence. On the other hand, the respondents were found to have made factual representations that were not justified by the information they possessed and without any basis for a reasonable belief they were true. That falls within the definition of a negligent misrepresentation. The evidence also supports the conclusion that claimants relied on the representation made at the time of their investments.

Claimants in their complaint, which is the basis for the claims in arbitration, seek a finding that the Operating Agreement is null and void. The finding herein that the representations were false, and that the respondents were responsible for making negligent representations which induced the claimants to invest in the company, justifies the award setting aside the investment agreement, ordering rescission, and damages to claimants. That finding nullifies not only the original agreement which is claimed to be violated, but also the amended and restated agreement with its severe penalties and consequences.

As the membership in the company is rescinded because of the misrepresentations, the Operating agreement and its amendments are voided. Voiding and setting aside the operating agreement and the amended and restated operating agreement, since there is no cause of action by respondents outside the operating agreement, it is technically unnecessary to evaluate the other grounds of opposition to the counter claim. Notwithstanding, the other issues will be discussed.

First, the validity of the Amendments:

The method and timing of adoption suggests that it was an effort by the managers and promoters to insulate themselves from any inquiry by concerned members who were dissatisfied by the operational management of the company and who believed that the managers were fraudulently or otherwise making decisions adverse to the best interest of the company and its members.

It had been more than five years from the time of the creation of the company and an application for a permit to develop the property had been rejected by the city council as nonconforming to the city zoning requirements. Regular reports had not been submitted to the members in accordance with the operating agreement. Annual budgets had not been submitted and requests for books, records, and check records had not been produced in compliance with the operating agreement.

It had become apparent to the managers and officers of the company, and to some other members, that there was dissatisfaction by some members who might be willing to take some action against the company and its officers. As reflected above, severe and to some extent illegal and unenforceable provisions were placed in a proposed amended operating agreement.

The method of adoption of these provisions was surreptitious and coercive. The proposed amendments were circulated somewhat late in the day by e-mail to all but the Old Trace and Nero claimants with a follow up telephone to some urging the members to sign immediately to protect their investments. There was no discussion of the details of the amendments with the members who signed. There had been discussion among some of the members and the officers

and managers that Nero and Old Trace were going to adversely affect the company. The Old Trace and Nero claimants only received the proposed amendments after they had been approved by a supermajority of members. The approval was given near the end of October 2012.

It is noted that a meeting was held on October 17, 2012 among all investors, called by members to discuss the project. Respondents failed to attend though they had notice of the meeting. The meeting was followed by a letter from Sean Corrigan to all, including respondents, setting forth the agenda that had been discussed, concerns about operational decisions, and some proposed solutions. See Arbitration Exhibit 37.

The amendments to the operating agreement, obviously drafted by an attorney for the respondents, followed in less than 2 weeks. The objective was to stifle concerns and prevent inquiry among the dissenting members or any action by members to rectify, modify, amend, or end the project.

Although the operating agreement permitted amendments upon an affirmative vote by a super majority, and 80 % approved these provisions, the method of approval did not permit all voices to be heard, or for reasonable discussion, and it is noted that among the so-called super majority, 20% were votes by members who are now claimants here, and among the other approval voters, over 25% are respondents or close relatives of respondents. If those 25% are not independent but subject to control of the respondent s, there is not a supermajority in favor of the amendments.

The specific provisions precluding right of examination of the books and records, imposing severe penalties for violations by way of monetary and involuntary buy-outs, bear no reasonable relationship to any actual harm and on the face of it are purely punitive.

The involuntary buy-out for filing a law suit is at 90% of the fair market value at the time of the violation. Of course, respondents have already received the full benefit of the investment dollars of claimants as well as of borrowed money.

As discussed above, the so called liquidated damages bear no resemblance to estimated actual damages and are unreasonable. By the terms of the amendments, if a member files a law suit in superior court, the company is entitled to a liquidated damage amount of $50,000 against each member who files the law suit. In this case respondents seek $250,000 against the 5 claimants. Moving to compel arbitration against 5 united plaintiffs is on its face not 5 times more expensive or time consuming than a motion to compel on the same grounds against one plaintiff.

Imposing a $50,000 penalty against a member who is trying to ascertain the propriety of conduct of the operating company can only be a penalty to deter inquiry. Particularly here where all the testimony was that no tangible damage was suffered by anything done by any member.

Causation: Assuming that all of the conduct complained of in fact violated the Operating Agreement, has the LLC suffered any damages as a consequence? The failure to obtain approval for the proposed three story office building was caused by the failure to propose a building that met city zoning standards or acceptable provisions for waivers of some zoning provisions. There were two predominant causes that the evidence established as the cause for the rejection of the application to the city: city height limitations and the inability to satisfy city parking requirements, which could not be satisfied by a three-story building, and the refusal to propose a lesser building which could have been approved within a short period of time after formation of the company.

Other claimed violations include the engagement by claimants of Ronald Packard as consultant, and then attorney of record in these proceedings in the fall of 2012. Mr. Packard is and was an avowed opponent of the three story project who not coincidentally was an adjacent property owner whose property would be affected by the 40 Main Street building as proposed. Claimants by 2012, more than 5 years after the formation of the LLC and after the failure to get approval of respondents for the three story concept, were questioning the propriety of the management of the company and its books and records, and were considering what alternative might be available to them. A member of an LLC is not barred from seeking remedies if the member is reasonable justified in believing there is mismanagement or fraud by the managers or officers of the company. This was the period of time when they had also learned that a usable 20

car parking garage was not feasible. Respondent argues that this conduct violates the Section 5.1.1.1 of the Amended Operation Agreement.

Members who spoke with bank officers had an absolute right to talk with them because of the risks to their investment dollars if the bank foreclosed or defaulted the loans. One way of protecting one's interest is by acquiring a loan before it is defaulted. While the inquiry concerning acquiring the banks' loan could have nefarious intent, it may also be a proper protective effort which would gave the member more ability to protect his interest in the company.

Speaking with council members even in a disparaging way about the building is alleged to have occurred in 2016. It is noted that in 2016 the case was being fully litigated in arbitration and respondents had already advised claimants that they were no longer members of the company and were subject to the involuntary termination of their membership.

The wisdom of engaging an avowed opponent as counsel who has an interest in the case once litigation is contemplated or commenced is questionable but such counsel was not called as a witness. Such counsel, it should also be noted, was a former mayor of the city and sat on the city council as a member during a portion of the time the project was pending. He had a strong bias against the proposed building but it was a bias he was entitled to have as an adjacent property owner. Claimants had a right to defend themselves and their investment in the project. Mr. Packard had early on expressed objection to the building as proposed in discussions with Theodore Sorensen and expressed his opposition to the height and concerns about the parking problems. The evidence does not establish that hiring Mr. Packard as an attorney had anything to do with the disapproval of the building application. Nor did it have any effect on Mr. Packard's already formed objection to the building.

While the evidence established that Mr. Packard as a councilman and an adjacent property owner recused himself from any part of the city's processes in considering the 40 Main Street plan and there was no physical or other evidence of improper conduct by him at any time, the fact that the other council members were undoubtedly aware of his opposition, might have

influenced the council planning department, planning commission, and the council in not approving the three story plan. Whether that is true or not, there was no evidence presented to establish any impropriety by Mr. Packard as a public official although that has no real bearing on the outcome of this arbitration.

The ordinance affecting the height limits might have made it more difficult to justify the three story version of the building, but by its terms when introduced by Mr. Packard expressly did not include his or the property at 40 Main Street, noting that with or without the amended ordinance, the 40 Main Street building was nonconforming as to both height and parking. There also is no evidence that claimants had anything to do with the enactment of the ordinance.

Much of the complained of activity of claimants regarding the bank, city council members, and the like, occurred well after the 2012 rejection of the plan by the city and continued even during the arbitration proceedings at a time when the claimants had asserted causes of action for fraud and misrepresentation and were questioning the validity of the amendments to the operating agreement.

Respondent who are seeking damages against the claimant include the Sorensens. The Sorensen's have no standing in their own names to sue the members for damages as pleaded. If the claimants were liable for liquidated or other damages, their liability would be to the company and not to its managers or employees in their own right.

Confidential Information and Privacy rights of the LLC. Certain information that was private information and writings of the company was used by claimants in discussions with third parties who had some relationship to the project and who might have some relationship to the project in the future. None of those contacts had any economic or other known impact on the company or the project. Because the liquidated damages provisions are not enforceable, either because of their method of approval, or because they do not constitute proper liquidated damages and are a penalty, or because they are subject to the rescission based on misrepresentation and fraud at the inception, and because no actual damages are proved, even assuming that such disclosures were a violation by claimants, respondents are not entitled to an award for any such violation. The same is true of any other alleged violations by the claimants of the operating agreement.

LACHES AND ESTOPPEL

There is no factual evidence establishing any of the affirmative defenses of laches, estoppel, or unclean hands, that would preclude the action by claimants.

CONCLUSION

Claimants are entitled to an Award voiding their acquisition of a membership in the 40 Main Street Offices, LLC based upon the negligent representations made by the Sorensens, setting aside and rescinding the 40 Main Street Development Agreement as to them, , and a return of their investment with interest at the legal rate from May of 2007. Claimants are entitled to an Award of attorneys' fees and costs. Costs do not include the arbitration costs.

Claimants were wrong in filing the action in view of the agreement to arbitrate disputes notwithstanding that the agreement is set aside as to claimants . As the arbitrator is reserving jurisdiction to determine attorneys' fees to be awarded to claimants, it also finds that respondents are entitled to actual attorneys' fees and costs incurred in enforcing the arbitration provision.

Claimants seek an award that the entire Operating Agreement be set aside for fraud and misrepresentation and mismanagement. If all of the members had joined in the law suit, that relief could be available along with the appointment by the Court of a receiver to take charge of the company. However, 60% of the members have not joined in this action and the company remains a viable company for all purposes. Claimants however are entitled to an award finding that they are may rescind the acquisition of their memberships in the company and, by way of damages, a return of their investment with interest at the legal rate from May of 2007.

This Award is an Interim Final Award. The arbitrator retains jurisdiction to issue a Final Award, computing interest, fees, and costs and any other ancillary or collateral relief justified by the findings herein.

IT IS SO ORDERED.

Date: February 8, 2017

Hon. Jack Komar (Ret.)
Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Michelle Penuliar, not a party to the within action, hereby declare that on February 10, 2017, I served the attached Final Interim Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Jose, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on February 10, 2017.

Michelle Penuliar
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JAMS ARBITRATION CASE REFERENCE NO. 1110017521

Old Trace Partners, L.P.,
Claimant(s),

and

Sorensen, Theodore, et al.,
Respondent(s).

ORDER ON MOTION TO AMEND FINAL INTERIM AWARD, COMPUTATION OF INTEREST ON AWARD, AND AWARD OF ATTORNEYS' FEES AND COSTS

PRELIMINARY

An Interim Final Award was issued in this matter on February 8, 2017. The Respondents subsequently filed a motion requesting that the court amend the award on the grounds that Interim Award erroneously awarded interest from the dates of investments (May 2007) rather than from the date the rescission demand (or its equivalent) was made by way of the filing of a complaint in June 2014 (California Civil Code Section 1691).

On February 8, 2017, the motion to amend was denied without prejudice and a briefing schedule was issued for hearing on that motion as well as issues related to interest computations, costs and attorneys' fees.

The matter came on for hearing on April 12, 2017 at 9:00 a.m. Counsel appeared in person: Julienne Nucum, Esquire and Preston Wong, Esquire, for Claimants and William Milks, Esquire and Kathryn Barrett, Esquire, for Respondents.

The matters having been fully briefed by both sides, and oral argument having been made, it is ordered as follows:

1. The motion to amend is denied. There is no statutory basis for amending the award and the award is correct on the merits. Although the arbitrator expressed some concern about the difference between the legal rate of interest and the market rates, the arbitrator is satisfied that using the legal rate of interest, even if it were not

EXH. "B"

compelled, would make the claimants whole as the law requires in a rescission/damage case. But, the interest award of the legal rate from the date of the damages is compelled by both the law and, as importantly, the 40 Main Street, LLC, operating agreement, Paragraph 14.20.

2. Respondents motion to strike the supplemental briefing which was due on April 19, 2017 at 12:00 p.m. based on alleged late filing is denied. The time stamp on the e-mail filed papers show it was timely received by JAMS at 11:51. A.M. on April 19th. The other objections, although to some extent meritorious are to evidence and arguments that have no impact on the decision here and will not be addressed individually.

3. In reviewing the law concerning the finality of arbitration awards, it is clear that the primary basis upon which a final award may be modified or amended is statutory. While Code of Civil Procedure Section 1284 provides the basis for correcting an award, as opposed to amending it on the merits, referencing Code of Civil Procedure sections 1286.2 and 1286.4, the principal basis for such a correction is that there is a miscalculation in computing numbers, **or a** mistake in describing a party, thing, or property referred to in the award. See also JAMS RULE 24(j).

Aside from such miscalculations or misdirection, additional specified grounds include an imperfection in the form of the award affecting the merits of the controversy, and if an arbitrator exceeds his powers. Also, fraud and the like will always permit an amendment or setting aside of an award on both statutory and common law principles. See also, Emerald Aero LLC v. Kaplan (2017), 4th District Court of Appeal-D070579, where there was no proper notice of claims and the award exceeded written notice of claims to respondent, with the court decision based, in effect, on lack of procedural due process and breach of the arbitration agreement.

In reviewing the notice of claims and the intensive briefing by both parties, both before and after the Interim Final Award, the arbitrator is satisfied that the parties were well aware of the claims and defenses thereto, and that all contractual and due process requirements have been satisfied and that there are no other errors within the statutory structure that would justify the amendment of the award of the interest as

damages for the breaches and the misrepresentations as found in the Interim Final Award.

The award of interest as damages is based on the fact that the damage to claimants occurred upon payment to respondents of their investment in the LLC which provides the grounds for rescission as well as the right to recover damages. Civil Code Section 1692. See Runyan v. Pac. Air Industries (1970) 2 Cal. 304. See also Civil Code Section 3287(a). The damages here are also founded in tort in view of the factual misrepresentations upon which the rescission is based. See Code of Civil Procedure Sections 3288 and 3291. This rule is in contradistinction to the damage rule in rescission cases governed solely by Civil Code 3287(b). But here the wrongdoing of respondents is in the negligent misrepresentations (tort) and breaches of promises. Claimants were clearly damaged by such conduct and the clear amount of damages was the amount of their investment.

Perhaps, most importantly, Paragraph 14.20 of the operating agreement specifically provides **" that any judgment or order entered . . . shall contain a specific provision(s) (sic) providing for the recovery of . . . . prejudgment interest from the date of the breach at the maximum rate of interest allowed by law."** The Interim Final Award did in fact specify an interest rate on the damages at the "legal rate". The legal rate by definition is 10% simple interest per annum. The California Constitution sets the legal rate at 7% but the legislature is authorized to set interest rates on judgments up to 10%. The "legal rate" is 10%. That in fact is the maximum interest rate allowed by law in the circumstances of this case.

See also Al-Husry v. Nilson Farms Mini-Market (1984) 25 Cal. App. 4th 641, finding that an award of 5% interest on a return of a deposit should have been 10%. Here, also, the claimants have been damaged from the moment they made their investments and are entitled to damages from the date of the investment. The various statutory provisions do provide for the claimants to be made whole.

Civil Code Section 3281 provides for recovery of damages for detriment suffered by the act of another, and Section 3287 provides that if the damages are a sum certain, or such that can be made certain, at the time the damage is sustained, the injured

party is entitled to interest from that date. Civil Code Section 3289(b) provides for interest at 10%.

The evidence is that the return on money by way of interest on bank deposits or loans over the years since 2010 has not varied by much. Counsel for both parties acknowledge that banks pay interest on accounts at generally less that 1% per annum. Evidence submitted by counsel for respondents contends that interest rates should be at .81% per annum. To use that rate of interest on damages is contrary to both the law and the specific language of the agreement between the parties.

Therefore, in considering what interest rate to apply as damages, the arbitrator selected the statutory rate and while recognizing that market interest rates were low for the last ten years, all expectations by both the promoters (respondents) and the investors (claimants) were that there would be a very substantial return on the investments. And, while no specific rate of interest was promised, the testimony at arbitration was that Respondents in calculating their management fees used a much higher rate of return on the investment. A 10% return was not unlikely. However, notwithstanding this discussion, statutory law and the operating agreement would be controlling in any event. Discussions and objections as to what the expectations of the investors may have been are not relevant or determinative as to the amount of interest to which the prevailing party must receive for breach and misrepresentations.

4. COSTS

Paragraph 14.20 of the operating agreement provides for the recovery by the prevailing party of "all reasonable fees, costs and expenses . . . including . . . reasonable attorneys' fees and expenses." "Costs" are not otherwise defined and are therefore found to be costs as defined and limited in Code of Civil Procedure Section 1033.5

Expert witness fess and transcript costs as well as court reporter fees incurred during the arbitration hearing itself are not recoverable unless ordered by the court (or arbitrator) or otherwise agreed to be the parties in the contractual provisions creating the arbitration. No such order was requested or made by the arbitrator in this matter.

A) All attorneys' fees and costs which are reimbursable to claimants, however incurred in the attempted recovery of the damage claims here, are recoverable and will be attributed to the claims generally and will not be apportioned to particular facets of any claim. It is noted that the litigation involved multiple theories of recovery and defenses by both claimants and respondents and the evidence and efforts by all parties were not separable and apportionable to any particular cause of action or theory of recovery.

The fees and costs to be recovered here may only include costs and fees which claimants incurred in the litigation. To the extent that an attorney did not bill for time, *and* no obligation was incurred for such work by claimants, such fees or costs are not a recoverable fee. The discussion of "pro bono public work" is misplaced. This was not a public interest case and the claimants were clearly not indigent. This was a claim for fraud, misrepresentation, contract, etc., and the prevailing party is entitled to reasonable fees and costs incurred; such must be fees and costs incurred for which claimants are obligated. The *right* to an award of fees and costs belongs to claimants; not their counsel, though to the extent that the party is obligated to counsel, or to the extent that a statutory right to attorneys' fees accrues, counsel may sue for and collect the same.

B) The fees claimed and costs incurred by claimants appear to be reasonable and necessary other than as indicated above and set forth hereinafter.

1. Claimants' attorneys' fees shall be reduced by the sum of $13,550.50 which is an amount of billed by claimants in connection with the opposition to motion to compel arbitration. While counsel claims that only $8,157.50 should be deduced, the law suit should never have been filed and examining the billings it is not clear that any amount of time early on was not related to the court action and the need to compel arbitration up to the time of the improvident appeal by respondents.
2. Preston Wong's unbilled time of 256.9 hours. Counsel orally argued at the hearing on the motion that it was understood by their agreement with claimants that claimants would be obligated to pay such sums as are received by claimants for attorneys' fees even though not billed in

the course of the litigation. No evidence or sworn declaration has been provided to establish such a basis for awarding unbilled fees and the cover letter to the written fee agreement provides specifically for billings for attorneys' fees on a very regular basis by the 15th day of each month.

The discussion of lode star computations and "pro bono publico" work is inapposite to the case and issues before the arbitrator. This was not a pro bono case and it was not a "public interest" case as that term is used in Code of Civil Procedure Section 1021.6. Each of the cases cited by counsel for claimants involves either a public interest law suit or a statutory basis for recovery of fees by an attorney who has taken on representation pro bono public. None of those circumstances appear here.

The basis for recovery of attorneys' fee pursuant to the agreement of the parties is to reimburse a prevailing party for its reasonable and necessary fees incurred in connection with the litigation by the very terms of the operating agreement of the LLC. The actual fees incurred must, of course, be reasonable and necessary to the representation. The use of lode star computations in this type of circumstance is merely to determine actual time reasonably spent by counsel for which the client may be liable or entitled to recover attorney fees incurred.

The application usually is to public interest litigation which the proponent has recovered for the public interest and seeks to have his attorney compensated. Under those circumstances, the beginning discussion always relates to the lode star computation and a determination whether that sum is reasonable or whether it should be reduced or enhanced.

Here, the right to recover fees is the right to recover fees reasonably incurred by the named claimants for which they have either paid or are obligated to pay attorneys' fees as expressed in the Operating Agreement. The work done by Mr. Wong, notwithstanding his

competent and professional representation is not a fee that may be recovered from Respondents unless it was an obligation of claimants. The only previous billings of claimants for Mr. Wong's work appears to be 30.3 hours that were billed to claimants and which we're paid pursuant to the fee agreement and which were reasonable and necessary at $250.00 hourly for a total of $8325. Claimants are entitled to reimbursement of that amount as prevailing parties. The balance of the fees claimed for Mr. Wong's unbilled work are not supported by the evidence submitted and the arbitrator will reserve jurisdiction to consider further evidence after the order and award herein.

3. Ronald Packard attorneys' fees as claimed are both reasonable and necessary and claimants are entitled to be reimbursed in the claimed amount of $136,344 and $200 for costs. The fees claimed were reasonable and necessary and were the obligation of claimants and claimants as prevailing parties are entitled to recover the same.
4. Julienne Nucum attorney's fees in the sum of $172,510.00 are reasonable and necessary along with costs of $11,400.00 and are obligations of claimants for which they are entitled to reimbursement as prevailing parties.
5. Expert witness fees, court transcript fees, and court reporter fees for the arbitration are not recoverable under Code of Civil Procedure 1033.5 and the terms of the agreement between the parties.. Deposition fees and costs are recoverable in the undisputed amount of $29,483,71. Also recoverable are paralegal fees incurred in the sum of $3150.00 for the services of Maria Miranda which are found to be reasonable and necessary.
6. Respondents must reimburse Mr. Jeffrey Luney the sum of $825 which they neglected to pay for his deposition time.
7. The fees claimed by respondents must be limited to the fees and costs claimed incurred by them in seeking to compel arbitration. The

fees and costs related to the appellate process after the court ordered the matter to arbitration were not justified as part of the motion to compel arbitration. That was an attempt to seek further fees from the court in advance of the arbitration itself. Total fees to Respondent were for work performed totaling $43,001.25 and parking costs of $6.25 and court filing fees.

CONCLUSION

Claimants are entitled to the following award:

1. Damages: $1,136,000.00 principal plus interest at the legal rate (10%) from May 10, 2007 computed through April 11, 2017 as $1,184,483.44. plus daily interest of $311.23 per date after April 11, 2017 until the date of the final award.
2. Attorneys' fees for work by Julienne Nucum: $172,510.00 plus $5330.00 post interim award.
3. Attorneys' fees for work by Preston Wong: $8,325.00 plus $ 1050.00. The claimed balance of $66,475.00 is reserved subject to the production of evidence establishing that such fees are an obligation of claimants except $1,050.00 post interim award.
4. Attorneys' fees for work performed by Ronald Packard: $136,360.00 plus $4,288.00 post Interim Award and $200.00 cost.
5. Costs as follows: Deposition Reporters - $20,483.71.00;
6. Costs and expenses $11,400.00

This Order is final 30 days from the date below unless any party establishes during that time that the award overlooks an issue and subject to the reserved issue of Preston Wong's fees beyond those billed to the claimants which may be raised by any party during that said 30 day period. Note: any evidence provided in support of the fee claim must be under oath by declaration under penalty of perjury and subject to cross examination. At the expiration of thirty days, the arbitrator will issue the Final Award which will encompass both the terms of the Order here as well as the provisions of the Final Interim Award.

IT IS SO ORDERED.

Date: APRIL 27, 2017

Hon. Jack Komar (Ret.)

SERVICE LIST

Case Name: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference #: 1110017521
Panelist: Komar, Jack ,

Hear Type: Arbitration
Case Type: Business/Commercial

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Theodore G. Sorensen

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PROOF OF SERVICE BY E-Mail

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Josephine Care, not a party to the within action, hereby declare that on May 03, 2017, I served the attached Order on Motion to Amend Final Interim Award, Computation of Interest on Award, and Award of Attorneys' Fees and Costs on the parties in the within action by electronic mail at San Jose, CALIFORNIA, addressed as follows:

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rdpackard@packard.com
Parties Represented:
Old Trace Partners, L.P.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on May 03, 2017.

Josephine Care
JAMS
jcare@jamsadr.com

NOTICE TO ALL PARTIES June 20, 2017

RE: **Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.**
Reference #: 1110017521

Dear Counsel,

Respondent's request to disqualify the arbitrator in this matter was referred to the National Arbitration Committee for review and decision. Pursuant to JAMS Comprehensive Arbitration Rule 15, we have reviewed the submissions from the parties and determined that the disqualification should be denied.

Judge Komar (Ret.) properly issued his initial disclosures at the time of his appointment in 2015. In January, 2016, Judge Komar issued a supplemental disclosure regarding his 30 year old former representation of Mr. Corrigan's son. This supplemental disclosure was timely, sufficiently detailed and properly notified the parties of his recollection of the representation. On a call following this supplemental disclosure, the arbitrator confirmed counsel received the disclosure. Having received no objection to this supplemental disclosure, nor any further inquiry related to the disclosure (other than possibly the name of Mr. Corrigan's son), the arbitration continued. The matter was heard over ten days in October and November of 2016. Thereafter the arbitrator issued an interim award and entertained motions with respect to the award. An additional order on the interim award was issued in May 2017. Respondents moved for disqualification in June 2017.

Respondent's basis for disqualification in this matter relates to a trivial, unrelated and sufficiently old matter so as to subject the parties to significant prejudice if allowed to be the basis to remove the arbitrator at this late date and following a decision on the merits. JAMS has determined that the arbitrator's disclosure was sufficient to alert the parties to the past representation. Respondent did not object and did not inquire further. As such, Respondent's objection raised over 18 months later is untimely and is deemed waived (See, JAMS Comprehensive Arbitration Rule 27(b).).

Finally, no evidence of bias has been presented to justify removal of the arbitrator at this late stage of the proceedings, especially in light of the significant prejudice to the parties of removing an arbitrator following the hearing and decision.

Taking into account the materiality of the facts and the significant prejudice to the Parties, the disqualification is hereby denied.

Sincerely,

Sheri Eisner
General Counsel
Co-Chair, National Arbitration Committee

160 WEST SANTA CLARA STREET SUITE 1600 SAN JOSE, CA 95113 TEL 408-288-2240 FAX 408-295-5267

EXH "C"

SERVICE LIST

Case Name: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Hear Type: Arbitration
Reference #: 1110017521
Case Type: Business/Commercial
Panelist: Komar, Jack ,

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PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Josephine Care, not a party to the within action, hereby declare that on June 20, 2017, I served the attached Letter Dated 6/20/17 from Sheri Eisner, Esq. on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Jose, CALIFORNIA, addressed as follows:

Julienne Nucum Esq.
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Parties Represented:
Old Trace Partners, L.P.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on June 20, 2017.

Josephine Care
jcare@jamsadr.com

NOTICE TO ALL PARTIES July 10, 2017

RE: **Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.**
Reference #: 1110017521

Dear Counsel,

We have reviewed the parties' various correspondence regarding my June 20th letter. The decision of JAMS as reflected in that letter is final and will not be revisited. (See, Comprehensive Rule 15.) The matter will proceed without further delay. Any further issues with respect to this matter should be directed to the Court upon confirmation or vacatur proceedings.

Sincerely,
Sheri Eisner
Sheri Eisner
General Counsel
Co-Chair, National Arbitration Committee

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EXH. "N"

SERVICE LIST

Case Name: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Hear Type: Arbitration
Reference #: 1110017521
Case Type: Business/Commercial
Panelist: Komar, Jack ,

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Party Represented:
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PROOF OF SERVICE BY E-Mail

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Josephine Care, not a party to the within action, hereby declare that on July 10, 2017, I served the attached Letter dated 7/10/17 from Sheri Eisner, Esq. on the parties in the within action by electronic mail at San Jose, CALIFORNIA, addressed as follows:

Julienne Nucum Esq.
Preston B. Wong Esq.
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rdpackard@packard.com
Parties Represented:
Old Trace Partners, L.P.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on July 10, 2017.

Josephine Care
JAMS
jcare@jamsadr.com

From: Josephine Care <jcare@jamsadr.com>
Date: January 7, 2016 at 9:48:30 AM PST
To: "julienne@mirandanucum.com" <julienne@mirandanucum.com>, "bmilks@sbcglobal.net" <bmilks@sbcglobal.net>
Cc: Jack Komar <jkomar@jamsadr.com>
Subject: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al. - REF# 1110017521

Dear Counsel,
This supplemental disclosure is being sent on behalf of Judge Komar.

Thank you.

In reviewing the Motion and the opposition papers on January 6, 2015, it came to my attention that the general partner of Claimant, Old Trace Partners, is a gentleman named Wilfred Corrigan. Over 30 years ago, in the early 1980's, before my appointment as a Judge, I was engaged to represent the son of a Wilfred Corrigan in juvenile traffic court in San Mateo County in connection with a traffic ticket received by the son. The matter was resolved without trial after one appearance. I did not represent Mr. Corrigan but I recall one meeting with both parents. I did not obtain any confidential information from them nor have an attorney client relationship with them. I do not know for certain, but I will assume that Wilfred Corrigan is the same Corrigan as above.

The Old Trace case is not connected in any way with that prior incident . I have no bias or prejudice in any way in this case, nor any predisposition as to how this case should be decided. Nor would the fact of the prior situation have any impact on how this case is decided.

I would also note that one of the attorneys who was a draftsman, allegedly, in the underlying documents is Harry Price, a lawyer who appeared in my court several times in disputed matters during the 24 plus years I sat as a Superior Court Judge. Nothing that occurred there would have any impact on any decision I might make in this case.

I make the above statement in the interests of a full disclosure.

Hon. Jack Komar (Ret.)

Josephine Care
Senior Case Manager

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EXH. "E"

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Lindsay Andersen, not a party to the within action, hereby declare that on July 25, 2017, I served the attached Final Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Jose, CALIFORNIA, addressed as follows:

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Preston B. Wong Esq.
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Fick Investment Group
Kimberly A. Nero
Mary Ellen Klein
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Phone: (650) 947-7300
rdpackard@packard.com
Parties Represented:
Old Trace Partners, L.P.

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on July 25, 2017.

Lindsay Andersen
landersen@jamsadr.com

Exhibit 2

40 MAIN STREET OFFICES, LLC
LIMITED LIABILITY COMPANY
AMENDED AND RESTATED OPERATING AGREEMENT

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE REGULATORY AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OPERATING AGREEMENT OR THE INTERESTS PROVIDED FOR HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL. THE UNITS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), IN RELIANCE UPON THE EXEMPTIONS SET FORTH IN SECTION 4(2) THEREOF AND IN THE RULES OF REGULATION D PROMULGATED THEREUNDER; THE ISSUER IS UNDER NO OBLIGATION TO REGISTER THE UNITS UNDER THE 1933 ACT. UNITS MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION UNDER THE 1933 ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER THAT SUCH REGISTRATION IS NOT REQUIRED. ADDITIONAL RESTRICTIONS ON THE TRANSFER OR INTERESTS ARE CONTAINED IN ARTICLE 10 OF THIS AGREEMENT. BASED UPON THE FOREGOING, EACH PURCHASER OF A UNIT MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF INVESTMENT THEREIN FOR AN INDEFINITE PERIOD OF TIME.

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT (the "Agreement") is entered into as of the Effective Date (defined below), among the Persons listed on **Exhibit A** hereto as Members and **Gunn Management Group, Inc.** (the "Manager"), and each of those persons who become a Company Member and/or Manager in accordance with the terms of this Agreement.

RECITALS:

A. Theodore G. Sorensen, Harry I. Price and Gerald J. Sorensen have negotiated for the right to purchase that certain real property commonly known as 40 Main Street, Los Altos, CA (the "Real Property") and desire to contribute all such rights to purchase the Real Property to the Company under the terms set forth herein. The Assessor's Parcel Number for the Real Property is APN: 167-38-032 and a legal description of the Real Property is attached hereto as **Exhibit B** and the contents thereof are incorporated herein by reference.

B. The purpose of the Company is to finance and construct certain improvements ("Improvements") to the Real Property to permit the construction and leasing or sale of residential and/or commercial real estate to the general public and such other authorized uses as the Manager shall determine from time to time under the terms of this Agreement.

C. The Members, Manager and Profits Interest Holders (defined below) enter

into this Agreement to form and provide for the governance of the LLC and the conduct of its business, and to specify their respective rights and obligations.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND UNDERTAKINGS HEREIN SPECIFIED AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, WITH THE INTENT TO BE OBLIGATED LEGALLY AND EQUITABLY, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings specified below or elsewhere in the Agreement and when not so defined shall have the meanings specified in California Corporations Code Section 17001 (such terms are equally applicable to both the singular and plural derivations of the terms defined):

1.1 "Act" shall mean the Beverly-Killea Limited Liability Company Act, codified in the California Corporations Code, Section 17000 et seq., as the same may be amended from time to time.

1.2 "Additional Capital Contribution" shall have the meaning set forth in section 3.2 hereof.

1.3 "Affiliate" of a Member or Manager shall mean any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with a Member or Manager, as applicable. The term "control," as used in the immediately preceding sentence, shall mean with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

1.4 "Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

1.5 "Articles" shall mean the Articles of Organization for the Company originally filed with the California Secretary of State and as amended from time to time.

1.6 "Assignee" shall mean the owner of an Economic Interest who has not been admitted as a substitute Member in accordance with Article VIII.

1.7 "Bankruptcy" shall mean: (a) the filing of an application by a Member for, or his or her consent to, the appointment of a trustee, receiver, or custodian of his or her other

assets; (b) the entry of an order for relief with respect to a Member in proceedings under the United States Bankruptcy Code, as amended or superceded from time to time; (c) the making by a Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of a Member unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure by a Member generally to pay his or her debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of his or her inability to pay his or her debts as they become due.

1.8 "Capital Account" shall mean, with respect to any Member, the capital account which the Company establishes and maintains for such Member pursuant to Section 3.4.

1.9 "Capital Contribution" shall mean the total amount of cash and fair market value of property contributed and/or services rendered, or to be rendered, to the Company by the Members.

1.10 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.

1.11 "Company" shall mean 40 Main Street Offices, LLC, a California limited liability Company.

1.12 "Company Minimum Gain" shall have the meaning ascribed to the term "Minimum Gain" in the Regulations Section 1.704-2(d).

1.13 "Corporations Code" shall mean the California Corporations Code, as amended from time to time, and the provisions of succeeding law.

1.14 "Dissolution Event" shall have the meaning ascribed to that term in Section 10.1.

1.15 "Distributable Cash" shall mean the amount of cash which the Manager deems available for distribution to the Members, taking into account all debts, liabilities, and obligations of the Company then due, and working capital and other amounts which the Manager deems necessary for the Company's business or to place into reserves for customary and usual claims with respect to such business.

1.16 "Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company, or except as provided in Section 17106 of the Corporations Code, any right to information concerning the business and affairs of the Company.

1.17 "Effective Date" shall have the meaning ascribed to that term in Section 2.1.

1.18 "Family Member" shall mean: (a) with respect to any individual, such individual's spouse, parent, sibling, in-law, child or grandchild (whether natural, adopted or in the process of adoption), any trust of all of the beneficial interests of which are owned by any such individuals or by any such individuals together with any organization described in Code Section 501(c)(3), the estate of any such individual, and any corporate, association, partnership or limited liability company all of the equity interests of which are owned by those above-described individuals, trust or organizations, and (b) with respect to any trust, the owners of the beneficial interests of such trust.

1.19 "Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year.

1.20 "Former Member" shall have the meaning ascribed to it in Section 8.2.

1.21 "Former Member's Interest" shall have the meaning ascribed to it in Section 8.2.

1.22 "Majority Interest" shall mean those Members who hold a majority of the Percentage Interest.

1.23 "Manager" or "Managers shall mean a Manager or Managers, or any other persons that succeed a Manager or join the Mangers as a manager of the Company.

1.24 "Manager" shall mean Gunn Management Group, Inc.

1.25 "Member" shall mean each Person who (a) is an initial signatory to this Agreement as a holder of a Percentage Interest or as a Profit Holders' Interest, has been admitted to the Company as a Member in accordance with the Articles or this Agreement or is an Assignee who has become a Member in accordance with Article VIII, and (b) has not ceased to be a Member in accordance with Article IX or for any other reason.

1.26 "Member Nonrecourse Debt" shall have the meaning ascribed to the term "Partner Nonrecourse Debt in Regulations Section 1.704-2(b)(4).

1.27 "Member Nonrecourse Deductions" shall mean items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt.

1.28 "Membership Interest" shall mean a Member's entire interest in the Company including the Member's Economic Interest, the right to vote on or participate in the management, and the right to receive information concerning the business and affairs of the Company.

1.29 "Net Profits" and "Net Losses" shall mean the income, gain, loss and deductions of the Company in the aggregate or separately stated, as appropriate, determined in accordance with the method of accounting at the close of each Fiscal Year on the Company's information tax return filed for federal income tax purposes.

1.30 "Nonrecourse Liability" shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

1.31 "Optional Purchase Event" shall have the meaning set forth in Section 8.1.

1.32 "Percentage Interest" shall mean the percentage of a Member set forth opposite the name of such Member under the column "Member's Percentage Interest" in **Exhibit A** Schedule 2 attached hereto, as such percentage may be adjusted from time to time pursuant to the terms of this Agreement. Percentage Interests shall be determined annually, unless otherwise provided herein, in accordance with the relative proportions of the aggregate Capital Contributions of the Members.

1.33 "Permitted Transfer" shall have the meaning ascribed to that term in Section 8.4.

1.34 "Person" shall mean an individual, partnership, limited partnership, limited liability company, corporation, trust, estate, association or any other entity.

1.35 "Prime Rate" as of a particular date shall mean the prime rate of interest as published on that date in the Wall Street Journal, and generally defined therein as the "base rate on corporate loans posted by at least 75% of the nations 30 largest banks." If the Wall Street Journal is not published on a date for which the Prime Rate must be determined, the Prime Rate shall be the prime rate published in the Wall Street Journal on the nearest-preceding date on which the Wall Street Journal was published.

1.36 "Profit Holders' Interest" shall mean the interest set forth in Exhibit A Schedule 3 as such may be adjusted from time to time as provided herein.

1.37 "Profits Interest" shall mean the interest of a Member in the profits of the Company.

1.38 "Purchase Questionnaire" shall mean that certain Purchaser Questionnaire executed by each Member as a condition precedent to purchasing Membership Interests.

1.39 "Regulations" shall, unless the context clearly indicates otherwise, mean the regulations in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code, and any successor regulations.

1.40 "Remaining Members" shall have the meaning ascribed to it in Section 8.2.

1.41 "Secretary of State" shall mean the California Secretary of State.

1.42 "Super-Majority Interest" shall mean those members who hold sixty percent (60%) of the Percentage Interest.

1.43 "Tax Matters Partner" (as defined in Code Section 6231) shall be the Manager or its successor as designated pursuant to section 9.8.

1.44 "Transfer" or "Transferred" shall mean any sale, assignment, transfer, conveyance, pledge, hypothecation, or other disposition voluntarily or involuntarily, by operation of law, with or without consideration, or otherwise (including, by way of intestacy, will, gift, bankruptcy, receivership, levy, execution, charging order or other similar sale or seizure by legal process) of all or any portion of any Membership Interest.

Without limiting the generality of the foregoing, the sale or exchange of at least fifty percent (50%) of the voting stock of a Member, if a Member is a corporation, or the Transfer of an interest or interests of at least fifty percent (50%) in the capital or profits of a Member (whether accomplished by the sale or exchange of interests or by the admission of new partners or members), if a Member is a partnership or limited liability company, or the cumulative Transfer of such interests in a Member which effectively equal the foregoing (including Transfer of interests followed by the incorporation of a Member and subsequent stock Transfers, or Transfers of stock followed by the liquidation of a Member and subsequent Transfers of interests) will be deemed to constitute a Transfer of the Member's entire Membership Interest. **ARTICLE II**

ORGANIZATION MATTERS

2.1 Formation. The Members intend to form a California limited liability company by filing the Articles with the Secretary of State and entering into this Agreement. This Agreement shall be deemed effective as of the date the Articles are filed ("Effective Date"). The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different because of any provision of this Agreement than those rights or obligations would be in the absence of such provision, this Agreement shall control to the extent permitted by the Act.

2.2 Name. The name of the Company shall be "40 Main Street Offices, LLC." The business of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that the Managers deem appropriate or advisable. The Managers shall file any fictitious name certificates and similar filings, and any amendments thereto, that the Managers consider appropriate or advisable. The Company's name shall be the exclusive property of the Company, and no Member shall have any rights in the name or any derivation thereof except for the Manager as set forth herein.

2.3 Term. The Company's existence commenced on the Effective Date and shall continue until terminated as hereinafter provided.

2.4 Registered Office and Agent. The Company shall continuously maintain a registered office ("Office") and registered agent ("Agent") in the State of California. The Office shall be that of the Agent. The Agent shall be as stated in the Articles or as otherwise determined by the Managers. If the Agent ceases to act as such for any reason or the Company changes the Office's location, the Managers shall designate promptly a replacement agent and/or notify the Secretary of State of the new office location on the form prescribed the Secretary of State ("Notification"). If the Managers fail to designate

a replacement Agent or notify the Secretary of State of the new Office location, a Majority Interest may file the Notification with the Secretary of State specifying the Agent and/or Office, as the case may be.

2.5 Principal Place of Business. The Company's principal place of business shall be 40 Main Street, Los Altos, CA 94022 or as the Managers may determine. The Company may also have such offices, anywhere within and without the State of California, as the Managers may determine from time to time, or the business of the Company may require.

2.6 Member and Manager Information. The name, address, taxpayer identification number and Percentage Interest of each Member and Manager are set forth in **Exhibit A**. A Member may change his or her address in the Company's books and records upon notice thereof to the Managers.

2.7 Purpose and Business of the Company. The purpose of the Company is to engage in any lawful activity for which a limited liability company may be organized under the Act. Notwithstanding the foregoing, without the written consent of a Super-Majority Interest, the Company shall not engage in any business other than the following:

2.7.1 The business of purchasing, owning, developing, leasing, selling, and operating the Real Property and the improvements thereto; and

2.7.2 Such other activities directly related to and in furtherance of the foregoing business as may be necessary, advisable, or appropriate, in the reasonable opinion of the Managers.

2.7.3 To acquire by purchase, lease or otherwise, any real or personal property (and to enter into options and agreements to so acquire such real or personal property) which may be necessary, convenient or incidental to the accomplishment of the purposes of the Company;

2.7.4 To construct, operate, maintain, finance, improve, own, sell convey, assign, mortgage or lease any real estate and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the Company;

2.7.5 To borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Company, and to secure the same by mortgage, pledge or other lien on any assets of the Company;

2.7.6 To borrow money on the general credit of the Company for use in the Company business and to execute documents in connection therewith;

2.7.7 To enter into, perform and carry out contracts of any kind necessary to, in connection with or incidental to, the accomplishment of the purposes of the Company;

2.7.8 To enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the purposes of the Company, so long as said activities and contracts may be lawfully carried on or performed by a Company under applicable laws;

2.7.9 To prepay in whole or in part, refinance, recast, increase, modify, or extend any mortgage affecting any real property or other indebtedness of the Company and, in connection therewith, to execute any extensions, renewals or modifications of such other mortgages and indebtedness;

2.7.10 To take or cause to be taken all actions and to perform or cause to be performed all functions necessary or appropriate to promote the business of the Company and to realize and carry out its purposes.

2.8 Tax Classification. The Members acknowledge that, pursuant to Regulation Section 301.7701-3, the Company shall be classified as a partnership for federal income tax purposes until the effective date of any election ("Election") to change its classification on IRS Form 8832, Entity Classification Election. The Members agree that the Managers shall have, with the written consent of sixty percent (60%) of the Membership Interests, the authority to file and make the Election on behalf of the Company and each Member at such time as the Managers determine such a change is in the Company's best interests.

2.9 No State-Law Partnership. The Company's classification as a partnership will apply only for federal (and, as appropriate, state and local) income tax purposes. This characterization does not create or imply a general partnership, limited partnership or joint venture among the Members for state law or any other purpose. Instead, the Members acknowledge the Company's status as a limited liability company under the Act.

ARTICLE III

CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions.

3.1.1 ***Profit Holders' Interest.*** Upon formation of the Company, the holders of the Profit Holders' Interest shall contribute all of their right to acquire the Real Property pursuant to that certain Purchase Agreement ("Purchase Agreement"), dated on or about February 26, 2007 by and between Theodore G. Sorensen, Harry I. Price and Gerald J. Sorensen, shareholders of Manager and those certain persons and entities set forth in the Purchase Agreement. The Members agree that such right has a net fair market value equal to the real estate fees provided thereunder and the value of the Profit Holders' Interest.

3.1.2 ***Members.*** Each Member shall contribute to the Company, as that Member's initial Capital Contribution, the money specified in **Exhibit A**, Schedule 2 to this Agreement. **Exhibit A** shall be revised from time to time to reflect any additional contributions made in accordance with Section 3.2. The Members shall divide the profits and losses of the Company in proportion to their allocated profits interest, as adjusted from time to time.

3.2 Capital Accounts.

3.2.1 ***Maintenance.*** The Company shall maintain a separate Capital Account for each Member. The Capital Account of each Member shall be credited with the Member's Initial Capital Contribution, increased by: (i) any other cash contributed after the date hereof by such Member to the Company; (ii) the fair market value, as determined by the Managers, of any property contributed after the date hereof by such Member to the Company (net of liabilities that are secured by such contributed property or that the Company or any other Member is considered to assume or take subject to under Code Section 752); (iii) allocations to such Member of Net Profit pursuant to Article VI; and (iv) other additions allocated to such Member in accordance with the Code; and decreased by: (i) the amount of cash distributed to such Member by the Company; (ii) allocations to such Member of Net Loss pursuant to Article VI; (iii) the fair market value, as determined by the Managers, of property distributed to such Member by the Company (net of liabilities that are secured by such distributed property or that such Member is considered to assume or take subject to under Code Section 752); and (iv) other deductions allocated to such Member in accordance with the Code.

3.2.2 ***Compliance with Treasury Regulations.*** The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Code Section 704(b) and Regulations Section 1.704-1(b)(2)(iv), and shall be interpreted and applied in a manner consistent with such regulations.

3.2.3 ***Assignment.*** On the Transfer of all or any part of a Member's Membership Interest as permitted by this Agreement, the Capital Account of the transferor, or portion thereof that is attributable to the Transferred interest, shall carry over to the transferee as prescribed in Regulations Section 1.704-1(b)(2)(iv).

3.2.4 ***Revaluation.*** At such times as may be required or permitted by Code Section 704 and any Regulations thereunder, the Capital Accounts shall be revalued and adjusted to reflect the then fair market value of the Company's property. The Capital Accounts shall be maintained in compliance with Regulation Section 1.704-1(b)(2)(iv)(f). All allocations of gain resulting from such revaluation shall be made consistently with

regulation Section 1.704-1(b)(2)(iv)(f) and, to the extent not inconsistent therewith, provisions of Section 5.12 on the allocation of Net Profit.

3.3 Withdrawal and Return of Capital. No Member shall be entitled to withdraw or to demand the return of any or all of that Member's Capital Contribution except as specifically provided in this Agreement.

3.4 No Interest. No Member shall be entitled to receive interest on that Member's Capital Contributions or the balance of that Member's Capital Account without the Manager's prior written consent.

3.5 No Priority Return. Except as otherwise provided in this Agreement, no Member shall have priority over any other Member regarding the return of a Capital Contribution.

3.6 Member Loans.

3.6.1 ***Member Loans***. Any Member or an Affiliate of a Member may lend money to the Company with the Manager's prior written consent. The loan shall not be treated as a Capital Contribution by that Member or entitle the Member to an increase in that Member's Percentage Interest. The loan amount shall be a debt due from the Company, repayable out of the Company's assets, bear interest at the lower of ten percent (10%) or the maximum rate permitted by law, and shall be on such other terms as the Company and the Member agree. Notwithstanding the foregoing, no Member shall be required to make any loans to the Company; if the Company needs to borrow from a Member then the Manager may borrow on such terms as shall be approved by a Super-Majority.

3.6.2 ***Lender Rights***. The Members acknowledge that any Member, Manager or Affiliate of a Member or Manager (each a "Lender") who loans money to the Company pursuant to this Section 3.6 shall have rights ("Rights"), the exercise of which may be in conflict with the Company's best interests. In that regard, the Members hereby authorize, agree and consent to the Lender's exercise of any of Lender's Rights under any promissory note, security agreement or other loan documents, even though the Lender's exercise of those rights may be detrimental to the Company or the Company's business. Further, the Members agree that any Lender's proper exercise of the Rights shall not be deemed a breach of that Lender's fiduciary duties (if any) to the Company.

3.7 Additional Capital Contribution. If the Manager at any time or from time to time determines that the Company requires additional capital, the Manager shall give notice to each Member of: (i) the total amount of additional capital required, (ii) the reason the additional capital is required, (iii) each Member's proportionate share of the total additional capital such Member must contribute to the Company (determined in accordance with this section based on Profits Interests of each Member), and (iv) the date

each Member's Additional Capital Contribution is due and payable, which date shall be thirty (30) days after the notice has been given. A Member's share of the total Additional Capital Contribution shall be equal to the product obtained by multiplying the Member's percentage of profit times the total Additional Capital Contribution Required. In the event that the adjacent property located at 60 Main Street is also acquired, an additional capital contribution shall be required of Members equal to the purchase price of such property, based on their Percentage Interest and no Additional Capital Contribution shall be required of the Managers.

3.8 Remedy of Reduction of Member's Interest in Event of Failure to Make Additional Capital Contribution. If a Member fails to pay when due all or any portion of any Additional Capital Contribution, the Manager shall request the non-defaulting Members to pay the unpaid portion of the defaulting Member's Contribution (the "Unpaid Contribution"). To the extent the Unpaid Contribution is contributed by any other Member, the defaulting Member's percentage of Company Profit ("Percentage") shall be reduced and the Percentage of each Member who makes up the Unpaid Contribution shall be increased, so that each Member's Percentage is equal to a fraction, the numerator of which is that Member's total Contributions and the denominator of which is the total Contributions of all Members (as if the holders of the Profits' Interest had made a contribution equal to that of the actual contributions made by the other Members); provided, however, that the aggregate Percentage of the holders of the Profits' Interest shall not decrease below twenty-five percent (25%). The Manager shall amend Exhibit A accordingly.

ARTICLE IV

MEMBERS

4.1 Limited Liability. Except as expressly set forth in this Agreement or required by law, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise.

4.2 Admission of Additional Members. The Manager may admit to the Company additional Members, from time to time, subject to the following:

4.2.1 ***Consent.*** The Manager and a Super-Majority Interest must consent in writing to the admission;

4.2.2 ***Capital Contribution.*** The additional Member shall make a Capital Contribution in such amount and on such terms as the Manager determines to be appropriate based upon the needs of the Company, the net value of the Company's assets, the Company's financial condition, and the benefits anticipated to be realized by the additional Member;

4.2.3 ***No Termination.*** No additional Member shall be admitted if the effect of such admission would be to terminate the Company within the meaning of Code Section 708(b); and

4.2.4 ***Additional Members Bound.*** The additional Member agrees to be bound by the terms of this Agreement.

Notwithstanding the foregoing, Assignees may only be admitted as substitute Members in accordance with Article VIII. The Manager shall amend **Exhibit A** on the admission of additional Members to set forth the Members' names, addresses, taxpayer identification numbers, Capital Contributions and Percentage Interests.

4.3 Withdrawals or Resignations. No Member may withdraw, resign or retire from the Company.

4.4 Termination of Membership Interest. Upon: (a) the Transfer of a Member's Membership Interest in violation of Article VIII, (b) the occurrence of an Optional Purchase Event as to such Member, or (c) the withdrawal, resignation or retirement of a Member in violation of Section 4.3, the Membership Interest of a Member shall be terminated by the Manager and thereafter that member shall be an Assignee only unless such Membership Interest shall be purchased by the Company and/or the Remaining Members as provided in Article VIII. Each Member acknowledges and agrees that such termination or purchase of a Membership Interest upon the occurrence of any of the foregoing events is not unreasonable under the circumstances existing as of the date hereof.

4.5 Competing Activities. The Members and Managers and their officers, directors, shareholders, partners, members, managers, agents, employees and Affiliates may engage or invest in, independently or with others, any business activity of any type or description including without limitation, those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company. Neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Members and Managers shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company. The Members shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the Company. Each Member acknowledges that the other Members and their Affiliates own and/or manage other businesses, including business that may compete with the Company and for the Members' time. Each Member hereby waives any and all rights and claims which they may otherwise have against the other Members and their officers, directors, shareholders, partners, members, managers, agents, employees, and Affiliates as a result of any of such activities.

4.6 Transactions with the Company. Subject to any limitations set forth in this Agreement and with the prior approval of the Manager, a Member or an Affiliate of a Member may transact business with the Company so long as the transaction is not expressly prohibited by this Agreement and so long as the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the Company as and when made and are at least as favorable to the Company as those terms and conditions that are

generally available in similar transactions from Persons operating at arm's length and, in the case of services, from Persons capable of performing similar services. Subject to other applicable laws, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

4.7 Remuneration to Members. Except as otherwise specifically provided in this Agreement or pursuant to a transaction permitted by Section 5.6, no Member is entitled to remuneration for services rendered or goods provided to, or on behalf of, the Company.

4.8 Members are not Agents. Pursuant to Section 5.1 and the Articles, the management of the Company is vested in the Manager. The other Members shall have no power to participate in the management of the Company except as expressly authorized by this Agreement or the Articles and except as expressly required by the Act. No Member, acting solely in the capacity of a Member, is an agent of the Company nor does any Member, unless expressly and duly authorized in writing to do so by the Manager, have any power or authority to: (a) bind or act on behalf of the Company in any way; (b) pledge its credit; (c) execute any instrument on its behalf; or (d) render it liable for any purpose.

Each Member shall indemnify, defend and hold harmless the Company and the other Members from and against any and all loss, cost, expense, liability or damage arising from or relating to any action by such action by such Member in contravention of this Section 4.8.

4.9 Voting Rights. Except as expressly provided in this Agreement, the Articles, or required by law, Members shall have no voting, approval or consent rights and, to the extent permitted by applicable law, each member waives that Member's right to vote on any issue other than those set forth in this Section 4.9.

4.9.1 ***Super-Majority Approval.*** The affirmative vote of Members holding sixty percent (60%) of the Percentage Interests (not including for such purposes the Percentage Interests held by Members who are the subject of an Optional Purchase Event or an assignor of a Membership Interest or by the Manager) shall be required for:

4.9.1.1 Any amendment of the Articles or Agreement, in accordance with Section 14.16, this Agreement, and

4.9.1.2 A decision to compromise the obligation of a Member to make an Additional Capital Contribution or return money or property paid or distributed in violation of the Act.

4.9.1.3 A decision to sell, or otherwise dispose of the Property or to dissolve the Company.

4.9.2 ***Approval by Members Holding a Majority Interest.*** Except as set forth in Section 5.3.2, in all matters in which a vote, approval or consent of the Members is required, an affirmative vote, written consent or approval of a

Majority Interest (or, in instances in which there are defaulting or Remaining Members, non-defaulting or Remaining Members who hold a majority of the Percentage Interests held by all non-defaulting or Remaining Members) shall be sufficient to authorize or approve such act. In addition to any approvals required elsewhere in this Agreement the Manager shall obtain approval by a Majority Interest of the following:

4.9.2.1 ***Annual Budget.*** A projection of costs with the first to be presented in January 2008.

4.9.2.2 ***Project Budget and Schedule.*** Within sixty (60) days following approval of the project by the City of Los Altos the Manager shall present a Project Budget and Schedule for approval.

4.9.2.3 ***Project Pro Forma.*** Within sixty (60) days following approval of the project by the City of Los Altos the Manager shall present a Project Pro Forma including projected costs and returns.

4.9.2.4 ***Capital Calls.*** Any call by the Manager for the contribution of additional capital to the Company.

4.9.2.5 ***Construction Loan.*** The Manager shall seek the approval of a Majority Interest of the terms of the proposed construction loan.

4.9.3 ***Approval Standard.*** Except as otherwise specifically provided in this Agreement, all votes, approvals or consents of the Members may be given or withheld, conditioned or delayed as the Members may determine in their sole and absolute discretion.

4.10 Member Meetings. No annual or regular meetings of the Members are required. However, if such meetings are held, meeting notices and procedures shall be in accordance with Corporations Code Section 17104 or any applicable successor statue, except that Corporations Code Section 17104(h)(2) shall not apply to any meetings of the Members. Any action that may be taken by Members under this Agreement may be taken by a written consent executed by Members having not less than the aggregate Percentage Interests that would be necessary to take that action at a meeting at which all Members entitled to vote thereon were present and voted. Written consent shall be governed by Corporation's Code Section 17104(i), except that notwithstanding anything to the contrary in Corporations Code Section 17104(i), action taken by written consent shall be effective as of the date set forth in the consent.

4.11 Reporting and Development Meetings. Prior to the approval by the City of Los Altos of the proposed Improvements, the Manager shall issue a written annual report on or before April 30 of any given year for the prior year. Such report shall consist of the federal tax returns and any other information that the Manager in its sole discretion deems appropriate. After approval of the Improvements by the City of Los Altos, the Manager shall submit quarterly reports concerning the progress toward completing the

Improvements. Upon completion of the Improvements, reporting shall be no less than annually. The Manager may call a meeting of the Members when it is deemed necessary.

4.12 Certificate of Membership Interest.

4.12.1 ***Certificate.*** A Membership Interest may (in the discretion of the Manager) be represented by a certificate of membership. Subject to applicable law, the form and content of the certificate of membership shall be determined by the Manager.

4.12.2 ***Cancellation of Certificate.*** Except as herein provided with respect to lost, stolen, or destroyed certificates, no new certificates of membership shall be issued in lieu of previously issued certificates of membership until former certificates for a like number of Membership Interests shall have been surrendered and cancelled. All certificates of membership surrendered to the Company for transfer shall be cancelled.

4.12.3 ***Replacement of Lost, Stolen, or Destroyed Certificate.*** Any Member claiming that his or her certificate of membership is lost, stolen, or destroyed may make an affidavit or affirmation of that fact and request a new certificate. Upon the giving of a satisfactory indemnity to the Company as reasonably required by the Manager, a new certificate may be issued of the same tenor and representing the same Percentage Interest of membership as was represented by the certificate alleged to be lost, stolen, or destroyed.

ARTICLE V

MANAGEMENT AND CONTROL OF THE COMPANY

5.1. Management of the Company by Manager.

5.1.1. ***Exclusive Management by Manager.*** The business, property and affairs of the Company shall be managed exclusively by its Manager. Except for situations in which the approval of the Members is expressly required by the Articles or this Agreement, the Manager shall have full, complete and exclusive authority, power, and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs.

5.1.1.1. ***Interference by Members.*** Every Member owes a duty to the Company to refrain from interference with the management of the Company by the Manager. For the purposes of this section, Interference ("Interference") includes any and all efforts by a Member or Members to oppose, directly or indirectly, the management of the Company by the Managers. Interference includes, without limitation, efforts by a Member or Members to oppose approval of the Improvements by the City of Los Altos, efforts to gain financing for the building or construction of the Improvements, to interfere with proposed leases and any other effort to oppose the lawful operations of the Company. Interference does not include private discussions among Members regarding the effective management of the Company.

5.1.2. ***Agency Authority of Manager.*** Subject to Section 5.3.2:

5.1.2.1. If there is only one Manager then the Manager is authorized to endorse checks, drafts, and other evidence of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's accounts, and may sign all checks, drafts, and other instruments obligating the Company to pay money, and may sign contracts and obligations on behalf of the Company.

5.1.2.2. If there is more than one Manager, then any Manager acting alone, is authorized to endorse checks, drafts, and other evidences of indebtedness made payable to the order of the Company, but only for the purpose of deposit into the Company's accounts. All checks, drafts, and other instruments obligating the Company to pay money in an amount of less than $25,000 may be signed by any one Manager acting alone. All checks, drafts and

other instruments obligating the Company to pay money in an amount of $25,000 or more must be signed on behalf of the Company by any two Managers acting together. Any two Managers, acting together, shall be authorized to sign contracts and obligations on behalf of the Company.

5.2. Election of Managers.

5.2.1. ***Number, Term, and Qualifications***. The Company shall initially have one (1) Manager. The number of Managers of the Company shall be fixed from time to time by the affirmative vote or written consent of a Super-Majority Interest, provided that in no instance shall there be less than one Manager and provided further that if the number of Managers is reduced from more than one to one, the Articles shall be amended to so state, and if the number of Managers is increased to more than one, the Articles shall be amended to delete the statement that the Company has only one Manager. Unless he or she resigns or is removed, each Manager shall hold office until a successor shall have been elected and qualified. Managers shall be elected by the affirmative vote or written consent of Members holding a Super-Majority Interest. A Manager need not be a Member, an individual, a resident of the State of California, or a citizen of the United States.

5.2.2. ***Resignation***. Any Manager may resign at any time by giving written notice to the Members and the remaining Managers without prejudice to the rights, if any, of the Company under any contract to which the Manager is a party. The resignation of any Manager shall take effect upon receipt of that notice or at such later time as shall be specified in the notice. Unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not: (i) affect the Manager's rights as a Member; (ii) constitute a withdrawal of a Member; or (iii) affect any rights a Manager or a Manager's Affiliate may have under any written agreement with the Company. The resignation of the Manager or Removal for Cause may affect the Profit Interest Holders' interests. Any dispute over a readjustment of these interests shall be resolved pursuant to section 14.10 hereof.

5.2.3. ***Removal***. Any Manager may be removed at any time, with cause, by the affirmative vote of a Super-Majority Interest at a meeting called expressly for that purpose, or at the written consent of a Super-Majority Interest. Any removal shall be without prejudice to the rights, if any, of the Manager under any employment contract and, if the Manager is also a Member, shall not affect the Manager's rights as Member or constitute a withdrawal of Member. For purpose of this Section, "Cause" shall mean fraud, gross negligence, willful misconduct, embezzlement or a breach of

such Manager's obligations under this Agreement or any employment contract with the Company.

5.2.4. ***Vacancies.*** Any vacancy occurring for any reason in the number of Managers shall be filled pursuant to the affirmative vote or written consent of a Super-Majority Interest.

5.3. Powers of Managers.

5.3.1. ***Necessary Powers.*** Without limiting the generality of Section 5.1, but subject to Section 5.3.2 and to the express limitations set forth elsewhere in this Agreement, the Manager shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company including, without limitation, the power to exercise on behalf of and in the name of the Company all of the powers described in Corporations Code Section 17003, including, without limitation, the power to:

5.3.1.1. Acquire, purchase, renovate, improve, alter, rebuild, demolish, replace and own the Real Property and any other property or assets that the Manager determines is necessary or appropriate or in the interest of the business of the Company, including any adjacent real property and to acquire options for the purchase of any such property;

5.3.1.2. Sell, exchange, lease, or otherwise dispose of the Real Property and other property and assets owned by the Company, or any part thereof, or any interest therein;

5.3.1.3. Borrow money from any party (including the Manager and their Affiliates), issue evidences of indebtedness in connection therewith, refinance, increase the amount of, modify, amend, or change the terms of, or extend the time for the payment of any indebtedness or obligation of the Company, and secure such indebtedness by mortgage, deed of trust, pledge, security interest, or other lien on Company assets;

5.3.1.4. Guarantee the payment of money or the performance of any contract or obligation of any Person;

5.3.1.5. Sue on, defend, or compromise any and all claims or liabilities in favor of or against the Company; submit any or all such claims or liabilities to arbitration; and confess a judgment against the Company in connection with any litigation in which the Company is involved; and

5.3.1.6. Retain legal counsel, auditors, and other professionals in connection with the Company business (including a Manager, or an officer thereof, in an independent capacity) and to pay therefor

such remuneration as the Manager may determine; provided, however, that any agreements between the Company and a Manager, or an officer thereof, shall be subject to approval as set forth in section 5.3.2 below.

5.3.1.7. At any time following development of the Real Property dissolve the Company upon ten (10) days' notice subject to the approval of a Super-Majority. Any such dissolution shall be accomplished in part by assignment of the Real Property to the Members in proportion to the Profits Interest pursuant to a Tenancy in Common Agreement subject to the approval of a Majority Interest.

5.3.2. ***Limitations on Power of Manager.*** Notwithstanding any other provisions of this Agreement, no debt or liability of more than $25,000 may be contracted on behalf of the Company except by the written consent of all Managers (if more than one). Additionally, the Manager shall not have authority hereunder to cause the Company to engage in the following transactions without first obtaining the affirmative vote or written consent of a Super Majority Interest (or such greater Percentage Interests set forth below) of the Members:

5.3.2.1. Except as permitted in Section 5.3.1.7, the sale, exchange, or other disposition of all, or substantially all, of the Company's assets occurring as part of a single transaction or plan, or in multiple transactions over a 12 month period, except in the orderly liquidation and winding up of the business of the Company upon its duly authorized dissolution, shall require the affirmative vote or written consent of a Super-Majority Interest;

5.3.2.2. The conversion of the Company into, or the merger of the Company with, another limited liability company or limited partnership shall require a Super Majority Interest, provided in no event shall a Member be required to become a general partner in a merger with a limited partnership without his or her express written consent or unless the agreement of merger provides each Member with the dissenter's rights described in the Act;

5.3.2.3. The merger of the Company with, or conversion into, a corporation or a general partnership or other Person shall require the affirmative vote or written consent of all Members;

5.3.2.4. The establishment of different classes of Members (except with respect to the Manager or other managers, and the Profit Holders' Interest);

5.3.2.5. An alteration of the primary purpose or business of the Company as set forth in Section 2.7;

5.3.2.6. Transactions between the Company and one or more of the Managers (or Members) or one or more of any Manager's or Member's Affiliates, or transactions in which one or more Managers or Members or one or more of any Manager's or Member's Affiliates, has a material financial interest;

5.3.2.7. Without limiting subsection 5.3.2.6, the lending of money by the Company to any Manager, Member or officer of a Manager or Member;

5.3.2.8. Any act which would make it impossible to carry on the ordinary business of the Company;

5.3.2.9. The filing of a bankruptcy petition on behalf of the Company; and

5.3.2.10. Any other transaction described in this Agreement as requiring the vote, consent, or approval of the Members;

5.4. Devotion of Time. The Managers are not obligated to devote all of their time or business efforts to the affairs of the Company. The Managers shall devote whatever time, effort, and skill they deem appropriate for the operation of the Company.

5.5. Competing Activities. The Managers and their officers, directors, shareholders, partners, members, managers, agents, employees and Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including without limitation, those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company. Neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Managers shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company (except with respect to any real property immediately adjacent thereto). The Managers shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the Company. The Members acknowledge that the Managers and their Affiliates own and/or manage other businesses, including business that may compete with the Company and for the Manager's time. The Members hereby waive any and all rights and claims which they may otherwise have against the Managers and their officers, directors, shareholders, partners, members, managers, agents, employees, and Affiliates as a result of any of such activities.

5.6. Transactions between the Company and the Managers. Notwithstanding that it may constitute a conflict of interest, the Managers may, and may cause their Affiliates to, engage in any transaction, including, without limitation, the purchase, sale, lease, or

exchange of any property or the rendering of any service, or the establishment of any salary, other compensation, or other terms of employment with the Company so long as such transaction is not expressly prohibited by this Agreement and so long as the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the Company and are at least as favorable to the Company as those terms and conditions that are generally available in similar transactions from Persons operating at arm's length and, in the case of services, from Persons capable of performing similar services.

A transaction between the Managers and/or their Affiliates, on the one hand, and the Company, on the other hand, shall be conclusively determined to constitute a transaction on terms and conditions, on an overall basis, fair and reasonable to the Company and at least as favorable to the Company as those generally available in a similar transaction between parties operating at arm's length if a Majority Interest of the Members having no interest in such transaction (other than their interests as Members) affirmatively vote or consent in writing to approve the transaction. Notwithstanding the foregoing, the Managers shall not have any obligation, in connection with any such transaction between the Company and the Managers or an Affiliate of the Managers, to seek the written consent of the Members.

5.7. Payments to Managers. Except as specified in this Agreement, no Manager or Affiliate of a Manager is entitled to remuneration for services rendered or goods provided to the Company. The Managers and their Affiliates shall receive only the following payments:

5.7.1. ***Management Fee.*** The Company shall pay the Managers as a guaranteed payment a fee of four percent (4%) of the sale price of the Real Property effective as of the future date of close of escrow of the sale ("expected value"). The payment and timing of the payment of the Management Fee shall be payable in three stages:

(1) First Stage: monthly for services in connection with the management of the Company in an amount reasonably estimated to pay a total of three percent (3%) of the expected value of the Real Property upon development divided by the expected number of months that development is expected to take as determined in good faith by the Manager. Such monthly fee may be changed from time to time based on reasonable projections made by the Manager. No Manager shall be prevented from receiving any fee because the Manager (or officer or shareholder thereof) is also a Member of the Company;

(2) Second Stage: Based upon appraised value of the Real Property upon completion of improvements, the Management Fee of four percent (4%) will be recalculated, and one percent (1%) of the appraised value, together with three percent (3%) of the difference between the previous estimated value and the appraised value (so as to provide a credit for all Management Fees previously paid), shall be payable upon issuance of the Certificate of Occupancy by the City of Los Altos;

(3) Third Stage: The balance of the Management Fee shall be paid at the time of the sale of the Real Property equal to a total of four percent (4%) of the amount received on the sale (less all Management Fees previously paid); provided, however that this amount shall be decreased to three percent (3%) until such time as the Members have received their capital accounts and an annualized return of eighteen percent (18%) per annum.

5.7.2. ***Services Performed by Managers or Affiliates.*** The Company shall pay the Managers or Affiliates of the Managers for services rendered or goods provided to the Company to the extent that the Managers are not required to render such services or goods themselves without charge to the Company, and to the extent that the fees paid to such Managers or Affiliates do not exceed the fees that would be payable to an independent responsible third party that is willing to perform such services or provide such goods.

5.7.3. ***Expenses.*** The Company shall reimburse the Managers and their Affiliates for the actual cost of materials used for or by the Company. The Company shall also pay or reimburse the Managers or their Affiliates for organizational expenses (including, without limitation, legal and accounting fees and costs) incurred to form the Company and prepare and file the Articles and this Agreement. All legal and accounting fees incurred thereafter shall be paid directly by the Company (or subsequently reimbursed if advanced by a Member or Manager). No legal fees shall be charged by the Manager or any officer thereof in the formation of the Company.

5.7.4. ***Supervisory Services by Members.*** The Members shall be required to perform supervisory services as directed by the Manager in an amount and of such nature as shall be agreed but not to exceed the hours specified in **Exhibit A** and receive payment for such supervisory services in the amount specified.

5.8. Officers.

5.8.1. ***Appointment of Officers.*** The Managers may appoint officers at any time. The officers of the Company, if deemed necessary by the Managers, may include a Chief Executive Officer, Vice President, Secretary, and Chief Financial Officer. The officers shall serve at the pleasure of the Managers, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. No officer need be a resident of the State of California or citizen of the United States. If a Manager is not an individual, such Manager's officers may serve as officers of the Company if elected by the Managers. The officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Managers.

5.8.2. ***Removal, Resignation and Filling of Vacancy of Officers.*** Subject to the rights, if any, of an officer under a contract of employment, any officer may be removed, either with or without cause, by the Managers at any time. Any officer may resign at any time by giving written notice to the Managers. Any resignation shall take affect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Agreement for regular appointments to that office.

5.8.3. ***Salaries of Officers.*** Subject to Sections 5.7 and 5.9, the salaries of all officers and agents of the Company shall be fixed by a resolution of the Managers and shall be subject to approval of a Majority Interest.

5.8.4. ***Duties and Powers of Officers.*** The Officers shall have such powers as the Managers shall provide from time to time.

5.9. Membership Interests of Managers. Except as otherwise provided in this Agreement, Membership Interests held by the Managers as Members shall entitle each Manager to all the rights of a Member, including without limitation, the economic, voting, information and inspection rights of a Member.

5.10. Fiduciary Duties. The only fiduciary duties a Manager owes to the Company and the Members are the duty of loyalty and the duty of care set forth in subsections 5.10.1 and 5.10.2 below:

5.10.1. ***Duty of Loyalty.*** A Manager's duty of loyalty to the Company and the Members is limited to the requirement to account to the Company and hold as trustee for the Company any property, profit, or benefit derived by the Manager in conduct or winding up of the Company's business or derived from any use by the Manager of Company property, without the written consent of the Members;

5.10.2. ***Duty of Care.*** A Manager's duty of care to the Company and the Members in the conduct and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law by the Manager.

5.11. Limitation of Liability.

5.11.1. ***Liability of Manager Limited to Manager's Capital Account.*** Under no circumstances will any director, officer, shareholder, member, manager, partner, employee, agent or Affiliate of any Manager have any personal responsibility for any liability or obligation of the Manager

(whether on a theory of alter ego, piercing the corporate veil, or otherwise), and any recourse permitted under this Agreement or otherwise of the Members, any former Member or the Company against a Manager will be limited to the value of the Capital Account of the Manager as it may exist from time to time.

5.11.2. ***Limited Liability for Company Obligations.*** No person who is a Manager or officer or both a Manager and an officer of the Company, shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a Manager or officer, or both a manager and an officer.

ARTICLE VI

ALLOCATIONS

6.1. Allocation of Net Profit and Net Loss.

6.1.1. ***Net Loss.*** Net Loss shall be allocated to the Members in proportion to their Percentage Interests.

6.1.2. ***Net Profit.*** Profits equal to a six percent (6%) annualized return on each Member's Initial Capital Contribution shall be allocated to each Member and thereafter an equal amount shall be allocated to the Profit Interest Holders, thereafter Net Profit shall be allocated to the Members in proportion to their Percentage Interests.

6.1.3. ***Reallocations.*** Notwithstanding anything to the contrary in Section 6.1.1, Net Loss allocations to a Member shall be made only to the extent that such loss allocations will not create a deficit Capital Account balance for that Member in excess of an amount, if any, equal to such Member's share of Company Minimum Gain. Any Net Loss not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect of the allocation of losses under this Section 6.1.3. Any loss reallocated under this Section 6.1.3 shall be taken into account in computing subsequent allocations of income and losses pursuant to this Article V, so that the net amount of any item so allocated and the income and losses allocated to each Member pursuant to this Article VI, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article VI if no reallocation of losses had occurred under this Section 6.1.3.

6.2. Special Allocations. Notwithstanding Section 7.1:

6.2.1. ***Minimum Gain Chargeback.*** If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially

allocated items of Company income and gain for such Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain that is allocable to the disposition of Company property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this Section 6.2.1 shall be made in proportion to the amounts required to be allocated to each Member under this Section 7.13.1. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This Section 6.2.1 is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

6.2.2. ***Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt.*** If there is a net decrease in Company Minimum Gain attributable to a Member Nonrecourse Debt, during any Fiscal Year, each member who has a share of the Company Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5)). Allocations pursuant to this Section 6.2.2 shall be made in proportion to the amounts required to be allocated to each member under this Section 6.2.2. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 6.2.2 is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

6.2.3. ***Nonrecourse Deductions.*** Any Nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1) for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their Percentage Interests.

6.2.4. ***Member Nonrecourse Deductions.*** Those items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic

Jon Maginot

From: Ron Packard
Sent: Monday, April 08, 2019 1:32 PM
To: City Council; Chris Jordan; Jon Maginot; christopher.diaz@bbklaw.com; Jon Biggs
Subject: RE: 40 Main Street Appeal
Attachments: 2017-09-18 Packard Decl. in support of anti-SLAPP (pp. 101-200).pdf

Email #4, with Packard Decl. (part 2)

From: Ron Packard
Sent: April 8, 2019 1:11 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal (Email #2, with Final Award)

Email #2, with Final Award

From: Ron Packard
Sent: April 8, 2019 1:08 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal

Dear Council members and staff,

Enclosed please find my letter and various backup information for the hearing tomorrow night. I respectfully request that the letter and the attachments be included in the administrative record for the hearing. Two of the attachments will be send in batches due to their size.

Thanks, Ron Packard

risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Regulations Section 1.704-2(i).

6.2.5. ***Qualified Income Offset.*** If a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Section 6.2.5 shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article V so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this Article V to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 6.2.5 if such unexpected adjustments, allocations, or distributions had not occurred.

6.3. Section 754 Adjustments. Regulations Section 1.704-1(b)(2)(iv)(m) may require the Company to adjust the Members' Capital Accounts if the Company adjusts the tax bases of its assets pursuant to Code Sections 734(b) or 743(b) following an election pursuant to Code Section 754. Any such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis). Such gain or loss shall be specially allocated among the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted. Such gain or loss shall also be included in any calculation of the aggregate Net Profit or Net Loss allocated to a Member for the purpose of determining the amount of any subsequent allocation that Member is to receive pursuant to this Agreement.

6.4. Member Services; Interest Payments. Notwithstanding any other provision of this Agreement, if a final determination, assessment, or adjudication is made or conceded to on behalf of the Company that any amount paid to a Member or an Affiliate of a Member for services authorized to be rendered by such Person, or interest authorized to be paid to such Person, under this Agreement is not deductible for income tax purposes during any Fiscal Year of the Company, the Company shall specially allocate items of income and gain, for that Fiscal Year or subsequent Fiscal Years as necessary, to the Member in the amount of the disallowed payment. Notwithstanding any other provision of this Agreement, such items of income and gain shall not be included in any calculation of the aggregate amount of Net Profit and Net Loss allocated to such Member.

6.5. Curative Allocations. The allocations set forth in this Agreement are intended to comply with certain requirements of Regulation Section 1.704-1(b). Because it is not possible to foresee every possible future event during the term of the Company, the Allocations might not be consistent with the manner in which the Members intend to share Company distributions in all situations. Accordingly, the Managers may allocate income, gain, loss and deductions among the Members in a manner to prevent the

allocations from distorting the manner in which Company distributions are intended to be shared among the Members. The Managers shall have the discretion to accomplish this result in any reasonable manner.

6.6. Other Allocation Rules.

6.6.1. ***Percentage Interests.*** Unless otherwise herein expressly provided to the contrary, all allocations to the Members pursuant to this Article V shall be divided among the Members in proportion to their respective Percentage Interests.

6.6.2. ***Allocation by Tax Matters Partner.*** For purposes of determining Net Profit, Net Loss, or any other items allocable to any period, Net Profit, Net Loss, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Tax Matters Partner using any permissible method under Section 706 of the Code and the Treasury Regulations thereunder.

6.6.3. ***Excess Nonrecourse Liabilities.*** Solely for purposes of determining a Member's proportionate share of the "excess Nonrecourse liabilities" of the Company within the meaning of Section 1.752-3(a)(3) of the Regulations, the Members' interests in Net Profit shall be in accordance with their respective Percentage Interests.

6.6.4. ***Allocations of Contributed Property.*** Notwithstanding any other provisions in this Article V, in accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution.

6.6.5. ***Member's Capital Accounts.*** Allocations pursuant to this Section 6.6.5 are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of profits, losses, or other items of distributions pursuant to any provision of this Agreement.

6.7. Allocation of Net Profits and Losses and Distributions in Respect of a Transferred Interest. If any Economic Interest is transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year of the Company, Net Profit or Net Loss for such Fiscal Year shall be assigned pro rata to each day in the particular period of such Fiscal Year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member or Assignee based upon his or her respective Economic Interest at the close of such day.

However, for the purpose of accounting convenience and simplicity, the Company shall treat a transfer of, or an increase or decrease in, an Economic Interest which occurs at any time during a semi-monthly period (commencing with the semi-monthly period including the date hereof) as having been consummated on the last day of such semi-monthly period, regardless of when during such semi-monthly period such transfer, increase, or decrease actually occurs (i.e., sales and dispositions made during the first fifteen (15) days of any month will be deemed to have been made on the 15th day of the month.

Notwithstanding any provision above to the contrary, gain or loss of the Company realized in connection with a sale or other disposition of any of the assets of the Company shall be allocated solely to the parties owning Economic Interests as of the date such sale or other disposition occurs.

6.8. Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Article V and hereby agree to be bound by the provisions of this Article V in reporting their shares of Company income and loss for income tax purposes.

ARTICLE VII

INTERIM DISTRIBUTIONS

7.1 Minimum Distribution to Pay Tax Liabilities. The Company shall use its reasonable best efforts to make minimal annual cash distributions to each Member in an amount of cash equal to the current highest marginal income tax rates under Federal and California law, after taking into account the deductibility of California income taxes from Federal taxable income and applicable depreciation. Such percentage shall be readjusted to account for any change in the tax laws that would affect such percentage.

7.2 Discretionary Distributions. Subject to applicable law and any limitations contained elsewhere in this Agreement, the Manager may elect from time to time to distribute Distributable Cash to the Members, which distributions shall be in proportion to their Percentage Interests until the Initial Capital Contributions are paid and thereafter pursuant to the Profits Interest. All such distributions shall be made only to the Persons who, according to the books and records of the Company, are the holders of record of the Economic Interests on the actual date of distribution. Neither the Company nor any Manager shall incur any liability for making distributions in accordance with this Section 7.2.

7.3 Form of Distribution. Except as may be expressly provided herein (e.g. Section 5.3.1.7), a Member, regardless of the nature of the Member's Capital Contribution, has no right to demand and receive any distribution from the Company in any form other than money. Except as provided in Section 10.4, no Member may be compelled to accept from the Company: (a) a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other Members; or (b) a distribution of any asset in kind.

7.4 Restriction on Distribution.

7.4.1 ***Restrictions***. No distribution shall be made if, after giving effect to the distribution:

7.4.1.1 The Company would not be able to pay its debts as they become due in the usual course of business; or

7.4.1.2 The Company's total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution.

7.4.2 ***Manager's Determination***. The Managers may base a determination that a distribution is not prohibited on any of the following:

7.4.2.1 Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;

7.4.2.2 A fair valuation; or

7.4.2.3 Any other method that is reasonable in the circumstances.

Except as provided in Corporations Code Section 17254(e), the effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date payment is made if it occurs more than 120 days of the date of authorization.

7.4.3 A Member or Manager who votes for a distribution in violation of this Agreement or the Act is personally liable to the Company for the amount of the distribution that exceeds what could have been distributed without violating this Agreement or the Act if it is established that the Member or Manager did not act in compliance with Section 7.4 or Section 10.5. Any Member or Manager who is so liable shall be entitled to compel contribution from (i) each other Member or Manager who also is so liable; and (ii) each Member for the amount the Member received with knowledge of facts indicating that the distribution was made in violation of this Agreement or the Act.

7.5 Return of Distributions. Members and Assignees who receive distributions made in violation of the Act or this Agreement shall return such distribution to the Company. Except for those distributions made in violation of the Act or this Agreement, no Member or Assignee shall be obligated to return any distribution to the Company or pay the amount of any distribution for the account of the Company or to any creditor of the Company. The amount of any distribution returned to the Company by a Member or Assignee or paid by a Member or Assignee for the account of the Company or to a

creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member or Assignee.

7.6 Tax Withholding. If any federal, foreign, state or local jurisdiction requires the Company to withhold taxes or other amounts with respect to any Member's allocable share of Net Profits, taxable income or any portion thereof, or with respect to distributions, the Company shall withhold from distributions or other amounts then due to such Member (or shall pay to the relevant taxing authority with respect to amounts allocable to such Member) an amount necessary to satisfy the withholding responsibility. In such a case, the Member for whom the Company has paid the withholding tax shall be deemed to have received the withheld distribution or other amount so paid, and to have paid the withholding tax directly.

If it is anticipated that at the due date of the Company's withholding obligation the Member's share of cash distributions or other amounts due is less than the amount of the withholding obligation, the Member to which the withholding obligation applies shall have the option to pay to the Company the amount of such shortfall. In the event a Member fails to make such payment and the Company nevertheless pays the full amount to be withheld, the amount paid the Company shall be deemed a Nonrecourse loan from the Company to such Member bearing interest at the lower of the Prime Rate or the maximum rate permitted by law, and the Company shall apply all distributions or payments that would otherwise be made to such Member toward payment of the loan and interest, which payments or distributions shall be applied first to interest and then to principal until the loan is repaid in full.

Each Member agrees to cooperate fully with the Company's efforts to comply with the Company's tax withholding and information reporting obligations and agrees to provide the Company with such information as the Company may reasonably request from time to time in connection with such obligations.

ARTICLE VIII

TRANSFER OF INTERESTS

8.1 Restrictions on Transfer. Except for Permitted Transfers under section 8.4 and as otherwise permitted under section 8.6, no Member shall Transfer all or any part of that member's Membership Interest except with the prior written consent of a Majority Interest, which consent may be given or withheld, conditioned or delayed (as allowed by this Agreement or the Act), as the Members may determine in their sole and absolute discretion. Transfers in violation of this Article VIII shall be effective only to the extent set forth in Section 8.7. After the consummation of any Transfer of any part of a Membership Interest, the Membership Interest so Transferred shall continue to be subject to the terms and provisions of this Agreement and any further Transfers shall be required to comply with all the terms and provisions of this Agreement.

8.2 Further Restrictions on Transfer of Interests. In addition to other restrictions found in this Agreement, no Member shall Transfer all or any part of that Member's

Membership Interest: (i) without compliance with applicable securities laws; (ii) if the Transfer would cause the Company's tax termination within the meaning of Code Section 708(b)(1)(B)(; or (iii) if the Transfer would cause the Company's tax termination within the meaning of Code Section 708(b)(1)(B); or (iii) if the Transfer would cause the Company to be treated as a corporation pursuant to Code Section 7704 or Regulations Section 1.7704-1.

8.3 Substitution of Members. An Assignee of a Membership Interest shall have the right to become a substitute Member only if (i) the requirements of Sections 8.1 and 8.2 are met; (ii) the Managers have consented to such substitution in its sole and absolute discretion; (iii) The Assignee executes an instrument satisfactory to the Managers accepting and adopting the terms and provisions of this Agreement;' and (iv) the Assignee pays any reasonable expenses in connection with such Assignee's admission as a new Member. The admission of an Assignee as a substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability that such Member may have to the Company.

8.4 Permitted Transfers. Subject to compliance with Section 8.2, a Member may Transfer that Member's Membership Interest as follows (each a Permitted Transfer):

8.4.1 ***Affiliates***. To any Affiliate of the Member so long as that Member remains in voting control of the Affiliate and, at such time as the Member is no longer in voting control of such Affiliate, a "Transfer" shall be deemed to have occurred); or

8.4.2 ***Gift***. By inter vivos gift or by testamentary Transfer to any Family Member; it being agreed that, in executing this Agreement, the Managers have consented to such Transfers.

8.5 Effective Date of Transfers. Any Transfer of all or any portion of an Economic Interest which complies with this Article VIII shall be effective as of the date provided in Section 8.7 following the date upon which the requirements of Sections 8.1, 8.2 and 8.3 (collectively, "Transfer Requirements") have been met. The Company shall provide the Members with written notice of such Transfer as promptly as possible after the Transfer Requirements have been met. Any transferee of a Membership Interest shall take subject to the restrictions on Transfer imposed by this Agreement.

8.6 Rights of Legal Representatives. If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling the Member's estate or administering the Member's property, including any power the Member has under the Articles or this Agreement to give an assignee the right to become a Member. If a Member is a corporation, trust, or other entity and is dissolved or terminated the powers of that Member may be exercised by his or her legal representative or successor.

8.7 No Effect to Transfers in Violation of Agreement. Upon any Transfer of a Membership Interest in violation of this Article VIII, the transferee shall have no right to vote or participate in the management of the business, property and affairs of the Company or to exercise any rights of a Member, such transferee shall only be entitled to become an Assignee and thereafter shall only receive the share of one or more of the Company's Net Profits, Net Losses and distributions of the Company's assets to which the transferor of such Economic Interest would otherwise be entitled. Notwithstanding the immediately preceding sentences if, in the determination of the Company's legal counsel, a Transfer in violation of this Article VIII would cause the Company to: (a) be treated as a corporation pursuant to Code Section 7704 or Regulations Section 1.7704-1, or (b) be terminated for tax purposes under IRC Section 708(b)(1)(B), the Transfer shall be null and void and the purported transferee shall not become either a Member or an Assignee.

Except as otherwise provided in Section 8.4, on and contemporaneously with any Transfer of a Member's Economic Interest which does not at the same time Transfer the balance of the rights associated with the Membership Interest Transferred by the Member (including, without limitation, the rights of the Member to vote or participate in the management of the business, property and affairs of the Company), the Company shall purchase from the Member, and the Member shall sell to the Company for a purchase price of $100, all remaining rights and interests retained by the Member (including voting and inspection rights) that immediately before the Transfer were associated with the Transferred Economic Interest. Such purchase and the sale shall not, however, result in the release of the Member from any liability to the Company as a Member.

Each Member acknowledges and agrees that the right of the Company to purchase such remaining rights and interests from a Member who Transfers a Membership Interest in violation of this Article VIII is not unreasonable under the circumstances existing as of the date hereof.

8.8 Right of First Negotiation. The Company and the other Members shall have a right of first offer on any Membership Interest that a Member desires to Transfer, other than a Transfer pursuant to Section 8.4. If any Member desires to Transfer all or any part of his or her Membership Interest (other than pursuant to Section 8.4), such Member shall notify the Company and the other Members in writing of such desire and, for a period of thirty (30) days thereafter, the Company shall negotiate with respect to the purchase of such Member's Membership Interest. Thereafter, the Members shall negotiate with respect to the purchase of such Member's Membership Interest. During such period, the Member desiring to Transfer his or her Membership Interest may not solicit a transferee for such Membership Interest and may not continue any pending negotiations for the sale of the Membership Interest with third parties other than the Company.

8.9 Right of First Refusal. If the period described in Section 8.8 expires without an agreement being reached as to the purchase of the Membership Interest referred to therein, the Member desiring to transfer his or her Membership Interest may solicit transferees. In such event, each time a Member proposes to transfer all or any part of his or her Membership Interest (or as required by operation of law or other involuntary

transfer to do so) other than pursuant to Section 8.4, such Member shall first offer such Membership Interest to the Company and the non-transferring Members in accordance with the following provisions:

8.9.1 ***Notice of Proposed Transfer.*** Such Member shall deliver a written notice ("Option Notice") to the Company and the other Members stating (i) such Member's bona fide intention to transfer such Membership Interest; (ii) the Membership Interest to be transferred; (iii) the purchase price and terms of payment for which the Member proposed to transfer such Membership Interest; (iv) the nature of the proposed transfer (e.g., sale or pledge); and (iv) the name and address of the proposed transferee, if any. The Member shall use commercially reasonable efforts to cause the Option Notice to be signed by the proposed transferee, if any, confirming the accuracy of the information contained therein.

8.9.2 ***Company Option.*** Within thirty (30) days after receipt of the Option Notice, the Company shall have the right, but not the obligation, to elect to purchase all or any part of the Membership Interest on the terms and conditions specified in the Option Notice, but at the lower of: (a) the price determined pursuant to Section 8.3 of this Agreement, or (b) the price specified in the Option Notice. If the Option Notice provides for the payment of non-cash consideration, the Company may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as determined by the Managers. If the Company exercises such right within such thirty (30) day period, the Managers shall give written notice of that fact to the transferring and non-transferring Members within seven (7) calendar days after the expiration of the thirty (30)-day period.

8.9.3 ***Members' Option.*** If the Company fails to elect to purchase the entire Membership Interest proposed to be transferred within the thirty (30) day period described in Section 8.9.2 of this Agreement, the non-transferring Members shall have the right, but not the obligation, to elect to purchase any remaining share of such Membership Interest at the same price and on the same terms and conditions granted to the Company in Section 8.9.2 upon the same price and terms of payment designated in the Option Notice. If the Option Notice provides for the payment of non-cash consideration, such purchasing Members each may elect to pay the consideration in cash equal to the good faith estimate of the present fair market value of the non-cash consideration offered as determined by the Managers. Within sixty (60) days after receipt of the Option Notice, each non-transferring Member shall notify the Managers in writing of his or her desire to purchase a portion of the Membership Interest proposed to be so transferred. The failure of any Member to submit a notice within the applicable period shall constitute an election on the part of that Member not to purchase any of the Membership Interest which may be so transferred. Each Member so electing to purchase shall be entitled to

purchase a portion of such Membership Interest in the same proportion that the Percentage Interest of such Member bears to the aggregate of the Percentage Interests of all of the Members electing to so purchase the Membership Interest being transferred. In the event any Member elects to purchase none or less than all of his or her pro rata share of such Membership Interest, then the other Members can elect to purchase more than their pro rata share.

8.9.4 ***Closing.*** If the Company and the other Members elect to purchase or obtain any or all of the Membership Interest designated in the Option Notice, then the closing of such purchase shall occur within ninety (90) days after the Company's receipt of the Option Notice. The Transferring Member, the Company and/or the other Members shall execute such documents and instruments and make such deliveries as may be reasonably required to consummate such purchase.

8.9.5 ***Failure to Exercise Options.*** If the Company and the other Members elect not to purchase or obtain, or default in their obligation to purchase or obtain, all of the Membership Interest designated in the Option Notice, then the transferring Member may transfer the portion of the Membership Interest described in the Option Notice not so purchased, to the proposed transferee providing such transfer: (i) is completed within thirty (30) days after the expiration of the Company's and the other Members' right to purchase such Membership Interest; (ii) is made on terms no less favorable to the transferring Member than as designated in the Option Notice; and (iii) complies with Sections 8.1, 8.2, and 8.3; it being acknowledged by the Members that compliance with Sections 8.8 and 8.9.1-8.9.4 does not modify any of the transfer restrictions in Article VIII or otherwise entitle a Member to transfer his or her Membership Interest other than in the manner prescribed by Article VIII. If such Membership Interest is not so transferred, the transferring Member must give notice in accordance with this Section prior to any other or subsequent transfer of such Membership Interest.

8.10 Transfers and Assignments of Profit Interest Holder's Interests. Notwithstanding Section 8.9, upon the transfer of the Profits Interest of a Profits Interest Holder, the remaining Profits Interest Holders shall have the right, pro-rata as to their Profits Interests as Holders of Profits Interests, to elect to exercise the right of first refusal set forth in Section 8.9 for a period of ten (10) days after receipt of the Option Notice described in Section 8.9.1. Such exercise shall be made in writing to the Company. If any Holder of a Profit Holder's Interest fails to exercise his or her rights under this Section 8.10, the other remaining Holder of a Profit Holder's Interest may elect to purchase the balance pro rata. If the remaining Holders of Profit Sharing Interest elect to purchase less than all of the transferor's Membership Interest, the portion of such Membership Interest not elected to be purchased shall be subject to purchase and sale in accordance with Section 8.9.

ARTICLE IX

OPTIONAL PURCHASE EVENTS AND

TERMINATION OF MEMBERSHIP INTEREST

9.1 Optional Purchase Event Defined. As used in this Article IX, "Optional Purchase Event" means, with respect to any Member, the occurrence of any of the following events:

9.1.1 The death, withdrawal, resignation, retirement, insanity, bankruptcy or dissolution of a Member;

9.1.2 The occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement;

9.1.3 The filing by a Member of a judicial action or proceeding in violation of section 14.10 or an action seeking a decree of judicial dissolution pursuant to Code Section 17351;

9.1.4 The breach of Section 5.1.1.1; or

9.1.5 The breach of Section 14.26

9.2 Optional Purchase Event. Upon the occurrence of an Optional Purchase Event that is not a Permitted Transfer, the Company and/or the Remaining Members ("Remaining Members") shall have the option to purchase, and if such option is exercised, the Member whose actions or conduct resulted in the Optional Purchase Event ("Former Member") or such Former Member's legal representative shall sell, the Former Member's Membership Interest ("Former Member's Interest") as provided in this Article IX. Each Former Member agrees to give prompt notice of the Optional Purchase Event to the Managers.

9.3 Purchase Price. The purchase price for the Former Member's Interest shall be ninety percent (90%) of the fair market value of the Former Member's Interest as determined by an independent appraiser jointly selected by the Former Member (or the Former Member's legal representative) and the Manager.

If the Former Member (or the Former Member's legal representative) and the Managers are unable to agree on the selection of an appraiser within thirty (30) days after the Optional Purchase Event, each shall select an independent appraiser within thirty (30) days after the Optional Purchase Event, each shall select an independent appraiser within twenty (20) days after expiration of the thirty (30)-day period. The two (2) appraisers so selected shall each independently appraise the Former Members' Interest and, as long as the difference in the two (2) appraisals does not exceed five (5) percent of the lower of the two (2) appraisals, the fair market value shall be conclusively deemed to equal the average of the two (2) appraisals. The determination of such appraisers shall be binding on the parties. If either party fails to select an independent appraiser within the time required by this Section 9.3, the fair market value of the Former Member's Interest shall

be conclusively deemed to equal the appraisal of the independent appraiser timely selected by the other.

If the difference between the two (2) appraisals referred to above exceeds five (5) percent of the lower of the two (2) appraisals, the two (2) appraisers selected shall select a third appraiser who shall also independently appraise the Former Member's Interest. In such case the fair market value of the Former member's Interest shall be the average of the two closest appraisals. The determination of such appraisers shall be binding on the parties. The Company and the Former Member shall each pay one-half (1/2) of the cost of the third appraisal.

In determining the fair market value, the appraisers appointed under this Agreement shall consider all opinions and relevant evidence submitted to them by the parties, or otherwise obtained by them, and shall set forth their determination in writing together with their opinions and the considerations on which the opinions are based, with a signed counterpart to be delivered to each party, within sixty (60) days after commencing the appraisal. Notwithstanding the foregoing, the appraisers shall not consider any discount for an undivided interest that might otherwise be applicable herein.

Notwithstanding the foregoing, if the Optional Purchase Event results from a breach of this Agreement by the Former Member, the purchase price shall be reduced by an amount equal to the damages suffered by the Company or the Remaining Members as a result of such breach. The purchase price of the Former Member's interest shall be ninety percent (90%) of the fair market value of the Former Member's Interest as determined by the Certified Public Accountant employed by the Company. Such valuation shall be based on an appraisal of the Real Property, within twelve (12) months of the Optional Purchase Event, before or after, plus the value of other assets owned by the Company less accrued liabilities as determined by the Certified Public Accountant for the Company, as adjusted for the Membership Interest.

Notwithstanding the foregoing, if the Optional Purchase Event results from a breach of this Agreement by the Former Member, the purchase price shall be reduced by an amount equal to the damages suffered by the Company or the Remaining Members as a result of such breach.

9.4 Notice of Intent to Purchase. Within fifteen (15) days after the purchase price of the Former Member's Interest determined in accordance with Section 9.3, the Manager shall notify each Remaining Member of such price. Within thirty (30) days after the Managers have notified the Remaining Members as to the purchase price of the Former Member's Interest determined in accordance with Section 9.3, each Remaining Member shall notify the Managers in writing of his or her desire to purchase a portion of the Former Member's Interest. The failure of any Remaining Member to submit a notice within the applicable period shall constitute an election on the part of the Member not to purchase any of the Former Member's Interest. Each Remaining Member so electing to

purchase shall be entitled to purchase a portion of the Former Member's Interest in the same proportion that the Percentage Interest of the Remaining Member bears to the aggregate of the Percentage Interests of all of the Remaining Members electing to purchase the Former Member's Interest.

9.5 Election to Purchase Less than All of the Former Member's Interest. If any remaining Member elects to purchase none or less than all of his or her pro rata share of the Former Member's Interest, then the Remaining Members may elect to purchase more than their pro rata share. If the Remaining Members fail to purchase the entire Interest of the Former Member, the Company may purchase any remaining share of the Former Member's Interest. If the Remaining Members and the Company do not elect to purchase all of the Former Member's Interest, such remaining Interest shall be that of an Economic Interest Only.

9.6 Payment of Purchase Price. The purchase price shall be paid by the Company or the Remaining Members, as the case may be, by either of the following methods, each of which may be selected separately by the Company or the Remaining Members:

9.6.1 ***All Cash***. At the Closing, the Company or the Remaining Members shall pay in cash the total purchase price for the Former Member's Interest; or

9.6.2 ***Terms***. At the Closing, the Company or the Remaining Members shall pay one-fifth (1/5) of the purchase price and the balance of the purchase price shall be paid in four equal annual principal installments, plus accrued interest, and be payable each year on the anniversary date of the closing. The unpaid principal balance shall accrue interest at the current Applicable Federal Rate (for debts to be retired over the payment term) as provided in the Code for the month in which the initial payment is made, but the Company and the Remaining Members shall have the right to prepay in full or in part at any time without penalty. The obligation of each purchasing Remaining Member, and the Company, as applicable, to pay its portion of the balance due shall be evidenced by a separate promissory note executed by the respective purchasing Remaining Member or the Company, as applicable. Each such promissory note shall be in an original principal amount equal to the portion owed by the respective purchasing Remaining Member or the Company, as applicable. The promissory note executed by each purchasing Remaining Member shall be secured by a pledge of that portion of the Former Member's Interest purchased by such Remaining Member.

9.7 Closing of Purchase of Former Member's Interest. Unless court approval is required, the closing ("Closing ") for the sale of a Former Member's Interest pursuant to this Article IX shall be held at 10:00 a.m. at the principal office of Company no later than sixty (60) days after the determination of the purchase price, except that if the Closing date falls on a Saturday, Sunday, or California legal holiday, then the Closing shall be held on the next succeeding business day. If court approval is required, (i) the Closing of the sale of a Former Member's Interest shall occur not later than ten (10) business days

after entry of the order approving such sale; (ii) the Former Member or such Former Member's legal representative shall file the application seeking court approval within thirty (30) days following the determination of the purchase price; and (iii) the parties to the court proceeding shall make every effort to obtain the court's approval in an expeditious manner. At the Closing, the Former Member or such Former Member's legal representative shall deliver to the Company and/or the Remaining Members an instrument of Transfer (containing warranties of title and no encumbrances) conveying the Former Member's Interest. The Former Member or such Former Member's legal representative, the Company and the Remaining Members shall do all things and execute and deliver all papers as may be necessary to consummate fully such sale and purchase in accordance with the terms and provisions of this Agreement.

9.8 Purchase Terms Varied by Agreement. Nothing contained herein is intended to prohibit Members from agreeing upon other terms and conditions for the purchase by the Company or any Member of the Membership Interest of any Member in the Company desiring to retire, withdraw or resign, in whole or in part, as a Member.

ARTICLE X

ACCOUNTING, RECORDS, AND REPORTS

10.1 Books and Records. The accounting records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of the Company shall reflect all of the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office in California all of the following:

10.1.1 ***Members***. A current list of the full name and last known business or residence address of each Member and Assignee set forth in alphabetical order, together with the Capital Contributions, Capital Account and Percentage Interest of each Member and Assignee;

10.1.2 ***Addresses***. A current list of the full name and business or residence address of each Manager;

10.1.3 ***Articles***. A copy of the Articles and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

10.1.4 ***Tax Returns***. Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six (6) most recent taxable years;

10.1.5 ***Operating Agreement***. A copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

10.1.6 ***Financial Statements.*** Copies of the financial statements of the Company, if any, for the six (6) most recent Fiscal Years; and

10.1.7 ***Books and Records.*** The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four (4) Fiscal Years.

10.2 Delivery to Members and Inspection.

10.2.1 ***Copies.*** Upon the request of any group of Members, whose interests total forty percent (40%) of the Membership Interest, for purposes reasonably related to the interest of that Person as a Member or Assignee, at the expense of the Company, a copy of the information required to be maintained under sections 10.1.1, 10.1.2 and 10.1.4 and a copy of this Agreement, as amended from time to time. or Assignee for purposes reasonably related to the interest of that Person as a Member or Assignee, the Managers shall promptly deliver to the requesting Member or Assignee, at the expense of the Company, a copy of the information required to be maintained under Sections 10.1.1, 10.1.2 and 10.1.4 and a copy of this Agreement.

10.2.2 ***Inspection.*** Upon the request of any group of Members, whose interests total forty percent (40%) of the Membership Interest, for purposes reasonably related to the interest of the Members, or Assignees, at the expense of the Company, to:

10.2.2.1 Inspect and copy during normal business hours any of the Company records described in Sections 10.1.1 through 10.1.7; and

10.2.2.2 Obtain from the Managers, promptly after their becoming available, a copy of the Company's federal, state, and local income tax or information returns for each Fiscal Year.

10.2.3 ***Partial Year Income Statements.*** Members representing at least forty percent (40%) of the Percentage Interests, may make a written request to the Managers for an income statement of the Company for the initial three-month, six-month, or nine-month period of the current Fiscal Year ended more than thirty (30) days prior to the date of the request, and a balance sheet of the Company as of the end of that period. Such statement shall be accompanied by the report thereon, if any, of the independent accountants engaged by the Company or, if there is no report, the certificate of a Manager that the statement was prepared without audit from the books and records of the Company. If so requested, the statement shall be delivered or mailed to the Members within thirty (30) days thereafter.

10.2.4 ***Request by Agent or Attorney***. Any request, inspection, or copying by a Member or Assignee under this Section 10.2 may be made by that Person or that Person's agent or attorney.

10.2.5 ***Powers of Attorney***. The Managers shall promptly furnish to a Member a copy of any amendment to the Articles or this Agreement executed by a Manager pursuant to a power of attorney from the Member.

10.3 Annual Statements.

10.3.1 ***Annual Reports***. If, at any time, the Company has more than thirty-five (35) Members, the Managers shall cause an annual report to be sent to each of the Members not later than one hundred twenty (120) days after the close of the Fiscal Year. The report shall contain a balance sheet as of the end of the Fiscal Year and an income statement and statement of changes in financial position for the Fiscal Year. Such financial statements shall be accompanied by the report thereon, if any, of the independent accountants engaged by the Company or, if there is no report, the certificate of a Manager that the financial statements were prepared without audit from the books and records of the Company.

10.3.2 ***Tax Returns***. The Managers shall cause to be prepared at least annually, at Company expense, information necessary for the preparation of the Members' and Assignees' federal and state income tax returns. The Managers shall send or cause to be sent to each Member or Assignee within ninety (90) days after the end of each taxable year such information as is necessary to complete federal and state income tax returns and, if the Company has thirty-five (35) or fewer Members, a copy of the Company's federal, state, and local income tax or information returns for that year.

10.3.3 ***Statement of Information***. The Managers shall cause to be filed at least annually with the California Secretary of State the statement required under California Corporations Code Section 17060.

10.4 Financial and Other Information. The Managers shall provide such financial and other information relating to the Company or any other Person in which the Company owns, directly or indirectly, an equity interest, as any group of Members totaling forty percent (40%) may reasonably request. The Managers shall distribute to the Members, promptly after the preparation or receipt thereof by the Managers, any financial or other information relating to any Person in which the Company owns, directly or indirectly, an equity interest, including any filings by such Person under the Securities Exchange Act of 1934, as amended, that is received by the Company with respect to any equity interest of the Company in such Person.

10.5 Filings. The Managers, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Managers, at Company expense, shall also cause to be prepared and timely filed, with

appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Articles and all reports required to be filed by the Company with those entities under the Act or other than current applicable laws, rules, and regulations. If a Manager required by the Act to execute or file any document fails, after demand, to do so within a reasonable period of time or refuses to do so, any other Manager or Member may prepare, execute and file that document with the California Secretary of State.

10.6 Bank Accounts. The Managers shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

10.7 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managers. The Managers may rely upon the advice of the Company accountants as to whether such decisions are in accordance with accounting methods followed for federal income tax purposes.

10.8 Tax Matters for the Company Handled by Managers and Tax Matters Partner. The Managers shall, from time to time, cause the Company to make such tax elections as they deemed to be in the best interests of the Company and the Members. The Tax Matters Partner shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and shall expend the Company funds for professional services and costs associated therewith. The Tax Matters Partner shall oversee the Company tax affairs in the overall best interests of the Company. If for any reason the Tax Matters Partner can no longer serve in that capacity or ceases to be a Member or Manager, as the case may be, a Majority Interest or a majority of the Managers may designate another person to be Tax Matters Partner.

10.9 Statutory Inspection Rights. Notwithstanding anything in this Agreement to the contrary, the Managers shall provide such information to the Members as the California Corporations Code shall require.

ARTICLE XI

DISSOLUTION AND WINDING UP

11.1 Dissolution. The Company shall dissolve, its assets be disposed of, and its affairs wound up on the first to occur of the following (each a "Dissolution Event")

11.1.1 Upon the entry of a decree of judicial dissolution pursuant to Act Section 17351;

11.1.2 At any time after three (3) years from the date hereof upon the vote of a Super-Majority;

11.1.3 The sale of all or substantially all of the assets of Company; or

11.1.4 The happening of any event that makes it unlawful or impossible to carry on the business of the Company;

11.1.5 The retirement of all loans secured by the Real Property, if the Manager so elects and the Manager proposes a co-tenancy agreement effecting terms and conditions similar to those of this Agreement; the Members agree that the Co-Tenancy Agreement shall become effective as to all upon approval of a Super Majority Interest.

11.2 Certificate of Dissolution. As soon as possible following the occurrence of a Dissolution Event, the Managers who have not wrongfully dissolved the Company or, if none, the Members, shall execute a Certificate of Dissolution in such form as shall be prescribed by the California Secretary of State and file the Certificate as required by the Act.

11.3 Winding Up. Upon occurrence of a Dissolution Event, the Company shall continue solely for the purpose of winding up ifs affairs in an orderly manner, liquidating its assets (or distributing the Real Property and Improvements to the Members as tenants in common), and satisfying the claims of its creditors. The Managers who have not wrongfully dissolved the Company or, if none, the Members, shall be responsible for overseeing the winding up and liquidation of Company, shall take full account of the liabilities of Company and assets, shall either cause its assets to be sold or distributed, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in Section 11.5. The Persons winding up the affairs of the Company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the Company. The Managers or Members winding up the affairs of the Company shall be entitled to reasonable compensation for such services.

11.4 Distributions in Kind. Any non-cash asset distributed to one or more Members shall first be valued at its fair market value to determine the Net Profit or Net Loss that would have resulted if such asset were sold for such value, such Net Profit or Net Loss shall then be allocated pursuant to Article X, and the Members' Capital Accounts shall be adjusted to reflect such allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in such distributed asset shall be the fair market value of such interest (net of any liability secured by such asset that such Member assumes or takes subject to). The fair market value of such asset shall be determined by the Managers or by the Members or if any Member objects by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) selected by the Manager or liquidating trustee and approved by the Members.

11.5 Order of Payment upon Dissolution.

11.5.1 ***Liquidating Distributions.*** After determining that all known debts and liabilities of the Company, including, without limitation, debts and liabilities to Members who are creditors of the Company, have been paid

or adequately provided for, the remaining assets shall be distributed to the Members in accordance with their positive Capital Account balances, after taking into account income and loss allocations for the Company's taxable year during which liquidation occurs. Such liquidating distributions shall be made by the end of the Company's taxable year in which the Company is liquidated or, if later, within ninety (90) days after the date of such liquidation.

11.5.2 ***Debts***. The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

11.5.2.1 Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision, including the financial responsibility of the Person, was determined in good faith and with reasonable care by the Members or Managers to be adequate at the time of any distribution of the assets pursuant to this Section.

11.5.2.2 The amount of the debt or liability has been deposited as provided in Corporations Code Section 2008.

This Section 10.5.2 shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

11.6 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely at the assets of the Company for the return of his or her positive Capital Account balance and shall have no recourse for his or her Capital Contribution and/or share of Net Profits (upon dissolution or otherwise) against the Managers or any other Member.

11.7 Certificate of Cancellation. The Managers or Members who filed the Certificate of Dissolution shall cause to be filed in the office of, and on a form prescribed by, the California Secretary of State, a Certificate of Cancellation of the Articles upon the completion of the winding up of the affairs of the Company.

11.8 No Action for Dissolution. Except as expressly permitted in this Agreement, a Member shall not take any voluntary action that directly causes a Dissolution Event. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not required by Section 11.1. This Agreement has been drawn carefully to provide fair treatment of all parties and equitable payment in liquidation of the Economic Interests. Accordingly, except where the Managers have failed to liquidate the Company as required by this Article XI, each Member hereby waives and renounces his or her right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of

judicial dissolution of the Company on the ground that (a) it is not reasonably practicable to carry on the business of the Company in conformity with the Articles or this Agreement, or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. Damages for breach of this Section 11.8 shall be monetary damages only (and not specific performance), and the damages may be offset against distributions by the Company to which such Member would otherwise be entitled.

ARTICLE XII

INDEMNIFICATION AND INSURANCE

12.1 Indemnification of Agents. The Company shall defend and indemnify any Member or Manager and may indemnify any other Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he or she is or was a Member, Manager, officer, employee or other agent of the Company or that, being or having been such a Member, Manager, officer, employee or agent, he or she is or was serving at the request of the Company as a manager, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to hereinafter as an "agent"), to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Managers shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any Person entitled to be indemnified by the Company hereunder, upon such terms and conditions as the Managers deem appropriate in their business judgment.

12.2 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of Section 12.1 or under applicable law.

12.3 Definitions. For purposes of this Article XII, the following definitions shall apply:

12.3.1 ***"Expenses"*** shall include, without limitation, attorneys' fees, disbursements and retainers, court costs, transcript costs, fees of accountants, experts and witnesses, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating or being or preparing to be a witness or other participant in a Proceeding.

12.3.2 ***"Proceeding"*** includes any action, suit, arbitration, alternative dispute resolution mechanism, investigation, administrative hearing or other

proceeding, whether civil, criminal, administrative or investigative in nature, except a proceeding initiated by a Person pursuant to Section 12.12.2 of this Agreement to enforce such Person's rights under this Agreement.

12.4 Indemnification of Managers and Officers.

12.4.1 ***All Proceedings.*** The Company shall indemnify any Manager or officer of the Company who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, any Proceeding (other than a Proceeding by or in the right of the Company) by reason of the fact that such Manager or officer of the company is or was an agent of the Company against all Expenses, amounts paid in settlement, judgments, fines, penalties and ERISA excise taxes actually and reasonably incurred by or levied against such Manager or officer in connection with such Proceeding if it is determined as provided in Section 12.6 or by a court of competent jurisdiction that such Manager or officer acted in good faith, in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, and in a manner not in violation of this Agreement or the Act, and with respect to any criminal Proceeding, and no reasonable cause to believe his or her conduct was unlawful. The termination of any Proceeding, whether by judgment, order, settlement or conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that a Manager or officer of the Company did not act in good faith, and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that a Manager or officer had reasonable cause to believe that his or her conduct was unlawful.

12.4.2 ***Expenses Actually Incurred in Good Faith.*** The Company shall indemnify any Manager or officer of the Company who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, any Proceeding by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Manager or officer is or was an agent of the Company only against Expenses actually and reasonably incurred by such Manager or officer in connection with such Proceeding if it is determined as provided in Section 12.6 or by a court of competent jurisdiction that such Manager or officer acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, except that no indemnification shall be made with respect to any claim, issue or matter as to which such Manager or officer shall have been adjudged to be in violation of this Agreement or the Act or otherwise liable to the Company unless and only to the extent that the court in which such Proceeding was brought or other court of competent jurisdiction shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case,

such Manager or officer is fairly and reasonably entitled to indemnification for such Expenses which such court shall deem proper.

12.5 Successful Defense. Notwithstanding any other provision of this Agreement, to the extent that a Manager or officer of the Company has been successful on the merits or otherwise in defense of any Proceeding referred to in Section 12.4, or in defense of any claim, issue or matter therein, such Manager or officer shall be indemnified against Expenses actually and reasonably incurred in connection therewith.

12.6 Determination of Conduct. Any indemnification under Section 12.4 (unless ordered by a court as referred to in such Section) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the Manager or officer of the Company is proper in the circumstances because such Manager or officer has met the applicable standard of conduct set forth in Section 12.4. Such determination shall be made: (i) by the Managers by a majority vote of a quorum consisting of Managers who were not parties to such Proceeding; or (ii) if such quorum is not obtainable or, even if obtainable, a quorum of such disinterested Managers so directs, by independent legal counsel in a written opinion; or (iii) by the Members by a vote of a Majority Interest, whether or not constituting a quorum, who were not parties to such Proceeding.

12.7 Payment of Expenses in Advance. Expenses incurred by a Manager or officer of the Company in connection with a Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of a written undertaking by or on behalf of such Manager or officer to repay such amount if it shall ultimately be determined that such Manager or officer is not entitled to be indemnified by the Company as authorized in this Article XII.

12.8 Indemnification of Other Agents. The Company may, but shall not be obligated to, indemnify any Person (other than a Manager or officer of the Company) who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, any Proceeding (including any Proceeding by or in the right of the Company) by reason of the fact that such Person is or was an agent of the Company (including Members who are not Managers or officers of the Company), against all Expenses amounts paid in settlement, judgments, fines, penalties and ERISA excise taxes actually and reasonably incurred by such Person in connection with such Proceeding under the same circumstances and to the same extent as is provided for or permitted in this Article XII with respect to a Manager or officer of the Company.

12.9 Indemnity Not Exclusive. The indemnification and advancement of Expenses provided by, or granted pursuant to, the provisions of this Article XII, shall not be deemed exclusive of any other rights to which any Person seeking indemnification or advancement of Expenses may be entitled under any agreement, vote of Managers or Members, or otherwise, both as to action in such Person's capacity as an agent of the Company and as to action in another capacity while serving as an agent. All rights to indemnification under this Article XII shall be deemed to be provided by a contract between the Company and each Manager and officer, if any, of the Company who serves

in such capacity at any time while this Agreement and relevant provisions of the Act and other applicable law, if any, are in effect. Any repeal or modification hereof or thereof shall not affect any such rights then existing.

12.10 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Article XII or of Section 17155 of the Act. In the event a Person shall receive payment from any insurance carrier or from the plaintiff in any action against such Person with respect to indemnified amounts after payment on account of all or part of such indemnified amounts having been made by the Company pursuant to this Article XII, such Person shall reimburse the Company for the amount, if any, by which the sum of such payment by such insurance carrier or such plaintiff and payments by the Company to such Person exceeds such indemnified amounts; provided, however, that such portions, if any, of such insurance proceeds that are required to be reimbursed to the insurance carrier under the terms of its insurance policy shall not be deemed to be payments to such Person hereunder. In addition, upon payment of indemnified amounts under the terms and conditions of this Agreement, the Company shall be subrogated to such Person's rights against any insurance carrier with respect to such indemnified amounts (to the extent permitted under such insurance policies). Such right of subrogation shall be terminated upon receipt by the Company of the amount to be reimbursed by such Person pursuant to the first sentence of this Section 12.10.

12.11 Heirs, Executors and Administrators. The indemnification and advancement of Expenses provided by, or granted pursuant to, this Article XII shall, unless otherwise provided when authorized or ratified, continue as to a Person who has ceased to be an agent of the Company and shall inure to the benefit of such Person's heirs, executors and administrators.

12.12 Right to Indemnification upon Application.

12.12.1 ***Prompt Payment.*** Any indemnification or advance under Section 12.4 or 12.7 shall be made promptly, and in no event later than sixty (60) days, after the Company's receipt of the written request of a Manager or officer of the Company therefor, unless, in the case of an indemnification, a determination shall have been made as provided in Section 12.6 that such Manager or officer has not met the relevant standard for indemnification set forth in Section 12.4.

12.12.2 ***Right to Indemnity Enforceable.*** The right of a Person to indemnification or an advance of Expenses as provided by this Article XII shall be enforceable in any court of competent jurisdiction. Neither the failure by the Managers or Members of the Company or its independent legal counsel to have made a determination that indemnification or an advance is proper in the circumstances, nor any actual determination by

the Managers or Members of the Company or its independent legal counsel that indemnification or an advance is not proper, shall be a defense to the action or create a presumption that the relevant standard of conduct has not been met. The burden of proving that indemnification or an advance is not proper shall be on the Company. In any such action, the Person seeking indemnification or advancement of Expenses shall be entitled to recover from the Company any and all expenses of the types described in the definition of Expenses in Section 12.3.1 of this Agreement actually and reasonably incurred by such Person in such action, but only if he or she prevails therein.

12.13 Limitations on Indemnification. No payments pursuant to this Agreement shall be made by the Company:

12.13.1 ***Voluntary Proceedings.*** To indemnify or advance funds to any Person with respect to a Proceeding initiated or brought voluntarily by such Person and not by way of defense, except as provided in Section 12.12.2 with respect to a Proceeding brought to establish or enforce a right to indemnification under this Agreement, otherwise than as required under California law, but indemnification or advancement of Expenses may be provided by the Company in specific cases if a determination is made in the manner provided in Section 12.6 that it is appropriate; or

12.13.2 ***Unlawful Indemnification.*** If a court of competent jurisdiction finally determines that any indemnification or advance of Expenses hereunder is unlawful.

12.14 Partial Indemnification. If a Person is entitled under any provisions of this Article XII to indemnification by the Company for a portion of Expenses, amounts paid in settlement, judgments, fines, penalties or ERISA excise taxes incurred by such Person in any Proceeding but not, however, for the total amount thereof, the Company shall nevertheless indemnify such Person for the portion of such Expenses, amounts paid in settlement, judgments, fines, penalties or ERISA excise taxes to which such Person is entitled.

ARTICLE XIII

INVESTMENT REPRESENTATIONS

Each Member hereby represents and warrants to, and agrees with, the Managers, the other Members, and the Company as follows:

13.1 Pre-existing Relationship or Experience. (i) He or she has a pre-existing personal or business relationship with the Company or one or more of its officers, Managers or controlling persons; or (ii) by reason of his or her business or financial experience, or by reason of the business or financial experience of his or her financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the Company or any affiliate or selling agent of the Company, he or she is capable of

evaluating the risks and merits of an investment in the Membership Interest and of protecting his or her own interests in connection with this investment.

13.2 No Advertising. He or she has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the sale of the Membership Interest.

13.3 Investment Intent. He or she is acquiring the Membership Interest for investment purposes for his or her own account only and not with a view to or for sale in connection with any distribution of all or any part of the Interest. No other person will have any direct or indirect beneficial interest in or right to the Membership Interest.

13.4 Accredited Investor. He or she is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended ("Securities Act").

13.5 Purpose of Entity. If the Member is a corporation, partnership, limited liability company, trust, or other entity, it was not organized for the specific purpose of acquiring the Membership Interest.

13.6 Residency. He or she is a resident of the State of California.

13.7 Economic Risk. He or she is financially able to bear the economic risk of an investment in the Membership Interest, including the total loss thereof.

13.8 No Registration of Membership Interest. He or she acknowledges that the Membership Interest has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or qualified under the California Corporate Securities Law of 1968, as amended, or any other applicable blue sky laws in reliance, in part, on his or her representations, warranties, and agreements herein.

13.9 New Company. He or she is aware that the Company has no past history and is newly formed.

13.10 No Obligation to Register. He or she represents, warrants, and agrees that the Company and the Managers are under no obligation to register or qualify the Membership Interest under the Securities Act or under any state securities law, or to assist him or her in complying with any exemption from registration and qualification.

13.11 No Disposition in Violation of Law. Without limiting the representation set forth above, and without limiting Article VIII of this Agreement, he or she will not make any disposition of all or any part of the Membership Interest which will result in the violation by him or her or by the Company of the Securities Act, the California Corporate Securities Law of 1968, or any other applicable securities laws. Without limiting the foregoing, he or she agrees not to make any disposition of all or any part of the Membership Interest unless and until:

13.11.1 ***Registration Statement.*** There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of such securities laws; or

13.11.2 ***Opinion of Counsel.*** (i) He or she has notified the Company of the proposed disposition and has furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition; and (ii) if reasonably requested by the Managers, he or she has furnished the Company with a written opinion of counsel, reasonably satisfactory to the Company, that such disposition will not required registration of any securities under the Securities Act or the consent of or permit from appropriate authorities under any applicable state securities law.

13.12 Legends. He or she understand that the certificates (if any) evidencing the Membership Interest may bear one or all of the following legends:

13.12.1 "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS, SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STAE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS, AND CONDITIONS WHICH ARE SET FORTH HEREIN IN THE COMPANY'S OPERATING AGREEMENT, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY."

13.12.2 Any legend required by applicable state securities laws.

12.13 Investment Risk. He or she acknowledges that the Membership Interest is a speculative investment which involves a substantial degree of risk of loss by him or her of his or her entire investment in the Company, that he or she understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the Company is newly organized and has no financial or operating history.

13.13 Investment Experience. He or she is an experienced investor in unregistered and restricted securities of limited liability companies or limited partnerships speculative and high risk ventures. This representation shall not be applicable to any Person that provides the Managers with such written information as the Managers deem necessary to substantiate that the Member engaged and designated a Professional Advisor to assist the

Member in evaluating the risks and merits of an investment in the Company. As used in this Section 12.14, a "Professional Advisor" shall have the meaning ascribed to that term in Corporations Code Section 25009, 10 California Code of Regulations Section 260.102.12(g)(1), or any successor statutes or regulations.

13.14 Restrictions on Transferability. He or she acknowledges that there are substantial restrictions on the transferability of the Membership Interest pursuant to this Agreement, that there is no public market for the Membership Interest and none is expected to develop, and that, accordingly, it may not be possible for him or her to liquidate his or her investment in the Company.

13.15 Information Reviewed. He or she has received and reviewed all information he or she considers necessary or appropriate for deciding whether to purchase the Membership Interest. He or she has had an opportunity to ask questions and receive answers from the Company and its officers, Managers and employees regarding the terms and conditions of purchase of the Membership Interest and regarding the business, financial affairs, and other aspects of the Company and has further had the opportunity to obtain all information (to the extent the Company possess or can acquire such information without unreasonable effort or expense) which he or she deems necessary to evaluate the investment and to verify the accuracy of information otherwise provided to him or her.

13.16 No Representations by the Company. Neither any Manager, Officer, any agent or employee of the Company or of any Manager, or any other Person has at any time expressly or implicitly represented, guaranteed or warranted to him or her that he or she may freely transfer the Membership Interest, that a percentage of profits and/or amount or type of consideration will be realized as a result of an investment in the Membership Interest, that past performance or experience on the part of the Managers or their Affiliates or any other person in any way indicates the predictable results of the ownership of the Membership Interest or of the overall Company business, that any cash distributions from Company operations or otherwise will be made to the Members by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the Company.

13.17 Consultation with Attorney. He or she has been advised to consult with his or her own attorney regarding all legal matters concerning an investment in the Company and the tax consequences of participating in the Company, and has done so, to the extent he or she considers necessary.

13.18 Tax Consequences. He or she acknowledges that the discussion of the tax consequences arising from this investment is general in nature and the tax consequences to him or her of investing in the Company will depend on his or her particular circumstances, and neither the directors, employees, Affiliates, or consultants of any of them will be responsible or liable for the tax consequences to him or her of an investment in the Company. He or she will look solely to, and rely upon, his or her own advisers with respect to the tax consequences of this investment.

13.19 No Assurance of Tax Benefits. He or she acknowledges that there can be no assurance that the Code or the Regulations will not be amended or interpreted in the future in such a manner so as to deprive the Company and the Members of some or all of the tax benefits they might now receive, nor that some of the deductions claimed by the Company or the allocations of items of income, gain, loss, deduction, or credit among the Members may not be challenged by the Internal Revenue Service.

13.20 Indemnity. He or she shall defend, indemnify and hold harmless the Company, each and every Manager, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, agents, attorneys, registered representatives, and control persons of any such entity who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by him or her including, without limitation, the information in this Agreement, against losses, liabilities, and expenses of the Company, each and every Manager, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, attorneys, accountants, agents, registered representatives, and control persons of any such Person (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by such Person in connection with such action, suit, proceeding, or the like.

ARTICLE XIV

MISCELLANEOUS

14.1 Counsel to the Company. Counsel to the Company may also be counsel to any Manager or any Affiliate of a Manager. The Managers may execute on behalf of the Company and the Members any consent to the representation of the Company that counsel may request pursuant to the California rules of Professional Conduct or similar rules in any other jurisdiction ("Rules"). Each Member acknowledges that Company Counsel does not represent any Member in the absence of a clear and explicit written agreement to such effect between the member and Company Counsel, and that in the absence of any such agreement Company Counsel shall owe no duties directly to a Member. Notwithstanding any adversity that may develop, in the event any dispute or controversy arises between any Members and the Company, or between any Members or the Company, on the one hand, and a Manager (or Affiliate of a Manager) that Company Counsel represents on the other hand, then each Member agrees that Company Counsel may represent either the Company or such Manager (or his or her Affiliate), or both, in any such dispute or controversy to the extent permitted by the Rules, and each Member hereby consents to such representation. Each Member further acknowledges that: (a) Theodore G. Sorensen has represented his interests and those of his spouse, Susan K. Sorensen, in connection with the formation of the Company and the preparation and negotiation of this Agreement; and (b) while communications with them concerning the formation of the Company, its Members and Managers may be confidential with respect to third parties, no Member has any expectation that such communications are confidential with respect to Susan K. Sorensen.

14.2 Complete Agreement. This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members and Managers with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members and Managers or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on the Members or Managers or have any force or effect whatsoever. To the extent that any provision of the Articles conflict with any provision of this Agreement, the Articles shall control.

14.3 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

14.4 Parties in Interest. Except as expressly provided in the Act, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Persons other than the Members and Managers and their respective successors and assigns nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

14.5 Pronouns; Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require. Any reference to the Code, the Regulations, the Act, Corporations Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

14.6 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

14.7 Interpretation.; In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of the Company, a particular Member, or its, his or her counsel.

14.8 References to this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated. References to a particular section or subsection shall include all of the subsections thereunder unless specifically stated to the contrary.

14.9 Governing Law; Jurisdiction. This Agreement is governed by and shall be construed in accordance with the law of the State of California, excluding any conflict-of-laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. Each Member hereby consents to the exclusive jurisdiction of the state and federal courts sitting in California in any action on a claim arising out of, under or in connection with this Agreement or the transactions

contemplated by this Agreement, provided such claim is not required to be arbitrated pursuant to Section 14.10 hereof. Each Member further agrees that personal jurisdiction over him or her may be effected by service of process by registered or certified mail address as provided in Section 14.15 of this Agreement, and that when so made shall be as if served upon him or her personally within the State of California.

14.10 Arbitration. Except as otherwise provided in this Agreement, any dispute, controversy or claim arising out of or relating to this Agreement, or any breach thereof, including without limitation any claim that this Agreement, or any part hereof, is invalid, illegal or otherwise voidable or void, shall be submitted, at the request of the Company or any Member, to binding arbitration by a JAMS/ENDISPUTE ("JAMS") arbitrator, or such other arbitrator as may be agreed upon by the parties. Hearings on such arbitration shall be conducted in Santa Clara County, California. A single arbitrator shall arbitrate any such controversy. The arbitrator shall hear and determine the controversy in accordance with applicable law and the intention of the parties as expressed in this Agreement, upon the evidence produced at an arbitration hearing scheduled at the request of either party. Such pre-arbitration discovery shall be permitted to the fullest extent permitted by California law applicable to arbitration proceedings, including, without limitation, the provisions of Title 9 of Part 3 of the California Code of Civil Procedure, including Section 1283.05, and successor statutes, permitting expanded discovery proceedings. The arbitrator shall decide all discovery disputes. The arbitrator shall issue a written reasoned decision and award within ninety (90) days from the date the arbitration proceedings are initiated. Judgment on the award of the arbitrator may be entered in any court having jurisdiction thereof.

Liquidated Damages. In the event of any breach of the terms of section 14.10 (Mediation and Arbitration), or of section 5.1.1.1 (Interference) it is understood by the Members that it will be difficult to attach a value to the damages caused by such breaches. It is acknowledged that any party's failure to follow the procedures set forth in section 14.10 or to use Interference against the Company will cause the party against whom an action was improperly filed or the Company ("Aggrieved Party") to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Aggrieved Party of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such breaches, the Members agree that liquidated damages may be assessed and recovered by the Aggrieved Party as against such Member or Members that wrongfully filed such action or actions or committed Interference against the Company. In the event of the filing of any such action, or of Interference, and without the Aggrieved Party being required to present any evidence of the amount or character of actual damages sustained by reason thereof; such Member or Members, or the Company, shall be jointly and severally liable to the Aggrieved Party for payment of liquidated damages in the amount of Fifty Thousand Dollars ($50,000) as an offset for legal fees and other damages that may occur. This amount is against any Member, if more than one Member participates then the amount shall be assessed against each participating Member. If any proceeding is brought in court, and it is determined that such

proceeding should have been part of an arbitration or mediation procedure, or if the Arbitrator determines that a Member or Members have been guilty of Interference, then such liquidated damages shall be assessed by the arbitrator or court of competent jurisdiction in the proceeding or procedure that follows. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and the Member or Members shall pay them to the Aggrieved Party without limiting the Aggrieved Party's right to other remedies under the terms of this Agreement

14.10.1 ***Consolidation.*** Any arbitration hereunder may be consolidated by JAMS with the arbitration of any other dispute arising out of or relating to the same subject matter when the arbitrator determines that there is a common issue of law or fact creating the possibility of conflicting rulings by more than one arbitrator. Any disputes over which arbitrator or panel of arbitrators shall hear any consolidated matter shall be resolved by JAMS.

14.10.2 ***Power and Authority of Arbitrator.*** The arbitrator shall not have any power to alter, amend, modify or change any of the terms of this Agreement nor to grant any remedy which is either prohibited by the terms of this Agreement, or not available in a court of law.

14.10.3 ***Governing Law.*** All questions in respect of procedure to be followed in conducting the arbitration as well as the enforceability of this Agreement to arbitrate which may be resolved by state law shall be resolved according to the laws of the State of California.

14.10.4 ***Costs.*** The costs of the arbitration, including any JAMS administration fee, the arbitrator's fee, and costs for the use of facilities during the hearings, shall be borne equally by the parties to the arbitration.

14.11 Exhibits. All Exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

14.12 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

14.13 Specific Performance. The Members agree that irreparable damage will result if this Agreement is not performed in accordance with its terms, and the Members agree that any damages available at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the Members hereunder shall be enforceable in a court of equity, or other tribunal with jurisdiction, by a decree of specific performance, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies and all other remedies provided for in this Agreement shall, however, be cumulative and not exclusive and shall be in addition to any other remedies that a Member may have under this Agreement, at law or in equity.

14.14 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

14.15 Notices. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively, "Notice") given under this Agreement shall be in writing and shall be served personally or delivered by first class, registered or certified, return receipt requested U.S. mail, postage prepaid. Notices may also be given by transmittal over electronic transmitting devices such as Telex, facsimile or telecopy machine or e-mail if the party to whom the notice is being sent has such device or service in its office, provided a complete copy of any notice so transmitted shall also be mailed in the same manner as required for mailed notice. Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in U.S. mail, postage prepaid. Notices shall be directed to the Company at the Company's principal place of business as specified in Section 2.5 of this Agreement, and at the addresses shown on **Exhibit A** provided a Member may change such Member's address for notice by giving written notice to the Company and all other Members in accordance with this Section 14.15.

14.16 Amendments. Except as otherwise expressly provided in this Agreement, all amendments to this Agreement will be in writing and signed by all of the Managers and a Super-Majority Interest of the Members. In the absence of any opinion of counsel as to the effect thereof, no amendment to this Agreement or the Articles shall be made which violates the Act or is likely to cause the Company to be taxed as a corporation.

14.17 Reliance on Authority of Person Signing Agreement. If a Member is not a natural person, neither the Company nor any other Member will: (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual; or (b) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

14.18 No Interest in Company Property; Waiver of Action for Partition. No Member or Assignee has any interest in specific property of the Company. Without limiting the foregoing, each Member and Assignee irrevocably waives during the term of the Company any right that he or she may have to maintain any action for partition with respect to the property of the Company.

14.19 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Any counterpart of this Agreement that has attached to it separate signature pages which altogether contain the signatures of all Managers or Members or their attorneys-in-fact shall for all purposes be deemed a fully executed instrument.

14.20 Attorneys Fees. In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provisions providing for the recovery of attorney fees and costs incurred in enforcing such judgment and an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law. For the purposes of this Section: (a) attorney fees shall include, without limitation, fees incurred in the following: (1) post judgment motions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation and (b) prevailing party shall mean the party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

14.21 Time is of the Essence. All dates and times in this Agreement are of the essence.

14.22 Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any person may be lawfully entitled.

14.23 Special Power of Attorney.

14.23.1 ***Limited Power.*** By signing this Agreement, each Member designates and appoints the Managers as that Member's true and lawful attorney in fact, in that Member's name and stead, to make, execute, sign and file such instruments, documents or certificates which may from time to time be required by the laws of the United States of America, the State of California and any political subdivisions thereof (or any other state or political subdivision in which the Company shall do business) to carry out the purposes of this Agreement, except where such action requires the express approval of the Members. The Managers are not granted any authority on behalf of the Members to amend this Agreement except that the Managers shall have the authority, as attorney in fact for each of the Members to amend this Agreement and the Certificate as may be necessary or appropriate to give effect to the transactions specified below following any necessary approvals or consents of the Members:

14.23.1.1 admissions of additional Members;

14.23.1.2 transfers of Membership Interests;

14.23.1.3 withdrawals or distributions of Capital Contributions or Distributable Cash;

14.23.1.4 contributions of additional capital;

14.23.1.5 changes in the amount of Capital Contribution or Percentage Interest or any Member; or

14.23.1.6 admissions of Persons as successor Managers.

Each Member authorizes each such attorney-in-fact to take any action necessary or advisable in connection with the foregoing, hereby giving each attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever requisite or advisable to be done in connection with the foregoing as fully as such Member might or could do so personally, and hereby ratifying and confirming all that any such attorney-in-fact shall lawfully do or cause to be done by virtue thereof or hereof.

14.23.2 ***Nature of Power of Attorney***. This power of attorney is a special power of attorney coupled with an interest and (a) is irrevocable; (b) may be exercised by any such attorney-in-fact by listing the Member executing any agreement, certificate, instrument, or other document with the single signature of any such attorney in fact acting as attorney in fact for such Members; (c) shall survive the death, disability, legal incapacity, Bankruptcy, insolvency, dissolution, death, or cessation of existence of a Member; and (d) shall survive the delivery of any assignment by a Member of the whole or a portion of his Membership Interest in the Company, except that where the assignment is of such Member's entire Membership Interest in the Company and the Assignee is admitted as a Member under the terms of this Agreement, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling any such attorney-in-fact to effect such substitution.

14.23.3 ***Signatures***. The Managers may exercise the special power of attorney granted in Section 14.23.1 by a facsimile signature of the Managers or one of the Manager's officers.

14.24 Estoppel Certificate. Each Member shall, within ten (10) days after written request by any Manager, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by such Member, or if there is a default, the nature or extent thereof.

14.25 Waiver. No waiver by any party to this Agreement of any breach of, or default under, this Agreement by any other party shall be construed or deemed a waiver of any other breach of or default under this Agreement, and shall not preclude any party from exercising or asserting any rights under the Agreement with respect to any other breach or default.

14.26

Proprietary and Confidential Information. Each Member and the Company acknowledge and agree that the Operating Agreement requires the Manager to

make certain information available to Members from time to time, in writing or orally. In addition, it is understood and agreed that each Member may make certain information of a personal, or financial, nature known to the Manager from time to time. All such information is defined as "Proprietary and Confidential Information." Proprietary and Confidential Information disclosed by one party ("Disclosing Party") to any other party ("Receiving Party") is protected by this Agreement. Each Member and the Company agree to take all reasonable precautions to protect the Disclosing Party's Proprietary and Confidential Information from disclosure to third parties. Each Member and the Company recognize and acknowledge the special value and the importance in protecting each other's Proprietary and Confidential Information. Therefore, each agrees not to provide, disclose or otherwise make available the Proprietary and Confidential Information of the other in any form to any other person, without the express written consent of the Disclosing Party. Any use or attempted use by a Member or the Company of Proprietary and Confidential Information in violation of the restrictions of this Section 14.26 shall constitute a material breach of this Agreement which will cause irreparable harm to the Disclosing Party entitling the Disclosing Party to injunctive relief in addition to all legal remedies. The obligations of the parties set forth in this Section 14.26 shall survive the termination of the Agreement for a period of three (3) years; provided, however, such obligations shall terminate with respect to Proprietary and Confidential Information to the extent the information: (i) was a matter of public knowledge or available in published literature at the time of Receiving Party's communication thereof to a third party; (ii) becomes a matter of public knowledge or available in published literature through no fault of the Receiving Party prior to the time of communication thereof to a third party; (iii) was in Receiving Party's possession free of any obligation of confidence at the time of the communication thereof to a third party; (iv) was rightfully communicated by a third party to the Receiving Party free of any obligation of confidence prior to the time of Receiving Party's communication thereof to a third party; (v) was conveyed to a professional attorney or accountant in the ordinary course of business in furtherance of Company business; or (vi) was developed by officers, employees or agents of, or consultants to, Receiving Party independently of and without reference to the Disclosing Party's Proprietary and Confidential Information.

14.27 Consent of Spouse. Within ten (10) days after any individual becomes a Member or a Member marries, such Member shall have his or her spouse execute a consent substantially in the form attached to this Agreement.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first written above and each of the individuals signing below warrants that he or she has the authority to sign for and on behalf of the respective parties.

MANAGER: Gunn Management Group, Inc.

By:_____
Theodore G. Sorensen, President and Secretary

By:_____
Gerald J. Sorensen, Vice-President and CFO

MEMBERS: [Signature Block]

_____

_____

MEMBERS: [Signature Block]

_____

_____

EXHIBIT A
CAPITAL CONTRIBUTION OF MEMBERS AND
ADDRESSES OF MANAGERS, MEMBERS, AND PROFIT INTEREST HOLDERS
Schedule 2
Capital Member's Interest (50% of Profit Interest)

Member's Name	Member's Address	Member's Initial Capital Contribution (Dollars)	Capital Member's Percentage Interest
Gerald J. Sorensen and Ann M. Sorensen, as Community Property	749 University Ave. Los Altos, CA 94022	284,000	10.00%
Theodore G. Sorensen and Susan K. Sorensen, as Community Property	751 University Ave. Los Altos, CA 94022	284,000	10.00%
Old Trace Partners, LP	101 First Street #612 Los Altos, CA 94022	284,000	10.00%
Daniel T. Nero and Kimberly A. Nero, as Community Property	25720 La Lanne Court Los Altos Hills, CA 94022	284,000	10.00%
Patapsco Freedom Enterprises C/O Next	7075 Samuel Morse Dr., Suite 250, Columbia, MD 21046	284,000	10.00%
Couch Investments, LLC	560 Oxford Ave. Palo Alto, CA 94306	284,000	10.00%
Paul E. Butterfield	13798 Lakeside Drive Clarksville, MD 21029	284,000	10.00%
Paul L. Klein, Jr. and Mary Ellen Klein, as Community Property	18715 Glen Ayre Drive Morgan Hill, CA 95037	284,000	10.00%
Alan E. Truscott	451 San Domingo Way Los Altos, CA 94022	142,000	5.00%
Patricia D. Sorensen	11576 Fallcreek Spring Ct. Cupertino, CA 95014	142,000	5.00%
Fick Investment Group, a General Partnership	926 Mercedes Ave. Los Altos, CA 94022	142,000	5.00%
Young Revocable Trust dated 11/18/1999	1305 Ensenada Way Los Altos, CA 94022	56,800	2.00%
Sarah R. Crawford Decl. of Trust dated 8/11/1997	Box 552, Honolulu, HI 96725	56,800	2.00%
JJ. Hill 4J3	1393 Oak Ave. Los Altos, CA 94022	19,880	0.70%
Matthew K. Sorensen	5657 Grand Oaks Dr. Lake Oswego, OR 97035	4,260	0.15%
Marian E. Sorensen	66 Los Altos Ave. Los Altos, CA 94022	4,260	0.15%
Total		2,840,000	100.00%

EXHIBIT B

CAPITAL CONTRIBUTION OF MEMBERS AND

ADDRESSES OF MANAGERS, MEMBERS, AND PROFIT INTEREST HOLDERS

Schedule 3

Profit Interest Holders

(50% of profit interest)

Member's Name	Member's Address	Profit Interest Holders' Interest
Gerald J. Sorensen	749 University Ave. Los Altos, CA 94022	50.00%
Theodore G. Sorensen	751 University Ave., Los Altos, CA 94022	50.00%
Total		100.00%

EXHIBIT B

LOT 5, BLOCK 1, as delineated upon that certain Map entitled "MAP NO. 1 OF THE TOWN OF LOS ALTOS", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on October 25th, 1907 in Book "L" of Maps, at Page 99.

Exhibit 3

SUBSCRIPTION AGREEMENT

40 Main Street Offices, LLC, a California limited liability company

I, the undersigned ("Subscriber") agree to become a Member of **40 Main Street Offices, LLC**, a California limited liability company ("Company") and to invest $_____ therein to acquire a Membership interest. The Membership interest in the Company will be referred to herein as the "Interests."

In order to induce the Company to issue the Interests, as a condition to my purchase of the Interests, and understanding that the Company will rely on this certification in determining my suitability as an investor for purposes of the Company's compliance with potential legal requirements and the Company's consequent eligibility for certain exemptions or exceptions from regulatory registration requirements, I warrant, represent, and certify to the Company as follows:

1. **Identity of Purchaser:** I will be investing as an individual (US Citizen) or through a US based entity. I certify the US Tax ID number I provide will be valid and not subject to any foreign withholding requirement.

2. **Subscription:** I irrevocably subscribe for and agree to purchase Interests in **40 Main Street Offices, LLC**, subject to the terms and conditions set forth herein. I understand that by putting forth this Subscription Agreement, the Company does not agree or acknowledge that the Interests are regulated securities, but due to the uncertainties of the law in this regard, is obtaining this certificate for the protection of the Company and all investors in the event that the Interests were held to be regulated securities under any applicable law. The total of all Interests will be $2,840,000 (*unless the adjacent property located at 60 Main Street is also acquired, in which case additional capital contribution may be required*). Each 10% Interest investment will be **$284,000**; **10%** of subscription is due upon execution of this Subscription Agreement; an additional **40%** is due on or before **April 12, 2007**; and the balance of **50%** is due on or before **May 11, 2007**.In the event that no closing occurs by May 16 (or any extension period agreed to by the Seller) then all funds will be returned and there shall be no further liability hereunder.

3. **Representations, Warranties, And Agreements By Purchaser:** I represent, warrant, and agree as follows:

a. The Interests are being purchased by me and not any other person, with my own funds and not with the funds of any other person, and for my account and not as a nominee or agent and not for the account of any other person. When I have purchased and received the Interests, no other person will have any interest, beneficial or otherwise, in the Interests. I am not obligated to transfer the Interests to any other person nor do I have any agreement or understanding to do so. I warrant that I was not solicited pursuant to this investment by the publication of any advertisement, nor is anyone receiving a commission or other consideration on account of my purchase of the Interests.

b. I am purchasing the Interests as an investment for an indefinite period, not with a view to or for the sale in connection with the distribution of any part or all thereof by public or private sale or other disposition. I have no intention of selling, granting any participation in or otherwise distributing or disposing of any Interests. I do not intend to subdivide my purchase of Interests with any person. I understand the procedure to sell the Interests will be determined

by the 40 Main Street Offices, LLC Operating Agreement and subject to the approval of the other LLC Members.

c. I have been advised that the Interests have not been registered under the Securities Act of 1933, as amended (the "Act"), or qualified under the any state securities law (the "Law"), on the grounds, among others, that no distribution or public offering of the Interests is to be effected and the Interests will be issued by the Company in connection with a transaction that is exempt under the Act and does not involve any public offering within the meaning of the Law. I understand that the Interests are to be sold and issued pursuant to exemptions which may include but are not limited to those provided by Sections 3(a)(II), 3(b), 4(2) and 4(6) of the Act and Rules 147, 504, 505 and 506 of the Securities and Exchange Commission ("SEC") promulgated thereunder, relating to certain intrastate offerings, small offerings, issuer transactions not involving any public offering, and sales to accredited investors.

d. I understand that the Company is relying in part on my representations as set forth herein for purposes of claiming and preserving applicable exemptions and that the basis for such exemptions may not be present if, notwithstanding my representations, I have in mind acquiring Interests for resale on the occurrence or nonoccurrence of some predetermined event, or I have otherwise misrepresented my mental state, intentions, or other matters stated herein. I agree to indemnify the Company for any damages which it incurs on account of any misrepresentation or breach hereof by me.

e. I understand that any resales or transfers of any of the Interests may be prohibited by law for a period of time or indefinitely under some circumstances.

f. I recognize that the Interests may be subject to restrictions imposed by federal and state law, and that the certificate representing the Interests will bear a restrictive legend. I also recognize that I cannot, and I agree that I will not, dispose of the Interests unless there is an available exemption from registration and/or qualification, and that no undertaking has been made with regard to registering or qualifying the Interests in the future or that any such exemption will be available.

g. I understand that the availability of an exemption from registration or qualification in the future will depend in part on circumstances outside my control and that I may be required to hold the Interests for a substantial period or potentially indefinitely unless registered under the Act and qualified under applicable state laws or unless an exemption from such registration and qualification is applicable to any subsequent transfer. I agree that the Interests will not be sold without registration under the Act or an appropriate exemption therefrom and further without qualification under applicable state Law or exemption therefrom. I understand that the Company has no obligation or present plans for registration or for qualification of the Interests and that it has no obligation to register or to qualify the Interests for any future sale thereof by me.

h. I recognize that no public market exists with respect to the Interests, and no representation has been made to me that such a public market will exist at a future date. I am not investing in reliance on any statements, predictions, or opinions relating to the potential future market for the Interests or the potential offering of the Interests to the public or in any market, nor on any other statements whatever unless expressed in writing in the Operating Agreement of the Company.

i. I understand that state securities regulators have made no finding or determination relating to the fairness for investment of the Interests offered by the Company and that no state securities regulator has or will recommend or endorse the Interests. Similarly, the Securities Exchange Commission has made no finding or determination relating to these Interests, and has not and will not recommend or endorse the Interests.

j. I have consulted with appropriate tax advisors and fully understand the tax consequences and tax matters applicable to the Interests. I understand that the Company has not obtained or received any opinion relating to tax consequences of this transaction, and I agree that no representations relating to the tax consequences of this transaction have been made to me or relied upon by me.

k. I understand that the Company will pass through its gains and losses to investors, and accordingly that I may incur taxable income as a result of the Company's activities that are not matched by any actual distribution of cash to me. I understand and agree that the Company has no duty to distribute income to match taxable income to me resulting from its business, nor to distribute money to pay any taxes assessed thereon, and I further understand that under some circumstances the Company will likely retain any profits as working capital, or invest them in further growth, rather than distributing them to investors, for a period of time which is not determinable at present. I agree that I will make no distribution of the Interests and take no action which, in the opinion of counsel for the Company, would result in an adverse change in the tax status of the Company or the Interests, and that for such purposes, I will consult with Company prior to any transfer or action.

l. I am aware that the Company has no past history and is newly formed.

m. I am an "accredited investor" (as defined in the undersigned's INVESTOR QUALIFICATION CERTIFICATE);

OR

Either alone or with my professional advisers who are unaffiliated with, and have no equity interest in, and are not compensated by the Company or any affiliate or selling agent of the Company, directly or indirectly, I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of an investment in the Interests and have the capacity to protect my own interest in connection with my proposed investment in the Interests. I have been furnished with such financial and other information concerning the Company, the Managers of the Company and the business and proposed business of the Company as I consider necessary in connection with my investment in the Interests. I have evaluated all information about the Company that I deem material to the formulation of an investment decision. I have been given the opportunity by the Company to obtain any information and ask questions concerning the Company, the Interests, and my investment that I felt necessary, and, to the extent that I availed myself of that opportunity, I have received satisfactory information and answers. If I requested any additional information that the Company possessed or could acquire without unreasonable effort or expense and that was necessary to verify the accuracy of the financial and other written information furnished to me by the Company, that additional information was provided to me and was satisfactory. I do not desire any further information.

n. I intend to and do rely solely upon my own knowledge and experience (and that of my professional advisors) in making an investment decision as to whether to invest in the Company's Interests. I am not relying on any oral representations or statements which have

been made to me, nor am I relying on any written representations other than those which are set forth herein or in the Company's Operating Agreement.

o. I understand and recognize that the purchase of Interests in this offering involve a high degree of risk, including: (i) an investment in the Company is highly speculative in light of the nature of the investment, and investors may incur substantial losses from operations due to a number of factors; (ii) the financial hazards involved in this offering, including the risk of losing my entire investment; (iii) the lack of liquidity and restrictions on transfers of Interests, such that the ability to transfer Interests is extremely limited; and (iv) the tax consequence of this investment. I specifically understand the risks of real estate investments in office buildings and/or mixed use office/residential condominium buildings, and understand that factors beyond my control relating to the city, region, or area where the office building and/or mixed use office/residential condominium units are to be located could result in vacancy percentages which would make it impossible to pay mortgage obligations and could result, unless Members contribute additional monies, in a foreclosure of the mortgage on the property and the resulting loss of the Company's entire investment.

p. Considering all factors in my financial and personal circumstances (including, but not limited to, health problems, unusual family responsibilities, and requirements for current income), I am able to bear the economic risk of an investment in the Company, including a loss of my entire investment. By electing to participate in this investment, I realize I may lose my entire investment. I further acknowledge that my financial condition is such that I am not under any present necessity or constraint to dispose of the Interests to satisfy any existing or contemplated debt or undertaking. Understanding that the investment in Interests is risky, I am able to bear the economic risk of loss of such investment, which include the possibility that I will lose my entire investment and the possibility that, on account of the restrictions on the Interests and the limited nature of the market for restricted Interests, there will be no purchaser available to purchase the Interests should I want to sell them in the future. I understand that rights of first refusal granted to the other Members of the Company may make it substantially more difficult for me to sell my Interests.

q. I do not have, and I have no reason to believe that I will have in the future, any family, personal, or business matter which would require me to utilize the moneys invested in the Company therefor.

r. I agree that the Company may note upon its membership transfer records a "stop transfer order" with respect to the Interests in order to enforce the restrictions on transfer hereinabove described. I understand and agree that any and all membership interest certificates issued by the Company in connection with the proposed purchase may bear appropriate restrictive legends recommended by counsel. I further agree that the Company shall not be liable for any refusal to transfer the Interests upon the books of the Company, except in compliance with the terms and conditions of such restrictions.

s. I agree that the Interests I am acquiring, and all other later acquired Interests, will be subject to the Operating Agreement which I am executing concurrently.

t. I understand that the Company will be operated by Managers with broad ranging authority, and that the value of my investment may be dependent on their abilities and devotion of efforts, and further that decisions not to be made by the Managers will largely be made by a majority vote of those holding Interests (voting by percentage ownership). I have read and understand the Operating Agreement.

u. I acknowledge receipt and careful review of the materials provided including, but not limited to, the section entitled "Risk Factors," and all other documents furnished in connection with this transaction including the exhibits and financial information attached to the Project Plan and hereby represent that I have been furnished by the Company during the course of this transaction with all information regarding the Company that I have requested or desire to know; that I have been afforded the opportunity to ask questions of and receive answers from duly authorized officers or other representatives of the Company concerning the Company, the Interests, the terms and conditions contained in the Operating Agreement of the Company, and any additional information that I have requested.

4. **Indemnification:** I agree to save, indemnify, defend, and hold harmless the Company, its successors and assigns, and the Managers and controlling persons thereof, if any, against any loss, claim, damage, liability, cost and expense arising out of a breach by the undersigned of any of the foregoing representations, warranties and covenants of the undersigned.

5. **Agreement To Refrain From Resales:** Without limiting the representations and warranties contained in this Agreement or in the Operating Agreement which I am executing concurrently, I further agree that I will not pledge, hypothecate, sell, transfer, assign or otherwise dispose of any of the Interests nor receive any consideration for Interests from any person, unless and until prior to any proposed pledge, hypothecation, sale, transfer, assignment or other disposition, I have (i) complied with all restrictions on transfers of Interests and other relevant restrictions contained in the Operating Agreement, this Certificate, and other applicable Company documents and (ii) satisfied authorized Company representatives and counsel that the transfer will not require registration of such Interests under the Act or qualification of such Interests under the Law or any other Interests law and will be in compliance with all applicable federal and state Interests laws.

6. **Company May Refuse To Transfer:** Notwithstanding the foregoing, if, in the opinion of counsel for the Company, I have acted in a manner inconsistent with the representations and warranties in this Certificate, the Company may refuse to transfer my Interests until such time as counsel for the Company is of the opinion that such transfer will not require registration of the Interests under the Act or qualification of Interests under the Law or any other Interests laws or violate existing Company documents or cause damage to the Company's legal and/or tax position. I understand and agree that the Company may refuse to acknowledge or permit any disposition of Interests that is not in all respects in compliance with this Certificate and that the Company intends to make an appropriate notation in its records to that effect.

7. **Successors:** The representations, warranties and agreements contained in this Agreement will be binding on my successors, assigns, heirs and legal representatives and shall inure to the benefit of the respective successors and assigns of the Company (and its directors and officers). This Agreement will be interpreted under California law.

8. **General Provisions.** This Subscription Agreement shall be governed by the laws of the State of California. This Subscription Agreement may be modified only by a writing duly executed by both parties. Should any of the terms of this Subscription Agreement conflict with the Operating Agreement of the Company, the terms in the latter document shall control.

9. **Attorneys' Fees.** In the event that any party shall bring an action in connection with the performance, breach, or interpretation of this Subscription Agreement, or in any way relating to the transactions contemplated by this Subscription Agreement, the prevailing party in such action shall be entitled to recover from the losing party all reasonable costs and expenses incurred in such action including reasonable attorneys' fees, court costs, and other costs related to such litigation.

10. **Severability.** Should any part of this Subscription Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Subscription Agreement had been executed with the invalid portion thereof eliminated.

11. **Counterparts:** This Subscription Agreement may be executed in counterparts. Upon the execution and delivery of this Subscription Agreement by the the Subscriber, this Subscription Agreement shall become a binding obligation of the Subscriber with respect to the purchase of Interests as herein provided; subject, however, to the right hereby reserved to the Company to enter into the same agreements with other subscribers and to add and/or to delete other persons as subscribers.

12. **Cooperation:** I agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Subscription Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Investor Subscription Agreement this ____ day of _____, 200__.

Investor or qualified representative of Investing Entity:

OLD Trace Partners, L.P.

Signature of Investor

Name Sean Corrigan

SS / EIN # _____

Title (if any) Partner

Signature of Co-Investor

Name _____

SS / EIN # _____

Title (if any) _____

This subscription is accepted on this 8 day of May, 2007.

40 Main Street Offices, LLC

By: **40 Main Street Management, Inc.,** Managing Member

By: _____
Gerald J. Sorensen, Manager

By: _____
Theodore G. Sorensen, Esq., Manager

By: _____
Harry I. Price, Esq., Manager

Exhibit 4

Ted Sorensen

From: Ted Sorensen <tsorensen@adviselaw.com>
Sent: Friday, November 02, 2007 6:46 PM
To: 'Toby Levy'
Cc: 'Jerry'
Subject: RE: Main St. sketch #2 for comment

Toby,

I have also spoken to Jerry and note that we were looking for some rock fascia (large rock as we discussed). But, even more important is that the perspective on the Packard building is wrong. We think that the Packard building is 35 feet and ours is 43 feet. Packard's looks like it is 21 in this drawing.

If anything, we want to make Packard's building look like it is taller than it actually is—not shorter. I think that any rendering will be looked at as gospel when it comes to comparing the building heights.

Ted

-----Original Message-----
From: Toby Levy [mailto:Toby@levydesignpartners.com]
Sent: Friday, November 02, 2007 5:42 PM
To: Ted Sorensen
Subject: FW: Main St. sketch #2 for comment

Here is the other scheme, with some revisions...

Toby S. Levy, FAIA
President

Levy Design Partners, Inc
90 South Park
San Francisco, CA 94107
415-777-0561
www.levydesignpartners.com

From: Hardik Udani
Sent: Friday, November 02, 2007 4:23 PM
To: markuslui@hotmail.com
Cc: Toby Levy; Casey Feeser
Subject: RE: Main St. sketch #2 for comment

Hi Markus,

Please see attached sketch showing our revisions for scheme #2. I have also annotated some materials for your clarification. Please call me if you have any questions.

Architect, LEED AP
LEVY DESIGN PARTNERS, Inc.
90 South Park, San Francisco, CA 94107
T: 415-777-0561 F: 415-777-5117
E: udani@levydesignpartners.com

From: Toby Levy
Sent: Friday, November 02, 2007 11:48 AM
To: Hardik Udani; Casey Feeser
Subject: FW: Main St. sketch #2 for comment

Exhibit 5

Sorensen Campaign for Los Altos City Council

From: "David Casas" <david.casas@alumni.pepperdine.edu>

To: "Paul Nyberg" <paulnyberg@aol.com> "Bruce Barton" <bruceb@latc.com>

"Price@padailypost.com" <Price@padailypost.com> "L.A. Chung" <lisa.chung@patch.com>

"Norma Schroder" <nschroder@losaltospolitico.com>

1 Files 84KB Download All

84KB

Email regarding Sorensen

Save

Paul, Bruce, Dave, Lisa, and Norma,

First, to be clear, the attached document was given to me in hard copy form, by the recipient. The recipient is an investor in 40 Main, the downtown property which the Sorensens have an interest in.

Next, the recipient deleted the part of the email that had specific financial details, which would have identified them. The authenticity of the email was confirmed when I spoke with Ted Sorensen, this afternoon, letting him know that the general content of his email was being shared by an investor (however, not the investor who privately gave me Ted's email).

To-date, I have chosen to remain in the background for the current City Council election. However, for full disclosure, I have taken two actions:

1) I offered to provide a non-cash contribution, to all candidates, in the form of a voter database for Los Altos (4 out of the 6 candidates accepted). My intent was to given them a tool, developed by a former MV City Council Member, that proved successful for my campaigns. I believe in a fully informed voter, and wanted to ensure each candidate had the capability to communicate their messages.

2) Over 1 1/2 years ago, I made a commitment to not endorse anyone for this election. At the time, I stated clearly, that Megan would be my only exception ... should she choose to run. She subsequently made the decision to run, so I honored my commitment.

To address Ted's email, I find it troubling. While the email came from Ted Sorensen, to his investors, Jerry Sorensen was included in the distribution. There is a clear line connecting 40 Main, to Jerry's campaign (why he's running, and what he would do to benefit 40 Main, if elected).

Separately, and more concerning, I understand that a subset of the investors have engaged an attorney to their address concerns about 40 Main. Taking into account the attached email, with the potential engagement of an attorney by investors, raises serious questions that should be addressed by both Ted and Jerry Sorensen.

I do not believe in gotcha politics. That is why I stopped by Ted's home to speak to him about his email, and gave him a copy of what I received (the attached document). I'm sure there is an explanation, beyond what Ted gave me ("This was a private email, but if an investor chooses to share it, I can't stop them.").

I've been asked to share Ted's email with you. The public has a right to know about this, to ensure they are making an informed decision about who will represent them on the City Council.

Character matters. Ethics matters. An informed voter matters.

Best Regards,
David Casas

Subject: FW: Report

From: Ted Sorensen [mailto:ted@gunnmanagement.com]
Sent: Tuesday, October 09, 2012 [redacted]
To: ted@gunnmanagement.com; Jerry Sorenson
Subject: Report

All,

Political Issues

As all of you are aware, we decided to counteract the political advantage that Mr. Packard used by Jerry running for office. The campaign is going well but there are no polls and it is impossible to know how we are doing overall. Mr. Packard and Val Carpenter are working overtime for the election of Jon Baer and to defeat Jerry. We are working overtime to defeat Jon Baer and get Jerry elected.

The good news is that there are four other candidates including Megan Satterlee (who was prepared to support our building to some degree) and 3 newcomers to the political process, all of whom are in favor of a vibrant downtown and who are telling people that they support a public process to determine the extent of downtown development that the town will support. All believe that an informed town will support three or even 4 stories on State and Main.

Following the election we will take a look at the new council and determine our best strategy moving forward. Of course, if Jerry is elected, it will be necessary for him to recuse himself on our building but he should be able to have a substantial influence on the fact that a true visioning process will take place. If that happens, we believe that a significantly more dense downtown will come out of that debate. We should allow 6-8 months for any new application to wend its way through the process. It should be kept in mind that we did manage a 7-0 vote at the Planning Commission for our proposed building and we had two votes ready at the Council. Though the actual vote was 4-0 against we were very close to achieving our goal.

The City has embarked on a parking study that is said to result in a parking in lieu program. That report is due out in February. We will be participating in this process and will do our best to make sure that it reflects the true reality of Los Altos parking opportunities. We designed parking plaza solutions that will generate some 300 additional stalls in the downtown at a cost of about $3.0 million. We are hopeful that this will translate into an in lieu program that will be workable.

We will provide additional information as it becomes available. Keep an eye on the news at the election. We are hoping that Jon Baer loses. Aside from that, the other candidates should be open to approval of our three-story building. All of the candidates should support a two story building (even Jon Baer).

Exhibit 6

SWORN COMPLAINT FORM
(Form May Be Subject to Public Disclosure)*

AS REQUIRED BY GOVERNMENT CODE SECTION 83115, please complete the form below to file a sworn complaint with the Fair Political Practices Commission.

Mail the complaint to:

Enforcement Division
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

NOTE: The Fair Political Practices Commission does not enforce or address violations of the Brown Act, the content of campaign communications, residency requirements, the inappropriate use of public funds or resources (including use of uniforms or equipment), placement of campaign signs or materials on public property, or violation of a local campaign rule or campaign ordinance.

Person Making Complaint

Last Name: Sorensen

First Name: Theodore G.

Street Address: 40 Main Street

City: Los Altos State: CA Zip: 94022

Telephone: (650) 949-4900

Fax: (650) 949-0844

E-mail: ted@gunnmanagement.com

RECEIVED
FAIR POLITICAL
PRACTICES COMMISSION
'11 SEP -8 PM 3:00

***IMPORTANT NOTICE**

Under the California Public Records Act (Gov. Code Section 6250 and following), this sworn complaint and your identity as the complainant may be subject to public disclosure. Unless the Chief of Enforcement deems otherwise, within three business days of receiving your sworn complaint we will send a copy of it to the person(s) you allege violated the law.

In some circumstances, the FPPC may claim your identity is confidential, and therefore not subject to disclosure. A court of law could ultimately make the determination of confidentiality. If you wish the FPPC to consider your identity confidential, do not file the complaint before you contact the FPPC to discuss the complaint at (916) 322-5660 or toll free at (866) 275-3772.

Person(s) Who Allegedly Violated the Political Reform Act: (If there are multiple parties involved, attach additional pages as necessary.)

Last Name: Packard

First Name: Ron

Committee Name: _____
(only if applicable)

Street Address: 4 Main Street

City: Los Altos State: CA Zip: 94022

Telephone: (650) 947-2300

Fax: (____) ____-____

E-mail: rdpackard@packard.com

Describe, With as Much Particularity as Possible, the Facts Constituting the Alleged Violation(s) and How You Have Personal Knowledge that it Occurred.*

See attached statement

***IMPORTANT! Attach copies of any available documentation that is evidence of the violation, (for example, copies of checks, campaign materials, minutes of meetings, etc., if applicable to the complaint.) Note that a newspaper article is NOT considered evidence of a violation.**

Provision(s)/Section(s) of the Political Reform Act Allegedly Violated and When the Violation(s) Occurred: (If specific sections are not known, please provide a brief summary)

See attached statement

###

Name and Addresses of Potential Witnesses, Other than Yourself, if Known:

Last Name: _____

First Name: _____

Street Address:

_____

City: _____ State: _____ Zip: _____

Telephone: (____) ____-_____

Fax: (____) ____-_____

E-mail: _____

Last Name: _____

First Name: _____

Street Address:

_____

City: _____ State: _____ Zip: _____

Telephone: (____) ____-_____

Fax: (____) ____-_____

E-mail: _____

###

Last Name: _____

First Name: _____

Street Address:

_____

City: _____ State: _____ Zip: _____

Telephone: (____) ____-_____

Fax: (____) ____-_____

E-mail: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Theodore G. Sorensen — 9/5/14

(Signature) **(Date)**

THEODORE G. SORENSEN

(Please Print Your Name)

Clear Page Print Page

Enforcement Division
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Investigation of Ron Packard in connection with possible violation of California Government Code Section 87100

Background

Ron Packard, along with his two brothers, owns the real estate at Four Main Street in Los Altos; Santa Clara County, California; the Packard property is adjacent to 40 Main Street, Los Altos, CA, which is real estate owned by 40 Main Street Offices, LLC, of which a company owned and controlled by Jerry Sorensen and I is the Managing Member.

In March, 2007, we met with Ron Packard regarding our proposal of a three-story office on our property. Although Ron Packard was championing three-story development in downtown Los Altos at that time, he stated to us at the meeting that he was not sure he wanted a three-story office building on the property next to the Packard property. Following that meeting Mr. Packard made a significant effort on Council to limit three-story development opportunities in the areas closest to the Packard property (with one exception for a hotel building sitting diagonally across from the Packard property on Main Street that was approved prior to the Municipal Code changes orchestrated by Mr. Packard).

Subsequent to March 2007, the Downtown Development Committee II ("DDCII") recommended three-story development in an area adjacent to the CRS/OAD zone. But, suddenly, without further meetings of DDCII, the City Staff altered the DDCII recommendations to instead recommend to the Council that three-story buildings be allowed in a completely different zoning district located further away from the CRS/OAD Zone in which Mr. Packard's building resides.

The ordinance change in question relates to how building heights are measured. The change was initiated by Mr. Packard and then Mayor Valerie Carpenter, in a memorandum dated May 8, 2012. It was stated at the time both verbally and in the May 8, 2012 memorandum to Council authored by Mr. Packard and Ms. Carpenter that the proposed changes would not apply to the CRS/OAD zoning district (the zoning district in which the Packard building is located). It appears that this statement was used to provide cover to the claim that Mr. Packard's participation was exempt.

In a decisive October 24, 2012 Council meeting Mr. Packard, participated in agenda item number 5 relating to the height measurement ordinance. His participation included supportive comments during discussion in favor of the ordinance, recommendations and support for proposed changes to the ordinance and casting a vote on the ordinance. Mr. Packard announced at the outset of the introduction of the agenda item, that he was not required to recuse himself and could participate in the agenda item because the proposed change did not apply to the Packard property. This statement, during the meeting, acknowledged the fact that such an

amendment to the zoning code, if applied to his property, would be included in the definition of a "financial interest" contained in Government Code section 87103.

In reality, as published and enacted, the agenda item changed Municipal Code section 14.66.230, which provides how building heights are measured in downtown Los Altos, including property within the CRS/OAD zone (which includes Mr. Packard's own property at 4 Main Street and our neighboring property at 40 Main Street). It also changed Municipal Code language related to development incentives, contained in section 14.48.180 which directly affects our ability to achieve an approval for our prosed building. As a result, Mr. Packard participated in changes to an ordinance which was motivated by his financial interest in the Packard property.

Facts:

1. Ron Packard is an attorney.
2. For nine years, ending in December 2012, Ron Packard served on the City Council of Los Altos.
3. Ron Packard has a substantial financial interest in real property located at 4 Main Street, Los Altos, CA 94022.
4. His property is located in a very small zoning area that is known as the "CRS/OAD" zone.
5. 40 Main Street is adjacent to the Packard property and is also in the CRS/OAD zone.
6. Since 2007, 40 Main Street Offices, LLC a California Limited Liability Company of which we are Members has been trying to gain approval for an office building on the site at 40 Main Street, Los Altos 94022.
7. Another downtown zone known as the "CRS" zone is within about 400 feet of the CRS/OAD Zone.
8. In a closed door session of the City Council the four councilmembers (except Packard) met to consider a threat of a lawsuit should the Council approve our project at 40 Main Street.
9. In an interview with the Daily Post, Ron Packard initially denied his involvement with the letter and threat but in a later interview, he had to retract that statement as his company hired the lawyer who wrote the letter threatening a lawsuit.
10. On June 12, 2012, our initial application was denied by the City Council.
11. Jerry Sorensen ran for Council in the November 2012 election.
12. Ron Packard, on October 10, 2012 in a paid political advertisement, wrongly accused Jerry Sorensen of being a leader of downtown landlords. The Town Crier later retracted the story.
13. Immediately prior to our application being heard by City Council, after multiple delays, Ron Packard also initiated a public effort to amend certain zoning code provisions. He took the following steps:
    a. On May 8, 2012, Mr. Packard co-drafted a Memorandum to Council requesting council to reverse recent zoning changes that had been recommended by the Downtown Development Committee III ("DDC III") and adopted by the Council that allowed for an easier approval process for proposed three-story developments on State and Main Streets;
    b. He requested that the Council create a new DDC IV to address the issue;

c. He personally chose members of DDC IV, who were confirmed by the Council;
d. He drafted proposed changes to the Municipal Code.
e. He stated that he was eligible to undertake this effort because the proposed changes he drafted did not apply to the CRS/OAD Zone.
f. He addressed the issue of a Conflict of Interest by including the following paragraph in the May 8, 2012 Memorandum to Council:

> "In order to avoid any concerns about a possible conflict of interests (sic), and consistent with the Council Norms to attempt to limit the scope of items so as to avoid any conflicts of interest, these proposals do not apply to projects that have not yet been submitted to the City prior to the final adoption of the proposed zoning changes, and is not to include any change to the CRS/OAD zone. Councilmember Packard has consulted with outside counsel and is satisfied that these zoning amendments, as presented above, do not create a conflict of interest since on two separate fronts they would not apply to the proposed development of 40 Main Street. As such, a special request is made not to discuss the pros and cons of projects included in the CRS/OAD zone, to have the change apply to outstanding applications that have not yet received final approval, or what impact they would have on any proposed project within the CRS/OAD zone."

14. On May 8, 2012 Ron Packard and then Mayor Valerie Carpenter initiated the effort in their joint memorandum, agendized the item and co-authored a Memorandum to Council recommending the proposed changes, and specifically calling out multiple times that the changes would not apply to the CRS/OAD zone, 40 Main Street or Four Main Street.
15. The Council received significant public resistance to the proposed changes and referred the item to the Planning and Transportation Commission ("PTC") for review.
16. The PTC discussed the item at their June 21, 2012 meeting, and rejected the proposed changes.
17. The Council took the matter up again at their July 24, 2012 Council meeting. The Council formed the DDC IV to study the issue further.
18. DDC IV met on August 24, 2012 and then two to three more times.
19. DDC IV recommended certain changes to the Municipal Code that would apply to the CRS zone only and excluded the CRS/OAD zone, the changes recommended specifically rejected limiting buildings to two stories;
20. On October 4, 2012, the PTC considered the issue. For the first time, the CRS/OAD zone was included in the proposed changes. We are told that no mention of this change was made orally at the PTC and there was none in the written record. Despite policy designed to assure that every PTC meeting is videotaped, for unknown reasons, the tape for this meeting does not exist. No record of this meeting beyond Staff recorded "action" minutes is available to us.
21. Following the unrecorded PTC meeting the Staff changed the proposal so that it applied to the entire downtown.

22. In a discussion with one of the PTC members, he had no rewcollection of there being any discussion whatsoever of the application of the proposed amendments to the downtown as a whole.
23. Following the PTC meeting, changes were made whereby the DDC IV proposal was changed in writing so that it applied to all zones in the downtown area. This change was made by simply eliminating the exclusion of the CRS/OAD. The matter then went before Council on October 24, 2012. No mention of this change was made in the Staff presentation or throughout the council discussion.
24. Ron Packard participated in the debate,
25. Mr. Packard announced that he was participating only because the proposed amendments did not apply to "his property" within the CRS/OAD zone;
26. Mr. Packard stated clearly that he had reviewed the changes made from his original proposal and fully endorsed those changes as improvements. Mr. Packard then praised the outcome, recommended the proposed changes and supported additional changes proposed by Council but then, seeing that the majority was now in support, proceeded to vote "no."
27. At the October 24, 2012 Council meeting, Staff present included Marcia Somers, City Manager, Jolie Houston, City Attorney, James Walgren, the Assistant City Manager who was responsible for the changes; and Zach Dahl, the Senior Planner who was directly involved.
28. During the meeting, not one of the Staff Members spoke up to correct Ron Packard that the Ordinance applied to the CRS/OAD zone in which our property and the Packard property are located.
29. In a subsequent meeting with the Staff, in the Fall of 2013, Assistant City Manager James Walgren stated that it was "always the intention" to make the changes applicable to the entire downtown despite Ron Packard's statement at the October 24, 2012 Council meeting that the changes did not apply to the CRS/OAD zone where the Packard property is located. .

Law:

1. Government Code Section 87100 provides in full:

> "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

2. Government Code Section 87103 provides in relevant part:

> "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:...

"(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars ($2,000) or more...."

Conclusion:

1. I believe that this demonstrates a clear violation of Government Code Section 87100 as Mr. Packard voted on an ordinance that directly affected his financial interest in the Packard property and that of 40 Main Street Offices, LLC, its direct competitor.

2. I believe that Ron Packard also violated Business and Professions Code section 17200 et. seq. as Mr. Packard used his position on the Council to diminish the value of the property at 40 Main Street. Further, his participation in the entire process, his praise of the outcome, the spurring on of his fellow Council Members followed by his apparently strategic "no" vote indicate fore-knowledge of the fact that the CRS/OAD was to be affected. It does not appear to be inadvertence. We believe he voted "no" so that if he ever was accused of a violation he would have cover.

3. I also believe that further investigation would reveal that the entire effort was orchestrated by Mr. Packard, and involved Ms. Carpenter and possibly certain elements of the Staff.

4. The City should withdraw the change in the Municipal Code.

5. Appropriate sanctions should be imposed on all participants who aided and abetted this effort to harm our property for the benefit of Ron Packard.

Political Reform Act Conflict Analysis

State law provides "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Cal. Gov. Code § 87100.) At the time Packard was in office and making or participating in governmental decisions as a public official the FPPC used an eight step analysis to determine whether a conflict of interest existed.

The following analysis addresses Packard's conflict of interest in participating or attempting to influence 40 Main Street's development project and amendments to the City's zoning ordinance.

1. Is the individual a public official?

"Public official" means every member, officer, employee or consultant of a state or local government agency. (Cal. Gov. Code § 82048.) As a City Councilmember, Packard qualified as a public official.

2. Is the public official making, participating in making or influencing a governmental decision?

A public official makes a governmental decision when he votes on a matter before the City Council. (2 CCR § 18702.1(a)(1).) Voting on an ordinance revision is a governmental decision.

Three specific revisions were made to the city's zoning ordinances during the fall of 2012. These changes were discussed in detail at the October 2012 City Council meeting and held over for a decision at the November 13, 2012 meeting, where they were ultimately approved. The amendments contained the following changes.

First, the amendments revise section 14.48.180 regarding Exceptions for Public Benefit in the Commercial Real Estate Sales District (CRS). These changes clarify that exceptions are made at the complete discretion of the city council and require a finding that the benefits to downtown will be significant. This amendment further provides that exceptions may include those for the height of the structure and first floor, and provides examples of what qualifies as a significant public benefit. Corresponding changes were not made to the Commercial Retail Sales/Office-Administrative District (CRS/OAD), which is the district that contains both the Packards property at 4 Main Street and our property at 40 Main Street.

Second, the amendments revise the way that height limitations are measured in section 14.66.230. This change is applicable to all zones in the city. Third, the amendments revise the definition of "parapet" in section 14.02 which again applies to all zones in the city, including the Packard property and our property at 40 Main Street.

Ron Packard initiated the proposed amendments and participated in Council discussion of the matter (appearing to be in favor of the amendments). When a vote was called, he initially did not appear to vote, seemingly waiting to see how the other councilmembers voted. After it was indicated that three had voted in favor, he then recorded his vote as "no". Though he voted against approval of the amendments, his initiation of the issue, his drafting of the first set of amendments, his participation in the debate of the issues, and his statements in favor of the proposed amendments a made his "no" vote irrelevant to the question of whether or not he had influenced the vote. Thus the vote on October 24, 2012 was a governmental decision.

In addition, a public official influences a governmental decision when the official contacts or otherwise attempts to use his official position to influence a governmental decision. (2 CCR § 18702.3(a).) Contacting city staff or other councilmembers regarding the 40 Main Street's development project, for example, would constitute influence of a government decision.

3. What are the public official's interests that the decision(s) may affect?

There are several financial interests which may give rise to a conflict of interest. It appears that Packard has several of these interests.

a. Real Property

"A public official has an economic interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars ($2,000) or more in fair market value." (2 CCR § 18703.2; *see also* Cal. Gov. Code § 87103(b).) "Interest in real property" includes "a pro rata share of interests in real property of any business entity or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater." (Cal. Gov. Code § 82033.)

The 4 Main Street property profile (Exhibit 1) demonstrates that as early as 1998 Packard had an ownership interest in this property, presumably valued at $2,000 or more. It appears that in 2010 his ownership interest was transferred into a limited partnership called "Four Main Street Associates L.P." Packard, according to records from the Secretary of State (Exhibit 2), is the registered agent of this limited partnership. In addition, he is the CEO and a director of Four Main Street Corporation, which is the limited partnership's general partner. I understand that Packard has a ten percent or greater interest in these entities such that his pro rata share of the real property is valued at $2,000 or more. Therefore he has a financial interest in the property located at 4 Main Street.

b. Business Entity

A public official has an economic interest in a business entity if the public official has a direct or indirect investment worth two thousand dollars ($2,000) or more in the business entity or if the public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity. (2 CCR § 18703.1; *see also* Cal. Gov. Code § 87103(a).) Assuming Packard has an investment worth $2,000 or more in Four Main Street Associates L.P. or holds a position as a partner, director or officer of the entity, he has a financial interest in this business entity. Packard is an officer and director of Four Main Street Corporation and assuming he has an investment worth $2,000 or more in this entity, he has a financial interest in the corporation as well.

c. Sources of Income

"A public official has an economic interest in any person from whom he or she has received income . . . aggregating five hundred dollars ($500) or more within 12 months prior to the time when the relevant governmental decision is made." (2 CCR § 18703.3; *see also* Cal. Gov. Code § 87103(c).) Presumably Four Main Street Associates L.P. or Four Main Street Corporation is a source of income to Packard.

4. Are the public official's interests directly or indirectly involved in the decision?

The FPPC analyzes whether an economic interest is directly or indirectly involved in a governmental decision to determine which materiality standard to apply. This part of the conflict analysis is removed in the new regulations adopted by the FPPC; however the regulation used to determine direct vs. indirect effect has only been repealed in the real property context so far.

a. Real Property

Real property is "directly" involved in a governmental decision if it is located within 500 feet of the boundaries of the property which is the subject of the governmental decision. (2 CCR 18704.2(a)(1) (*effective through 5/30/14*).) Other real property is "indirectly' involved in the governmental decision.

i. 40 Main Street Property

Since Packard's property is located within 500 feet of ourthe property, the decision regarding the development of 40 Main Street is directly involved.

ii. Ordinance Decision

The first revision adopted by the City Council applied to the CRS Zone, which we understand is within 500 feet of Packard's property. The two additional revisions apply to all zones in the city, including Packard's property in the CRS/OAD zone. Thus, his property was within 500 feet of the decision on these two revisions.

However, regardless of the proximity of the public official's real property to the decision in question, real property is still considered "indirectly" involved in a governmental decision if "the decision solely concerns the amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or the development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category." (*Id.* at (b)(1).) Thus, Packard's property is considered "indirectly" involved in the governmental decision to amend the ordinance.

b. Business Entity & Source of Income

A person, including a business entity or source of income is "directly" involved in a decision "when that person, either directly or by an agent: (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or; (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency." (2 CCR § 18704.1(a).) Based on this definition, Four Main Street Associates L.P., Four Main Street Corporation and Packard's sources of income are "indirectly" involved in the governmental decisions at issue because none initiated the proceedings and none were the named parties of or the subject of the proceedings.

5. Will the governmental decision have a material financial effect on the public official's economic interests?

a. Real Property

Under the FPPC's regulations in effect at the time the governmental decisions were made, the financial effect of a governmental decision with a direct effect on a public official's property is presumed to be material. Thus, any decision made by Packard to make or influence

the governmental decision regarding 40 Main Street's development project would meet the materiality standard without proving any actual financial effect since the effect is presumed.

Under the FPPC's regulations in effect at the time the governmental decisions were made, the financial effect of a governmental decision with an indirect effect on a public official's property is presumed to be immaterial. (2 CCR § 18705.2(b)(1).) However, this presumption can be rebutted by proof that there are specific circumstances regarding the decision, its financial effect and the nature of the real property in which the official has an economic interest that make it reasonably foreseeable that the decision will have a material financial effect on the property. (*Id.*) Examples of such specific circumstances include "(A) the development potential or income producing potential of the real property in which the official has an economic interest, (B) the use of the real property in which the official has an economic interest; and (C) the character of the neighborhood including, but not limited to, substantial effects on: traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood." (*Id.*)

The decision to adopt the ordinance amendments in November 2012 had several effects on Packard's interest in the real property located at 4 Main Street. First, the fact that stricter standards were adopted for the CRS Zone but not the CRS/OAD zone where Packard's property is located indicates that it is more difficult to obtain a public benefit exception for properties outside Packard's zone. This has the effect of making property within the CRS/OAD zone more attractive, including Packard's own property should he wish to sell or chose to renovate or rebuild on his property. This is because it will be easier to obtain an exception for public benefit in the CRS/OAD zone, which results in better development conditions for the CRS/OAD zone generally and Packard's property specifically.

Second, the two changes that apply to all properties have the effect of limiting the height on development in all zones within the city. This benefits Packard whose property already has a three story building (see Exhibit 1) by reducing the likelihood that any new builds within the CRS or CRS/OAD zone would have three stories. This has the effect of making Packard's property the tallest in its area, a fact that Packard has pointed out to us in correspondence, which presumably increases the value of his property. In addition, this amendment has the effect of reducing the height of buildings erected next to Packard's property, which improves light to his building and the offices he has available for lease. This is especially true with regard to property adjacent to Packard's property, including ours at 40 Main Street since no new building has been approved or built yet.

We note that the FPPC has revised its regulations since the actions discussed above. However, as noted below, we think the revised regulations do not change the analysis that the ordinance amendments had a material effect upon Packard's financial interests.

The revised FPPC regulation that went into effect May 31, 2014 provides that a reasonably foreseeable effect (see below) is material if it meets any one of thirteen enumerated tests. This includes if the governmental decision:

- Would change the development potential of the property.

- Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.
- Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.

(2 CCR § 18705.2(a)(7), (10), (12).) The amendments to the City's zoning ordinances would also be material under this regulation because several of the materiality tests are met. As discussed above, the change affects the development potential of Packard's property by limiting the height of any future development if he decides to rebuild on the property which ultimately changes the development potential of his property. In addition, limiting the height of neighboring properties improves the character of Packard's parcel because it increases the light that reaches the office space in his building making it more attractive to rent and because it makes his property the most prominent on the street. Presumably these effects improve the market value of Packard's property. Finally, a reasonably prudent person using due care and consideration under the circumstances surrounding this decision would understand that the decision to limit the height of buildings in the City of Los Altos would have a positive effect on Packard's property value and on his ability to rent space in the building. In fact, I believe that Packard's motivation in recommending these changes to the City Council was to limit the height of the building at 40 Main Street in order to benefit his building at 4 Main Street.

6. Is it reasonably foreseeable that the economic interest will be materially affected?

Under the FPPC's regulations in effect in 2012, a material financial effect on an economic interest is reasonably foreseeable if it is "substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to the economic interest would be met as a result of the governmental decision. (2 CCR § 18706(a) (*effective through 5/31/14*).)

When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a public official's economic interest under this test, there are several factors that may be considered. These factors include the extent to which the official or the official's source of income has engaged, is engaged or plans on engaging in business activity in the jurisdiction; the market share held by the official or the official's source of income in the jurisdiction; the extent to which the official or the official's source of income has competition for business in the jurisdiction; the scope of the governmental decision in question; and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency. (*Id.* at (b).)

The recent revisions to the FPPC's regulations eliminate the "substantially likely" part of the test to eliminate the quantitative aspect that the definition has taken on and replace it with a more qualitative approach aimed at determining whether the financial effect on the official's

financial interest might occur to the degree that a public official would be subject to the temptations that the statute seeks to avoid. (*See* FPPC Staff Memorandum, "Proposed Amendments to Conflicts of Interest Regulations, dated 8/13/12.) The effect of this regulatory change appears to be a broadening of the regulatory definition of "reasonably foreseeable."

Under the revised regulation, a material financial effect is presumed when the official's economic interest is the subject of the decision (i.e. explicitly involved in the decision). (2 CCR 18706(a) (*effective 5/31/14*).) The standard for all other economic interests is as follows: "A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable." (*Id.* at (b).)

To determine whether this test is met, the following factors should be considered: (1) The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency; (2) Whether the public official should anticipate a financial effect on his or her economic interest as a potential outcome under normal circumstances when using appropriate due diligence and care; (3) Whether the public official has an economic interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has an economic interest; (4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's economic interest could compromise the public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public; (5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's economic interests, including whether the economic interest may be entitled to compete or be eligible for a benefit resulting from the decision; (6) Whether the public official has the type of economic interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her economic interest in formulating a position. (*Id.*)

Under either test of foreseeability, it appears that the financial effects on Packard's interest in his real property were reasonably foreseeable assuming he participated in or influence the government decision regarding the development of the 40 Main Street project. This seems evident given the proximity of the Packard property directly next to our property. The fact that our development project was for three stories and would have affected the value of Packard's property is something even Packard seems to have conceded by his statements opposing a three story development next to his property, including specifically objecting to our project. Even though Packard appears to have supported the new three-story hotel diagonally across the street, which the building does not have the proximity to his building that the 40 Main Street development project next to his building would have. Furthermore, the hotel is not an office building and will therefore not have any reasonably foreseeable effect on Packard's economic interests.

In addition, under either test of foreseeability, it appears that the financial effects on Packard's interest in his real property were reasonably foreseeable at the time he voted on the ordinance. This is because at the time of the decision it was substantially likely that his real property would increase in value because there would be no competing three story buildings developed in the CRS/OAD and because the shorter building permitted to be developed at 40 Main Street, adjacent to his property, would allow for more light into his building than a three story neighbor making the rental space more attractive. This financial benefit to Packard's property became a reality as soon as the ordinance was adopted without any intervening events. This is true even though Packard voted against the ordinance because he in fact voted on the decision from which he stood to benefit (or not benefit if the amendments had not been approved).

In addition, under the lower threshold found in the revised regulation it was a realistic possibility that Packard would receive this financial benefit from adoption of the ordinance amendments. Again, no intervening events were necessary for him to realize this benefit. Also, Packard should have anticipated this benefit to his property (and as I suspect did in fact anticipate this benefit) and a reasonable inference can be made that this decision did in fact compromise Packard's ability to act in the best interests of the public rather than in his own best personal interests.

7. Is the potential effect of the governmental decision on the public official's economic interests distinguishable from its effect on the public generally?

The last two steps in the FPPC's analysis are exceptions that will allow the official to participate even if the analysis demonstrates that he has a conflict of interest. These two exceptions are not met.

The first exception allows the official to participate if he can "establish that the governmental decision will affect the public official's economic interest in a manner which is indistinguishable from the manner in which the decision will affect the public generally." (2 CCR § 18707.) This is demonstrated by showing that the governmental decision will affect a significant segment of the public in substantially the same manner as it will affect the public official. (2 CCR § 18707.1.) This exception is not met because both the 40 Main Street Development Project and the ordinance amendments uniquely affect Packard's property at 4 Main Street.

8. Is the public official's participation legally required?

The final exception permits an official to participate in a decision despite a conflict of interest if there exists no alternative source of decision consistent with the purposes and terms of the statue authorizing the decision. (2 CCR § 18708(a).) This exception is narrowly construed. (*Id.* at (c).) Here, the exception is not met because a quorum of the city council was able to act on both decisions absent Packard's participation.

Name and Addresses of Potential Witnesses, Other than Yourself, if Known:

Council Members

Last Name:	Packard
First Name:	Ron
Street Address:	4 Main Street, Los Altos, CA 94022
Telephone:	650-947-7300
Cell phone:	650-823-6959

Last Name:	Carpenter
First Name:	Val
Street Address:	154 Bridgton Court, Los Altos, CA 94022
Telephone:	650-941-0487
Cell phone:	415-515-7315

City Manager

Last Name:	Somers
First Name:	Marcia
Street Address:	One North San Antonio Road, Los Altos, CA 94022
Telephone:	650-947-2700

City Staff

Last Name:	Walgren
First Name:	James
Street Address:	One North San Antonio Road, Los Altos, CA 94022
Telephone:	650-947-2700

Last Name:	Dahl
First Name:	Zach
Street Address:	One North San Antonio Road, Los Altos, CA 94022
Telephone:	650-947-2700

City Attorney:

Last Name:	Houston
First Name:	Jolie
Firm:	Berliner Cohen
Street Address:	10 Almaden Blvd., 11th Floor, San Jose, CA 95113
Telephone:	408-286-5800

Exhibit 7

Ronald D. Packard
115 Doud Dr.
Los Altos, CA 94022

September 16, 2014

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814-0886
Attn: Gary S. Winuk, Chief, Enforcement Division

Re: Complaint by Theodore G. Sorensen against Ron Packard

Dear Mr. Winuk:

This letter is in response to yours of September 9, 2014, containing a thirteen-page conflict of interest complaint by attorney and supposed developer Theodore G. Sorensen against me for my vote of October 21, 2012, on Municipal Code §§ 14.66.230 and 14.48.180. The complaint has been filed in the context of him and his brother (the "Sorensens") attempting for several years to get a building permit for a three-stories office building that exceeded the height limitation of the city and grossly failed to provide the required parking. In doing so, the Sorensens represented to the Planning Commission and City Council that they could not comply with the zoning requirements and yet make a profit. This was false. The Sorensens had already advised their investors that they could develop a two-story building in full compliance with existing zoning regulations (including height and parking) and make a profit of over $2.5 million for a near doubling of their money, using conservative estimates. (*See* Ex.1 for their investment prospectus, particularly page 9.) During the Sorensens' applications and dealings with the city, they often misrepresented the prior city staff statements and conditions, attempted to bully and malign them in privately and in public meetings, and frequently used my role on the city council as their scapegoat, wrongfully suggesting that the only reason for their denials was due to my supposedly violating the conflict of interest rules by persuading the staff, commissioners, and council members to vote negatively on their project. All such accusations were false.

Furthermore, the complaint is full of hyperbole that is entirely unsubstantiated. The only exhibits provided, which I have not received, were supposedly a picture of my building and evidence that I am an owner. There are pages of accusations regarding public meetings, agenda, ordinance proposals, and other such items, much of which can be confirmed or negated with public records and videos of the meetings. But Mr. Sorensen has failed to provide any other document – no agenda, no minutes, no staff reports, nothing. It is as though he filed the complaint in hopes of generating a sensational effect, which would explain why he gave it to several local newspapers the day it was mailed.

This is consistent with the modus operandi of the Sorensens. They have engaged in bullying and hardball tactics for years, with the city staff, city attorney, and city manager, making false claims of prior assurances, false claims that the city unfairly moved the goal posts, and all sorts of other inaccurate but mean accusations. They are also known for making

authoritative but inaccurate statements of the law, demanding preferential treatment while falsely claiming they were unfairly prejudiced by the fact that their neighbor was on the city council.

From 2007 through 2012 when I was on the city council, the Sorensens would frequently speak to other council members, commissioners, city staff, the press and community members belittling and complaining about me, knowing that I would rarely reciprocate due to my concern about possible FPPC conflict of interest rules. During my entire term on the city council, not once did I speak to any council member, commissioner, city staff, city attorney or city manager about the merits or demerits of the Sorensens' proposed project at 40 Main. That, however, did not stop the Sorensens from using me as their scapegoat when the city staff and ultimately the city council refused to cave in to their demands.

More recently, three significant events effected the Sorensens, which likely caused them to once again attempt to divert public attention from themselves by filing this complaint in a public fashion:

(a) First, in July 2014 a lawsuit was filed in the Superior court by one of the investors against the Sorensens alleging fraud. The body of the lawsuit provides in detail the items of misrepresentation. (*See* Ex. 2.) The news of the recent lawsuit was reported in both local newspapers. Other investors may join in the lawsuit against the Sorensens.

(b) Second, the Sorensens so badgered the relatively new city manager with claims of being treated unfairly and demanding certain rights, that she obtained a legal opinion from Sheppard Mullin, a respected San Francisco law firm, who had no prior dealing with the city or anyone associated with it. They carefully analyzed each of the Sorensens' fifteen (15) demands and concluded that each was unfounded. (*See* Ex. 3.) This undoubtedly was reassuring to the city staff, city attorney, and city manager, who thereafter could more confidently look askance on any purported authoritative demands and statements of fact or legal analysis by the Sorensens.[1]

(c) Third, the Sorensens had been hoping to satisfy their deficient parking requirements by getting the city to allow them to restripe the city parking plazas. But the city Planning & Traffic Commission ("P&TC") was generally negative on the concept of allowing a private developer to restripe the city's parking plazas in order to satisfy the developer's parking requirements, and the council completely rejected it. The staff report for the council meeting included several written communications supposedly from the public, one of which a five-page anonymous memo. A council member conducted an investigation and revealed that the anonymous author was Mr. Sorensen. (*See* Ex. 4 for the staff report without all the correspondence except for the anonymous memo; and Ex. 5 for the council minutes.)

[1] Mr. Sorensens' loose facts and legal analysis in his present FPPC complaint against me is consistent with his previous approach with the city, which was rejected by Sheppard Mullin.

In light of all this negative news and events, the Sorensens turned back to their core bullying tactic of trying to use me as their scapegoat. So, they sent the unsubstantiated complaint to the FPPC, but equally important, to the press, which printed an article the following day. (*See* Ex. 6.)

BACKGROUND

My two brothers and I purchased the existing office building at 4 Main Street, Los Altos, California in 1998. It has two stories above ground and a basement floor.[2] (*See* Ex. 7 for pictures from the front and back.) In 2004 I was elected to the Los Altos city council and served until December 2012, when I was termed out.

The Los Altos downtown consists of a number of zones, as indicated on the zoning map. (*See* Ex. 7.) Our property and the Sorensens' property are within the CRS/OAD zone (which is distinct from the CRS zone), and are identified on the attached zoning map.

2005-2007 – Downtown Zoning Committees

The second year I was on the city council, I formed a Downtown Zoning Committee ("DZC") to look at various zones downtown, but avoided reviewing the CRS/OAD zone since my property was in that zone.[3] It became known as DZC-I and focused primarily on the CD and CS zones, although there were limited discussions regarding the CRS zone. In December 2005, I prepared a Summary of Actions which I provided to the city that recommended increased density for certain areas of the CD zone from 30 feet (2 stories) to 35 feet (3 stories). (*See* Ex. 9 for the Summary.) There was no recommendation that the CRS zone be increased from its then 100% FAR. The city council later adopted many of the recommended changes to the CD and CS zones, which eventually resulted in major new developments on First Street. No recommendation was made, one way or the other, regarding the Sorensens' zone.

The third year I was on the city council, I formed a new DZC- II which focused mostly on the CRS zone with a different set of members. (The CRS zone and the CRS/OAD zone are separate and distinct zones with their own set of zoning regulations.) The Final Report of the DZC-II was dated April 17, 2007, and there is no mention of three stories, 250% FAR or 300% FAR. (*See* Ex. 10.)

Contrary to these facts, Mr. Sorensen argues, without any substantiation, that I "was championing three-story development in downtown Los Altos." (Complaint, p. 1, ¶ 2.) While it is true that I championed three-story developments in the CD and CS zones, those zones are far removed from the CRS/OAD zone and my property. He also states that the DZC-II recommended three-story developments in the CRS zone, but that is false. (See Ex. 9.) His facts regarding staff altering the DZC-II focus for three-story developments is unsubstantiated and

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[2] The Sorensens have been demanding the right to a three stories building by claiming (with their unique definition) that ours is three stories. Using their definition, however, they too can build a three-story building so long as one story is underground. This was true before and after my vote in 2012.

[3] Mr. Sorensen mistakenly calls them "Downtown Development Committees."

patently wrong. (Complaint, p. 1, ¶ 3.) The DZC-I had already recommended three-story developments for the CD and CS zones the prior year. Mr. Sorensen's half-truths, promoting confusion about the zones, and conspiracy theories that the staff secretly changing the focus supposedly to accommodate my sinister desire to prevent their three-story development, are false.

Around this time, the city staff made a strong push to eliminate in all commercial zones throughout the city any references to story and FAR limitations, to be replaced with a height limitation, called "form-based" zoning. Staff assured the council that the overall impact would substantially be the same, but that it is more objective and easier for staff and developers to implement. In particular, we were told that there would be no substantial impact on the downtown CRS and CRS/OAD zones, since before and afterwards it would be impossible to have three-story developments due to the ground-floor requirement of 12 foot ceiling height required for grade-A retail. As a result, and without any community opposition, the council adopted the staff-recommended change citywide going from story/FAR limitations to "form-based" height limitations for all commercial developments.

The city had granted an option to purchase and develop a city-owned property at First and Main Street in the CS zone, but retained rights to approve the design. That property is on the other side of the downtown and marked on the zoning map provided. Since the early 1990s when the city adopted a Downtown Urban Design Plan, it also provided for each downtown zone a special provision allowing exceptions to the zoning requirements if the developer were to provide some "public benefit" consistent with the goals of the Urban Design Plan. That provision was occasionally used and the requested exceptions to the zoning requirements were modest. The developer of the property at First and Main, however, requested an exception to the height limitation in exchange for providing a small public plaza area. The height limitation would allow the developer to build a three-story building on Main Street, which would have had a major visual impact on the downtown. The council denied the request, but it became clear that the change from story/FAR to form-based zoning was going to result in other attempts by developers in the CRS zone for height exceptions in order to build three-story structures, all in exchange for some minor public benefit.

May 8, 2012 – City Council meeting

Due to our concerns about the request by the developer at First and Main Street, on May 8, 2012, then Mayor Val Carpenter and I proposed that the city begin the process of clarifying that the "public benefit" provision may only provide limited benefits, and to make it clear that three-story buildings would not be part of the exchange for those benefits. (*See* Ex. 11.) This agenda item expressly excluded any consideration for the CRS/OAD zone, consistent with the council's policy to limit the scope of agenda items to the extent possible so as to avoid any conflict of interest. The video of that meeting is available on the city's webpage. There were five public speakers on the item, with the substance of their comments reflected in the minutes of the meetings. (*See* Ex. 12.) After public comment, council members Satterlee and Fishpaw said that they did not want to consider 2-story limitations since they wanted to stay with the form-based zoning, but they would consider some form of height limitation. I made the original motion with the two-story limitation and without any suggestion for height limitation, but later amended the motion to allow the city attorney and city staff to decide whether to recommend story limitation

or height limitation. I stated that the amendment was in order to accommodate the concerns of council member Satterlee. As amended, the motion regarding the CRS district passed unanimously. My understanding was that the height limitation discussed was to be within the "public benefit" provision, and I certainly did not think in terms of a citywide new definition for height measurement. That entire agenda item and discussion did not include the CRS/OAD zone, which is why I felt it permissible to engage in that discussion.

Mr. Sorensen misrepresented what happened at this meeting, falsely insinuating at various times in his complaint that I drafted the height measurement ordinance for that meeting. As can be verified by the agenda we prepared and the video of the meeting, I did not present any drafted height measurement ordinance at that meeting. Indeed, any such ordinance was not even mentioned. And furthermore, it expressly excluded the CRS/OAD zone where Sorensens' and my property are located.

June 12, 2012 – City Council meeting

Although not mentioned by Mr. Sorensen, their three-story development plan was presented to the city council at the June 12, 2012 city council meeting. The city staff recommended denial based on various zoning code violations. Prior to that meeting, I had no discussions with any staff person regarding the Sorensens' project or the staff report. As indicated in the video and the minutes, I recused myself due to a conflict of interest, stepped down from the dais and left the room. (*See* Ex. 13.) During the public comment there were some who made accusations that I had spoken to and attempted to influence the vote of the council members or staff, which I assumed were accusations promoted and spread by the Sorensens. After the public comment, several council members stated that they had never had any communications with me regarding the Sorensens' application, and, to the contrary, I was known to jump up and leave the room if the topic was raised.[4]

Mr. Sorensen states as his Fact 6 (Complaint, p. 2) that since 2007 his investment entity had been trying to gain approval for an office building for 40 Main Street. What he failed to state is that not once did he submit a proposal to the city that was in compliance with the city's zoning ordinances. He could have done so, consistent with his prior representations to his investors that an office building in full compliance with the then existing zoning ordinances would generate a profit of over $2.5 million, almost a doubling of their money. (*See* Ex. 15.) Instead, the Sorensens' misrepresented to the community and the city that they could not development a building in conformance with zoning and produce a profit. So, they demanded the right to build a three-story building in violation of the height limitations and without providing the required parking, and tried to cover-up their unreasonable demands by claiming that any denial was only

[44] While not relevant to the FPPC issue, Mr. Sorensen stated that I was involved in a letter sent by a lawyer threating a lawsuit should the city approve his project, and that I first told a newspaper reporter that I had no involvement in the letter but later had to retract that statement. This is false. First, the letter in question does not threaten a lawsuit. (*See* Ex. 14.) Second, the claimed statement and retraction with a newspaper report is nonsense. The reporter was confused and had failed to read the first sentence of the attorney's letter that states that he was representing the owners of Four Main Street, which included me. There was no need or attempt by me to hide what was expressly stated.

because I was improperly influencing the city staff, commissioners and my fellow council members.

June 21, 2012 – Planning Commission meeting

The city attorney and staff did prepare a draft ordinance and presented it to the Planning Commission for its hearing the following month on June 21, 2012. As drafted, it did not include the CRS/OAD zone and generally followed the draft previously prepared by Mayor Carpenter and myself. It excluded height and parking as possible exceptions that could be given to a developer in exchange for "public benefits."[5] I was not consulted regarding this draft by anyone, and I did not talk to any staff or Planning Commissioners about it. The staff report for that agenda item also contained a recital of the background facts. (*See* Ex. 16 for the staff report and draft ordinance.) At the Planning Commission meeting, staff had also included a proposal to modify Code § 14.66.230 regarding how to measure height, and Code § 14.66.240 regarding parapet walls and other architectural elements. Prior to that meeting I did not speak to any staff person, the city attorney, council members, or Planning Commissioners regarding their agendized item. Indeed, I did not know that the staff had included any recommendation to modify the height measuring definition until the matter came back to the city council the following month.

The June 21, 2012 Planning Commission meeting can be seen in full on the city's webpage. I was not present at that meeting. The staff presentation was made by Mr. Walgren who showed the downtown zoning map and said that the CRS/OAD zone was not part of the consideration. During the presentation, he spoke of the "oddity" of how the city currently takes height measurements, and recommended updating that. Commissioner Moison asked if it is correct that three stories are not now allowed in the downtown. Mr. Walgren said that such is correct, that both the CRS and CRS/OAD zones are limited to two stories because of the 30 foot height limit. During the public comment, several expressed a desire to include the CRS/OAD zone. After discussion, the recommendation of the Commission was to not adopt the ordinance, but instead invite the prior DZC and other organizations into the process for an open discussion and engagement. (*See* Ex. 17 for the minutes.)

July 24, 2012 – City Council meeting

This matter came back to the city council the following month at its July 24, 2012 meeting. Without any prior contact between me and any staff or council person, the items were broken into two separate agenda items: Agenda Item 18 dealing with the proposed modification of the "public benefit" clauses and excluding the CRS/OAD zone; and Agenda Item 19 dealing with creating DZC-IV to look at both height measurement methodology and "public benefit" for the downtown zones, including the CRS/OAD zone. At the beginning of the meeting, council member Satterlee requested Items 19 and 18 be reversed. I concurred and raised the additional concern that I had a conflict of interest regarding Item 19 (creating a new DZC) since that new committee would be tasked to consider the "public benefit" provision for the downtown zones

[5] The actual wording under B was: "Such exceptions [in exchange for the public benefit the developer provides] shall not include modifications of the height of the structure, height of the first floor, or on-site parking requirements, which instead may be granted if qualified under standard variance procedures."

including the CRS/OAD zone, but not a conflict with Item 18 ("public benefit" provision which excluded the CRS/OAD zone). I wanted the item in which I had a conflict to proceed first, consistent with the FPPC regulations, which was the reason I also requested to have the two agenda items reversed. The city attorney concurred, and that was done. (*See* Exs. 18 and 19 for the staff reports on agenda Items 18 and 19, respectively, and Ex. 20 for the minutes.)

When Item 19 came before the council, I recused myself, stated the reason for the conflict, stepped down from the dais, and left the room. I had not previously discussed any aspect of this agenda item with any member of the council, staff, city attorney, or Commissioner. It was during this agenda item that the council decided to reconstitute the DZC as DZC-IV, selected the membership and voting rights, and asked the new committee to review this matter, which was to also include the CRS/OAD zone. There was only one speaker during the public comment, Taylor Robinson, who said that she was very supportive of reconstituting the committee and being a part of it. She was not a part of DZC-III, and accordingly I had no involvement in her becoming a part of this new committee. Later Bart Nelson was added to the committee, but that was done without any prior or subsequent consultation or discussion with me. (*See* Ex. 21.)

In his typical style, Mr. Sorensen has stated, without any documents or substantiation, that I "personally chose" the members of this new committee. (Complaint, p.3, Fact 13c.) This is another example of Mr. Sorensen's misrepresentations. The falsity can readily be confirmed by reviewing the video proceedings of the July 24, 2012 meeting.

After the conclusion of that agenda item 19, I returned to the chambers and took my seat as agenda item 18 was presented. Mr. Walgren made the staff presentation and said that in light of the decision to refer this matter to a new DZC-IV, it would be a brief report and no action was required. During his brief description of the proposed method of measuring height, he said it was a "clean-up item." There was no public comment and no council action on this item. (*See* Ex. 20 for the minutes for that meeting.) Once again, Mr. Sorensen's repeated accusations that I drafted this new regulation on the method of measuring height and knew at the time it would have a significant financial benefit to my property are unfounded and self-serving.

August 2012 – DZC-IV meetings

In light of the fact that the scope of the review by the new DZC-IV would include the CRS/OAD zone, I felt that I had a conflict of interest and did not attend any meeting of the DZC-IV, and did not speak to any member of that committee, any other member of the city council, city staff, city attorney, or commissioner regarding any aspect of the subject. At one point, the leadership of the committee wanted to add another member, Bart Nelson, which was put on the consent calendar for the August 28, 2012 council meeting. Once again I recused myself from that vote, and had not been consulted by anyone regarding the additional member. (*See* Ex. 21 for the minutes.) Mr. Sorensen's unsubstantiated suggestions to the contrary are false. I do not have the minutes of all of the DZC-IV meetings, but the minutes for its meeting held on August 24, 2012 were included as Attachment 4 to the October 23, 2012 city council staff report for Agenda Item 5. (*See* Ex. 24.) A summary of its findings were presented to the P&TC in the staff report for its October 4, 2012 meeting. (*See* Ex. 22.)

October 4, 2012 – Planning & Transportation Commission meeting

After the DZC-IV concluded its work, the matter then went before the P&TC for its October 4, 2012 meeting. The staff report recommended three ordinance changes: (1) change to the "public benefit" provision for only the CRS zone, (2) clean-up item on how to measure height, and (3) definition of a building "parapet." (*See* Ex. 22 for the staff report.) The reworded "public benefit" provision had been significantly watered down by the DZC-IV. It no longer excluded height and parking from the available exceptions that could be granted to a developer in exchange for the "public benefit." To the contrary, it expressly stated that height could be an available exception, so long as the exception is "minor" and supported the project's architectural integrity.

For reasons unbeknownst to me, the video of that meeting was not made. But the minutes reflect that there were no public comments, that the height measurement definition and the parapet definition were supported unanimously, and that the watered-down "public benefit" provision went through a couple of votes, with the final vote eliminating the word "minor" from the proposal.[6] (*See* Ex. 23 for the minutes.) This had the impact of watering it down even further. Apparently, somewhere between the actions of the DZC-IV and this P&TC meeting, the scope of the proposed modification of the "public benefit" provision was once again limited to the CRS zone, and no longer included the CRS/OAD zone. I did not know that, and continued to treat it as a conflict of interest item. As such, I had no contact with any Commissioner, staff person, or the city attorney regarding this meeting or agenda item.

October 23, 2012 – City Council meeting

Later that month, the item came back to the city council for its October 23, 2012 meeting (mistakenly referred to by Mr. Sorensen as October 24, 2012). Prior to receiving the council packet for that meeting, I thought the actions of the DZC-IV and the P&TC regarding the "public benefit" included the CRS/OAD zones, thus throughout I treated it as a conflict item. This means that from the time the council first began its deliberations on July 24, 2012 to create a new DZC and who to appoint to the new DZC-IV up until the October 23, 2012 council meeting, I had treated this item as a conflict issue, and had no discussion or contact whatsoever with any fellow council member, commissioner, committee member or staff.

Since the proposal before the council at this meeting expressly excluded the CRS/OAD zone, I felt there was not a conflict of interest, and participated in the discussion. At that meeting there was only one public speaker who strongly urged the Council to approve the proposed ordinance changes. (*See* Ex. 24 for the staff report on this agenda item.) No one spoke against any of the proposals. The council deliberations did not focus much on the height measurement or parapet definitions, but on whether the word "minor" should be put back in the "public benefit" proposal for the CRS zone. That discussion had nothing to do with the height measurement definition. Both Mayor Carpenter and I wanted the word "minor" added back, in order to provide

[6] Technically, the sentence within the "public benefit" provision for the CRS zone (not CRS/OAD zone) was as follows: "'Height of structure' shall only apply to minor building height exceptions that support the project's architectural integrity." In other words, the issue was whether a developer who provides a public benefit could expect a "building height exception" or a "minor building height exception."

some substance to the watered-down version. The other three council members, however, felt the word was superfluous and unneeded. Accordingly, the final vote was three to two, based on that issue. The minutes expressly state that "Mayor Carpenter and council member Packard dissenting due to their desire to include the word "minor" to define building height exceptions in Section 1.B." (*See* Ex. 25.)

Mr. Sorensen, on the other hand, has repeatedly and falsely accused me of switching my vote at the last minute to avoid any conflict of interest problems once I saw that the majority would approve the height measurement change. He has inferred some sinister motive by switching my vote, but that is entirely contradicted by looking at the video of that portion of the meeting. It was abundantly clear why I voted no, and even the minutes reflect the reason. I wanted the word "minor" added back to the "public benefit" section that dealt only with the CRS zone. It had nothing to do with Mr. Sorensen's theory.[7] Furthermore, the staff report and the minutes also demonstrated that no one was concerned about the height measure change, having accepted it as largely a "clean-up" issue that would apply to the entire city. I personally had no idea that it would be of any significance to the Sorensens or to any future application by them. (At the time, their application had been denied, and they had no pending application for development.)

Mr. Sorensen also repeatedly confuses the three zoning changes approved at the October 23, 2012 meeting. The "public benefit" change did not apply to the CRS/OAD zone. When I spoke during the meeting of not having a conflict of interest, I was speaking as to that item, even though I did not expressly so state. I did not consider the other two items to be of particular importance, but rather tag-along items. Mr. Sorensen condemns the entire city staff for failure to correct me when I said that the proposal did not apply to the CRS/OAD zone, but I believe they, like me, understood that I was referring to the "public benefit" amendment. Mr. Sorensen speaks as though he had no idea that the tag-along clean-up zoning changes would apply to the CRS/OAD zone. But that statement is incredulous since a mere glance at the name of the agenda item demonstrates otherwise: "Downtown and Citywide commercial ordinance amendments." The staff report and the limited comments on those changes make it clear that those amendments would apply citywide.

November 6, 2012 Los Altos City Council elections

The election of three members of the city council was held on November 6, 2012. Six candidates ran, including Mr. Sorensen's brother, Jerry Sorensen. He lost, in a distant fifth place. During the campaign an email dated October 9, 2012, from Mr. Sorensen to his investors in 40 Main Street surfaced, which states that Jerry Sorensen was running to obtain a "political advantage" for the benefit of their investment. (*See* Ex. 26.)

November 24, 2012 – City Council meeting

The three zoning ordinance amendments approved by the city council in their October 23, 2012 meeting were included on the consent calendar of their November 24, 2012 meeting, to

[7] In any event, I voted in favor of the ordinance at the second reading during the council meeting of November 24, 2012, and I voted in the affirmative. (*See* Ex. 26.)

satisfy the second reading requirement. The second reading was approved at that meeting as part of the consent calendar and without any discussion. (*See* Exs. 27 and 28 for the staff report on this agenda item and the minutes for that meeting, respectively.) Mr. Sorensen repeatedly states that at the last minute I voted no at the October 23, 2012 meeting in order to avoid any conflict of interest challenge. But if I had some Machiavellian plan to avoid voting to approve the ordinance in order to provide cover, as argued by Mr. Sorensen, then I would not have so voted during this meeting, thereby completely undoing the supposed cover.

LEGAL ANALYSIS

Mr. Sorensen's complaint is regarding the following three ordinances passed by the city council on October 23, 2012: (1) Code § 14.48.180 – the public benefit provision for the CRS zone; (2) Code § 14.66.230 – the citywide definition of height; and (3) Code § 14.66.230 – the citywide definition of parapet. Each is analyzed below.[8]

Municipal Code § 14.48.180 – Public benefit ordinance (CRS zone only)

My participation in the governmental decision on October 23, 2012, amending Municipal Code § 14.48.180 involved only properties within the CRS zone, some of which are within 500 feet of my property. (The CRS zone and the CRS/OAD zone are separate and distinct zones with their own set of zoning regulations.) This normally meant that my economic interest was "directly involved" in the amendment. However, then applicable Reg. § 18704.2(b) provided that where the "decision solely concerns the amendment of an existing zoning ordinance . . . which is applicable to all other properties designated in that category," then my economic interest was instead "indirectly involved" and controlled by then applicable Reg. § 18705.2(b).

Under then applicable Reg. § 18705.2(b), the "financial effect of a government decision on real property which is indirectly involved in the government decision is presumed not to be material." This meant that there was a presumption that my vote on Municipal Code § 14.48.180 was not economically material to my ownership of 4 Main, and not prohibited by any conflict of interest rules. That was, however, only a presumption that could be rebutted if it could be shown that it was reasonably foreseeable that the decision would have a material financial effect on my property, such as those listed under then applicable Reg. § 18705.2(b)(1)(A) – (C) which include the development or income producing potential of my property, its use, or the character of the neighborhood.[9]

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[8] Mr. Sorensen often mentions the three-story hotel across the street from our two properties. The first time the proposal for a hotel came before the city council was on September 14, 2010, and the minutes reflect that I recused myself and left the room. (See Ex. 29.) While on the council, I never spoke to any council member, commissioner, or staff regarding that project. The city and council agreed to allow the first floor to be less than 12 feet since it was a hotel and would never become retail. Based on that concession, the developer was able to build three stories using the form based zoning. The Sorensens have unsuccessfully demanded that the city treat them like the hotel, and allow three stories. Their demand was discussed and dismissed as Issue 12 in the recent Sheppard Mullin letter. (Ex. 3, p. 9.)

[9] Mr. Sorensen's legal analysis also concludes that whether from a real property, business entity, or source of income analysis, my property was to be considered "indirectly" involved in the government decision. (Complaint, p. 8, ¶ 4(a)(ii), and ¶ 4(b).)

The modification of the "public benefit" ordinance, as returned to the council and then finally adopted, had been significantly watered down from the version first proposed by Mayor Carpenter and me. Our version expressly excluded height and parking from the available exceptions, but the final version expressly stated that height was available. While I tried to be gracious and praised the results, I recognized that as a practical matter the revision to the "public benefit" provision added more clarity than change. This is particularly true since it was my understanding that the city staff already interpreted the provisions strictly. As such, it is highly doubtful that the city staff would interpret the CRS/OAD "public benefit" any differently than its interpretation for the watered-down version for the CRS zone.

It is far more reasonable to assume that the city staff, commissions, and city council will treat the "public benefit" provisions of the CRS and CRS/OAD zones substantially the same. After all, even as amended, they are substantially the same. As such, it is not reasonable to assume that their differences have caused any impact the fair market value of any of the properties in either the CRS or CRS/OAD zones, or their fair rental values. Nor will the difference cause any change in the use of my property or the character of the neighborhood. I am confident that any unbiased real estate agent, leasing agent, and appraiser who would testify that such variations in the wording of the "public benefit" clause would not enter whatsoever into their calculations of the value of 4 Main or its income capacity. I certainly gave no thought to any of those factors when I voted on it. The only reason for excluding the CRS/OAD zone was to allow my participation, as stated on a number of occasions and to be consistent with the council's stated policy that it favors limiting the scope of agenda items to avoid conflicts of interest to the extent possible.

Based on these factors, Mr. Sorensen's argument that my property financially benefited from the ordinance amendment is not just conjecture, it is a strained effort by a person desperately trying to creatively imagine a basis for using me as his scapegoat. His tenuous cause-effect speculations certainly would not muster the "substantial likelihood" and "reasonably foreseeable" requirements set forth in *Smith v. Superior Court of Contra Costa County* (1994) 31 Cal.App.4th 205; *Downey Cares v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983; *Witt v. Morrow* (1977) 70 Cal.App.3d 817; see also *In re Gillmor* (1977) 3 FPPC Ops. 38; *In re Thorner* (1975)1 FPPC Ops. 198.[10]

Municipal Code § 14.66.230 – Height measurement and parapet definitions (citywide)

The same analysis that was provided above for Municipal Code § 14.48.180 should be used for my vote on Municipal Code § 14.66.230 regarding the height measurement definition and parapet definition. Under then applicable Reg. § 18704.2(b), since the "decision solely concerns the amendment of an existing zoning ordinance . . . which is applicable to all other properties designated in that category," my economic interest was "indirectly involved" and

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[10] Mr. Sorensen also argues that I wanted to limit competing office supply in Los Altos to benefit my building, but that is contrary to my continued efforts over many years to greatly increase the office supply in the downtown. It is a small downtown that shares the same market wherever the office space may to located.

therefore, under then applicable Reg. § 18705.2(b), not in violation of the FPPC regulations unless it can be shown that it was reasonably foreseeable that the decision would have a material financial effect on my property.

The vote on these definitions did not change the overall height limit of properties in the CRS or CRS/OAD zones, which were and continue to be 30 feet, with a minimum ceiling height of 12 feet on the first story. (Municipal Code 14.48.120 for the CRS zone, and Municipal Code 14.548.130 for the CRS/OAD zone.) Due to these unchanged requirements, Mr. Walgren stated during the June 21, 2012 P&TC meeting that even prior to the amendment, only two stories could be built in the CRS and the CRS/OAD zones. Simple math for a three-story building confirms this. If the first floor is 12 feet to the ceiling, and two additional floors of only 8 feet to the ceiling, and then the two required duct spaces between the two floors of 2-3 feet each, adds up to a building height of 32-34 feet.[11] That was true before and after my voting on Municipal Code § 14.66.230.

The practical impact of the approval of Municipal Code § 14.66.230 was how the measurement of height is accomplished for a flat-roofed building and to define a parapet. Basically, prior to the amendment, the height of a flat-roofed building was from street level to the interior ceiling of the top floor. After the amendment, the height of a flat-roofed building was from the street level to the roof line of the exterior building. (A parapet and other limited structures could extend up an additional 8 feet both before and after the amendment.) For a sloped-roof building, the height of the building is from the street level to the middle of the sloped-roof.

At the time of the vote and at present, I do not consider the change in the measurement definition to have any, let alone any material, financial effect on my property. Both my property and neighboring properties were already limited to two stories. It will have no change on the use of my property or the character of the neighborhood. I considered the amendment to have been a tag-along clean-up correction requested by staff to eliminate some prior "oddity" in the code. There was no public opposition and relatively little discussion of it, other than to clarify the proposed change.

Mr. Sorensen, however, has now argued that it has provided a financial benefit to me by making my building the only three-story building in the area. This is based on his nonsensical claim that a building that has one floor underground and two stories above ground is a three story building. Using that definition, however, he too can have a three-story building, so long as one story is underground. Indeed, he could build a 5 story building, as long as it complies with the height limitation (meaning he can only have 2 stories above ground) and he provides the required parking. He also argues that somehow this new definition will preserve more light to the side of my building facing his, but all the windows on that side of my building are much lower than 30

[11] On the December 14, 2011 application by the Sorensens to the city, the ceiling height of the second and third floors was 8'6", and the space between each of the floors was 2'7". This made the height to the interior ceiling 34'11", exceeding the 30' height limit. This is why even before the amendment the Sorensens could not get approval for a three-story building. The amendment to the height definition did not change that fact. (See Ex. 30 for copy of the entire page of their submitted plan, and then a copy of the cross-section only of the page.)

feet. Thus, the change in the height definitions will have no differing impact on the light to those windows.

Once again, his argument of financial benefit is a stretch that does not meet the "substantial likelihood" and "reasonably foreseeable" requirements set forth in *Smith v. Superior Court of Contra Costa County* (1994) 31 Cal.App.4th 205; *Downey Cares v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983; *Witt v. Morrow* (1977) 70 Cal.App.3d 817; see also *In re Gillmor* (1977) 3 FPPC Ops. 38; *In re Thorner* (1975)1 FPPC Ops. 198.

CONCLUSION

In conclusion, the substantiated facts presented in this response show that I have been careful to avoid any conflicts of interest, have pro-actively recused myself in meetings where I felt there was the possibility of a conflict, and promptly left the room if my fellow council members began to talk about the Sorensens' project. The above analysis also shows that Mr. Sorensen has been loose with the facts and his legal analysis is overly creative at best.

Should you have any questions or desire any further clarifications or documents, I am happy to provide them.

Sincerely,

Ronald D. Packard

LIST OF EXHIBITS

1 Investor's verified lawsuit against the Sorensens for fraud
2 Investor email: "We are in deep shit with these guys."
3 Sheppard Mullin letter refuting Sorensens factual and legal conclusions
4 2014-08-26 council staff report on restriping
5 2014-08-26, city council meeting, restriping minutes
6 Daily Post article on September 9, 2014
7 Pictures of 4 Main Street showing it to be a two story building
8 Downtown zoning map, with 4 Main and 40 Main identified
9 2005 Summary of the DZC-I
10 April 17, 2007, DZC-II Final Report
11 May 8, 2012, Agenda Report from Mayor Carpenter and Ron Packard
12 May 8, 2012, city council meeting, minutes
13 June 12, 2012, city council meeting minutes denying Sorensen project
14 May 31, 2012, letter to council from attorney Barton G. Hechtman
15 Pro Forma Summary from Sorensens' prospectus
16 June 21, 2012, Planning Commission meeting staff report
17 June 21, 2012, Planning Commission meeting minutes
18 July 24, 2012, city council meeting, staff report for Item 18 re new DZC-IV
19 July 24, 2012, city council meeting, staff report for Item 19 re "public benefit"
20 July 24, 2012, city council meeting, minutes
21 2012-08-28, city council meeting, minutes
22 October 4, 2012, P&TC meeting, staff report
23 October 4, 2012, P&TC meeting, minutes
24 October 23, 2012, city council meeting, staff report
25 October 23, 2012, city council meeting, minutes
26 October 9, 2012, email that Jerry Sorensen running for political advantage
27 2012-11-24 council staff report, second reading of zoning amendments
28 2012-11-24 council minutes, second reading of zoning amendments
29 2010-09-14 council minutes, hotel
30 2011-12-11 Sorensens plan submittal showing cross section and heigth

Exhibit 8

SWORN COMPLAINT FORM
(Form May Be Subject to Public Disclosure)*

AS REQUIRED BY GOVERNMENT CODE SECTION 83115, please complete the form below to file a sworn complaint with the Fair Political Practices Commission.

Mail the complaint to:

Enforcement Division
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

NOTE: ***The Fair Political Practices Commission does not enforce or address violations of the Brown Act, the content of campaign communications, residency requirements, the inappropriate use of public funds or resources (including use of uniforms or equipment), placement of campaign signs or materials on public property, or violation of a local campaign rule or campaign ordinance.***

Person Making Complaint

Last Name: SORENSEN

First Name: THEODORE

Street Address: 40 MAIN STREET

City: LOS ALTOS State: CA Zip: 94022

Telephone: (650) 924-0918

Fax: (650) 949-0844

E-mail: ted@tgslawoffices.com

***IMPORTANT NOTICE**

Under the California Public Records Act (Gov. Code Section 6250 and following), this sworn complaint and your identity as the complainant may be subject to public disclosure. Unless the Chief of Enforcement deems otherwise, within three business days of receiving your sworn complaint we will send a copy of it to the person(s) you allege violated the law.

In some circumstances, the FPPC may claim your identity is confidential, and therefore not subject to disclosure. A court of law could ultimately make the determination of confidentiality. If you wish the FPPC to consider your identity confidential, do not file the complaint before you contact the FPPC to discuss the complaint at (916) 322-5660 or toll free at (866) 275-3772.

Person(s) Who Allegedly Violated the Political Reform Act: (If there are multiple parties involved, attach additional pages as necessary.)

Last Name: Packard

First Name: Ron

Committee Name: _____
(only if applicable)

Street Address: 4 Main St.

City: Los Altos State: CA Zip: 94022

Telephone: (650) 947-2300

Fax: (___) ___-____

E-mail: rdpackard@packard.com

Describe, With as Much Particularity as Possible, the Facts Constituting the Alleged Violation(s) and How You Have Personal Knowledge that it Occurred.*

See attached

***IMPORTANT! Attach copies of any available documentation that is evidence of the violation, (for example, copies of checks, campaign materials, minutes of meetings, etc., if applicable to the complaint.) Note that a newspaper article is NOT considered evidence of a violation.**

Provision(s)/Section(s) of the Political Reform Act Allegedly Violated and When the Violation(s) Occurred: (If specific sections are not known, please provide a brief summary)

See attached

###

Name and Addresses of Potential Witnesses, Other than Yourself, if Known:

Last Name: _____

First Name: _____

Street Address:

_____

City: _____ State: _____ Zip: _____

Telephone: (____) ____-_____

Fax: (____) ____-_____

E-mail: _____

Last Name: _____

First Name: _____

Street Address:

_____

City: _____ State: _____ Zip: _____

Telephone: (____) ____-_____

Fax: (____) ____-_____

E-mail: _____

###

Last Name: _____

First Name: _____

Street Address:

_____

City: _____ State: _____ Zip: _____

Telephone: (____) ____-_____

Fax: (____) ____-_____

E-mail: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Theodore G. Soretsen 10/28/2014

(Signature) **(Date)**

THEODORE G. SORETSEN

(Please Print Your Name)

Clear Page Print Page

October 28, 2014

Enforcement Division
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Investigation of Ron Packard in connection with possible violation of California Government Code Section 87100

Background

I filed a complaint against Ron Packard dated September 5, 2014 ("Original Complaint"). Since then I have reviewed additional material contained in the record at the City of Los Altos and I desire to amend and supplement the Original Complaint ("Amended Complaint") as described herein and as set forth in the description of certain events in the attached table entitled "Table 1 – Alleged Violations of Government Code Section 87100 ("Table 1"). As stated in the Original Complaint I, and partners, own property next door to property owned by Ron Packard and his partners. From the time he learned of our acquisition of the neighboring parcel and our intent to submit an application for a three-story building ("Development Application"), he used his power of office to oppose our Development Application. In this Amended Complaint, I have included additional events where Ron Packard violated Government Code Section 87100 ("Conflict of Interest Statute").

I ask that when you are evaluating this Amended Complaint you consider the effect on the Development Application. It is my contention that from the time that he became aware of our Development Application, each and every official act by Ron Packard that had an affect on that Development Application was a violation of the Conflict of Interest Statute. Even before Ron Packard became aware of the Development Application he acted to protect his property from nearby development. After he became aware of the Development Application, at times he acted directly to amend elements of the Los Altos Municipal Code on which we were relying; at other times he spoke against the Development Application by addressing other matters that appeared to be about some other matter but actually was a thinly veiled effort to undermine the political will to approve the Development Application. The purpose of this Amended Complaint is to more fully describe the acts and actions of Ron Packard designed to protect his property from nearby development and, more particularly, to defeat our Development Application in every manner available to him.

I understand that there is an important exception to the Conflict of Interest rules that allows Ron Packard to participate in matters before the City Council, as a public official, if he can answer the following question negatively:

> **Is the potential effect of the governmental decision on the public official's economic interests distinguishable from its effect on the public generally?**

The standard is that the official is allowed to participate if he can "establish that the governmental decision will affect the public official's economic interest in a manner which is indistinguishable from the manner in which the decision will affect the public generally." (2 CCR § 18707.) This is demonstrated by showing that the governmental decision will affect a significant segment of the public in substantially the same manner as it will affect the public official. (2 CCR § 18707.1.). In this case, for each of the acts described herein, the exception is not met because Ron Packard wanted to make sure that no one constructed a building taller than his next to him. From and after the day that he met us on March 15, 2007, and throughout his term in office, Ron Packard was fully aware of the fact that we intended to bring forward our Development Application and, even after its rejection, we intended to bring it back for consideration by the next Council. In each act described herein, Ron Packard was fully aware that his comments, purporting to be general in nature, and the changes to the Municipal Code that he was proposing, considering and voting on related directly to the viability of the Development Application and, thus, the effects of his comments and governmental decisions on his economic interests was clearly distinguishable from its effect on the public generally.

What follows is a detailed discussion of one effort to amend the Municipal Code. This effort was carefully crafted to appear to be unrelated to the Development Application but, when the dust settled, it was a direct attack on several of the elements of the Municipal Code, on which the Development Application rested.

Certain relevant historical events leading up to and related to recent zoning amendments that affected the Development Application; approved October 23, 2012 ("Packard Amendments"), with a second reading on the "Consent Calendar" on November 13, 2012.

I. Issue related to limitation of downtown zones to 2 stories

The Development Application was scheduled to be heard by the Council on May 8, 2012. In late April, we received a call from the Planning Department informing us that the Mayor (Val Carpenter) had bumped our matter and that, in its place, the Council would be considering a report from Mayor Carpenter and Ron Packard ("Report"). Since Ron Packard and Val Carpenter were working together on the Report, I believe that it is likely that Ron Packard and Val Carpenter worked together to move our Development Application off the Agenda to allow Ron Packard to speak directly to the Council, in a veiled address, on the matter of the Development Application.

In the Report, Ron Packard and Val Carpenter filed this statement with respect to the issue of a possible Conflict of Interest:

> He addressed the issue of a Conflict of Interest by including the following paragraph in the May 8, 2012 Memorandum to Council, written by Val Carpenter and Ron Packard (the Report):
>
> "In order to avoid any concerns about a possible conflict of interests (sic), and consistent with the Council Norms to attempt to limit the scope of items so as to avoid any conflicts of interest, these proposals do not apply to projects that have not yet been submitted to the City prior to the final adoption of the proposed zoning

> changes, and is not to include any change to the CRS/OAD zone. Councilmember Packard has consulted with outside counsel and is satisfied that these zoning amendments, as presented above, do not create a conflict of interest since on two separate fronts they would not apply to the proposed development of 40 Main Street. As such, a special request is made not to discuss the pros and cons of projects included in the CRS/OAD zone, to have the change apply to outstanding applications that have not yet received final approval, or what impact they would have on any proposed project within the CRS/OAD zone."

The May 8, 2012 Council Meeting. Item 12 of the Agenda states:

> "12. Exceptions for Downtown zoning and two stories limitation." In order to avoid any conflict of interest for Councilmember Packard...these changes will not apply to the CRS/OAD Zone." Note that the CRS/OAD Zone is the zone that includes property owned by Ron Packard and the property for which the Development Application was made.
>
> Council Minutes. Agenda Report: "From: Mayor Carpenter and Councilmember Packard"
> "Passed unanimously" (5-0)
>
> But, at 1:38:20 of the meeting, Ron Packard states the following:
>
> > "I want it known that I am absolutely opposed to 3-story developments in the core of our downtown, the CRS district, that's Main Street and State Street. Now is it possible that some project development can come forward where I would consider otherwise? It's possible but that might have to be on some variance or some special circumstance but I don't want developers thinking they can manipulate the measurements and how you do things in order to get three-stories. I want it clear as it was before."
>
> This quote, though ostensibly about the CRS only, actually is a clear statement to all concerned parties that Ron Packard wants to make sure that the Development Application is rejected. Ron Packard had been working with Val Carpenter on this matter and had ample opportunity to make his views known to her (when he should have been recused and not have participated in any discussions with Val Carpenter or any other member of the community). Further, it is obvious that once our Development Application is rejected and the proposed amendments to the Municipal Code are effective, it will be difficult or impossible to bring a similar application forward again.
>
> It is presented in this manner to give him "cover" but the fact that it was inserted into the Agenda in the spot set for our Development Application, and the words, themselves: "**I don't want developers thinking they can manipulate the measurements and how you do things in order to get three stories. I want it clear as it was before.**" These words relate directly to our Development Application and are not restricted to the CRS Zone and appear to be directed at the three remaining councilmembers as a direct violation of the Conflict of Interest Statute.

II. Councilmember Packard recuses himself with respect to proposed rezoning of the CRS and CRS/OAD zone.

July 24, 2012 Council Meeting. Item 19 (taken before item 18) of the Agenda states:

"19. Downtown Zoning Committee Phase IV. Recommendation to approve the reconstitution of the Downtown Zoning Committee for a fourth phase to focus on more clearly defining how building heights are measured in the CRS and CRS/OAD zoning districts as well as allowable development incentives in all Downtown zoning districts"

Council Minutes. **"Packard recused himself due to a financial conflict with the proposal (owns property within 500 feet of the proposed planning area)"**

III. During discussion of July 24, 2012 item 18, though no action was taken with respect to item 18, Councilmember Packard comments on July 24, 2012 Council Meeting, Item 19 though he had previously recused himself.

July 24, 2012 Council Meeting. Item 18 of the Agenda states:

"18. Downtown Ordinance Amendments."

Council Minutes. "Councilmember Packard returned to his seat on the dais. ... No action was taken based on the action taken as part of item number 19."

From the video record: Ron Packard takes the opportunity to comment on item 19 by making sure everyone in the room understands his view of what Downtown Zoning Committee IV should examine. Ron Packard states:

> "Thank you the the (sic) concept of a development benefit was first introduced for the downtown area in in I think it was '91 or '92 when the urban design document was created.
>
> And I think for the twenty years everything worked fine because no one ever tried to abuse it and um and the planning commissioners used discretion and judgment on the implementation of it aah and I think what has happened is we, this council has greatly expanded the development opportunities downtown for much of the downtown but we reached a balance. For better or worse that's what happened we allowed it on the outside but not in the core not on State and Main And there is a difference of opinion by some people of whether that is the right decision And if we have planning commissioners who would rather be policy makers and determine what the zoning should be they can use this as a means of doing that by by(sic) abusing it in a way that it has never been used before and that's what ever it's for for (sic) whatever whether that is for First and Main or for any other project that that becomes an issue and that is one of the reasons why I proposed to to (sic) take a look at this because it it it (sic) leads to a great deal of uncertainty for developers, for city staff and for planning commissioners, aah we need to have greater certainty of what should the parameters be. Now a I know I could have squawked, we have a council policy you know of trying to do things to not require a council member to be excluded because of a conflict and I could have squawked about the last agenda item saying it shouldn't include [CRS/]OAD because then I had a conflict and if it hadn't of then I could have participated but you know I say let the committee decide. I won't be able to participate but let it decide and umm but I want it known that that (sic) there's there's (sic) because we greatly expanded the development opportunities it allowed uncertainty to come forward on a provision that has been on the books for many years

> and the uncertainty I think is unfair to developers any developer whose has to spend a hundred, two hundred, three hundred thousand dollars, on architects and keep on coming back because they have some expectation because maybe somebody on staff said something or maybe they met with planning commissioners and they assured them of something and then it comes before the city council and the city council says forget it that doesn't help anyone so I I (sic) do hope that you know that however this provision is resolved for the CRS zone and that is what this agenda item is limited to that it it (sic) provides greater certainty to to (sic) everyone because it will because it will be a benefit to our community.

It could not have been lost on: (i) anyone on the dais, (ii) among any listening Planning Commissioners, (iii) any members of the public that might be asked to serve on the Downtown IV committee, or (iv) among the Staff that Ron Packard is speaking directly about expanding this limitation to the CRS/OAD as well as the CRS. He wants to make sure that he instructs anyone who might serve on that Committee, or eventually vote on a CRS/OAD project on the Planning Commission, or on the Council, that he expects that any attempt to use "development incentives" to gain an exception for a portion of a parking requirement, with respect to a future development application related to any building, including those in the CRS/OAD, should be unsuccessful—a direct attack on the Development Appication.

IV. Adoption of Zoning Amendments. October 23, 2012 Council Meeting, Item 5. Downtown and City-wide commercial ordinance amendments"

Agenda Report: "Council heard this recommendation at its July 24, 2012 meeting and voted to reconstitute ...the Downtown IV Committee to hold a series of meetings on the subject....the committee moved to recommend approval of the ordinance amendment to the Planning and Transportation Commission....at the subsequent...Planning and Transportation Commission meeting, all three ordinance amendments were recommend for approval." Note that two of the three ordinance amendments were "City-wide" and directly affected the CRS/OAD Zone (that includes property owned by Ron Packard and in which the Development Application was made).

From the Video record, Ron Packard states:

"I'm still in the room because this is proposed to apply to the CRS zone and not the entire downtown. If it had of then I'd have to recuse myself. Since it doesn't I'm here. I'm really pleased with this...."

The minutes of the October 23, 2012 Council meeting state Ron Packard voted on all three ordinance amendments, including the two that directly affected his property and the Development Application.

With this series of events a number of questions should be asked:

1. The Council agenda and agenda report for the item both clearly state, "Downtown and City-wide commercial ordinance amendments". How could Ron Packard believe and state the proposal applied "to the CRS zone and not the entire downtown"?
2. Ron Packard recused himself in the July 24, 2012 meeting on item 19, the matter relating to the appointment of a committee to discuss the downtown zoning issues that were now coming before the council in item 5. Why then did Packard fail to recuse himself on item 5 of the October 23, 2012 Council meeting when the product of that committee, described as "Downtown and City-wide commercial ordinance amendments", was considered and voted on by the Council and clearly affected Packard's property and the Development Application?
3. Why during the October 23, 2012 council meeting didn't either Los Altos Assistant City Manager James Walgren (who wrote the agenda report on the amendments) or Los Altos City Attorney Jolie Houston (who presumably wrote the amendments) clarify for Packard – as well as the entire council – that, contrary to Ron Packard's assertion, the zoning amendments under discussion directly affected Ron Packard's property?
4. When item 18 was considered after the discussion of item 19, Ron Packard proceeded to discuss the matters considered in item 19, during the July 24, 2012 Council meeting in an apparent attempt to instruct any participants in the Committee on how he thought the matter should be handled. How can he justify his participation in the process?
5. Why did Ron Packard participate in the November 13, 2012 meeting (his last meeting) when he moved for the approval of the "Consent Calendar" and then voted to approve all of the zoning matters before the Council on the "Consent Calendar", including the amendments approved on October 23 that directly affected Packard's property and the Development Application?

As we went through the public process of seeking approval for the Development Application it became evident that we were relying on certain facts relating to the downtown and certain areas of the Municipal Code—some of which had been changed to the advantage of the Development Application during Ron Packard's tenure on the Council based on the recommendation of Downtown Development Committee III. Following the defeat of our building project, Ron Packard sought to make changes designed to reverse those advantageous changes and take other steps to make a new submittal of the Development Application more difficult to sustain. Ron Packard took a variety of steps in connection with the following matters in order to adversely influence later consideration of the Development Application:

Municipal Code matters where Ron Packard has sought to influence interpretations or the Code itself to affect the Development Application ("Development Application Matters").

1. Any issue that addresses parking.
2. Setback from existing buildings. Ron Packard requested that we redesign our building to include a setback from his own and he even offered to purchase a strip of land for that purpose.
3. Height limitations in downtown were 38' to the parapet. We were relying on the fact that the parapet height is the only thing that the planning commission and Council were concerned about.

4. The zoning code ignored the number of stories and focused on the actual height of the buildings. In an earlier rezoning effort, the number of stories was removed from the Code but, in later rezoning analyses, Ron Packard sought to reintroduce the concept.
5. Development Incentives. The Zoning Code allows for exceptions in the event that a developer offers a public benefit. Ron Packard sought to reduce the applicability of Development Incentives.

In Table 1 we show how Ron Packard has violated the Conflict of Interest Statute by alternately recusing himself and then participating in the same matter or by participating or voting with respect to one or more of the above matters, each of which is essential to the efficacy of the Development Application.

Political Reform Act Conflict Analysis

State law provides "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Cal. Gov. Code § 87100.) At the time Packard was in office and making or participating in governmental decisions as a public official the FPPC used an eight step analysis to determine whether a conflict of interest existed.

The following analysis addresses Packard's conflict of interest in participating or attempting to influence 40 Main Street's development project and amendments to the City's zoning ordinance.

1. Is the individual a public official?

As a City Councilmember, Packard qualified as a public official.

2. Is the public official making, participating in making or influencing a governmental decision?

A public official makes a governmental decision when he votes on a matter before the City Council. (2 CCR § 18702.1(a)(1).) If Ron Packard participates in making the governmental decision or votes on an ordinance, he has met this standard.

3. What are the public official's interests that the decision(s) may affect?

There are several financial interests which may give rise to a conflict of interest. It appears that Packard has several of these interests.

4. Are the public official's interests directly or indirectly involved in the decision?

i. 40 Main Street Property

Since Packard's property is located within 500 feet of the Development Application, the decisions regarding the development of 40 Main Street is directly involved.

5. Will the governmental decision have a material financial effect on the public official's economic interests?

Any decision made by Packard to make or influence the governmental decision regarding the Development Application project would meet the materiality standard without proving any actual financial effect since the effect is presumed.

The revised FPPC regulation that went into effect May 31, 2014 provides that a reasonably foreseeable effect (see below) is material if it meets any one of thirteen enumerated tests. This includes if the governmental decision:

a. Would change the development potential of the property.
b. Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.
c. Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.

6. Is it reasonably foreseeable that the economic interest will be materially affected?

It appears that the financial effects on Packard's interest in his real property were reasonably foreseeable at the time he voted on each of the described matters.

7. Is the potential effect of the governmental decision on the public official's economic interests distinguishable from its effect on the public generally?

For each of the actions that Ron Packard took that are described in Table 1 and in the matters described in this letter, the public official's economic interests are clearly distinguishable from its effect on the public generally, as for each action there is a direct or indirect effect on his real property.

8. Is the public official's participation legally required?

The exception is not met because a quorum of the city council was able to act on both decisions absent Packard's participation.

For each of the matters set forth in Table 1, Ron Packard either inconsistently recuses himself on a variety of matters before the Council, indicating a violation in the associated matter or he attacks one of the Development Application Matters. In each case, the legal analysis is the same. I have set forth the underlying facts in Table 1.

Name and Addresses of Potential Witnesses, Other than Yourself, if Known:

Council Members

Last Name:	Packard
First Name:	Ron
Street Address:	4 Main Street, Los Altos, CA 94022
Telephone:	650-947-7300
Cell phone:	650-823-6959

Last Name:	Carpenter
First Name:	Val
Street Address:	154 Bridgton Court, Los Altos, CA 94022
Telephone:	650-941-0487
Cell phone:	415-515-7315

City Manager

Last Name:	Somers
First Name:	Marcia
Street Address:	One North San Antonio Road, Los Altos, CA 94022
Telephone:	650-947-2700

City Staff

Last Name:	Walgren
First Name:	James
Street Address:	One North San Antonio Road, Los Altos, CA 94022
Telephone:	650-947-2700

Last Name:	Dahl
First Name:	Zach
Street Address:	One North San Antonio Road, Los Altos, CA 94022
Telephone:	650-947-2700

City Attorney:

Last Name:	Houston
First Name:	Jolie
Firm:	Berliner Cohen
Street Address:	10 Almaden Blvd., 11th Floor, San Jose, CA 95113
Telephone:	408-286-5800

DATE	topic	action taken	code/statute	participated as member of public	Violation	Explanation
1/13/2004	ADA modification of Downtown parking plaza	recused /left chambers				
6/8/2004	Restaurant on Main Street allowed to use 3 parking stalls for wooden patio and to waive permit fees	made motion				Although this affects parking in the Downtown, the restaurant is more than 500 feet away and likely has little influence on Plaza 10 (Packard's shared plaza)
6/8/2004	Transportation Fund for Clean Air (TFCA) and Transporation for Livable Communities Grant Applications	recused /left chambers				
6/22/2004	TFCA Grant Applications	recused /left chambers				
7/13/2004	TFCA Grant Applications	abstained				This is likely on the Consent calendar and an abstention is adequate
7/13/2004	Acceptance of Donation (furniture for downtown community plaza)	recused / participated as a member of public		y	Y	if he felt it was necessary to recuse himself, he should never have participated as a member of the public.
9/28/2004	ADA modification of Downtown parking plaza	???				Need to investigate; this could well have been a violation
9/28/2004	Downtown Commercial Retail Sales District Zoning Ordinance	made motion	more details needed in description (complicated matter) Item 6	14.48	Y	the CRS zone is within 500 feet of Packard's property; he has consistently recused himself with respect to the Civic Center Master Plan, CRS Zone is no different
9/28/2004	Cleanliness in Downtown	recused /left chambers				
12/14/2004	Downtown Commercial Retail Sales District Zoning Ordinance	made motion	Downtown CRS Zoning Amendments (14.48); should have recused himself;		Y	the CRS zone is within 500 feet of his property
1/25/2005	Boutique Hotel at First and Main	made motion				more than 500 feet away
4/11/2005	Downtown Zoning Committee 1	made motion	formed committee; decided who would be on the committee; appointed himself; stated on the record that committee would review permitted uses, height, story, and floor area ratio limits as well.		Y	This is a clear violation of the Conflict of Interest Statute as any changes to the CRS Zone will affect Ron Packard's property.
4/12/2005	Downtown Zoning	seconded motion	reading of the ordinance amendments to CRS and other areas	Ch 14.02, 14.40, 14.44, 14.46, 14.48, 14.50	Y	Section 14.48 applies to the CRS zone; rezoning CRS zone without touching the CRS/OAD zone will have a related effect; the expectation would be that eventually the CRS/OAD zone would also have the same changes imposed.
4/26/2005	Adopted Downtown Zoning Ordinance changes	part of consent calendar	Chapters 14.02, 14.40, 14.46, 14.48, 14.50		Y	should have recused himself from voting on that agenda item
7/26/2005	Amendments to the Municipal Code Regarding Investments in Real Estate Developments for Councilmembers and Planning Commissioners	introduced the item to review FPPC guidelines of other city councils;	more details needed in description (complicated matter)		Y	a Council Norm was established (where is this norm?)
7/26/2005	Downtown Zoning Committee - Commercial Retail Sales (CRS) Zoning District	led the discussion and voted in favor			Y	the CRS zone is within 500 feet of his property; If the amendments down-zoned the downtown, then his adjacent property would benefit

7/26/2005	Neutra Cottage Operating Agreement	recused /left chambers				
8/23/2005	Personnel Committee Recommendations	made motion	did anyone ever follow through?			
8/23/2005	Neutra Cottage Operating Agreement	recused /left chambers				
9/27/2005	Neutra Cottage Operating Agreement	recused /left chambers				
10/25/2005	Downtown Commercial Retail Sales District Zoning Ordinance	made motion	confirmed on the record he does not have a conflict of interest with the issues being considered		Y	the CRS zone is within 500 feet of his property; If the amendments down-zoned the downtown, then his adjacent property would benefit
10/25/2005	Formation of Assessment District	recused / participated as a member of public	more details needed in description (complicated matter)	y	Y	if he felt it was necessary to recuse himself, he should never have participated as a member of the public.
11/15/2005	Downtown Commercial Retail Sales District Zoning Ordinance	made motion	approved as an agenda item (other items were pulled for discussion)	Ch 14.48, 14.74, 14.80 of Title 14	Y	Section 14.48 effects the CRS zone, which is within 500 feet of his property; If the amendments down-zoned the downtown, then his adjacent property would benefit; when were these proposed, read first time, when was the second reading and vote? 14.80 effects the Use Permits in the Downtown, which could have an impact on his property.
1/24/2006	Sunkist-Avalon Single Family Overlay District Boundary	recused /left chambers				
2/28/2006	Downtown Zoning Committee	led the discussion and voted in favor	voted to refer draft report to Planning Commission for action because the Zoning committee could not come to a consensus		Y	
5/9/2006	First and Main Street Hotel (item 10 on agenda)	Unknown				
5/9/2006	Design Review and Variance Applications for 146 Main Street	recused /left chambers				
6/13/2006	Downtown Zoning Committee 2	Opened the public hearing and closed it, discussed with council members, voted in favor on all items including to restructure the Downtown Zoning Committee to include himself			Y	
6/13/2006	Sunkist-Avalon Single Family Overlay District Boundary	recused /left chambers	but it also says he opened the public hearing so when did he come back or did he never leave?		Y	
8/29/2006	Downtown Zoning Committee	part of consent calendar			Y	Downtown Zoning Committee by its nature addresses zoning issues effecting Packard's property
8/29/2006	Sunkist-Avalon Single Family Overlay District Boundary	recused /left chambers				
9/12/2006	Downtown Parking Permit Program	voted in favor			Y	This had direct affect on his property because it allowed him to distribute more all day parking to plaza 10 adjacent to his building
4/24/2007	Downtown Zoning Committee	Phase II - presented an overview of committee that was chaired by Ron Packard			Y	This committee had a direct impact on where new development would occur in Downtown

Jon Maginot

From:	Ron Packard
Sent:	Monday, April 08, 2019 1:33 PM
To:	City Council; Chris Jordan; Jon Maginot; christopher.diaz@bbklaw.com; Jon Biggs
Subject:	RE: 40 Main Street Appeal
Attachments:	2017-09-18 Packard Decl. in support of anti-SLAPP (pp. 201-300).pdf

Email #5, with Packard Decl. (part 3)

From: Ron Packard
Sent: April 8, 2019 1:11 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal (Email #2, with Final Award)

Email #2, with Final Award

From: Ron Packard
Sent: April 8, 2019 1:08 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal

Dear Council members and staff,

Enclosed please find my letter and various backup information for the hearing tomorrow night. I respectfully request that the letter and the attachments be included in the administrative record for the hearing. Two of the attachments will be send in batches due to their size.

Thanks, Ron Packard

5/8/2007	First and Main street property	made motion	discussed parking issues		Y	This property provided parking to the downtown and Ron Packard was seeking to reduce public parking to make construction of new projects less likely
5/8/2007	Civic Center Renovation	recused /left chambers				
7/24/2007	Parking Enforcement in Downtown	recused /left chambers				
8/28/2007	Parking Enforcement in Downtown	recused / participated as a member of public	recused and left chambers in the previous meeting (7/24/07) when this topic was discussed	y	Y	If he felt it was necessary to recuse himself, he should never have participated as a member of the public.
8/28/2007	Parking Permit Program	recused /left chambers				Here he recused himself in contrast to his vote
9/25/2007	Rebuilding Los Altos	recused /left chambers				
9/25/2007	First and Main street property	made motion				
10/23/2007	Rebuilding Los Altos	recused /left chambers				
2/26/2008	Downtown Zoning Amendments	recused /left chambers	specifically stated on record that he had a conflict of interest due to property within 500 feet.			If he felt it was necessary to recuse himself here, why was it okay to vote on EVERY other downtown zoning issue?
3/11/2008	Downtown Zoning Amendments	recused /left chambers	specifically stated on record that he had a conflict of interest due to property within 500 feet.			If he felt it was necessary to recuse himself here, why was it okay to vote on EVERY other downtown sonzing issue?
3/25/2008	Membership and Scope of Downtown Zoning Phase III Committee	abstained (but present)	issue was adopted as part of approving the consent calendar; expanded the scope of the committee to autorize review of the CRS/OAD zoning regulations			
3/25/2008	Downtown Zoning	recused /left chambers	specifically stated on record that he had a conflict of interest due to property within 500 feet.			If he felt it was necessary to recuse himself here, why was it okay to vote on EVERY other downtown Zoning issue?
3/25/2008	Civic Center Master Plan Advisory Committee	recused /left chambers	membership was discussed			
3/25/2008	Ken Girdley, Historical Commission and Civic Center Master Plan Advisory Committee		read a statement declaring he does not consider himself to have a conflict in voting (and more)		Y	can't be involved with hiring and firing without being in control
8/12/2008	Zoning Code Amendments	made motion	adopted amendments for housing		review	
8/26/2008	CRS / OAD Zoning District Ordinance	recused /left chambers				
8/26/2008	Downtown Parking Permit Program	seconded motion			Y	previously recused himself on this topic; see 8/28/2007
9/9/2008	CRS / OAD Zoning District Ordinance	abstained from voting on agenda item				
9/9/2008	in final comments of the meeting	asked staff to review ordinances to enforce code violations related to building exteriors and is interested in amending them	If the amendments down-zoned the downtown, then his adjacent property would benefit and that is a direct conflict of interest		Y	but in the interest of "advocating for proactive enforcement" asked the staff to review ordinances relative to responding to code violatons. Specifically he is interested in amending the code to provide a mechanism to enforce maintenance of the exterior of buildings in downtown, particularly the awnings' Packard's building has awnings.

12/16/2008	Community Center Master Plan	recused /left chambers				
12/18/2008	Community Center Master Plan	absent			review	
2/10/2009	Community Center Master Plan	recused /left chambers		maybe		
3/10/2009	Relocation of Children's Corner Preschool	recused /left chambers	RETURNED and participated in discussion about day cares and potential relocation sites; made motion to appoint councilmember Carpenter to assist business in finding site		Y	How can he discuss the matter if it relates to a matter for which he has recusedd himself
4/28/2009	Community Center Master Plan	recused /left chambers				
7/28/2009	Community Center Master Plan	recused /left chambers				
11/10/2009	Downtown Opportunity Study	recused /left chambers				
11/10/2009	Miramonte /Covington Striping Change	seconded motion				
2/9/2010	Zoning Code Amendments	seconded motion		14.52.0160, 14.52.050, 14.52.0508, 14.32, 14.46		Need to investigate
3/9/2010	Community Center Master Plan	recused /left chambers				
3/23/2010	Zoning Code Amendments	seconded motion	to read proposed amendements for Ch 14.48, 14.42, 14.74, 14.82		Y	violations for 14.48, and possibly for 14.74 (needs investigation)
4/13/2010	Zoning Code Amendments	abstained (but present)	Ch 14.48, 14.42, 14.74, 14.82			abstention indicates that he should not have participated in 3/28/2010
4/13/2010	Commercial District Amendments	recused /left chambers	returned to chambers to oversee the public hearing portion of the discussion; not sure what happened next		possible	Needs to investigate why he would recuse himself and then conduct the public hearing
4/27/2010	Commercial District Amendments	abstained (but present)	Adopted Ordinance No. 10-349 amending Ch 14.44 , 14.40, 14.48, and 14.54		possible	Needs to investigate
4/27/2010	Downtown Development Committee	voted in favor (consent calendar)	disbanded the Committee		Y	Ron Packard was applying pressure to disband the Committee as it was introducing issues that he did not want to be explored such as parking solutions
4/27/2010	Reconsider Motion Approving Resolution 2010-12	recused /left chambers				Needs to be investigated
5/11/2010	Downtown Zoning	made motion	rezoned 5 parcels from CRS to CD (Ordinance No. 10-350 amending Ch 14.88) NOTE: participated here but recused himself 2-26-08 for South Triangle discussion/vote			These parcels are more than 500 feet from his property; unclear whether there still may have been a conflict
5/11/2010	Design Review and Variance Applications for 343 Second Street	seconded motion	research application 08-D-06 and app 10-DA-01			Needs to be investigated
5/11/2010	Downtown Public Plaza	recused /left chambers	Opportunity Study Environmental Impact Report			Proposed project is within 500 feet of his property
9/14/2010	New Hotel at One Main Street	recused /left chambers				
8/23/2011	Community Center Master Plan	recused /left chambers				
10/4/2011	Downtown Parking and Development Potential	led the discussion and voted in favor	covered Parking Plazas 1-5, 7 and parking-in-lieu program		Y	This project was within 500 feet of his property and an in lieu program would directly affect our Development Application
12/13/2011	Community Center Master Plan	recused /left chambers	Outreach materials			

3/13/2012	Downtown Parking and Development Potential	discussed and voted in favor	authorized staff to develop a draft RFP proposing scope of Downtown Parking Plan		Y	This study has a direct effect on the Development Application
4/10/2012	Community Center Master Plan	recused /left chambers				
4/10/2012	Parking Management Plan	recused /left chambers	Draft scope for RFP			Recused here but not on 3/13/12; this demonstrates the violation.
5/8/2012	Downtown Zoning	led the discussion and voted in favor	presented report on Exceptions for Downtown zoning and two stories limitation		Y	
5/22/2012	Civic Center Renovation	recused /left chambers	called Civic Center Campus improvements			
5/22/2012	Planning and Transportation Commission appointments	made motion	actively participated in appointing the committee members			
5/22/2012	Civic Center Master Plan Advisory Committee	recused /left chambers	called Civic Center Ad Hoc committee (same as Master Plan Adv. Committee?)			
5/22/2012	Ad Hoc Contiguous Retail Committee	reported status of committee	should not be on the committee; his business is within 500 feet of a bank on Main Street		Y	
6/12/2012	40 Main Street	recused /left chambers				
6/21/2012	Planning Commission Meeting: Height limits for CD, CRS, and CD/R3 districts	Packard was not involved but this is the meeting where the Planning Commission voted.	CRS / OAD is not mentioned.			
6/26/2012	Public/Private development proposal	recused /left chambers	this is from Passerelle in Plaza 9			
7/24/2012	Public/Private development proposal	recused /left chambers	this is from Passerelle in Plaza 9			
7/24/2012	Downtown Parking Plaza 4	council provided input and directed staff to work with developer on proposals				
7/24/2012	San Antonio Road Streetscape	recused /left chambers				
7/24/2012	Ad Hoc Contiguous Retail Committee	reported status of committee	council directed the report be given to the Downtown Parking Management Plan (affecting parking policy, with a direct affect on the Development Application)		Y	Affected properties within 500 feet of his property
7/24/2012	Downtown Ordinance Amendments	participated in discussion; no action taken	should have recused himself (interestingly, he was already recused in the discussion immediately prior; should have just stayed off the dias until this was complete)		Y	Discussed in body of complaint
8/28/2012	Agenda Item 9	council approved appointment of Bart Nelson	stated at the beginning of the meeting that he would abstain from voting			
10/23/2012	Amending Section 1.B of ordinance (building height) (which ordinance?)	led the discussion and voted in favor			Y	Discussed in body of complaint
11/13/2012	Commercial District Amendments	made motion	height limitations - measurements		Y	Discussed in body of complaint

Exhibit 9

SheppardMullin

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MEMORANDUM

To: Marcia Somers
Los Altos City Manager

Date: June 5, 2014

From: Arthur J. Friedman
Alexander L. Merritt

File Number: 15KV-197152

Re: Peer Review of 40 Main Street Project

I. INTRODUCTION

At your request, we have conducted an independent peer review of land use and planning issues for the proposed 40 Main Street project ("Project") in the City of Los Altos ("City"). The scope of our peer review included issues raised by the Project applicants, Ted and Jerry Sorensen, in written correspondence with the City, and where applicable, the City's responses.

II. MATERIALS REVIEWED

We reviewed the following materials in conducting our peer review:

- City Council Agenda Report re: Exceptions to Downtown Zoning and Two Stories Limitation, dated May 8, 2012
- City Council Meeting Minutes for May 8, 2012
- Meeting Minutes of Downtown IV Committee, dated August 24, 2012
- Agenda Report re: Downtown and City-wide Commercial Ordinance Amendments, dated October 23, 2012
- City Council Meeting Minutes for October 23, 2012
- City Council Meeting Minutes for November 13, 2012
- Letter from T. and J. Sorensen to M. Somers re: Submittal Package for Development of 40 Main Street, dated September 25, 2013
- 40 Main Street Submittal Package, submitted September 25, 2013
- Letter from Z. Dahl to T. and J. Sorensen re: 40 Main Street, dated October 25, 2013

- Email from T. Sorensen to Z. Dahl re: 40 Main Calculations dated November 18, 2013
- Memorandum from T. & J. Sorensen to M. Somers re: Ordinance Change to Ordinance No. 2012-388, dated January 20, 2014
- Letter from T. Sorensen to Z. Dahl re: 40 Main Street Proposal, dated February 3, 2014
- Letter from Z. Dahl to T. Sorensen re: 40 Main Street, dated March 20, 2014
- Memorandum from T. Sorensen to M. Somers and City Council re: parking policy, dated March 24, 2014
- Draft City Council Meeting Minutes for March 25, 2014
- Email from T. Sorensen to M. Somers re: parking policy, dated April 4, 2014
- Email from Z. Dahl to T. Sorensen re: 40 Main Street, dated April 10, 2014
- Los Altos Ordinance No. 2012-388
- Los Altos Zoning Ordinance
- Los Altos Zoning Map

III. ANALYSIS OF ISSUES RAISED BY THE APPLICANT

The applicants for the Project have raised numerous issues concerning the City's review and processing of the Project. The following divides the issues into topical categories, summarizes each issue, and provides our independent analysis of each issue.

A. VALIDITY AND EFFECT OF 2012 ZONING AMENDMENTS

In 2012, the City developed and adopted Ordinance 2012-388, amending certain provisions of the City's Zoning Ordinance. The applicants have raised questions about whether the 2012 zoning amendments are valid and applicable to the Project.

Issue 1:

Do the 2012 zoning amendments apply to the Project site at 40 Main Street, and if so what is their effect?

Analysis of Issue 1:

40 Main Street is located within the Downtown Design Plan Area and is zoned Commercial Retail Sales/Office-Administrative District (CRS/OAD). The Sorensens state that there is confusion about whether the 2012 zoning amendments apply to the CRS/OAD zoning district. (Jan. 20 Memorandum; Feb. 3 Letter.) In our view, as detailed below, there is no ambiguity.

The 2012 zoning amendments were initiated at the May 8, 2012 City Council meeting, where a subcommittee comprised of Mayor Carpenter and Councilman Packard presented a report recommending that the City prepare zoning amendments for the City's downtown to (a) restrict the availability of "public benefit exceptions" in three downtown zoning districts, and (b) limit buildings to two stories in the CRS zoning district. Because Councilman Packard owned property within the CRS/OAD zoning district, and because he had a conflict of interest with a previous iteration of the Project, the proposed zoning amendments were not to apply to the CRS/OAD zoning district or to applications in process.

After further study of the proposed amendments by the Downtown IV Committee, City staff prepared Ordinance 2012-388 for the City Council's review and consideration. Ordinance 2012-388 differed from the subcommittee's initial proposal in several respects. First, it further limited the amendments relating to public benefit exceptions to the CRS zoning district. Second, it omitted the proposed two-story height limitation in the CRS zoning district. Third, it added an amendment to Section 14.66.230[1] relating to the methodology for measuring building heights. Fourth, it added a new definition of "parapet" in Section 14.02.070.

On October 3, 2012, the City Council introduced Ordinance 2012-388. On October 23, 2012, the City Council voted 3-2 to pass Ordinance 2012-388 on first reading. On November 13, 2012, the City Council voted 5-0 to adopt Ordinance 2012-388. The ordinance took effect on December 14, 2012.

By the express terms of Ordinance 2012-388, the amendments relating to public benefit exceptions apply only to the CRS zoning district. (*See* Ordinance 2012-388 Section 1; § 14.48.180.) Therefore, these amendments do not apply to the CRS/OAD zoning district and do not affect 40 Main Street.

On the other hand, the amendments relating to building height measurement apply City-wide to all commercial and multiple-family structures. (*See* Ordinance 2012-388 Section 2; § 14.66.230.) Similarly, the new definition of "parapet" applies City-wide. (*See* Ordinance 2012-388 Section 3; § 14.02.070.) Therefore, these two amendments do apply in the CRS/OAD zoning district and do affect 40 Main Street.

Issue 2:

Did procedural irregularities or conflicts of interest render the 2012 zoning amendments null and void or otherwise subject to challenge?

Analysis of Issue 2:

The Sorensens state that (1) the 2012 zoning amendments, including the building height provisions, were never intended to apply to the CRS/OAD zoning district; and (2) that Councilman Packard should not have voted on the building height provisions because they applied to his property. As a result, they suggest that the City Council's "vote was improper and that the amendments are not in force," or alternatively, that Section 14.66.230 should be bifurcated so that the amendments do not apply to the CRS/OAD zoning district. (Jan. 20, 2014 Letter.)

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[1] Unless otherwise noted, all code citations are to the Los Altos Zoning Ordinance.

Based on the materials we have reviewed, there is no merit to the Sorensens' contentions. Ordinance 2012-388 is clear that it "amend[s] the height measurement definition for commercial and multiple-family structures." By its terms, it applies City-wide and is not limited to any particular zoning districts. As discussed above, the ordinance was properly introduced and adopted in October and November 2012, and it took effect in December 2012.

We would need more information to analyze whether Councilman Packard had a disqualifying conflict of interest with respect to the building height amendments under the Political Reform Act. However, regardless of whether Councilman Packard had a disqualifying conflict of interest, the time to file a legal challenge against Ordinance 2012-388 has expired. The Government Code imposes a 90-day statute of limitations on any action or proceeding "[t]o attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance." (Gov't Code § 65009(c)(1)(B).) The legislature adopted this short limitations period for the purpose of "provid[ing] certainty for property owners and local governments regarding decisions made pursuant to the [Planning and Zoning Law]." (Gov't Code § 65009(b); *see also Wagner v. City of South Pasadena* (2000) 78 Cal.App.4th 943, 948–49 ["[T]he statute itself declares that time is of the essence, and certainty in development projects is crucial."]

The legislature also drafted Section 65009(c) broadly, such that it applies to any challenge against a zoning ordinance. (*See, e.g., Ching v. San Francisco Bd. of Permit Appeals* (1998) 60 Cal.App.4th 888, 893 [noting that "the courts have consistently enforced the 90-day limitations period" in Planning and Zoning Law actions].) Accordingly, the courts have expressly found that the 90-day limitations period applies even where a zoning challenge is based on a violation of the Political Reform Act. (*See, e.g., Ching,* supra, 60 Cal.App.4th at 892–93 [rejecting plaintiff's argument that a four-year limitations period under the Political Reform Act should apply instead of the 90-day statute of limitations under the Planning and Zoning Law].) Here, the 90-day limitations period expired in February 2013 and thus Ordinance 2012-388 is no longer subject to challenge.

B. COMPLIANCE OF THE PROJECT WITH THE ZONING ORDINANCE

Correspondence between the applicants and the City indicates that the following issues have arisen regarding the Project's compliance with the Zoning Ordinance.

Issue 3:

Does the Project comply with development standards for rear setbacks?

Analysis of Issue 3:

In the CRS/OAD zoning district, no rear yard shall be required except that: (A) where the rear property line abuts a public parking plaza, the rear yard must be a minimum of two feet deep and landscaped; and (B) where the rear property line abuts an alley, the rear yard must be a minimum of ten feet deep, of which the rear two feet must be landscaped. (§ 14.54.080.)

Here, according to the Community Development Department, the Project's rear property line abuts a public parking plaza, and therefore requires a rear yard setback of two feet. (Oct. 25 Letter, p. 3.) In addition, the Project's proposed second and third floors encroach into the required setback. (*Id.*) Accordingly, "[t]hese rear yard setback encroachments will need to be included in the application's "exception for public benefit request." (*Id.*)

We have reviewed the plans and drawings submitted by the applicant on September 25, 2013, and we agree with the Community Development Department's analysis of the rear setback issue. Plan Sheet A0.3 shows that the Project's rear property line abuts Public Parking Plaza 10, thus triggering the two foot setback requirement under Section 14.54.080. In addition Plan Sheets A2.0 and A3.0 show that the Project's second and third floors, respectively, encroach into the required two foot setback.

In addition, we note that the Sorensens have apparently agreed that the Project would require an exception to the rear yard setback requirement. (Feb. 3 Letter.)

Issue 4:

Does the Project comply with off-street parking requirements?

Analysis of Issue 4:

Off-street parking requirements for the CRS/OAD zoning district are set forth in Sections 14.54.090, 14.74.100, and 14.74.110. For office uses, the off-street parking requirement is one parking space per 300 square feet of net floor area. (§14.74.100.) For intensive retail uses, the off-street parking requirement is one space per 200 square feet of net floor area, and for extensive retail uses, the off-street parking requirement is one space per 500 square feet of net floor area. (§ 14.74.110.) In addition, "For those properties which participated in a public parking district, no parking shall be required for the net square footage which does not exceed one hundred (100) percent of the lot area." (§§ 14.74.100, 14.74.110.)

The Project application states that the proposed building is 14,245 square feet for parking purposes, and that based on the proposed office use, the parking requirement is 47 stalls. (Sep. 25 Letter, pp. 2–3.) The application further states that Project proposes to provide no additional parking, which will result in a parking shortfall of 8 to 21 spaces, depending on what parking credits are available. The application proposes to address the shortfall by seeking an exception from the requirement and by proposing to provide a public paseo as a public benefit and to restripe a public parking plaza to create an additional 20 parking spaces. (*Id.* at pp. 3–4.)

The City's response found the Project's application incomplete and states that the plans do not provide sufficient information to calculate the parking requirement. It requests floor area diagrams, prepared by an architect, showing gross and net floor area for each floor of the Project. (Oct. 25 Letter, p. 2–3.) The City's response also expresses concern about the proposed public benefits and the re-striping policy. (*Id.*)

In our view, the City's response was appropriate. The Zoning Ordinance sets forth minimum requirements for applications for Use Permits and Design Review. (§§ 14.80.020, 14.78.030 ["Plans and applications for design review approval shall be filed with the planning division in such form as the city planner shall prescribe"].) To the extent the Project's application and plans did not provide sufficient information, the planner had authority to deem the application incomplete and request additional information. Furthermore, as discussed below under Issues 9–11, the City is under no obligation to grant the Project an exception from the off-street parking requirements or to accept the Project's proposed public benefits and mitigations.

Issue 5:

Does any existing authority support the Project's proposed re-striping of Public Parking Plaza 10?

Analysis of Issue 5:

No existing authority supports the proposed re-striping of Public Parking Plaza 10. However, the City has been studying the issue and is in the process of developing a proposed policy that would allow developers to re-stripe public parking plazas to meet their parking requirements.

On March 24, 2014, the Project applicants submitted a memorandum to the City Council, setting forth their recommendations for a re-striping policy. (Mar. 24 Memorandum.) On March 25, 2013, the City Council considered the re-striping issue and directed staff to develop a policy for the reconfiguration of public parking plazas by private developers. (Draft Meeting Minutes.) The City Council also directed staff to include certain conditions in the proposed policy, and to bring it to the Planning and Transportation Commission for initial review.

We cannot analyze the Project's consistency with the re-striping policy until the policy is finalized and adopted. However, we identified the following as key differences between the applicants' recommended policy and the City Council's direction to staff: (1) the applicants recommended allowing reduced dimensions for parking stalls, while the City Council directed that the required dimensions remain 9 feet by 18 feet; (2) the applicants recommended that the City pay the costs of undergrounding utilities in connection with re-striping, while the City Council directed that developers bear all costs of re-striping; and (3) the applicants recommended that developers receive credit for a stall created in any plaza, while the City Council directed that credit be available only to an adjacent, proximate property owner.

Issue 6:

For purposes of parking, how should the Project's floor area be calculated?

Analysis of Issue 6:

As discussed above under Issue 4, off-street parking requirements are based on the building's net floor area. "Net square footage" is defined as "the total horizontal area in square feet on each floor, including basements, but not including the area of inner courts or shaft enclosures." (§ 14.74.200(Q).) City staff correctly set forth this provision in its response to the Project application (Oct. 25 Letter, p. 2.) As noted above, the Sorensens will need to provide adequate floor plans in order for the City to calculate the Project's net floor area and the resulting parking requirement.

Issue 7:

What is the proper methodology for measuring the height of the Project?

Analysis of Issue 7:

The proper methodology for measuring the height of the Project was established by the 2012 zoning amendments. Specifically, Section 14.66.230 provides:

> **Height limitations—Measurement**. The vertical dimension shall be measured from the average elevation of the finished lot grade at the front, rear, or side of the building, whichever has the greater height, to the highest point of the roof deck of the top story in the case of a flat roof or a mansard roof; and to the average height between the plate and ridge of a gable, hip, or gambrel roof. A mansard roof is defined as any roof element with a slope of sixty (60) degrees or greater."

In addition, pursuant to Section 14.66.240(E):

> Completely enclosed penthouses or other similar roof structures for the housing of elevators, stairways, tanks, or electrical or mechanical equipment required to operate and maintain the building, and parapet walls and skylights may project not more than eight feet above the roof and the permitted building height, provided the combined area of all roof structures does not exceed four percent of the gross area of the building roof. However, no penthouse or roof structure or any space above the height limit shall be allowed for the purpose of providing additional usable floor space for dwelling, retailing, or storage of any type.

Issue 8:

Does the Project comply with applicable height limitations?

Analysis of Issue 8:

In the CRS/OAD zoning district, "No structure shall exceed thirty (30) feet in height. The first story shall have a minimum interior ceiling height of twelve (12) feet to accommodate retail use, and the floor level of the first story shall be no more than one foot above sidewalk level." (§ 14.54.120.) In addition, as noted above under Issue 7, parapet walls may extend eight feet above the permitted roof height if certain conditions are satisfied. (§ 14.66.240(E).)

The Project application states that the proposed building is 35 feet in height at the ceiling, and 38 feet in height at the parapet wall. (Sep. 25 Letter, p. 2.) The Sorensens acknowledge that the Project does not comply with the applicable 30-foot height limit and will require an exception. (Sep. 25 Letter, p. 2.) The Project application proposes to provide a public paseo as a public benefit justifying the exception. (*Id.*)

The City's response states that based on the height measurement provision discussed above, the building's actual height appears to be approximately 37 feet, and it requests that the Sorensens submit revised plans showing the correct building height. (Oct. 25 Letter, p. 3.) Based on our review of the elevations, it does appear that the applicants miscalculated the proposed building height by not measuring to the top of the roof deck as now required by the 2012 zoning amendments. (*See, e.g.* Plan Sheet A5.0.) Accordingly, we believe that staff's

response is appropriate. In addition, as noted above, staff has broad discretion to find the application incomplete and to request additional information.

Issue 9:

Does the proposed project comply with the City's requirements for stormwater?

Analysis of Issue 9:

City staff noted that the Project application did not include the required information for stormwater and directed the Sorensens to provide a preliminary drainage and improvement plan prepared by a licensed architect or civil engineer. (Oct. 25 Letter, p. 3.) The submittal package we reviewed did not include stormwater information or a preliminary drainage and improvement plan, and thus we believe staff's response was appropriate. As discussed above, staff has broad discretion to find the application incomplete and to request additional information.

C. AVAILABILITY OF PUBLIC BENEFIT EXCEPTIONS

In certain circumstances, the City's Zoning Ordinance provides for "public benefit exceptions," in which the City may grant a project an exception from a development standard in exchange for the project providing a public benefit. The applicants have raised the following issues concerning the Project's eligibility for public benefit exceptions from setback, height, and parking requirements.

Issue 10:

How much discretion does the City have generally in deciding whether to grant exceptions for public benefit?

Analysis of Issue 10:

In the CRS/OAD zoning district, the City may grant exceptions for public benefit to implement the Downtown Urban Design Plan. To do so, it must make the following findings:

> 1. The granting of the exception will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the area;
>
> 2. The benefit to the city derived from granting the exception is an appropriate mitigation when considered against the cost to the developer;
>
> 3. The project and mitigation will result in a public benefit to the downtown; and
>
> 4. The resultant project and mitigation are consistent with the general plan and promote or accomplish objectives of the downtown urban design plan.

(§ 14.54.180.) Exceptions may include, but are not limited to, setbacks, on-site parking, and development or building standards. (*Id.*)

We believe the decision to grant a public benefit exception is completely within the City's discretion for two reasons. First, the Zoning Ordinance does not require the City to make the findings and grant a public benefit exception in any scenario; instead, it leaves that decision entirely to the City's discretion. In fact, if the City in its discretion believes that it cannot make the required findings and that the exception is not justified, the Zoning Ordinance requires the City to deny the exception. Second, it is well-settled under California law that local bodies have broad discretion in planning and zoning issues. (*See, e.g. Big Creek Lumber Co. v. County of San Mateo* (1995) 31 Cal.App.4th 418, 428 ["local bodies retain broad discretion in zoning issues"]; *Federation of Hillside and Canyon Ass'ns v. City of Los Angeles* (2004) 126 Cal.App.4th 1180 ["the city has broad discretion to weigh and balance competing interests in formulating development policies"].)

Issue 11:

How much discretion does the City have in considering the Project's proposed public paseo as a public benefit justifying exceptions to the Zoning Ordinance?

Analysis of Issue 11:

As discussed under Issue 10, the City has broad discretion in considering the merits of proposed public benefits and deciding whether to grant exceptions for public benefit. The City is under no obligation to accept the proposed public paseo as public benefit and to grant the Project exceptions from the rear setback, height, and off-street parking requirements. As staff has noted, the public paseo at the proposed location is of "limited public benefit" and "does not appear to be equal to the magnitude of the requested height exception." (Oct. 25 Letter, p. 3.) Under required findings 2 and 3, this would justify denying the exception for public benefit. (§ 14.54.180.)

Issue 12:

What is the effect on the Project, if any, of the City's decisions to grant public benefit exceptions to nearby properties?

Analysis of Issue 12:

The City's decision to grant public benefit exceptions to nearby properties is irrelevant for purposes of the Project. The City reviews each request for a public benefit exception individually and must make the four required findings for each request. (§ 14.54.180.) None of the findings requires the City to take into consideration the exceptions it previously granted or the characteristics of nearby properties or projects. In addition, the concept of the public benefit exception is expressly different from a variance, in which the use of neighboring properties might be relevant. (*See* § 14.78.060 [required finding for variance is that the strict application of the Zoning Ordinance "deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications."])

D. PROCESSING AND REVIEW OF PROJECT APPLICATION

The applicants have raised the following issues relating to how the City should process and review the Project application.

Issue 13:

Is the Project exempt from new plan checks by City and County departments, including police, fire, and engineering?

Analysis of Issue 13:

In 2011, the Sorensens applied for entitlements to construct a similar project to the one currently under review. In January 2012, the Planning Commission voted to approve the previous project; however, In June 2012, the City Council took final action to deny it. The Sorensens then made design revisions and submitted a new application for the instant Project in September 2013. (Jan. 20 Memorandum; Sep. 25 Letter.)

The Sorensens have suggested that the Project should be exempt from "fresh" plan review by police, fire, and engineering staff because it is "substantially unchanged" from the previous project, which underwent plan review. (Sep. 25 Letter, p. 1.) We believe this incorrect. The previous project was rejected in a final action by the City Council. The instant Project is a new project based on a new application. Therefore, we believe the application should undergo ordinary plan review by the appropriate City and County departments. The Sorensens have not cited any authority for an exemption from plan checks, and to the extent the Project involves design changes, we believe new plan review would be required in any event. However, to the extent the Project is substantially similar to the previous project, we expect that plan review could be completed more expeditiously.

Issue 14:

What public hearing process should the City should follow in reviewing and approving the Project?

Analysis of Issue 14:

We understand that the Sorensens have suggested that because the Planning Commission approved a previous iteration of the Project, the application should follow an abbreviated review and approval process.

We believe this is incorrect and that the City should follow its ordinary process in reviewing and taking action on the Project. As discussed above under Issue 13, the City Council rejected the previous iteration of the project and the instant Project is a new project based on a new application. This new application should undergo ordinary processing. We have not found any authority for an abbreviated process in the Zoning Ordinance and the Sorensens have not cited one.

The Project is seeking a Use Permit and Commercial Design Review. (Sep. 25 Letter.) Both entitlements require a public hearing before the Planning and Transportation Commission, which will review the application and make a recommendation to the City Council. The City Council will then hold a public hearing on the application and decide whether to approve or deny it. (§14.78.030 [Design Review process]; § 14.80.040 [Use Permit process]; § 14.80.070 [Use Permit process].) In each case, the City Council has final approval authority. (*Id.*)

Issue 15:

Is the Sorensens' proposed public hearing process legally justified?

Analysis of Issue 15:

No, as discussed above under Issue 14, we have not found any authority in the Zoning Ordinance that would allow the Project to proceed under an abbreviated process, and based on the materials we have reviewed, the Sorensens have not cited one. The Project should undergo the ordinary public hearing process mandated by the Zoning Ordinance.

Exhibit 10

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was craziness and this should not fly and then you stood up and said oh, we never intended to have that happen and you said we're going to send it to the planning commission for further review.

Q. Isn't it a legal impossibility for the city council to adopt a change of a zoning ordinance without it going before the planning commission?

A. I don't know.

THE ARBITRATOR: Calls for a legal conclusion and it's argumentative.

BY MR. PACKARD:

Q. This complaint about how this agenda item was presented and how it evolved was the subject of an FPPC complaint against me your brother filed, correct?

A. I believe that is correct.

Q. Okay. Let's look at Exhibit 140 and I'm afraid it's another binder.

Now, this is a 13-page letter dated September 16, 2014 from me to the FPPC in Sacramento.

Have you ever read this?

A. I don't believe that I've ever read it.

Q. Then it has a list of exhibits, 30 exhibits that were not attached to this version.

Has anyone ever told you that the whole concept of a change of measurement was initiated by

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staff before the zoning committee meeting?

A. Before which zoning committee meeting?

Q. There was a decision to reinstate a zoning committee to look at this proposed --

MS. BARRETT: Objection, is Mr. Packard testifying? Is there a question?

BY MR. PACKARD:

Q. I was just asking -- you're correct.

Was there a decision to refer this question of changing the entitlement process to a new downtown zoning committee?

A. The sequence of events was the public spoke out loudly at the May 8th against the proposed changes, it went before the planning commission on the last date of their very last meeting and they soundly rejected all aspects of what had been proposed and then it was ushered quickly back to council for some new reconsideration and there was a zoning committee IV that was set up.

Q. When was the change of measurement introduced in the process?

A. The only -- the only evidence that I have of that is that it happened at the unrecorded PTC meeting in October 4th, I believe, the only thing that I have.

Q. You have not seen the staff report to the

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city council meeting which indicated that they initiated the new concept of measurement?

A. I don't know that I've read it or not read it.

I would presume I have read it, but I don't recall the specifics of that.

Q. Are you aware that after the Fair Political Practices Commission received my letter, which is Exhibit 140, that they dropped any further investigations?

A. I had a long conversation with Deputy District Attorney John Chase on that subject.

He told me he was very disappointed they had dropped that. He had come to the conclusion that you had violated the law. He had come to the conclusion he could not get a guilty verdict because of the video evidence that was too hard for people to follow, for a jury to follow and he was disappointed in this.

So that is what I'm aware of.

Q. So did you file a charge against me with the district attorney?

A. I didn't file a charge. I had long conversations with the district attorney, that is correct.

Q. Did you have any conversation with the FPPC?

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A. I had none with the FPPC.

Q. So my question was: Are you aware that after the FPPC received my letter, which is Exhibit 140, that they decided not to pursue the matter?

A. I did learn that from Mr. Chase, which is what I just told you.

Q. You what?

A. I learned it from Mr. Chase.

Q. Who was disappointed with the --

A. He was disappointed, or at least that's what he conveyed to me.

Q. Did he say that he understands the Brown Act better than the FPPC?

A. He didn't make that comment.

Q. And Mr. Chase dropped any further investigation with me, didn't he?

A. Mr. Chase informed me, he said, I am writing to regretfully inform you we are dropping the investigation of Mr. Packard, he has hired a very excellent attorney that has penetrated the weaknesses in the case we've identified and we were concerned about that.

We thought long and hard about bringing a case anyway, but we have decided to not do that.

Q. And he shared that -- how many times did you

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speak to Mr. Chase?
A. I can't recall. I've spoken to Mr. Chase many times over the last number of years.
I have not --
Q. All those times was regarding me?
A. Almost all of those times were regarding you, correct.
Q. Over what period of time?
A. I'd have to go back and take a look. I don't really recall. I think he looked at it for maybe two years, I don't recall, I think maybe a year and a half. I would have to go back and look. I don't remember.
Q. Let's look at your most current application, which is Exhibit 559.
So we're all oriented, this is dated July 15, 2016, correct?
A. That is correct.
Q. And it's not a brand new application, but a revision of your September 2013 application; is that correct?
A. Yes, that's correct.
Q. And this revision of July 15, 2016 no longer has the two-story atrium, does it?
A. The plan that is in front of the city today,

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which is this plan, does not have the atrium. We've had extensive discussions with Mr. Biggs about the fact that we've shown him the prior plans and how we would create that atrium and to whatever degree ultimately the city council wanted and so he is fully aware that is one of the mitigations that we have offered is to reduce the FAR to a hundred percent.
Q. So this application is substantially similar to the one rejected four years ago by that city council, correct?
A. That's correct.
Q. And the outside is substantially the same?
A. The outside is substantially the same.
Q. And the interior now has three stories?
A. The interior has three stories.
Q. No underground parking?
A. No underground parking.
Q. And this one does not conform to the city's zoning ordinances unless you rely on the public benefits?
A. As it sits today, it does not unless you have a public benefit, which there are many.
Q. And likewise, it does not meet the height requirements of 30 feet, but this one is over 37 feet, correct?

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A. It's 37 feet, I believe.
Q. How much?
A. 37, based on the ordinance that you were able to push through.
Q. And you're basing your arguments in part on a parking committee recommendation, right?
A. I don't follow the question.
Q. Let's look at page 1. You have a box there with the land development calculations?
A. Correct.
Q. And for the floor, you have gross square feet, net per code, net per parking meter and Nelson Nygaard.
What do you mean by net per parking committee?
A. To correct what you asked, it's net per parking committee.
So yes, Mr. Dahl had asked us to include this calculation and so we added that so that the city, planning commission and the city council could see how the parking committee recommendation would impact the building.
Q. But the parking committee never had any final recommendations, did it?
A. It had final recommendations, just didn't

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present them.
Q. I thought it got shut down before it finalized its recommendations.
A. The recommendations were made in November of 2015 to the planning and transportation commission.
The recommendations were well known by anybody following the committee and then you were able to shoot the committee down. Recommendations were still there. They just hadn't been presented.
Q. The last meeting that you tape recorded was in -- what was it, February of 2016?
A. I don't recall what the date was. I videotaped every meeting.
Q. At that last meeting, didn't Kim Cranston say he was still working on the parking in lieu recommendations?
A. You have to play the tape. I don't know what he said. I don't know.
But they were essentially finalized.
They were presented in the November planning and transportation commission meeting.
Q. Those were not draft recommendations?
A. I think they were just being finalized.
Q. Do you have anything in writing to show that Mr. Dahl made the requests that these parking

Exhibit 11

County of Santa Clara

Office of the District Attorney

County Government Center, West Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-7400
www.santaclara-da.org

Jeffrey F. Rosen
District Attorney

August 25, 2015

Davina Pujari
Hanson Bridgett
425 Market Street, 26th Floor
San Francisco, CA 94105

Re: Ronald Packard Conflict of Interest Investigation

Dear Ms. Pujari:

I am writing to notify you that we are declining to file criminal charges against Ronald Packard due to insufficient evidence.

Thank you very much for your responsiveness and professionalism in this matter.

Very truly yours,

John Chase
Deputy District Attorney

Exhibit 12

February 9, 2016

HAND DELIVERED

Los Altos City Council
1 North San Antonio Road
Los Altos, CA 94022

Dear Mayor Bruins and Councilmembers:

The Friends of Los Altos (FOLA) Board of Directors has grave concerns that certain downtown property owners' interests have been allowed to infiltrate and corrupt the integrity of City processes with regard to the City-wide Parking Ad Hoc Committee ("Committee"). Our complaint is regarding those closely associated with commercial property owners, namely Los Altos Hills resident Kim Cranston ("Cranston"), David Rock ("Rock"), and Bill Maston ("Maston"). We are concerned that these persons have introduced a new process in the City of Los Altos which is a subterfuge of the Brown Act, contrary to open government, and needs to be nipped in the bud.

In particular, we are concerned that the introduction of Subcommittees has allowed a rampant violation of the Brown Act. Much of the substantive work of the Committee took place in numerous serial meetings of these Subcommittees that were not noticed ahead of time, had no agendas posted, provided no opportunity for public comment, no minutes were taken, no action minutes were published for each meeting, and were not held in a public place that was fully accessible to the community. The cross membership and overlapping subject matters of these Subcommittees rendered Brown Act violations impossible to avoid, with six or seven Committee members often intercommunicating on the same subject. Since many of you were elected based in part on a platform of open government and transparency, we trust that appropriate steps listed at the end of this letter will be taken to cure this problem.

FACTUAL BACKGROUND

At the January 27, 2015, City Council meeting, Councilmember Jean Mordo ("Mordo") requested a future agenda item to discuss the formation of an ad-hoc parking committee and expressed his opinion that Councilmember Mary Prochnow ("Prochnow") should not be excluded from participating in the decision to form the Committee, even though she owns commercial property in downtown Los Altos. The City Attorney Jolie Houston ("City Attorney") disagreed. The motion to have the item on a future agenda was approved, with Prochnow not voting.[1]

[1] See City's website, City Council video of meeting on 1/27/2015 at 02:14:55 to 02:17:00.

At the February 24, 2015, City Council meeting, Mordo introduced the agenda item for the formation of a city-wide ad hoc parking committee to consist of 11 members, including him and the Mayor Pro Tem Jeannie Bruins ("Bruins") and a staff member. Prochnow participated in the discussion (contrary to the City Attorney's prior advice) and explained that parking is an important issue and of public concern. After some discussion, Mordo made the motion to form the Committee, which was seconded by Prochnow. Then Mayor Jan Pepper ("Pepper") asked Mordo about public notice of meetings, and Mordo explained that they would let people know about the meetings, but not go through the standard "Brown Act thing." Pepper asked Prochnow as the seconder of the motion if she was ok with that, which she affirmed. The motion passed 4-1, with Councilmember Satterlee ("Satterlee") voting no.[2]

At the March 10, 2015, City Council meeting, Mordo announced that the first Committee meeting would be held the following morning, and that it had been decided, with the involvement of the City Attorney, that the committee would be treated as a Brown Act committee since there are two members of the Planning and Transportation Commission on the Committee.[3] The other Committee members included the three mentioned above who were members of the Parking In-Lieu Subcommittee, plus Ronit Bodner ("Bodner"), Mark Rogge ("Rogge"), Mike McTighe ("McTighe"), Jack Kelly ("Kelly"), Gary Hedden ("Hedden"), and Lou Becker ("Becker"). All have served on one or more Subcommittees, except for Becker who has not served on any of the Subcommittees and has not participated in any serial meetings.

As will be seen, and by way of overview, the Committee evolved over time. At first it met twice a month as a whole to considered its charge. During that time, Cranston apparently sent one or more emails to all of the Committee members. While technically those were likely serial meetings in violation of the Brown Act, those are not the subject of our concern, unless they became a regular habit. Around April 15, 2015, the Committee created a series of Subcommittees, eventually five, which did the substantive work of gathering information, deliberating that information, formulating recommendations, etc. According to various reports from Committee members, those Subcommittee meetings were very frequent and took up hundreds of hours. The membership in those Subcommittees was fluid and likewise evolved. By the time the Subcommittees were being formed, the role of the two Councilmembers had become more clear as merely non-voting facilitators. It is the work of these Subcommittees that is the subject of our concerns.

On April 13, 2015, FOLA published an online article on its website entitled "Setting Expectations: Good Process & Appropriate Behavior."[4] It discussed the accusatory questions raised by Cranston at a Committee meeting in which Cranston suggested forgery by James Walgren, then Community Development Director for the City of Los Altos. The FOLA article also commented at its conclusion that the Committee should be subject to all aspects of the Brown Act to ensure open government and transparency.

On the following day, April 14, 2015, during the public comment portion of the City Council meeting, I presented these concerns as President of the FOLA Board of Directors, and was assured by then Mayor Pepper that FOLA's one statement regarding the Brown Act was incorrect since, according to her, "the Committee is a Brown Act Committee, the meetings are noticed, they are posted 72 hours ahead of time, there is opportunity for public comment on every agenda item, minutes are taken and action minutes

[2] See City's website, City Council video of meeting on 2/24/2015 at 01:07:08 to 01:37:56. Mordo's comments about the Brown Act are at 1:34:44.

[3] See City's website, City Council video of meeting on 3/10/2015 at 03:05:04 to 03:07:44; 03:09:14 to 03:09:19.

[4] The article can be found at http://www.friendsoflosaltos.org/setting-expectations-good-process-appropriate-behavior/

are published for every meeting, and it is held in a public place that is fully accessible to the community."[5] She then requested that FOLA retract the statement that the Committee was not a Brown Act committee.

The following day, at the beginning of the fourth Committee meeting on April 15, 2015, Mordo briefly reviewed the Brown Act with the Committee, and made the following statement:

> It [the Committee] is a Brown Act, which, by the way, that means, for those of you who haven't been on a committee before, a Brown Act committee, means that you cannot have meetings of more than five people. The Committee is eleven, the quorum is six, so you cannot have more than five meet either together at one time or a serial meeting like four people meet and then two of those meet with three more. Cannot do that. Of course if you meet at a social event and talk about things that have nothing to do with the affairs of the Committee, that's fine. So that's it.[6]

Later during that same April 15, 2015, meeting, several Subcommittees of the Committee were formed. The most significant was the Subcommittee to investigate a parking in-lieu program, for which Cranston first volunteered and has since served as the chair. Initially, it consisted of Cranston, Bodner, and Rogge. (Ex. 1.) As will be discussed later, however, the membership of this Subcommittee evolved over time with Cranston succeeded in bringing on to it his two downtown property owner supporters, Rock and Maston. (Ex. 2.) This meant that for this key Parking In-Lieu Subcommittee, Cranston was the chair, and Cranston/Rock/Maston held a majority. But that majority also belonged to almost all of the other Subcommittees, each with overlapping subject matters. As a result, Cranston/Rock/Maston were able to exert their influence on almost all aspects of Committee business with six to eight of the Committee members (including themselves) in meetings being held without public notice, without the opportunity for public input, and without minutes. This was a Brown Act violation, whether or not the two non-voting councilmembers were to be counted for Brown Act purposes. The Cranston/Rock/Maston downtown interests created an organizational structure with Subcommittees to do exactly what Mordo said you cannot do for serial meetings: five members of one Subcommittee were meeting with members of other Subcommittees on Committee business.

Adding fuel to the fire, Mordo stated at the same April 15, 2015 meeting that if any Committee member had any specific ideas on any of the topics of another Subcommittee, they should "feel free to email them (the chairs of the Subcommittees), meet with them, whatever."[7]

At the subsequent May 12, 2015, City Council meeting, the City Attorney presented Resolution No. 2015-09, affirming that the Brown Act would apply to certain City-created advisory committees where members of the committee include members of the public or members of other city commissions. During the discussion, the City Attorney commented on the importance to make the matter clear in light of questions raised by FOLA, Ron Packard and myself regarding secret meetings.[8]

Mordo prepared a two-page document dated June 15, 2015, entitled "Framework for Reporting Findings and Recommendations." (Ex. 3.) Whether he knew it or not, he acknowledged and institutionalized

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[5] See City's website, City Council video of meeting on 4/14/2015, with my comments beginning at 00:16:51, and Pepper's statements regarding compliance with the Brown Act at 00:19:40 to 00:20:10.

[6] See video of Committee Meeting 2015-04-15 (Part 1); https://vimeo.com/126683064 at 00:01:31 to 00:2:15.

[7] See video of Committee Meeting 2015-04-15 (Part 2); https://vimeo.com/126683065 at 00:34:26 to 00:34:50.

[8] See City's website, City Council video of meeting on 5/12/2015 at 04:20:49 to 04:45:08.

the fact that subject matters of the various Subcommittees overlapped. For instance, his general area A for Parking Mechanics has a subcategory of Parking Geometry and another of Parking Ratios. These two subjects are within the scope of the Parking Stall Standards (Re-Striping) Subcommittee and the Parking Ratios Subcommittee. Then he stated that some of the items in his Parking Management/Demand Reduction (the subject of the alternative Subcommittees) may already be incorporated into the mechanics of shared parking areas. He further stated that the shared parking concepts (also the subject of the alternative Subcommittees) may also be included in the mechanics of parking ratios (Parking Ratios Subcommittee). Thus, the overlapping nature of three of the Subcommittees consisted of seven of the nine Committee members.

During the June 17, 2015 Committee meeting, Mordo explained that he and Bruins will only be facilitating the meetings, and the other nine members would be the only ones voting.[9] He reaffirmed this during the October 13, 2015, City Council meeting.[10] By that time, the Committee itself represented that it consisted of only nine members. For instance, the June 15, 2015 draft report states at the end that it is respectfully submitted by the Committee, and then lists only the nine members. (Ex. 4, p. 11.)

At the December 2, 2015, Committee meeting, it was decided that there needed to be an executive committee to take the detailed recommendations of the various Subcommittees and consolidate them into a unified recommendation, along with a general PowerPoint presentation. Accordingly, an Executive Summary Committee was created, consisting of four members (Cranston/Rock with Rogge and Hedden), with Cranston as the chair. This new Subcommittee was to separately meet and prepare a draft Executive Summary. (Ex. 5.) At the same time, however, the Parking In-Lieu Subcommittee (Cranston, Bodner, Rock, Maston and Rogge) continued to be active with various modifications of its recommendations. Thus from December 2, 2015 forward, Cranston/Rock/Maston have been actively involved in the deliberations of the two key remaining Subcommittees, with Cranston serving as the chair of both. Since combined those two Subcommittees had six Committee members with comingled subject matters, serial meetings were unavoidable with Cranston in charge.

On January 6, 2016, five representatives of the Committee made a presentation of the parking plan to the Government Affairs Committee of the Los Altos Chamber of Commerce. At the beginning, the Chamber chair asked for an explanation of the use of the Subcommittees, stating that the residents of Los Altos were not used to subcommittees in their town. Rogge was the Committee's initial spokesperson and first stated that "The Parking Committee consisted of nine members."[11] In order to discuss all of the topics asked by the Council, they divided themselves up into four or five Subcommittees. He explained that "Each Subcommittee would go off and meet on their own, and go over the details of those things, and kind of wrestle among themselves and try to figure out what's the best way of describing this, the best way of addressing it, what's the best way of resolving it. And then bring some sort of report back to the whole."[12] After hearing from others they "would just reiterate that process over and over again"; and "they would go back to their own Subcommittees and say well wait a minute, let's change this or adjust this, based on these comments here, let's make these amendments to this, and then bring that back again to the whole

[9] See video of Committee Meeting 2015-06-17 (Part 1); https://vimeo.com/133711463, at 00:4:18 to 00:4:55.

[10] See City's website, City Council video of meeting on 10/13/2015, at 02:49:34 to 02:49:43.

[11] See video of Parking Committee 2016-01-06 (Part 1) - with Chamber of Commerce; https://vimeo.com/150947885, at 00:08:04 to 00:08:07.

[12] See of Parking Committee 2016-01-06 (Part 1) - with Chamber of Commerce; https://vimeo.com/150947885, at 00:09:30 to 00:09:51.

committee. So through this reiterative process, we meet, I don't know how many meetings, far too many numbers."[13]

On January 11, 2016, a Public Records request was made to the city, which included the following two items (as set forth in Ex. 6):

5. All Brown Act notices or other notices for the meetings held by the various Subcommittees of the City-wide Parking Ad Hoc Committee.

6. All recordings, minutes, documents exchanged or used at any of the Subcommittee meetings held by the various Subcommittees of the City-wide Parking Ad Hoc Committee. This request should exclude all information already available on the city's website regarding the City-wide Parking Ad Hoc Committee.

On January 21, 2016, the City Clerk provided the following response for both items 5 and 6: "There are no public records responsive to this request." (Ex. 7.) This, of course, confirms the obvious, which is that under the leadership of Cranston/Rock/Maston, they made no effort to comply with the Brown Act.

OVERLAPPING OF MEMBERSHIP AND SUBJECT MATTERS OF SUBCOMMITTEES

The membership within the Subcommittees has been somewhat fluid and expanding. When the Subcommittees were first formed during the April 15, 2015, Committee meeting, there were only three subcommittees with no overlapping of membership except for Maston, who served on two of the Subcommittees. The following is the full membership at some point in time for each of the five Subcommittees (plus the post December 2, 2015, Executive Summary Committee) based on written documents prepared by them which are available on the City's public website:

1. **Parking In-Lieu Subcommittee** – which is probably the most significant Subcommittee, consisting of five members: Cranston/Rock/Maston, Bodner and Rogge. They are listed at the beginning of their update dated June 17, 2015. (Ex. 2.)

2. **Square Footage Measurement Subcommittee** – Maston and McTighe. They are listed as the Subcommittee members when the Subcommittee was first formed, per Committee minutes of April 15, 2015. (Ex. 1.)

3. **Parking Ratios Subcommittee** – Rock, Rogge and Kelly. They are listed as the Subcommittee members in their July 15, 2015 Subcommittee memorandum. (Ex. 4.)

4. **Parking Stall Standards Subcommittee (aka Parking Lot Layout and Restriping Subcommittee)** – Rock/Maston. They are listed as the Subcommittee members when the Subcommittee was first formed, per Committee minutes of April 15, 2015. (Ex. 1.)

[13] See video of Parking Committee 2016-01-06 (Part 1) - with Chamber of Commerce; https://vimeo.com/150947885, at 00:010:03 to 00:10:38.

5. **Alternatives Subcommittee** – McTighe and Hedden. They are listed as the Subcommittee members when that Subcommittee was subsequently first formed, per Committee minutes of May 6, 2015. (Ex. 9.)

6. **Executive Summary Committee** – Cranston/Rock/Maston and Hedden are listed as the members when formed by the Committee on December 2, 2015. (Ex. 5.)

Under the Brown Act, if a particular person was temporarily involved in a Subcommittee discussion, and included as a member in a draft report for that Subcommittee, but was not included thereafter, that person, nevertheless, will remain counted towards the prohibited majority for that Subcommittee under the Brown Act during the balance of the Committee's ongoing business. One cannot select four other members to speak to on Committee business one month, and then select another group of four members the next month.

Based on the above, all of the initial five Subcommittees had interlocking Subcommittee members, making serial meetings unavoidable.[14] Maston served on three Subcommittees, which thereby included six Committee members. This constitutes over 50% of the Committee, even if one were to include the two non-voting council members. Not only do the Subcommittee memberships overlap, but the subject matters of the various Subcommittees are so intertwined that serial meetings are likewise impossible to avoid.

An example of the overlapping subject matter and membership involving Cranston/Rock/Maston is the June 17, 2015, update by the Parking In-Lieu Subcommittee, on which all of them were members. The first paragraph identified four issues that it wanted to solve, the fourth being how to deal with parking requirements caused by a change of use after a building is built. (Ex. 2.) That same issue, however, was also being addressed by the Square Footage Subcommittee, on which Maston was also a Subcommittee member, along with McTighe. The Square Footage Subcommittee's fourth recommendation in their October 20, 2015 report specifically mentioned the same issue and recommended an inspection process to ensure that exempt features are not later converted to useable office/retail space. (Ex. 10, p. 9.) Thus the private deliberations on this subject by these two Subcommittees by way of serial meetings expanded to six of the Committee members, again over 50% even if one were to include the two non-voting council members. But this same subject was also solidly within the draft report of the Parking Ratios Subcommittee, which included Rock and Kelly. (Ex. 11, pp. 7, 9, Table 2, p. 2.) Since Rock was on the Parking In-Lieu Subcommittee and the Parking Ratios Subcommittee, further serial meetings on this subject then expanded to also include yet a seventh member, Kelly.

Another example of the overlapping subject matter caused by Cranston/Rock/Maston was the issue of employee use of the public parking. During the June 17, 2015 meeting, Mordo raised the issue and said that it was non-negligible since it takes up a lot of valuable customer parking. When he asked which Subcommittee should address the issue, a Committee member commented that it was being worked on by all of the Subcommittees, thereby acknowledging the unavoidable commonality of the subject matter and the resulting serial meetings due to the cross-pollination of membership. Instead of any expression of concern about serial meetings and the Brown Act, the Committee members merely laughed.[15] It is this contempt for the Brown Act brought in by Cranston/Rock/Maston that is foreign to Los Altos, and needs to be stopped.

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[14] Becker is the only Committee member who never was a member of any of the Subcommittees.

[15] See video of Committee Meeting 2015-06-17 (Part 1); https://vimeo.com/133711463, at 00:3:09 to 00:04:00.

Another example involving Cranston/Rock/Maston is the central proposal of the Parking In-Lieu Subcommittee, which is an extremely detailed and exhaustive proposal for a parking in-lieu program for Los Altos. (Ex. 12, which for brevity only includes the first 28 pages and the last page.) Rock/Maston are not only on that Subcommittee, they also constituted the full membership of the Parking Stall Standards (Re-Striping) Subcommittee. In its May 6, 2015 report, that Subcommittee's Recommendation #4 was that the "restriping program may be used as part of an in-lieu fee program. . . ." (Ex. 13.) But Rock and Rogge also sit on (and constitute the majority) of the Parking Ratios Subcommittee. With their cross-fertilization of ideas, that Subcommittee's 11-8-2015 Recommendations mention the benefits of an in-lieu program three times: the use of in-lieu fees to cover any subsequent non-compliance, "participation in an in-lieu program" to decrease demand or increase supply, and "an associated in-lieu program would support more shared parking opportunities." (Ex. 11, pp. 7, 9, and 11.) By discussing this same issue of in-lieu parking with members of these three Subcommittees in private and behind closed doors, Cranston/Rock/Maston were able to include six of the Committee members.

Even the subject of re-striping could not remain with the Parking Stall Standards (Re-Striping) Subcommittee, which ostensibly consists of only Rock/Maston. They sit on multiple other Subcommittees and had to include the re-striping concept as part of the other Subcommittees' recommendations. The Parking Ratio Subcommittee's 11-8-2015 Summary of Recommendations included a "multi-pronged approach" with "[e]xpansion of parking supply with (re-striping) more efficient parking layouts in the parking plazas . . ." (Ex. 11, p. 11.) That Subcommittee's membership includes Rock, Rogge and Kelly. Of course, re-striping played a key role in the Parking In-Lieu Subcommittee, where in its 11-26-2015 recommendation, it appears no less than five times (Ex. 12, pp. 2, 8, 20, 21, and 25.) As a result of the serial discussions of this cross-fertilized topic, Cranston/Rock/Maston were able to build a consensus with Bodner, Rogge, and Kelly, over 50% of the Committee, even if one were to include the two non-voting Councilmembers. Even the Alternatives Subcommittee dealt with the re-striping issue. (Ex. 16, last page.)

Another subject as simple as how to count outside dining was the subject of serial meetings, with Cranston/Rock/Maston again playing a key role. It was discussed by the Square Footage Measurement Subcommittee (Maston and McTighe) (Ex. 10, p. 5), the Parking Ratios Subcommittee (Rock, Rogge and Kelly) (Ex. 11, p. 4, and 8), and the Parking In-Lieu Subcommittee (Cranston/Rock/Maston, Bodner, Rogge) (Ex. 12, p. 4). Once again, Cranston/Rock/Maston were able to communicate directly with seven Committee members on this subject, all in private meetings.

We have not attempted to make an exhaustive list of all other comingled subjects. Likely subjects include the use of bicycles to decrease demand, the possible expansion of shared parking, and the establishment of a standing committee (that interestingly enough includes Cranston's organization, the Downtown Los Altos Property Owners Association).

As if this situation was not bad enough, it was exacerbated when the Executive Summary Committee came into being in late 2015. This four-member Subcommittee (Cranston/Rock/Maston and Hedden), have been holding private meetings to summarize and make recommended alterations to all aspects of the Committee's recommendations. At the same time, the five-member Parking In-Lieu Subcommittee (Cranston/Rock/Maston, Bodner and Rogge) was also holding its own separate and private meetings. Cranston/Rock/Maston are on both Subcommittees, with Cranston as chair of both. A review of the proposed report of the most recent Executive Summary Committee (Ex. 15) and the Parking In-Lieu Subcommittee (Ex. 12) will reveal additional overlapping subject matters.

Cranston/Rock/Maston knew or should have known of this significant Brown Act problem they created. An attorney himself, Cranston holds himself out as an open government advocate focusing on government process, and has sued the City before on such issues. Frankly, the extent to which he has corrupted the government process with the introduction of subcommittees which are not accountable to the public, while at the same time representing himself as an advocate for open and transparent government, is shameful.

FINANCIAL SIGNIFICANCE OF COMMITTEE RECOMMENDATIONS

The subject matters being discussed by the Committee and the various Subcommittees are important issues of public concern, and have significant financial impact on commercial property owners. For instance, under their recommendations, the required parking spaces for a new office building downtown would decrease by 32% (a new 10,000 square feet office building would no longer require 33 parking spaces, but only 22). The required parking spaces for a new retail building downtown would decrease by 25% (a new 2,000 square feet retail building would no longer require 10 parking spaces, but only 7). Whether these recommendations are good or bad is not the point. Instead, the point is that all of the fact gathering and deliberations on such significant public issues should have been open and transparent during all phases of the process, and cannot be circumvented by use of secret and serial meetings via overlapping and interrelated Subcommittees.

This is particularly true since a prime mover for Parking In-Lieu has been Cranston, who owns several commercial properties in downtown Los Altos. He is the chair of that Subcommittee which has produced a 27-page recommendation involving numerous complex findings and recommendations. Certainly, the public is entitled to know that this non-resident (who at times has had a less-than-stellar reputation as a downtown landlord), had not skewed the numbers for his own financial benefit. The same with Rock, a Los Altos downtown commercial leasing agent, and Maston, an architect involved in both residential and commercial work. Bodner would also financially benefit since her family owns commercial real estate in Los Altos. Instead of going out of their way to be open and transparent, this Parking In-Lieu Subcommittee worked in secret. Accordingly, its numbers and conclusions are all suspect and unreliable.[16] Likewise, there is no disclosure of the factors and deliberations of why, buried in the Subcommittee's 27-page recommendation, is the requirement that Cranston's organization, the Downtown Los Altos Property Owners Association, always have a seat at the table.

NINE VS. ELEVEN MEMBERS OF COMMITTEE

A question of fact, and possibly of law, is whether the Committee consists of nine or eleven members. That question is probably best answered by the Committee itself. Once the Committee began to consolidate the recommendations of its Subcommittees into written reports and a PowerPoint presentation, it represented to others that it consisted of just nine members. For instance, the September 10, 2015 written report from the Los Altos City-wide Parking Committee – Parking Ratios ends with a list of the nine members in alphabetical order, as follows:

> Respectfully submitted by
> The City-wide Parking Committee:

[16] During the January 19, 2016 Committee meeting, it was mentioned that one of the Planning & Transportation Commission members had raised a concern that the numbers and findings within the Committee's Report perhaps should be peer reviewed. Rock scoffed at the idea commenting that he had high confidence in his own work.

Lou Becker, Ronit Bodner, Kim Cranston, Gary Hedden,
Jack Kelly, Bill Maston, Mike McTighe, David Rock, Mark Rogge

(Ex. 8, p. 11.)

One of the first PowerPoints prepared which covered the subjects of many of the Subcommittees was dated September 16, 2015. (Ex. 14.) On the second slide it similarly identified the Committee as nine members, as follows:

Los Altos City-wide Parking Committee

Lou Becker Ronit Bodner Kim Cranston	Mike McTighe David Rock Mark Rogge
Gary Hedden Jack Kelly Bill Maston	City Staff: Marcia Somers James Walgren

At the end of the PowerPoint, on p. 25, the Committee thanked various groups, beginning with Councilmembers Bruins and Mordo "for oversight to the City-wide Parking Committee." Obviously, Bruins and Mordo were not treated as full members of the Committee.

The Committee itself acknowledged the overlapping nature of the various Subcommittees. For the Committee's January 20, 2016, meeting, it received a draft dated January 11, 2016, of the various recommendations for the Planning and Transportation Commission. It was prepared by the Executive Summary Committee, of which Cranston/Rock/Maston are three of the four members. That summary discusses the use of Subcommittees who meet separately "to study and report on specific topics to the whole committee", and then lists the five Subcommittees. The penultimate paragraph acknowledges that while each recommendation can stand on its own, each "builds upon the other" and that the "whole is greater than the sum of the parts." The Executive Summary once again ends with the following, listing only the nine members of the Committee:

Respectfully submitted by
The City-wide Parking Committee:

Lou Becker, Ronit Bodner, Kim Cranston, Gary Hedden,
Jack Kelly, Bill Maston, Mike McTighe, David Rock, Mark Rogge

(Ex. 14)

Ultimately, however, it little matters whether there were nine or eleven members of the Committee. The overlapping subject matter of the Subcommittees and the overlapping membership meant that Cranston/Rock/Maston created a structure so that they could gather information, deliberate, and draft detailed legislative proposals outside the view of the public.

ANALYSIS

The Ralph M. Brown Act (Gov. Code, §§ 54950-54962; "Brown Act") generally requires the legislative body of a local public agency to hold its meetings open to the public. (§§ 54951, 54952, 54953, 54962.) Agendas of the meetings must be posted (§§ 54954.1, 54954.2), and members of the public must be given an opportunity to address the legislative body on any agenda item of interest to the public (§ 54954.3).

The purposes of the Brown Act are thus to allow the public to attend, observe, monitor, and participate in the decision-making process at the local level of government. Not only are the actions taken by the legislative body to be monitored by the public but also the deliberations leading to the actions taken. (See *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373, 375; *Frazer v. Dixon Unified School Dist.* (1993) 18 Cal.App.4th 781, 795-797; *Stockton Newspaper, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 100; *Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, 45.) "The term 'deliberation' has been broadly construed to connote 'not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.' [Citation.]" (*Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 234; see *Roberts v. City of Palmdale*, *supra*, 5 Cal.4th at p. 376.)

This is not new law. For years, the Brown Act has been interpreted so as to prevent private deliberative gatherings. As explained in *Frazer v. Dixon Unified School Dist.* (1993) 18 Ca. App. 2d 641 at 651:

> It is now well settled that the term "meeting," as used in the Brown Act (§§ 54950, 54953), is not limited to gatherings at which action is taken by the relevant legislative body; "deliberative gatherings" are included as well. (*Sacramento Newspaper Guild*, supra, 263 Cal.App.2d at p. 48, 69 Cal.Rptr. 480.) Deliberation in this context connotes not only collective decisionmaking, but also "the collective acquisition and exchange of facts preliminary to the ultimate decision." (*Id.*, at pp. 47–48, 69 Cal.Rptr. 480; *Rowen v. Santa Clara Unified School Dist.* (1981) 121 Cal.App.3d 231, 234, 175 Cal.Rptr. 292.)

As more recently stated in *Page v. MiraCosta Community College Dist.* (2009), 180 Ca. App. 4th 471, at 503:

> "To prevent evasion of the Brown Act, a series of private meetings (known as serial meetings) by which a majority of the members of a legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business would violate the open meeting requirement." In connection with such meetings, the California Supreme Court has emphasized that "the intent of the Brown Act cannot be avoided by subterfuge; a concerted plan to engage in collective deliberation on public business through a series of letters or telephone calls passing from one member of the governing body to the next would violate the open meeting requirement." [Citations omitted.]

The prohibitions and requirements of the Brown Act apply to all members of the legislative body, whether appointed or elected by the public. Thus, it applies equally to Cranston, Bodner, Rock and Maston,

along with all members of the various Subcommittees who have violated the spirit and law of the Brown Act, and exposes them to possible criminal action under Govt. Code 54959.

CONCLUSION

Open and transparent government is essential, particularly to Los Altos. Cranston/Rock/Maston, particularly Cranston, has been at the forefront of pointing his finger at others claiming Brown Act violations. It is extremely unfortunate when such a person proclaiming himself a champion of open and transparent government engages in a vast subterfuge of the Brown Act to advance his own financial interests. The result, as explained by Rogge, is that Cranston/Rock/Maston would "go off and meet on their own, and go over the details of those things, and kind of wrestle among themselves and try to figure out what's the best way of describing this, the best way of addressing it, what's the best way of resolving it." And after receiving some public input, they would "just reiterate that process over and over again" deciding "let's change this or adjust this, based on these comments here, let's make these amendments to this" so that "through this reiterative process, we meet, I don't know how many meetings, far too many numbers." This is precisely the "deliberative gatherings" condemned by the Courts. These serial meetings were not noticed ahead of time, with no agendas posted, no opportunity for public comment, no minutes taken, no action minutes published for each meeting, and not held in a public place that was fully accessible to the community. They violated Mordo's warnings that "you cannot have more than five meet either together at one time or a serial meeting like four people meet and then two of those meet with three more. Cannot do that." [17]

As a result, the deliberations of the Subcommittees on which Cranston/Rock/Maston sat are unreliable and need to be subjected to a detailed and in-depth analysis. This requires more resources than can be provided by current City staff, since it involves all of the Subcommittees except the Alternatives Subcommittee.

So that our position is clear, we have not filed any Brown Act complaint with the District Attorney's office. We have not filed any lawsuit against the City or others under Government Code §§54960, 54960.1 or 54960.2, nor under any other statute. We are not threatening to do such. And this letter is not a cease and desist letter under Government Code §§54960.1 or 54960.2.

Instead, we request that the Council to:

1. As of tonight, immediately put on hold on further Committee proceedings until its Brown Act propriety is resolved;

2. Engage an outside consultant (attorney) to review the Subcommittee process, and if it is inherently suspect, remove Cranston/Rock/Maston from the Committee, and reprimand Mordo for his lax attitude towards the Brown Act;

3. Engage an outside consultant to review all data used, and to review and verify the accuracy of all of the findings by the Subcommittees on which Cranston/Rock/Maston sat, to determine if any were inaccurate or overstated the results; and

[17] See video of Parking Committee 2015-04-15 (Part 1), https://vimeo.com/126683064 at 00:01:31 to 00:02:12.

4. If the accuracy of the Subcommittee findings is suspect, then discard the recommendations and begin the process over, if the Council so desires.

While several of the Committee members may have been innocent and well intentioned, it is far too important that the use of Subcommittees, a new element of bad government foreign to Los Altos, be condemned and stopped. Los Altos deserves good and open government, not just on the campaign trail, but in practice.

Very truly yours,

/s/ David Casas

_____

David Casas, President
Friends of Los Altos Board of Directors

List of Exhibits

Ex. 1 - Minutes of 4-15-2015 Committee meeting
Ex. 2 - Parking In-Lieu Subcommittee 6-17-2015
Ex. 3 - Mordo's Framework recommendations 6-15-2015
Ex. 4 - Parking Ratios Subcommittee memorandum 7-15-2015
Ex. 5 - Minutes re formation of Executive Summary Committee 12-2-2015
Ex. 6 - Public Records request re Subcommittees 1-11-2016
Ex. 7 - City Clerk response to public records request 1-21-2016
Ex. 8 - Draft Committee report of 9-10-2015 (without attachments)
Ex. 9 - Minutes re formation of Alternatives Subcommittee 05-06-15
Ex. 10 - Square Footage Subcommittee draft 10-20-2015
Ex. 11 - Parking Ratios Subcommittee memo 11-8-2015
Ex. 12 - Parking In-Lieu Subcommittee recommendation 11-19-2015
Ex. 13 - Parking Stall Standards (Restriping) Subcommittee 5-6-2015
Ex. 14 - One of first Power Points 9-16-2015
Ex. 15 - Executive Summary 1-11-2016
Ex. 16 - Alternatives Subcommittee draft recommendations 10-7-2015

Exhibit 13

JAMS ARBITRATION CASE REFERENCE NO. 1110017521

Old Trace Partners, L.P.,
Claimant(s),

and

Sorensen, Theodore, et al.,
Respondent(s).

ORDER

This matter was heard on September 23, 2016 on Respondent's Motion pursuant to notice and summarized as follows:

1. To Disqualify Julienne Nucum, and Ron Packard, counsel for Claimants;

2. To compel discovery responses and to have a protective order preventing access by Ron Packard to discovery materials and responses; and

3. To permit the filing of a new dispositive motion asserting the statute of limitations to the causes of action stated in the claim.

William Milks and Kathryn Barrett appeared for Respondents moving parties. Julienne Nucum and Preston Wong appeared for Claimants in opposition. Also present were Respondents Theodore Sorensen, Gerald Sorensen, and Claimant Alan Truscott.

The matter has been fully briefed and submitted following oral argument by counsel.

A. DISQUALIFICATION OF COUNSEL

It is asserted that Ronald Packard has improperly received documents produced by Respondents in discovery and has improperly used those documents for his own purposes and to disadvantage the 40 Main Street project which is the subject of this arbitration. The documents were to be used only in the arbitration preparation (see Order of May 4, 2016) and it is argued

that by agreement, the production was not to be shared with other than attorneys of record. See the exchange of letters between Ms. Nucum and Mr. Milks.

The discovery documents and materials produced were ordered limited to use in the arbitration by the arbitrator's order because of a concern by the parties that the documents could be misused for other purposes. The parties exchanged e-mails regarding discovery document materials use. Mr. Milks asked Ms. Nucum by e-mail to limit use of the documents by attorneys of record. Ms. Nucum indicated agreement by return e-mail.

An attorney's use of discovery documents to prepare for and use them in the arbitration would require under most circumstances that the attorney be permitted to provide copies of the documents to associate attorneys, experts, and consultants as part of preparation for the arbitration. It would be unusual to not provide copies although sometimes an acknowledgement of a protective order or confidentiality agreement would be signed by the non-attorney of record if requested. Such was apparently not requested here although it could have been.

The evidence presented is that Mr. Packard, while not attorney of record in this matter, is a licensed attorney in good standing and did in fact act as an undisclosed expert consultant to Ms. Nucum in both his attorney capacity and as an expert with regard to development issues based upon his long experience in city government. While he also contends he represents the claimants (see his declaration)[1] as an attorney (presumably in unrelated matters), such representation in unrelated matters would not entitle him to examine discovery documents under the order in this case. As such, he would be entitled to view and use such documents as an expert and an attorney of counsel for purposes of the arbitration. The documents and materials may not be used by him (or anyone else) for any other purpose other than in preparation for the arbitration and the arbitration itself and counsel for Claimants had a responsibility to advise Mr. Packard of the terms of the arbitrator's discovery order.

Respondents have asserted that Mr. Packard has attempted to prevent approval of the project because of his adjacent property ownership and has used discovery documents for that purpose.

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[1] The supplemental declaration of Ronald Packard submitted after Respondents' reply brief is ordered stricken as untimely and will be disregarded.

The claim is disputed. No competent evidence has been presented to show that he spoke with any official to stop approval of the project. He has not been a councilman or other official of the city for approximately 4 years. There may be some questionable communications with others regarding the project but discovery is not yet complete. If the evidence establishes that while acting as attorney for Claimants, he acted to sabotage the development; such evidence could have an impact on the validity of the claims in the arbitration. But there is no basis for disqualifying him at this time for his known conduct.

Other claims of ethical violations in the form of communications to adverse parties who were represented by other counsel do not justify his disqualification at this time. He sent an E-Mail on April 28, 2014, before the underlying law suit was filed, as owner of neighboring property and not as counsel, and an E-Mail on August 12, 2014, after the law suit was filed.

If he was representing Claimants when he sent e-mail to Respondents, he should not have sent them or at least have determined if there was counsel representing respondents. It would require speculation at this time as to whether he was aware of pending litigation which may have required him to infer that respondents were represented by counsel. If it was a violation of the canons, it is not sufficient for the arbitrator to take action since he is not counsel of record in the arbitration; he was well known to the parties to the dispute as a former official of the city, and presumably as a lawyer and neighboring property owner adjacent to the subject property. No evidence has been presented to establish the date he became counsel or when he became a legal consultant in the case for the claimants.

The essence of the motion to disqualify Ms. Nucum is based on the contention that she concealed knowledge of Ronald Packard as counsel, improperly shared information in violation of the agreement and the order that the discovery was only to be used for the arbitration, and that she is responsible for the concealment and failure to provide full discovery.

As indicated above, the evidence presented establishes that Mr. Packard was an expert he who was entitled to review the materials for use in the arbitration there is no evidence of misuse except that as an owner of adjacent property he wore two hats. The arbitrator assumes that may be an issue at the arbitration. But Ms. Nucum committed no wrong is engaging Mr. Packard. Although no evidence concerning the same was presented, it is assumed in the absence of evidence that Ms. Nucum fulfilled her duty as a lawyer and provided Mr. Packard with a copy of the discovery order.

As to the failure to provide full discovery, the "Nero" e-mail and other issues are evidence of a failure to conduct a sufficient search to respond to Claimant's discovery obligations to provide unredacted documents or to justify any redactions based upon privilege or otherwise. The evidence establishes that Claimants' counsel did not exercise sufficient due diligence to acquire e-mails and documents responsive to the discovery obligations imposed on counsel and she did not adequately ensure her clients fulfilled their responsibility to search for such materials. While she did send copies of the search terms requested by counsel for the Respondents to her clients, she had an obligation to do more to ensure compliance. She did not do that.

The excuse given is insufficient but may be viewed as negligence as opposed to willfulness given Nucum's declaration. It does not justify disqualification to represent Claimants.

B. MOTION TO COMPEL AND PRODUCE/PROTECTIVE ORDER FOR PACKARD- REQUIRE SEARCH.

It does appear, and is conceded by counsel for claimants, that there has not been a full and complete response to the discovery requests. For the reasons set forth above, it is ordered that Claimants make a complete search and production of all documents, in electronic native format, with all attachments included, as requested by Respondents. If there is a claim of privilege as to any such document, or portion of a document with redactions, Claimants must create a privilege log.

Respondents request an order that the Ronald Packard documents be responded to without attorney client privilege objections, essentially because they concealed the fact he was their counsel and that conduct constitutes a waiver of the attorney client privilege. But he was an undisclosed consultant and expert, so that such communications between him and counsel would be privileged until he was disclosed as such. If he is of counsel, that too would result in privilege claims. But if there was a time when he was not representing the claimants and was not their attorney, such documents would be discoverable. It is not clear when he became attorney for all claimants (or any of them), nor when he became a non-disclosed "expert."

In complying with the order of production herein, if there is a claim of privilege as to any such documents, counsel must create a privilege log and submit the same with regard to its

production of documents and other matters to Respondents' counsel. Claimant must provide a declaration as well if there is a claim of privilege as to when Mr. Packard was engaged as counsel or an expert for any purpose connected to the arbitration or otherwise. Either party may request a ruling on any such claim of privilege.

SANCTIONS

Claimants seek attorneys' fees as sanction for having to file the motion to compel further production of evidence here. While there clearly was a failure to require claimants to use the requested search terms by claimants in performing the discovery searches, it was not willful and although it necessitated the follow up motion here, the arbitrator is of the opinion that because there have been claims and counterclaims about discovery by both claimants and respondents, sanctions should not be awarded at this time. However, the arbitrator will reserve the issue of sanction to the conclusion of the matter so that the consequence of any discovery failures may be measured in the context of the entire case. It is noted that counsel for respondents expended approximately nine and one half hours preparing the motion here.

C. MOTION TO BE PERMITTED TO FILE NEW DISPOSITIVE MOTION FOR S/L

The request for a new motion on the statute of limitations is denied. There is conflicting evidence presented that perhaps should have been available when the original motion was made. But there clearly remain issues of fact and it cannot be said that the evidence would have made a difference in the outcome of the motion. Given the time frame required for a new motion and the somewhat doubtful value of permitting a new motion at this late date, the significant expense incurred by all parties to date and the further expense incurred in a new motion, and the further delay of a proceeding which has been prolonged; militates against permitting a further dispositive motion. But it is again noted that the statute of limitations affirmative defense is still extant and if evidence on the issue is presented at the hearing on the arbitration, the earlier denial of the motion for summary disposition will have no effect on the final award which may be issued.

CONCLUSION

1. The motion to compel is granted as set forth above.

2. The discovery materials received by the parties, as well as the future materials produced pursuant to this order, are to be used by counsel and any consultants or of counsel experts, and may only be used for preparation and use in the arbitration proceedings. The protective order to that effect is granted and a violation of the same must be brought before the arbitrator by any counsel or other party learning of such violation. A violation will result in appropriate sanctions. Counsel for both parties are directed to inform any person who qualifies as a person who can review discovery documents and materials of this protective order and bring any violations of this order to the attention of the arbitrator and opposing counsel.

3. The request to schedule another summary disposition hearing on the affirmative defense of the statute of limitation is denied but it is an issue that remains for determination in the arbitration.

IT IS SO ORDERED. 9-24-16

Hon. Jack Komar (Ret.)
Arbitrator

SERVICE LIST

Case Name: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference #: 1110017521
Panelist: Komar, Jack ,

Hear Type: Arbitration
Case Type: Business/Commercial

Kathryn E. Barrett

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Gunn Management Group, Inc.
Theodore G. Sorensen

William C. Milks

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PROOF OF SERVICE BY E-Mail

Re: Old Trace Partners, L.P. vs. Sorensen, Theodore, et al.
Reference No. 1110017521

I, Josephine Care, not a party to the within action, hereby declare that on September 30, 2016, I served the attached Order 9/24/16 on the parties in the within action by electronic mail at San Jose, CALIFORNIA, addressed as follows:

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Gunn Management Group, Inc. / Theodore G. Sorensen

I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on September 30, 2016.

Josephine Care
JAMS / jcare@jamsadr.com

Exhibit 14

RESOLUTION NO. 2016-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS ACCEPTING THE INDEPENDENT INVESTIGATIVE REPORT REGARDING ALLEGATIONS OF BROWN ACT VIOLATIONS BY THE CITYWIDE PARKING COMMITTEE AND ADOPTING THE RECOMMENDATIONS CONTAINED IN THE REPORT

WHEREAS, the City of Los Altos City Council conducts its business adhering to the provisions of the Ralph M. Brown Act (the "Brown Act"); and

WHEREAS, the City Council is committed to open and transparent government operations; and

WHEREAS, in January 2015 the City Council adopted a "POLICY OF THE CITY OF LOS ALTOS REGARDING OPENNESS IN CITY GOVERNMENT"; and

WHEREAS, said policy states that "All meetings of City policy bodies (City Council, Commissions, and Committees) shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.). The Brown Act serves as a floor, not a ceiling, for transparency and openness. Policies are provided here that go beyond the minimum requirements of law to instill public confidence and increase transparency"; and

WHEREAS, In May 2015 the City Council adopted Resolution No. 2015-09 requiring certain advisory subcommittees and/or ad hoc committees of the City to be more open and accessible to the public; and

WHEREAS, the City-wide Parking Committee ("Committee") was required to comply with the Brown Act; and

WHEREAS, on February 9, 2016, Friends of Los Altos ("FOLA") hand-delivered a formal complaint to the City Council alleging that the Committee and its use of subcommittees violated the Brown Act; and

WHEREAS, on March 22, 2016, FOLA hand-delivered a supplement to its formal complaint dated February 9, 2016, to the City Council; and

WHEREAS, in response to the allegations made by FOLA, the City suspended the Committee and its subcommittees; and

WHEREAS, the City Attorney took all necessary actions to preserve the records for an investigation of the allegations made by FOLA; and

WHEREAS, the City Council retained outside counsel to conduct an independent investigation of the allegations made by FOLA ("Investigation"); and

WHEREAS, the scope and purpose of the Investigation was two-fold: (1) to determine whether past actions of the Committee or its subcommittees violated the Brown Act; and (2) to make recommendations to the City Council consistent with the results of the investigation; and

WHEREAS, counsel for Investigation soon thereafter made attempts to obtain the relevant emails and documents from the Committee; and

WHEREAS, production of documents was delayed due to technical issues and/or privacy concerns, which significantly delayed the investigation; and

WHEREAS, counsel for the Investigation also reviewed all published agendas, minutes, meeting materials and draft reports of the Committee and subcommittees; and

WHEREAS, the Investigation made certain conclusions of law based on the facts and evidence reviewed; and

WHEREAS, the Investigation also made certain recommendations to avoid the risk of future violations of the Brown Act; and

WHEREAS, this Resolution is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The City Council hereby adopts the "City of Los Altos Releases Results of Independent Investigation dated May 10, 2016" ("Investigation") attached hereto as Exhibit "A" and incorporated by this reference.

2. The City Council hereby disbands the Committee.

3. The City Council hereby adopts the recommended actions as set for in the Investigation, Exhibit A, numbers 1 through 4.

4. The City Council hereby adopts the recommended measures to reduce the risk of future violations of the Brown Act as set for the in the Investigation, Exhibit A, numbers 1 through 3.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 10th day of May, 2016 by the following vote:

AYES: BRUINS, MORDO, PEPPER, PROCHNOW, SATTERLEE
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Jeannie Bruins, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

City of Los Altos Releases Results of Independent Investigation:

Los Altos, California – May 10, 2016

On February 9, 2016, Friends of Los Altos ("FOLA") submitted a letter to the City alleging that the City-wide Parking Committee ("Committee") through the use of its subcommittees violated California's open meeting law referred to as the Brown Act (Government Code §§ 54950-54963.) The City Council formed the Committee in February 2015 to make recommendations on parking issues facing the City. The Committee consisted of nine voting members. Mayor Jeannie Bruins and Councilman Jean Mordo also participated as non-voting members. The Committee ultimately formed the following six working group subcommittees: (1) Alternatives; (2) Parking In-Lieu Program; (3) Parking Ratios; (4) Parking Stall Standards/Layout; (5) Building Square Footage Measurement; and (6) Executive Summary.

In January 2015, the City adopted a "Policy of the City of Los Altos Regarding Openness in City Government." In May 2015, the City adopted Resolution No. 2015-09, confirming that the Committee as comprised shall comply with the Brown Act meeting requirements. The Committee held approximately 20 noticed, public meetings between March 11, 2015 and February 3, 2016 in compliance with Brown Act meeting requirements. Following FOLA's allegations, the City suspended further work of the Committee and on February 10, 2016, retained independent counsel, Arthur J. Friedman with the law firm of Sheppard Mullin Richter and Hampton, to investigate. The scope and purpose of Mr. Friedman's investigation was two-fold: (1) to determine whether past actions of the Committee or its subcommittees violated the Brown Act; and (2) to make recommendations to the City Council consistent with the results of the investigation.

Members of the Committee and City staff provided Mr. Friedman with e-mails and other documents relating to their work on the Committee and subcommittees. The production of documents and e-mails by some Committee members was delayed by technical issues and/or individual privacy concerns, but ultimately completed by April 17, 2016. Mr. Friedman has concluded his investigation and his findings are summarized below:

1. Did the Committee or its subcommittees violate the Brown Act?

Yes. Mr. Friedman identified evidence of the following Brown Act violations: (1) for periods of time, the Parking In-Lieu subcommittee consisted of a majority of the voting members of the Committee; (2) a majority of the voting members of the Committee periodically deliberated privately by e-mail; (3) a majority of the voting members of the Committee periodically conducted private serial meetings regarding various issues that were the subject of multiple subcommittees; and (4) City staff periodically provided materials to a majority of the voting members of the Committee accompanied by substantive comments reflecting statements/opinions of other voting members of the Committee. Additionally, further Brown Act violations were likely based on the overlap of related topics addressed by multiple subcommittees, collectively involving a majority of voting members of the Committee.

EXHIBIT A

2. The City's Response

In response to Mr. Friedman's findings, and based on his recommendations, the City is taking the following actions regarding the work and recommendations of the Committee:

1. The Committee shall perform no additional work and shall disband.

2. The City staff and/or an independent consultant hired by the City shall review, assess and make its own recommendations regarding the work and recommendations of the Committee.

3. Following City staff/independent consultant independent review of the Committee's recommendations, the City's Planning and Transportation Commission ("PTC") through noticed public hearing(s) shall review the separate recommendations of both the Committee and City staff/independent consultant, and shall make its own recommendations to the City Council.

4. Following the PTC's independent review and recommendations, the City Council shall through noticed public hearing(s) review the separate recommendations of the PTC, City Staff/independent consultant and the Committee before taking action.

To reduce the risk of future violations of the Brown Act, the City Council has directed City staff to draft Resolution(s) or take other appropriate measures to accomplish the following:

1. The City shall discontinue the simultaneous use of multiple subcommittees concerning similar or related topics.

2. The City shall expand and/or enhance Brown Act training to include Ad Hoc committee members to proactively address confusion about the Act's applicability and requirements.

3. The City shall establish procedures and guidelines for conducting deliberations and meetings consistent with the Brown Act, which shall include increased City staff oversight of committees.

Exhibit 15

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August 3, 2015

VIA FAX TO (408) 295-5267

Josephine Care
JAMS
160 West Santa Clara Street, Suite 1600
San Jose, CA 95113

Subject: *Old Trace Partners, L.P., et al. v. Theodore G. Sorensen, individually and dba Gunn Management Group, Inc.; Gerald J. Sorensen, individually and dba Gunn Management Group, Inc.; Gunn Management Group, Inc.; and 40 Main Street Offices, LLC*
JAMS Ref. No.: 1110017521

Dear Ms. Care:

This is in response to your letter dated July 24, 2015 and a follow-up to the voice mail message that I left for you earlier today regarding the above-referenced matter. As I informed you by email on May 13, 2015, my clients filed a Notice of Appeal respecting the order issued by the trial court holding that the stay granted in conjunction with my clients' successful petition to compel arbitration deprived the trial court of jurisdiction to award liquidated damages, as well as the costs and attorneys' fees incurred in connection with moving the trial court for recovery of the specified liquidated damages, under the arbitration provision of the governing Operating Agreement for 40 Main Street Offices, LLC.

The Appeal is pending before the Sixth Appellate District Court of Appeal, Court of Appeal Case Number H042342. Accordingly, pursuant to California Code of Civil Procedure Section 916(a):

> ... the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby....

Because Old Trace Partners, L.P., *et al.*, have expressly included the issue of liquidated damages, costs, and attorneys' fees sought in the trial court by Sorensen, *et al.*, in their demand for arbitration, the arbitration is one of the "matters embraced therein or affected thereby" relating to the Appeal of the trial court's order and is automatically stayed under California Code of Civil Procedure Section 916(a). Therefore, commencement of the arbitration is premature pending the outcome of the Appeal.

If you have any questions or want to discuss the matter, do not hesitate to contact me.

Yours truly,

William C. Milks, III

cc: Julienne Nucum, Esq.

Exhibit 16

William C. Milks, III (State Bar No. 114083)
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Attorneys for Respondents and Counterclaimants
Theodore G. Sorensen, Gerald J. Sorensen, Gunn Management Group, Inc., and 40 Main Street Offices, LLC

ARBITRATION

JAMS SILICON VALLEY

OLD TRACE PARTNERS, L.P., a California limited partnership; DANIEL T. NERO, KIMBERLY A. NERO, PAUL L. KLEIN, JR., MARY ELLEN KLEIN, ALAN E. TRUSCOTT, individually; and FICK INVESTMENT GROUP, a California general partnership, Claimants and Counterrespondents, v. THEODORE G. SORENSEN, individually and dba GUNN MANAGEMENT GROUP, INC.; GERALD J. SORENSEN, individually and dba GUNN MANAGEMENT GROUP, INC.; GUNN MANAGEMENT GROUP, INC., a California corporation; 40 MAIN STREET OFFICES, LLC, a California limited liability company; and DOES 1 to 20, inclusive, Respondents and Counterclaimants.	JAMS Reference No. 1110017521 **Santa Clara County Superior Court Case No. 114CV266849** **ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS BY RESPONDENTS AND COUNTERCLAIMANTS THEODORE G. SORENSEN, GERALD J. SORENSEN, GUNN MANAGEMENT GROUP, INC., AND 40 MAIN STREET OFFICES, LLC**

Theodore G. Sorensen, Gerald J. Sorensen, Gunn Management Group, Inc., and 40 Main Street Offices, LLC (collectively referred to herein as "Respondents") hereby submit the following answer to Claimants' First Amended and Restated Complaint ("Complaint"):

1. Respondents deny the allegations contained in Paragraph 1 of the Complaint.

2. Answering Paragraph 2, Respondents admit that Gunn Management Group, Inc. is a management entity that is wholly owned by Theodore G. Sorensen and Gerald J.

Sorensen (collectively referred to herein as the "Sorensens"). Except as so expressly admitted, Respondents deny the allegations contained in Paragraph 2 of the Complaint.

3. Answering Paragraph 3, the Sorensens admit that they prepared an investment prospectus entitled "Project Plan for 40 Main Street Los Altos, California" (the "Prospectus") in or about March 2007 including page 9 thereof entitled "Pro Forma Summary – Four Alternatives" attached as Exhibit A to the Complaint based on information obtained by the Sorensens from various sources including Claimants. Respondents allege that the "Pro Forma Summary – Four Alternatives" speaks for itself. Except as so expressly admitted, Respondents deny the allegations contained in Paragraph 3 of the Complaint.

4. Respondents admit the allegations contained in Paragraph 4 of the Complaint.

5. Respondents deny the allegations contained in Paragraph 5 of the Complaint.

6. Answering Paragraph 6, Respondents admit that Claimants collectively invested $1,136,000 and signed the Operating Agreement for 40 Main Street Offices, LLC (the "Company") in or about May 2007 and received an aggregate 40% membership interest. Except as so expressly admitted, Respondents deny the allegations contained in Paragraph 6 of the Complaint.

7. Respondents deny the allegations contained in Paragraph 7 of the Complaint.

8. Respondents deny the allegations contained in Paragraph 8 of the Complaint.

9. Respondents deny the allegations contained in Paragraph 9 of the Complaint.

10. Respondents deny the allegations contained in Paragraph 10 of the Complaint.

PARTIES

11. Answering Paragraph 11, Respondents admit that Old Trace Partners, L.P. invested $284,000 for a 10% membership interest in the Company. Except as so expressly admitted, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 11 of the Complaint and, basing their denial thereon, deny such allegations.

12. Answering Paragraph 12, Respondents admit that Daniel T. Nero and Kimberly A. Nero invested $284,000 for a 10% membership interest in the Company.

Except as so expressly admitted, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 12 of the Complaint and, basing their denial thereon, deny such allegations.

13. Answering Paragraph 13, Respondents admit that Paul L. Klein, Jr. and Mary Ellen Klein invested $284,000 for a 10% membership interest in the Company. Except as so expressly admitted, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 13 of the Complaint and, basing their denial thereon, deny such allegations.

14. Answering Paragraph 14, Respondents admit that Alan E. Truscott invested $142,000 for a 5% membership interest in the Company. Except as so expressly admitted, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 14 of the Complaint and, basing their denial thereon, deny such allegations.

15. Answering Paragraph 15, Respondents admit that Fick Investment Group invested $142,000 for a 5% membership interest in the Company. Except as so expressly admitted, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 15 of the Complaint and, basing their denial thereon, deny such allegations.

16. Respondents admit the allegations contained in Paragraph 16 of the Complaint.

17. Respondents admit the allegations contained in Paragraph 17 of the Complaint.

18. Answering Paragraph 18, Respondents admit that Gunn Management Group, Inc. is a California corporation wholly owned by the Sorensens and has its place of business at 40 Main Street, Los Altos, California. Except as so expressly admitted, Respondents deny the allegations contained in Paragraph 18 of the Complaint.

19. Respondents admit the allegations contained in Paragraph 19 of the Complaint.

20. Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 20 of the Complaint and, basing their denial thereon, deny such allegations.

21. Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 21 of the Complaint and, basing their denial thereon, deny such allegations.

22. Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 22 of the Complaint and, basing their denial thereon, deny such allegations.

JURISDICTION AND VENUE

23. Respondents deny the allegations contained in Paragraph 23 of the Complaint.

FIRST CAUSE OF ACTION

24. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 23, inclusive, in response to the allegations contained in Paragraph 24 of the Complaint.

25. Answering Paragraph 25, Respondents admit that in or about March 2007 the Sorensens prepared the Prospectus based on information obtained by the Sorensens from various sources including Claimants. Respondents allege that the Prospectus, including all attachments to the Prospectus, speaks for itself. Except as so expressly admitted, Respondents deny the allegations contained in Paragraph 25 of the Complaint.

26. Answering Paragraph 26, Respondents allege that the Prospectus, including all attachments to the Prospectus, speaks for itself. Respondents deny the remaining allegations contained in Paragraph 26 of the Complaint.

27. Respondents deny the allegations contained in Paragraph 27 of the Complaint.

28. Respondents deny the allegations contained in Paragraph 28 of the Complaint.

29. Answering Paragraph 29, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 29 of the Complaint and, basing their denial thereon, deny such allegations.

30. Respondents deny the allegations contained in Paragraph 30 of the Complaint.

SECOND CAUSE OF ACTION

31. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 30, inclusive, in response to the allegations contained in Paragraph 31 of the Complaint.

32. Respondents deny the allegations contained in Paragraph 32 of the Complaint.

33. Respondents deny the allegations contained in Paragraph 33 of the Complaint.

THIRD CAUSE OF ACTION

34. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 33, inclusive, in response to the allegations contained in Paragraph 34 of the Complaint.

35. Respondents deny the allegations contained in Paragraph 35 of the Complaint.

36. Respondents deny the allegations contained in Paragraph 36 of the Complaint.

FOURTH CAUSE OF ACTION

37. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 36, inclusive, in response to the allegations contained in Paragraph 37 of the Complaint.

38. Respondents deny the allegations contained in Paragraph 38 of the Complaint.

39. Respondents deny the allegations contained in Paragraph 39 of the Complaint.

FIFTH CAUSE OF ACTION

40. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 39, inclusive, in response to the allegations contained in Paragraph 40 of the Complaint.

41. Respondents deny the allegations contained in Paragraph 41 of the Complaint.

42. Respondents deny the allegations contained in Paragraph 42 of the Complaint.

43. Respondents deny the allegations contained in Paragraph 43 of the Complaint.

44. Respondents deny the allegations contained in Paragraph 44 of the Complaint.

SIXTH CAUSE OF ACTION

45. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 44, inclusive, in response to the allegations contained in Paragraph 45 of the Complaint.

46. Answering Paragraph 46, Respondents allege that the Operating Agreement speaks for itself. Respondents deny the remaining allegations contained in Paragraph 46 of the Complaint.

47. Respondents deny the allegations contained in Paragraph 47 of the Complaint.

48. Answering Paragraph 48, Respondents allege that the Operating Agreement speaks for itself. Respondents deny the remaining allegations contained in Paragraph 48 of the Complaint.

49. Respondents deny the allegations contained in Paragraph 49 of the Complaint.

50. Respondents deny the allegations contained in Paragraph 50 of the Complaint.

51. Respondents deny the allegations contained in Paragraph 51 of the Complaint.

SEVENTH CAUSE OF ACTION

52. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 51, inclusive, in response to the allegations contained in Paragraph 52 of the Complaint.

53. Respondents admit the allegations contained in Paragraph 53 of the Complaint.

54. Respondents deny the allegations contained in Paragraph 54 of the Complaint.

55. Respondents deny the allegations contained in Paragraph 55 of the Complaint.

EIGHTH CAUSE OF ACTION

56. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 55, inclusive, in response to the allegations contained in Paragraph 56 of the Complaint.

57. Respondents deny the allegations contained in Paragraph 57 of the Complaint.

58. Answering Paragraph 58, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 58 of the Complaint and, basing their denial thereon, deny such allegations.

59. Answering Paragraph 59, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 59 of the Complaint and, basing their denial thereon, deny such allegations.

NINTH CAUSE OF ACTION

60. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 59, inclusive, in response to the allegations contained in Paragraph 60 of the Complaint.

61. Answering Paragraph 61, Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 61 of the Complaint and, basing their denial thereon, deny such allegations.

62. Answering Paragraph 62, Respondents allege that the Operating Agreement speaks for itself. Respondents deny the remaining allegations contained in Paragraph 62 of the Complaint.

63. Respondents deny the allegations contained in Paragraph 63 of the Complaint.

TENTH CAUSE OF ACTION

64. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 63, inclusive, in response to the allegations contained in Paragraph 64 of the Complaint.

65. Respondents lack sufficient information or belief concerning the allegations contained in Paragraph 65 of the Complaint and, basing their denial thereon, deny such allegations.

66. Respondents deny the allegations contained in Paragraph 66 of the Complaint.

67. Respondents deny the allegations contained in Paragraph 67 of the Complaint.

68. Respondents deny the allegations contained in Paragraph 68 of the Complaint.

69. Respondents deny the allegations contained in Paragraph 69 of the Complaint.

70. Respondents deny the allegations contained in Paragraph 70 of the Complaint.

71. Respondents deny the allegations contained in Paragraph 71 of the Complaint.

ELEVENTH CAUSE OF ACTION

72. Respondents incorporate herein by reference the allegations of their answers to Paragraphs 1 through 71, inclusive, in response to the allegations contained in Paragraph 72 of the Complaint.

73. Respondents deny the allegations contained in Paragraph 73 of the Complaint.

RESPONSE TO ALLEGATIONS IN THE PRAYER AND RELIEF REQUESTED

WHEREFORE, in response to Claimants' Prayer and Relief Requested, Respondents incorporate their responses to all preceding paragraphs as if fully set forth herein and further answer as follows:

WHEREFORE, Respondents having fully answered, they request the arbitrator to enter judgment in their favor and against Claimants, and award Respondents their costs and expenses, including attorneys' fees incurred in this matter, and grant such other relief as the arbitrator may deem just and proper.

AFFIRMATIVE DEFENSES

1. Claimants' claims, and each cause of action stated therein, fail to state a claim against Respondents upon which relief can be granted and further fail to entitle Claimants to the relief sought, or any relief whatsoever from Respondents.

2. Any damages which Claimants may have suffered, which Respondents continue to deny, were the direct and proximate result of the conduct of Claimants. Therefore, Claimants are estopped and barred from recovery of any damages.

3. The Complaint, and each claim for relief therein that seeks equitable relief, is barred by the doctrine of unclean hands.

4. Claimants are not entitled to relief from or against Respondents, as they have not sustained any loss, injury, or damage that resulted from any act, omission, or breach by Respondents.

5. Claimants' damages, if any, were the result of intervening, superseding, concurrent, and/or contributing causes. Any alleged action or alleged omission on the part of Respondents was not the proximate cause of Claimants' alleged damages.

6. Claimants have failed to state a claim for the recovery of attorneys' fees and costs.

7. The alleged injuries to Claimants, if any, were caused in whole or in part by Claimants' own acts or contributory negligence. Claimants' damages, if any, must therefore be reduced proportionately.

8. The claims have been brought without reasonable grounds and/or to harass Respondents.

9. Any and all acts alleged to have been committed by Respondents were reasonably undertaken to protect the tangible and intangible assets of Respondents and, therefore, were justified and/or privileged.

10. Respondents have provided to Claimants copies and/or permitted inspection of all records and statements requested by Claimants as required under the Operating Agreement and the California Corporation Code.

11. Respondents acted reasonably and in good faith at all times material to this action, based upon all relevant facts and circumstances known by them at the time they so acted, and, accordingly, Claimants are barred from any recovery in this action.

12. Claimants were not injured or damaged in the manner or to the extent claimed by Claimants and/or such damages were not proximately caused by any actions or inactions on the part of Respondents.

13. Respondents did not breach any statutory or common law duties allegedly owed to Claimants.

14. Claimants' injuries, if any, were caused in whole or in part by the acts or omissions of others for whose conduct Respondents are not responsible.

15. Each Claimant expressly represented under Section 13.1 of the Operating Agreement that "he or she is capable of evaluating the risks and merits of an investment in

the Membership Interest and of protecting his or her own interests in connection with this investment." Each Claimant also represented that "he or she understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the Company is newly organized and has no financial or operating history." Claimants' claims are barred by the doctrine of assumption of the risk.

16. Each Claimant expressly represented under Section 13.4 of the Operating Agreement that "He or she is an 'accredited investor' as defined in Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended." Claimants' claims are barred by the doctrine of assumption of the risk.

17. Each Claimant expressly represented under Section 13.7 of the Operating Agreement that "He or she is financially able to bear the economic risk of an investment in the Membership Interest, including the total loss thereof." Claimants' claims are barred by the doctrine of assumption of the risk.

18. Each Claimant expressly represented under a section labeled "12.13" on page 50 of the Operating Agreement that "He or she acknowledges that the Membership Interest is a speculative investment which involves a substantial degree of risk of loss by him or her of his or her entire investment in the Company, that he or she understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the Company is newly organized and has no financial or operating history." Claimants' claims are barred by the doctrine of assumption of the risk.

19. Claimants' claims are barred or reduced because of Claimants' failure to mitigate damages.

20. Claimants' claims are barred because Respondents complied with applicable statutes and with the requirements and regulations of the State of California.

21. With respect to Claimants' demand for interest, Claimants are contractually barred from receiving interest by Section 3.4 of the Operating Agreement.

22. With respect to Claimants' demand for punitive damages, Respondents specifically incorporate by reference all standards of limitation regarding the determination

and enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 116 U.S. 1589 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 123 S. Ct. 1513 (2003).

23. Consideration of any punitive damages would violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the due process provisions of the California Constitution by allowing standard–less discretion to determine punishment and by depriving Respondents of prior notice of the consequences of their alleged acts.

24. Punitive damages are a punishment, a quasi-criminal sanction for which Respondents have not been afforded the specific procedural safeguards prescribed in the California Constitution and the Fifth and Sixth Amendments to the United States Constitution.

25. Claimants' causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by operation of the equitable doctrines of laches, waiver, estoppel, and ratification or approval of the Members under Sections 4.9, 4.10, and 5.6 of the Operating Agreement.

26. Claimants' alleged damages were the result of conditions which were unrelated to any conduct of Respondents.

27. Claimants' claims are barred because Respondents did not owe any legal duty to Claimants or, if Respondents did owe such a legal duty, Respondents did not breach that duty.

28. Claimants' claims are barred, in whole or in part, by accord and satisfaction.

29. To the extent Claimants seek equitable relief, Claimants are not entitled to such relief because there is an adequate remedy at law.

30. Section 14.18 of the Operating Agreement states: "No Member or Assignee has any interest in specific property of the Company." Claimants are contractually barred from seeking any right in or to the real property held by the Company.

31. Respondents deny each and every allegation of the Complaint that is not specifically admitted herein.

32. Claimants have failed to allege facts which, if proven, would establish that the alleged conduct, if any such conduct occurred, was the proximate cause of Claimants' alleged damages and/or injuries.

33. Claimants' claims are based on alleged statements and writings made prior to the execution of the Operating Agreement. The use of all such statements and writings is barred by Section 14.2 of the Operating Agreement which provides, in part, as follows: "This Agreement and the Articles constitute the complete and exclusive statement of agreement among the Members and Managers with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the members and Managers or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on the Members or Managers or have any force or effect whatsoever."

34. To the extent any actions were taken by Respondents' employees or representatives outside the course and scope of their employment or outside the terms and conditions of the parties' agreement, if any, Respondents are not liable.

35. Respondents did not commit, authorize, ratify, condone, or otherwise approve of any alleged fraudulent, tortious, or other conduct.

36. Claimants' breach of contract claims are barred by Claimants' own breach of contract.

37. Respondents discharged each and every obligation, if any, which they may have owed to Claimants, and otherwise owe no duty to Claimants.

38. If Respondents did not fully perform any contractual obligations, which they specifically deny, the duty of full performance under any contract was excused by virtue of the material breach of any such contract by Claimants.

39. Claimants' claims against Respondents are barred by the doctrine of substantial compliance.

40. Claimants cannot be heard to complain of any breach of any alleged agreement due to the failure of Claimants to fully perform under the terms of any alleged agreement and/or by Claimants' failure of consideration.

41. Respondents are informed and believe that Claimants breached the implied covenant of good faith and fair dealing owed to Respondents.

42. Claimants' breach of contract claims are barred by mutual mistake.

43. Claimants' breach of contract claims are barred by unilateral mistake.

44. Claimants' breach of contract claims are barred by a failure to allow time to cure.

45. Claimants' breach of contract claims are barred by a failure of conditions precedent.

46. Claimants' claims violate Respondents' rights under the United States and California Constitutions as the claims are unconstitutionally vague and violate Respondents' substantive and procedural due process rights.

47. Claimants' causes of action are barred and/or Claimants' remedies are limited on grounds that Respondents had innocent intent in the acts alleged in Claimants' Complaint.

48. Claimants are not entitled to recover because they unreasonably relied on any alleged statements or representations for which Respondents are alleged to be responsible.

49. Claimants should not be allowed to recover the relief requested in the Complaint because they would be unjustly enriched.

50. Claimants should not be allowed to recover for their alleged claims because they are *in pari delicto*.

51. Respondents' fiduciary duties are expressly limited by Section 5.10 of the Operating Agreement, and Claimants have failed to state a claim or cause of action under that section.

52. Claimants' claims are barred in whole or in part by their own breach of fiduciary duty to Respondents.

53. Claimants' claims are barred by the doctrines of ratification and consent.

54. Claimants are minority members of the Company and they have and/or are attempting to violate corporate form through this action.

55. Claimants are minority members of the Company and lacked Company authorization to institute or pursue this action.

56. Claimants lack standing to bring this action.

57. Claimants are minority members of the Company and lack the numerosity of units and/or voting capacity and right to effectuate the changes sought through this action.

58. Claimants are contractually bound and barred from bringing this action under the terms of the 40 MAIN STREET OFFICES, LLC LIMITED LIABILITY COMPANY AMENDED AND RESTATED OPERATING AGREEMENT (the "Operating Agreement").

59. The Operating Agreement at page 1 states: **"EACH PURCHASER OF A UNIT MUST BE PREPARED TO BEAR THE ECONOMIC RISK OF INVESTMENT THEREIN FOR AN INDEFINITE PERIOD OF TIME."** Under the express terms of the Operating Agreement, Claimants' have suffered no damages and therefore have not stated a claim or cause of action upon which relief can be granted.

60. Claimants' claims and causes of action based on alleged false and misleading statements in the Prospectus are barred by Section 14.2 of the Operating Agreement.

61. Claimants' claims or causes of action should be dismissed, because they are not ripe under the express terms of the Operating Agreement.

62. Claimants, and each of them, expressly agreed to "defend, indemnify, and hold harmless" each and every Respondent under Section 13.20 of the Operating Agreement "by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by him or her including, without limitation, the information in this Agreement."

63. Claimants' claims or causes of action based on alleged misrepresentation of facts or omission to represent or state facts by Respondents is barred by the doctrine of indemnification.

64. Claimants' claims are barred by the business judgment rule.

65. Respondents hereby give notice that they intend to rely upon such other defenses as may become available or appear during discovery in this case or otherwise, and hereby reserve the right to amend this Answer to assert any such other affirmative defenses.

WHEREFORE, Respondents having fully answered, request that the arbitrator enter an award in their favor and against Claimants, and award Respondents their costs and expenses, incurred in this matter, and grant such other relief as the arbitrator may deem just and proper.

COUNTERCLAIMS

Theodore G. Sorensen, Gerald J. Sorensen, Gunn Management Group, Inc. ("Gunn"), and 40 Main Street Offices, LLC ("Company") (collectively referred to herein as "Respondents") now aver and allege as follows Counterclaims against Claimants:

1. Claimants entered into the Operating Agreement with "Gunn Management Group, Inc. (the 'Manager'), and each of those persons who become a Company Member and/or Manager in accordance with the terms of this Agreement." In accordance with Section 2.1 of the Operating Agreement, "This Agreement shall be deemed effective as of the date the Articles are filed ('Effective Date')." The Articles were filed on May 8, 2007.

2. The RECITALS of the Operating Agreement provide: "B. The purpose of the Company is to finance and construct certain improvements ('Improvements') to the Real Property to permit the construction and leasing or sale of residential and/or commercial real estate to the general public and such other authorized uses as the Manager shall determine from time to time under the terms of this Agreement."

3. Under Section 2.7 of the Operating Agreement, to carry out the "Purpose and Business of the Company," without requiring Member approval, the Company is authorized, among other actions: "2.7.7 To enter into, perform and carry out contracts of any kind necessary to, in connection with or incidental to, the accomplishment of the purposes of the Company;" "2.7.9 To prepay in whole or in part, refinance, recast, increase, modify, or extend any mortgage affecting any real property or other indebtedness of the Company and, in connection therewith, to execute any extensions, renewals or modifications of such other

mortgages and indebtedness;" and "2.7.10 To take or cause to be taken all actions and to perform or cause to be performed all functions necessary or appropriate to promote the business of the Company and to realize and carry out its purposes." These powers are reposed in Gunn as the Manager under Section 5.3 of the Operating Agreement.

4. Section 5.1 of the Operating Agreement reads:

> 5.1. Management of the Company by Manager.
>
> 5.1.1. ***Exclusive Management by Manager***. The business, property and affairs of the Company shall be managed exclusively by its Manager. Except for situations in which the approval of the Members is expressly required by the Articles or this Agreement, the Manager shall have full, complete and exclusive authority, power, and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs.
>
> 5.1.1.1. ***Interference by Members***. Every Member owes a duty to the Company to refrain from interference with the management of the Company by the Manager. For the purposes of this section, Interference ("Interference") includes any and all efforts by a Member or Members to oppose, directly or indirectly, the management of the Company by the Managers. Interference includes, without limitation, efforts by a Member or Members to oppose approval of the Improvements by the City of Los Altos, efforts to gain financing for the building or construction of the Improvements, to interfere with proposed leases and any other effort to oppose the lawful operations of the Company. Interference does not include private discussions among Members regarding the effective management of the Company.

5. Section 14.10 of the Operating Agreement reads, in part:

> In the event of any breach of the terms of section 14.10 (Mediation and Arbitration), or of section 5.1.1.1 (Interference) it is understood by the Members that it will be difficult to attach a value to the damages caused by such breaches. It is acknowledged that any party's failure to follow the procedures set forth in section 14.10 or to use Interference against the Company will cause the party against whom an action was improperly filed or the Company ("Aggrieved Party") to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Aggrieved Party of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such breaches, the Members agree that liquidated damages may be assessed and recovered by the Aggrieved Party as against such Member or Members that wrongfully filed such action or actions or committed Interference against the

Company. In the event of the filing of any such action, or of Interference, and without the Aggrieved Party being required to present any evidence of the amount or character of actual damages sustained by reason thereof; such Member or Members, or the Company, shall be jointly and severally liable to the Aggrieved Party for payment of liquidated damages in the amount of Fifty Thousand Dollars ($50,000) as an offset for legal fees and other damages that may occur. This amount is against any Member, if more than one Member participates then the amount shall be assessed against each participating Member. If any proceeding is brought in court, and it is determined that such proceeding should have been part of an arbitration or mediation procedure, or if the Arbitrator determines that a Member or Members have been guilty of Interference, then such liquidated damages shall be assessed by the arbitrator or court of competent jurisdiction in the proceeding or procedure that follows. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and the Member or Members shall pay them to the Aggrieved Party without limiting the Aggrieved Party's right to other remedies under the terms of this Agreement

6. Section 14.20 of the Operating Agreement reads, in part:

14.20 Attorneys Fees. In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

7. Section 14.26 of the Operating Agreement reads, in part:

14.26 Proprietary and Confidential Information. Each Member and the Company acknowledge and agree that the Operating Agreement requires the Manager to make certain information available to Members from time to time, in writing or orally. In addition, it is understood and agreed that each Member may make certain information of a personal, or financial, nature known to the Manager from time to time. All such information is defined as "Proprietary and Confidential Information." Proprietary and Confidential Information disclosed by one party ("Disclosing Party") to any other party ("Receiving Party") is protected by this Agreement. Each Member and the Company agree to take all reasonable precautions to protect the Disclosing Party's Proprietary and Confidential Information from disclosure to third parties. Each Member and the Company recognize and acknowledge the special value and the importance in protecting each other's Proprietary and Confidential Information. Therefore, each agrees not to provide, disclose or otherwise make available the Proprietary and Confidential Information of the other in any form to any other person, without the express written consent of the

Disclosing Party. Any use or attempted use by a Member or the Company of Proprietary and Confidential Information in violation of the restrictions of this Section 14.26 shall constitute a material breach of this Agreement which will cause irreparable harm to the Disclosing Party entitling the Disclosing Party to injunctive relief in addition to all legal remedies.

FIRST COUNTERCLAIM FOR RELIEF
(Breach of Fiduciary Duty by Claimant Daniel T. Nero)

8. Respondents incorporate herein by reference, the allegations contained in Paragraphs 1 through 7 of their Counterclaims, inclusive.

9. Claimant Daniel T. Nero ("Nero") as an investor and Member of the Company under the then current Operating Agreement owed a duty to the Company, the Manager, and the other Members not to interfere with the business of the Company.

10. In or about January 2012, the Managers obtained a loan on the property located at 40 Main Street, Los Altos, CA 94022 in connection with the business purposes of the Company. In or about September 2012, on information and belief Nero, without authorization from Respondents, contacted Al Diaz of then Torrey Pines Bank regarding the financing by Respondents on the Property. Nero proposed to Torrey Pines Bank that he purchase the note on the Property. Although this offer was rejected, the result was to cast doubt on the business dealings of the Company and to interfere with the business between the Company and Torrey Pines Bank by disrupting the banking relationship that Respondents had with Torrey Pines Bank in general and Al Diaz in particular.

11. Respondents believe and therefore allege that Nero intended to interfere with the longstanding banking relationship between the Company and Al Diaz so that Torrey Pines Bank would not refinance the loan with the Company when the then existing loan on the Property became due.

12. By interfering with the banking relationship between the Company and Torrey Pines Bank, Nero breached his fiduciary duty owed to Respondents as well as the other Members.

13. The Manager was required to spend otherwise unnecessary time negotiating refinancing of the Property, delaying the refinancing. The Manager estimates that ten (10)

additional hours were spent renegotiating the loan in 2012 and repairing the relationship with Al Diaz, resulting in damages to be proven at the time of hearing.

14. Respondents are also entitled to exemplary damages, as well as their attorneys' fees and costs under Section 14.20 of the Operating Agreement.

SECOND COUNTERCLAIM FOR RELIEF
(Breach of Contract by Claimants - Interference)

15. Respondents incorporate herein by reference, the allegations contained in Paragraphs 1 through 14 of their Counterclaims, inclusive.

16. Respondents have continuously pursued approval of the development of the Property since the Property was acquired in May 2007 and have fulfilled all conditions precedent required of them under the Operating Agreement.

17. In or about October 2015, Alan E. Truscott ("Truscott"), without authorization from Respondents, contacted personnel at Bridge Bank regarding the financing by Respondents of the Property. The result was to interfere with the business between the Company and Bridge Bank by disrupting the banking relationship that Respondents had with Bridge Bank in general.

18. Respondents believe and therefore allege that Truscott intended to interfere with the banking relationship between the Company and Bridge Bank so that Bridge Bank would not refinance the Company again when the then existing loan on the Property became due and in so doing breached Section 5.1 of the Operating Agreement.

19. In or about October or November 2015, Nero and/or Erik or Sean Corrigan, believed and therefore alleged to be acting on behalf of Claimant Old Trace Partners, L.P., without authorization from Respondents, contacted personnel at Bridge Bank regarding the financing by Respondents of the Property. The result was to further interfere with the business between the Company and Bridge Bank by disrupting the banking relationship that Respondents had with Bridge Bank.

20. Respondents believe and therefore allege that Truscott, Nero, and the Corrigans intended to interfere and have interfered with the banking relationship between the Company and Bridge Bank so that Bridge Bank would not refinance the Company again

when the then existing loan on the Property became due and in so doing breached Section 5.1 of the Operating Agreement.

21. On or about March 3, 2016, Erik Corrigan, believed and therefore alleged to be acting on behalf of Claimant Old Trace Partners, L.P., without authorization from Respondents, contacted Bridge Bank regarding the financing by Respondents of the Property. The result was to interfere with the business relationship between the Company and Bridge Bank by disrupting the banking relationship that Respondents had with Bridge Bank in general and Al Diaz in particular.

22. Subsequently, in or about March 2016 Nero again contacted Bridge Bank by email and telephone without authorization from Respondents alleging Respondents were misrepresenting the facts regarding this action and with the intent of further disrupting the business relationship between Respondents and Bridge Bank including having Bridge Bank reconsider its refinancing of the Company and in so doing breached Section 5.1 of the Operating Agreement.

23. Respondents believe and therefore allege that Nero intended to interfere with the banking relationship between the Company and Bridge Bank so that Bridge Bank would not refinance the Company again when the then existing loan on the Property matures and/or have Bridge Bank reconsider its refinancing of the Company and in so doing breached Section 5.1 of the Operating Agreement.

24. In or about February 2016, Sean Corrigan, believed and therefore alleged to be acting on behalf of Claimant Old Trace Partners, L.P., without authorization from Respondents, contacted Los Altos City Councilman Mordo with the intent of interfering with the approval process regarding the proposed development of the Property. The result was to interfere with the business between the Company and the City of Los Altos by casting aspersions on Respondents and expressing dissatisfaction with the plan submitted by Respondents to the City of Los Altos for approval.

25. Respondents believe and therefore allege that Sean Corrigan intended to sabotage the project being proposed by Respondents for approval by the City of Los Altos and in so doing breached Section 5.1 of the Operating Agreement.

26. The Manager was and has been required to spend an enormous amount of time negotiating refinancing the Property, the refinancing was delayed requiring the Company to make additional payments under the old loan, and the Manager has been required to spend additional time to address extraneous issues with the City of Los Altos which have arisen due to Claimants' interference with Respondents' dealings with Bridge Bank and the City of Los Altos, and suffered damages as a consequence.

27. Section 14.10 requires that Truscott, Nero, and Old Trace Partners, L.P. based on the acts by Erik Corrigan and Sean Corrigan, be assessed $50,000.00 in liquidated damages for each of their acts of interference with the business of the Company totaling at least $250,000.00.

THIRD COUNTERCLAIM FOR RELIEF
(Breach of Contract – Wrongly Filing a Court Action)

28. Respondents incorporate herein by reference, the allegations of their Counterclaims contained in Paragraphs 1 through 26, inclusive.

29. Respondents have continuously pursued approval of the development of the Property since the Property was acquired in May 2007 and have fulfilled all conditions precedent required of them under the Operating Agreement.

30. On September 25, 2014 Claimants filed their Complaint in the Superior Court for Santa Clara County, titled *Old Trace Partners, L.P. et al. v. Sorensen, et al.;* Case No. 114CV266849 (referred to herein as the "Superior Court Action").

31. Pursuant to the Operating Agreement, the filing of the Superior Court Action is in direct violation of the clear terms in the Operating Agreement, Section 14.10.

32. In response to the Superior Court Action, Respondents retained the services of an attorney to file a Petition to Compel Arbitration.

33. On November 17, 2014, the Superior Court granted Respondents' Petition to Compel Arbitration.

34. Claimants have unequivocally shown by their filing of the Superior Court Action that they breached the terms of Section 14.10 of the Operating Agreement.

35. Section 14.10 requires that each of the Claimants be assessed $50,000.00 in liquidated damages for wrongly filing their Superior Court Action totaling $250,000.00.

FOURTH COUNTERCLAIM FOR RELIEF
(Breach of Contract - Unauthorized Disclosure of Confidential Information)

36. Respondents incorporate herein by reference, the allegations of their Counterclaims contained in Paragraphs 1 through 35, inclusive.

37. Contrary to the express terms of Section 14.26 of the Operating Agreement, on information and belief Claimants have disclosed Proprietary and Confidential Information to third parties in violation of Section 14.26 of the Operating Agreement to Ron Packard, David Casas, Jean Mordo, and others.

38. As a result of Claimants' wrongful conduct and breach, approval of Respondents' plan for development of the Property has been hindered resulting in delay of the approval, and Respondents and the other Members have suffered damages to be proven at the time of hearing.

39. Respondents are entitled to their attorneys' fees and costs under Section 14.20 of the Operating Agreement.

FIFTH COUNTERCLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Claimants)

40. Respondents incorporate every preceding paragraph as though fully set forth herein.

41. The covenant of good faith and fair dealing is implied in the Operating Agreement, and the covenant obligated the Claimants to act in accordance with the express terms of the Operating Agreement.

42. Claimants have unequivocally shown by their filing of the Superior Court Action and by their acts of interference to disrupt the business of the Company that they failed to perform under their obligations of the Operating Agreement.

43. Such failure constitutes a breach of the Operating Agreement, including the implied covenant of good faith and fair dealing.

44. As a result of Claimants' wrongful conduct, Respondents had to obtain the services of an attorney to respond to the Superior Court Action and have suffered damages in an amount to be proven at the time of hearing.

45. It has been necessary for Respondents to obtain the services of an attorney to pursue this claim and they are entitled to recover their reasonable attorneys' fees and costs under Section 14.20 of the Operating Agreement.

WHEREFORE, Respondents-Counterclaimants pray for relief as follows:

1. For judgment in their favor as to all of Claimants' claims;

2. For liquidated damages in the amount of in excess of $550,000.00 pursuant to Section 14.10 of the Operating Agreement;

3. For exemplary damages to be determined by the arbitrator;

4. For costs incurred in this action under Section 14.20 of the Operating Agreement;

5. For attorneys' fees incurred in this action under Section 14.20 of the Operating Agreement; and

6. For such other and further relief as the Arbitrator deems proper.

DATED this 10th day of July, 2016.

LAW OFFICES OF WILLIAM C. MILKS, III

William C. Milks, III

William C. Milks, III
State Bar No. 114083
960 San Antonio Road Suite 200A
Palo Alto, California 94303

Attorneys for Respondents-Counterclaimants
Theodore G. Sorensen, Gerald J. Sorensen, Gunn Management Group, Inc., and 40 Main Street Offices, LLC

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 10th day of July, 2016, I caused service of the foregoing **ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS** to be made by depositing a true and correct copy of same in the United States Mail, postage fully prepaid, addressed to the following and/or via electronic mail to the following at the e-mail addresses listed below:

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San Jose, CA 95113
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Attorneys for Claimants-Counterrespondents

William C. Milks, III

Exhibit 17

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THEODORE G. SORENSEN, and
GERALD J. SORENSEN

ARBITRATION

JAMS SILICON VALLEY

OLD TRACE PARTNERS, L.P., a California limited partnership; DANIEL T. NERO; KIMBERLY NERO; PAUL L. KLEIN, JR.; MARY ELLEN KLEIN; ALAN E. TRUSCOTT; and FICK INVESTMENT GROUP, a California general partnership,

Claimants and Counterrespondents,

v.

THEODORE G. SORENSEN, individually and dba GUNN MANAGEMENT GROUP, INC.; GERALD J. SORENSEN, individually and dba GUNN MANAGEMENT GROUP, INC.; GUNN MANAGEMENT GROUP, INC., a California corporation; 40 MAIN STREET OFFICES, LLC, a California limited liability company, and DOES 1-20, inclusive,

Respondents and Counterclaimants.

JAMS Reference No. 1110017521

Santa Clara County Case No. 114CV266849

RESPONDENTS'-COUNTERCLAIMANTS' RENEWED MOTION TO DISQUALIFY CLAIMANTS'-COUNTERRESPONDENTS' COUNSEL RONALD D. PACKARD

Date: October 31, 2016
Time: 9:00 AM
Location: JAMS – Silicon Valley
160 W. Santa Clara St., Ste. 1600
San Jose, CA 95113

Arbitrator: Honorable Jack Komar

I. INTRODUCTION

At the pre-arbitration hearing on October 21, 2016 the Arbitrator granted leave for Theodore G. Sorensen ("Ted Sorensen"), Gerald J. Sorensen ("Jerry Sorensen"), Gunn Management Group, Inc. ("Gunn"), and 40 Main Street Offices, LLC (the "Company") (collectively referred to hereafter as "Respondents") to renew their motion to disqualify Ronald D. Packard and his firm Packard, Packard & Johnson. That very day, Mr. Packard substituted in as counsel of record for one of the Claimants, Old Trace Partners, L.P.

Another Claimant, Alan Truscott revealed at his deposition on August 12, 2016 that Mr. Packard had secretly been participating as "co-counsel" for Claimants. At that deposition Julienne Nucum represented that Mr. Packard was "of counsel" to her firm Miranda & Nucum. Mr. Packard then submitted a declaration disavowing that he was "of counsel" or co-council, but was instead a non-testifying expert and counsel for each of the Claimants. In an about face, Mr. Packard then proffered a declaration stating that he was co-counsel after all, but not counsel of record. Mr. Packard has now substituted in as counsel of record.

However, before he substituted in as counsel of record, Mr. Packard attended depositions as an "observer." That role changed when Mr. Packard passed a note to Ms. Nucum with instructions to pass to the deponent, Sean Corrigan of Old trace Partners, to admonish him about testifying further as to a slanderous statement that he made about Respondents to a Los Altos City official, Jon Biggs and others. See attached **Exhibit 1**. That conduct alone serves as a ground to disqualify Mr. Packard.

Also troublesome is that Mr. Packard contacted subpoenaed third parties, David Casas and Jon Baer, regarding subpoenas served to them. However, in producing documents himself, Mr. Packard did not produce the emails to Messrs. Casas and Baer. Respondents learned of those emails based on documents produced by Messrs. Casas and Baer.

Because of the apparent disobedience to the subpoena to Mr. Packard, the Arbitrator authorized the deposition of Mr. Packard. Mr. Packard's testimony at his deposition on October 24, 2016 divulged that while he was a City of Los Altos councilmember, he in fact participated in submissions to the City on behalf of the company in which he has an economic interest and

which he manages opposing Respondents' development project for the adjoining property. He was involved in opposing Respondents' development project even though he had supposedly recused himself from City Council matters relating to the project. However, his supposed recusal was a sham based on his involvement in City committees and discussions at City Council meetings that affected the entitlements process for Respondents' development project, such as zoning law changes related to building height.

Furthermore, it is now clear that Mr. Packard has been acting in concert with Claimants since at least October 30, 2012, although he concealed that fact until he produced a privilege log. However, while representing Claimants, he directly contacted Respondents who were represented at the time by Mr. Milks, and in fact had a meeting with Messrs. Ted and Jerry Sorensen on September 3, 2013 in clear violation of Rules Prof. Conduct Rule 2-100. Mr. Packard also copied Messrs. Sorensen on an August 12, 2014 email in which Mr. Packard states: "As you probably know based on recent newspapers articles, one of your fellow investors has filed a lawsuit against the Sorensens regarding the 40 Main Street investment. ***I have received a copy of that lawsuit.…***" (Emphasis added.) Notably, a copy of a November 1, 2012 letter from another attorney representing some of the Claimants to Milks as the attorney for Respondents was attached to Claimants' lawsuit filed on June 19, 2014 two months before Packard contacted the Sorensens. Consequently, Packard knew Respondents were represented by Milks dating back to at least November 1, 2012. Hence, his September 3, 2013 meeting with Messrs. Sorensen and his unsolicited email copied to the Sorensens on August 12, 2014 violated Rules Prof. Conduct Rule 2-100 and is yet another reason to disqualify Packard and his firm.

For all of the reasons cited above in addition to those memorialized below, Respondents have now filed an action against Mr. Packard. See attached **Exhibit 2**. Respondents request that the Arbitrator grant leave for respondents to amend the complaint based on facts learned in connection with discovery in this arbitration. Clearly, Mr. Packard will be a key witness at the arbitration hearing regarding Respondents' counterclaims for breach of the covenant of good faith and fair dealing and interference. Mr. Packard should be disqualified from serving as

counsel of record and participation in the arbitration hearing because he should not be allowed to advance his own agenda in view of his actual conflict of interest in the matter.

For at least the foregoing reasons and those discussed in more detail below, Nucum and Packard indisputably 1) suppressed evidence twice, 2) breached an express agreement restricting Packard from having access to Respondents' discovery materials, 3) passed a note during a deposition to Nucum with instructions to pass to the deponent admonishing him about testifying further as to a slanderous statement, and 4) while concealing his involvement as an attorney for Claimants, Packard contacted Respondents in violation of Rules Prof. Conduct Rule 2-100. "The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process. [Citations.]" *People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal. 4th 1135, 1145-1146; see also *M'Guinness v. Johnson* (2015) 243 Cal. App. 4th 602, 613 (Cal. App. 6th Dist.). Therefore, Nucum and Packard and their firms should be disqualified.

III. ARGUMENT

A. Nucum and Packard and Their Firms Must Be Disqualified for Suppressing Evidence.

Not only have Nucum and Packard deceived Respondents by hiding Packard's involvement, they have schemed with Claimants to withhold evidence and suppressed evidence in proceedings before the Superior Court and the Arbitrator.

Claimants' withholding of documents concerning their fraud-related claims has now been discovered to be an orchestrated, calculated scheme by Claimants and their counsel, Packard and Nucum, to sequester documents, which are fatal to their claims. More troubling, certain documents previously redacted by Claimants, and others that Respondents have obtained by subpoena, show that Claimants have suppressed evidence that their fraud-related claims, as well as other claims, are time-barred because Claimants held off pursuing those claims for more than the period of limitations before they filed their initial complaint on June 19, 2014. In fact, Claimants and their counsel, Nucum and Packard, suppressed evidence demonstrating Claimants' claims for fraud and misrepresentation are time-barred and their opposition to

Respondents' SOL Motion was in bad faith.

The unredacted portion of one of the exhibits attached to Claimant Nero's September 17, 2014 declaration and other documents show that Claimants considered bringing their lawsuit as early as January 11, 2011 and that their claims were time-barred when they finally filed their lawsuit more than three years later on June 19, 2014. Yet, they covered up those facts, and filed their lawsuit and also opposed Respondents' SOL Motion in bad faith.

A trial court is empowered to disqualify counsel through its inherent power "[t]o control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." Code Civ. Proc., § 128, subd. (a)(5); see *In re Complex Asbestos Litigation* (1991) 232 Cal. App. 3d 572, 586. At its core, a motion to disqualify "involve[s] a conflict between the clients' right to counsel of their choice and the need to maintain ethical standards of professional responsibility. [Citation.] ***The paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar. The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process.*** [Citations.]" *People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal. 4th 1135, 1145-1146 (emphasis added); see also *Comden v. Superior Court* (1978) 20 Cal. 3d 906, 915 (*Comden*); *M'Guinness v. Johnson* (2015) 243 Cal. App. 4th 602, 613 (Cal. App. 6th Dist.).

"Code of Civil Procedure section 128, subdivision (a)(5) gives courts the power to order a lawyer's disqualification." *DCH Health Services Corp. v. Waite* (2002) 95 Cal. App. 4th 829, 831 (*DCH Health*); *Responsible Citizens v. Superior Court* (1993) 16 Cal. App. 4th 1717, 1723. "A trial court has the authority to disqualify attorneys who violate professional ethical rules because every court has the power to control, 'in furtherance of justice,''the conduct of persons connected with its proceedings. [Citations.]" *Jackson v. Ingersoll-Rand Co.* (1996) 42 Cal. App. 4th 1163, 1166 (*Jackson*). Disqualification is proper to assure fairness in judicial proceedings--its point is not to punish ethical transgressions, but to prevent continuing, detrimental effects

upon the proceedings. *Chronometrics, Inc. v. Sysgen, Inc*. (1980) 110 Cal. App. 3d 597, 607; accord, *Jackson*, *supra*, at 42 Cal. App. 4th 1166.

While concealing Packard's involvement in this arbitration, Nucum and Packard have intentionally secreted documents. They schemed to surreptitiously pass confidential and proprietary information to Packard in violation of the operating agreement. These acts were and continue to be motivated by Packard's business interests, intentionally concealing his involvement in the proceedings first before the Superior Court and now during these arbitration proceedings. Packard and Nucum and their firms should be disqualified.

There are also other compelling reasons for disqualification. Bus. & Prof. Code, § 6128, subdivision (a) provides an attorney is guilty of a crime if the attorney "[is] guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or **any** party." (Emphasis added) As a natural corollary Bus. & Prof. Code, § 6068 provides, in pertinent part, "[it] is the duty of an attorney to . . . employ, for the purpose of maintaining the causes confided to him or her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

"The attorney must also refrain from any act or representation that misleads the court. Bus. & Prof. Code, § 6068, subd. (d); Rules Prof. Conduct Rule 5-200(B) ['Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law.']." *Conservatorship of John L.* (2010) 48 Cal. 4th 131, 151-152. "Subdivision (d) of section 6068 obligates an attorney to 'employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth.' The statute requires an attorney to refrain from misleading and deceptive acts without qualification. (*Di Sabatino* v. *State Bar* (1980) 27 Cal. 3d 159, 162 [162 Cal. Rptr. 458, 606 P.2d 765]). It does not admit of any exceptions." *Rodgers v. State Bar* (1989) 48 Cal. 3d 300, 315.

Furthermore, Rules Prof. Conduct Rule 5-220 provides "A member shall not suppress any evidence that the member or the member's client has a legal obligation to reveal or to produce." *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal. 4th 1, 13.

Particularly egregious is Nucum's and Packard's suppression (by redaction) of information submitted to the Arbitrator in opposition to Respondents' SOL Motion. On February 29, 2016, Claimant Nero submitted a declaration in opposition to Respondents' SOL Motion. At paragraph 2 of his declaration, Nero testified:

> I reaffirm the statements I made in my prior declaration dated September 17, 2014, a copy of which is attached hereto.

Exhibit A to Nero's September 17, 2014 declaration was his redacted email, dated January 28, 2011, entitled "Investors Report". See Ex. 11 Barrett Decl. [Nero Declaration, Exhibit A]. Nero never produced the January 28, 2011 email, redacted or otherwise, to Respondents until August 19, 2016. The unredacted email discloses that Claimants concealed from Respondents and the Arbitrator the portion of the email that exposes Nero's firmly held conviction, in January of 2011, that he had been defrauded. The redacted portion of Nero's email states, in part:

> …I assume others, coupled with numerous misrepresentations and outright lies, leads me to believe that we will need to continue to police their actions until this property is sold….I am really concerned that they have and would in the future use **deception/fraud** to forge ahead….

In the same 2011 email chain, also suppressed (by redaction) from the Arbitrator and Respondents, Nero clearly proposes legal action on the very same claims alleged in Claimants June 19, 2014 complaint:

> To force them to sell the building…or take **legal action whereby we sue them for violating the agreement—undertaking prohibited transactions and violating reporting requirements/ misappropriating funds—i.e. overpayment of management fees/misrepresenting and providing fraudulent financial information** and lastly entering in transaction with the Manager that are and were not done at fair market value, specifically rental payments due to 40 Main from Gunn Mgt and Ted for their use of space at 40 Main.
> Thoughts?

Ex. 12 Barrett Decl. [*Unredacted* version of Nero 1/27/11 email chain]. The unredacted portion of the email clearly demonstrates Claimants' asserted knowledge of their claims in

January of 2011, more than three years before filing their June 19, 2014 Superior Court action. Their concealment of those portions of the Nero email, submitted in opposition to Respondents' SOL Motion, is emblematic of the Claimants' suppressing evidence.

Although Claimants finally produced the unredacted version of the January 28, 2011 email disclosing their failure to file within the statute of limitations period, they have continued to withhold emails exchanged in May of 2011 wherein Nero discusses the fact that he has consulted five (5) attorneys concerning their asserted fraud claims:

> Spoke with a 5th attorney – Mark Boenninghausen .....we got them dead to the wall...
> I do intend to inform them of my engagement of an attorney to sue them for fraud....

Exs. 8 and 9 Barrett Decl. [Nero May 18, 2011 and May 19, 2011 emails]. These key emails were obtained by subpoena from a third party. They were withheld by Claimants. Claimants' redaction and suppression of those portions of the Nero email submitted in connection with their opposition to Respondents' SOL Motion shows not only the lack of merit to their claims but also Claimants' bad faith as litigants, all with the knowledge of their counsel, Packard and Nucum. Nucum and Packard and their firms should be disqualified.

B. Packard's Receipt of Confidential Information Compels His and Nucum's and Their Firms' Disqualification.

Claimants and Nucum have concealed that Packard and his firm have been involved as counsel for more than two years. During that time confidential information has been provided through discovery by Respondents and accessed by Packard, in spite of the fact that the confidential information produced through discovery was "to be deemed confidential and to be available for review only by the named parties and *their counsel of record*." Nucum and Packard have concealed Packard's involvement to further Packard's conflicting business interests and his collusion with Claimants to sabotage the development proposed by Respondents. Disqualification is mandated here, because of Claimants' counsels' breach of the agreement that Respondents confidential information was "to be deemed confidential and to be available for review only by the named parties and their counsel of record." ¶¶ 4-6, Exs. 3, 4, and 5 Milks Decl.

Professional responsibilities do not turn on whether a member of the State Bar acts as a lawyer. "One who is licensed to practice as an attorney in this state must conform to the professional standards in whatever capacity he may be acting in a particular matter. [Citation.]" *Libarian v. State Bar* (1943) 21 Cal. 2d 862, 865; accord, *Baron v. City of Los Angeles* (1970) 2 Cal. 3d 535, 542. "'[A] conflict of interest [under rule 5-102(B)] may arise from an attorney's relationship with a nonclient. Such a conflict of interest may arise [1] where an attorney's relationship with a person or entity creates an expectation that the attorney owes a duty of fidelity. It may also arise [2] where the attorney has acquired confidential information in the course of such a relationship which will be, or may appear to the person or entity to be, useful in the attorney's representation in an action on behalf of a client.' Cal. Compendium on Professional Responsibility, State Bar Formal Opinion No. 1981-63, p. 3." *William H. Raley Co. v. Superior Court* (1983) 149 Cal. App. 3d 1042, 1047.

In this case, on January 6, 2016, Milks wrote a meet-and-confer letter to Nucum regarding the production of discovery materials by Respondents. ¶ 4, Ex. 3 Milks Decl. That letter concluded : "…Respondents request that any discovery materials that are produced that are not otherwise publicly available are to be deemed confidential and to be available for review only by the named parties and their counsel of record." ¶ 4, Ex. 3, p. 2, Milks Decl. Claimant Fick's email attests to the fact that Respondents' materials are considered by Claimants to be confidential. ¶ 2, Ex. 1 Milks Decl.

On January 15, 2016, Milks sent an email to Nucum stating: "I noted that your letter did not comment about the request that the parties agree that the documents to be exchanged that are not already available to the public be maintained confidential and shared only among the parties and their counsel of record. Is that acceptable to your clients?" ¶ 5, Ex. 4 Milks Decl. [1/15/2016 email in email string (second email, from Milks to Nucum]. Nucum responded in her email on the same date: "***As to keeping the materials confidential, my clients and I have no problem.***" ¶ 5, Ex. 4 Milks Decl. [1/15/2016 email in email string (first email, from Nucum to Milks] (emphasis added). Milks confirmed this agreement in his February 3, 2016 letter to Nucum: "As agreed in your January 15, 2016 email, any discovery materials that are produced

that are not otherwise publicly available are to be deemed confidential and to be available for review only by the named parties and their counsel of record." ¶ 6, Ex. 5, p. 2, Milks Decl. However, Nucum breached that agreement by disclosing Respondents' discovery materials to Packard, who is not a party or counsel of record, and such disclosure is in violation of the operating agreement.

To warrant disqualification in the absence of an attorney-client relationship, there must be some sort of fiduciary or confidential association involving the attorney on the one hand and the opposing party or the source of the confidential information on the other hand. See Vapnek, *et al.*, Cal. Practice Guide: Professional Responsibility, p. 4:239.1, p. 4-75.

Respondents disclosed confidential information to Nucum and her firm with the expectation that it would be maintained in confidence. ¶¶ 4-6, Exs. 3, 4, and 5 Milks Decl. Cf., *Morrison Knudsen Corp. v. Hancock, Rothert & Bunshoft* (1999) 69 Cal. App. 4th 223, 233 (parent company understood that its communications with its underwriters' attorney would be kept confidential).

Respondents' confidential information has been disclosed by Nucum to Packard and is at continued risk of disclosure to Packard; second, the receipt of this information by Nucum and Packard puts their firms in an irremediable conflict situation, given Packard's business interests in this matter; third, by wrongfully obtaining the information, Packard has gained an unfair business advantage.

This case unquestionably implicates the integrity of the judicial system. See *Allen v. Academic Games Leagues of Am.*, 831 F. Supp. 785, 789 (C.D. Cal. 1993) (attorney's "actions would undermine the integrity of the legal profession …."). "[O]nly conduct that *will* have a continuing effect, not *might* have a continuing effect, justifies disqualification. (See *Chronometrics, Inc.* v. *Sysgen, Inc., supra*, 110 Cal. App. 3d 597, 607.) Disqualification must be *necessary*. (See *id.*, at p. 605.)" *Mills Land & Water Co. v. Golden W. Ref. Co.* (1986) 186 Cal. App. 3d 116, 134 [230 Cal. Rptr. 461] (emphasis in original). There is a necessity here. There is legitimate concern regarding Packard's use of Respondents' confidential information to further his business interests in opposing Respondents' proposed development and exploiting what he

becomes privy to in this litigation to fuel his opposition to development of the Company's property.

Discovery produced by Respondents in this case involves reports to investors and discussion of strategies to obtain entitlement for the project. Claimant Truscott testified at his deposition on August 12, 2016 that he and the other Claimants secretly enlisted with Packard as their attorney in this arbitration to counsel them to achieve Claimants' objectives to sabotage Respondents' proposed development and to divest or devalue other members' interests in the Company. Packard should be disqualified so that he will not be able to use such information to continue to oppose and impede Respondents' proposed development, to the detriment of all of the investors, including Claimants who have joined forces with him to stop the proposed development from advancing in derogation of the interests of the majority of members who continue to want to proceed with the proposed development. In fact, in Respondents' moving papers, they disclosed that the Sorensens were in communication with Los Altos Community Development Director, John Biggs, regarding the Respondents' proposed development. ¶ 10 J. Sorensen Decl. Packard now admits in his declaration that he has contacted Mr. Biggs and had a "discussion with Mr. Biggs" about the Company's project. ¶ 8 Packard Decl.

Therefore, Packard and his firm, which received and would continue to receive Respondents' confidential information, as well as Nucum and her firm, which have improperly been the conduit of that confidential information to Packard, must be disqualified.

C. Packard Violated the Prohibition Against Contacting a Represented Party Thereby Mandating Disqualification.

Violation of Rules Prof. Conduct Rule 2-100 is also grounds for disqualification. "Rule 2-100 provides, in relevant part: 'While representing a client, a member [of the California State Bar] shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.' Contact with represented parties is proscribed to preserve the attorney-client relationship from an opposing attorney's intrusion and interference. (*Abeles v. State Bar* (1973) 9 Cal. 3d 603, 609 [108 Cal. Rptr. 359, 510 P.2d 719] [discussing precursor

to Rule 2-100].)" *Jackson*, *supra*, at 42 Cal. App. 4th 1167 ("Here, the court disqualified Attorney Pandell under Rule 2-100"); accord, *Mills Land & Water Co. v. Golden West Refining Co.* (1986) 186 Cal. App. 3d 116, 127 (under rule prohibiting contact with represented party, attorney for defendant was disqualified, where he had direct contact with plaintiff corporation's ousted president, who was still a director).

Packard has sent emails to the Sorensens regarding Respondents' proposed development in spite of his knowledge that Respondents were represented by Milks. Packard was aware that Milks had represented Respondents at least as early as November 1, 2012. ¶ 7, Ex. 6 Milks Decl. [Exhibit B to Claimants' June 19, 2014 complaint, letter from Boennighausen to Milks]. Nevertheless, Packard emailed Ted and Jerry Sorensen on April 28, 2014 regarding Respondents' development of the property adjoining Packard's property. ¶ 4, Ex. 1 T. Sorensen Decl. After Claimants' filed their lawsuit, Packard again emailed the Sorensens. ¶ 5, Ex. 2 T. Sorensen Decl. All of these emails were unsolicited. Notably, Packard's August 12, 2014 email states:

> As you probably know based on recent newspapers articles, one of your fellow investors has filed a lawsuit against the Sorensens regarding the 40 Main Street investment. I have received a copy of that lawsuit, which includes your email addresses in an attachment.

Packard's August 12, 2014 email suggests that he received a copy of the lawsuit after learning about it in the newspapers as a deception to conceal his participation in filing the lawsuit. However, based on Claimant Truscott's deposition testimony, Packard was involved in filing the lawsuit. Packard's unsolicited communications with Ted and Jerry Sorensen, particularly after Claimants filed their lawsuit mandate his and his firm's disqualification.

Lacking any relevant defense to the violation of Rules Prof. Conduct Rule 2-100, Claimants' opposition instead chooses to cast aspersions on Milks by accusing him of drafting an illegal provision in the Operating Agreement. Not only is that argument a "red herring," but it ignores the terms of the current Operating Agreement and is mooted by the facts.

The original operating agreement for the Company was entered into by the parties to this arbitration in 2007 and remained in effect until the Fall of 2012. ¶ 4 Reply Declaration of William C. Milks, III ("Milks Reply Decl."). In the Fall of 2012, Milks was requested by Gunn

to draft an amended operating agreement, which became the 40 MAIN STREET OFFICES, LLC LIMITED LIABILITY COMPANY AMENDED AND RESTATED OPERATING AGREEMENT ("current Operating Agreement") following execution by a Super-Majority of the members of the Company. ¶ 5 Milks Reply Decl.

At the time the current Operating Agreement was drafted, amendments to the Cal. Corp. Code had been enacted, effective January 1, 2013. In view of the uncertainty as to the retroactive application of the amendments to the 2007 operating agreement affecting the inspection rights of the members, Milks included a safe harbor provision in the current Operating Agreement. That safe harbor provision appears as Section 10.9 on page 41 of the current Operating Agreement. ¶ 6 Milks Reply Decl. Section 10.9 reads: "Statutory Inspection Rights. Notwithstanding anything in this Agreement to the contrary, the Managers shall provide such information to the Members as the California Corporations Code shall require." *Id*. at Ex. 1, p. 41.

In any event, Claimants have never been denied their full individual inspection rights under former Cal. Corp. Code § 17106(b) or current § 17704.10. In fact, at the request of Claimants, Respondents made all records required by Cal. Corp. Code § 17704.10 available at Milks' office on March 27, 2015 and were inspected by Messrs. Sean Corrigan and Truscott on that date. No other such inspections have been requested by Claimants since that time. Claimants have instead sought copies of records of the Company through discovery in this arbitration. ¶ 7 Milks Reply Decl. Therefore, Claimants' attempt to disparage Milks is without merit.

D. Packard Must Be Disqualified Because Respondents Will Call Him As a Percipient Witness Against Claimants.

Also, Packard will be called as a witness to testify adversely to Claimants as to Respondents' counterclaims, requiring Packard's withdrawal under Rules Prof. Conduct Rule 3-310. Unbeknownst to Respondents, Claimants secretly enlisted Packard as their counsel years ago and have concealed Packard's direct involvement, both in the concerted opposition to thwart the entitlement process pursued by the Company and, even more egregiously, as counsel for

Claimants enabling Packard to receive confidential information through discovery and the arbitration proceedings to use in opposing Respondents' efforts to proceed with their proposed development. This was disclosed at Claimant Truscott's deposition on August 12, 2016. Ex. 4 Barrett Decl. [Truscott deposition excerpt]. Also, Nucum, who has been acting as counsel of record for the Claimants, confirmed Packard's status as "of counsel" and, in fact, asserted the attorney-client privilege as to questions concerning Truscott's communications with Packard. See Reply Declarations of Ted Sorensen and Kathryn Barrett and ¶ 2 Milks Reply Decl.

It has now surfaced that Claimants not only secretly joined ranks with Packard to block development of the Property, but have concealed that they have been working with Packard as counsel for several years to sabotage the Company. In the present case, Respondents will call Packard as a percipient witness. Respondents will elicit his testimony regarding his opposition to Respondents' proposed development and his interactions with Claimants. Respondents will also elicit Packard's testimony regarding his secret collusion with Claimants in pursuing legal action in breach of their common law and California Corporation Code Section 17704.09(d) obligation of good faith and fair dealing to the Company and its members and interference with the Company's business, as well as Respondents' affirmative defense of unclean hands based, at least in part, on the acts of Packard himself detailed above. Because Packard will be called as a witness to testify adversely to Claimants as to Respondents' counterclaims, requiring Packard's withdrawal under Rules Prof. Conduct Rule 3-310 due to an actual conflict with his clients' interests, he should be disqualified.

E. Both Nucum and Packard and Their Firms Must Be Disqualified.

When a conflict of interest requires an attorney's disqualification from a matter, the disqualification normally extends vicariously to the attorney's entire law firm. See *Flatt v. Superior Court* (1994) 9 Cal. 4th 275, 283. According to this principle, both Nucum and her firm must be disqualified.

Furthermore, "Notwithstanding the variations to be expected across the nation on any point of law, the prevailing view is that for purposes of disqualification, the of counsel attorney is considered to be affiliated with a firm so that the disqualification of one from representation

must be imputed to the other. (See ABA, Lawyers Manual on Professional Conduct (Bur. Nat. Affairs 1990) pp. 91:501, 91:506.)" *SpeeDee Oil*, *supra*, at 20 Cal. 4th 1155. Therefore, both Packard and his firm should also be disqualified.

Disqualification of both Nucum and Packard and their respective firms is mandated by the facts and circumstances of the present case. Moreover, Respondents' motion for disqualification is timely, because they just learned at Claimant Truscott's deposition on August 12, 2016 of Packard's secret involvement as counsel in this case. *Id*. at 20 Cal. 4th 1145, fn. 2. ("Moreover, Mobil objected immediately on learning of the Shapiro firm's involvement in the case.")

IV. CONCLUSION

An order is required disqualifying Nucum and Packard and their firms for suppressing evidence first before the Superior Court and now during these arbitration proceedings in opposing Respondents' SOL Motion, hiding Packard's involvement in this arbitration while surreptitiously gaining access to Respondents' confidential information through discovery in breach in the parties' agreement that their discovery materials were to be deemed confidential and to be shared only among the named parties and counsel of record, and illicitly using the information to further Packard's business interests. Packard also contacted Respondents in violation of Rules Prof. Conduct Rule 2-100. Packard improperly passed a note to co-counsel during a deposition with instructions to pass to the deponent. Packard will be called as a witness to testify adversely to Claimants as to Respondents' affirmative defenses and counterclaims, requiring Packard's withdrawal under Rules Prof. Conduct Rule 3-310. Therefore, Nucum and Packard and their respective firms must be disqualified.

Respondents also request leave to refile their dispositive motion as to Claimants' fraud-related and other claims in view of the contents of the newly discovered documents heretofore concealed by Nucum and Packard in concert with Claimants and their prior bad faith opposition to Respondents' SOL Motion.

Dated: October 26, 2016

LAW OFFICES OF WILLIAM C. MILKS, III

By: */s/ William C. Milks, III*
William C. Milks, III

Attorneys for Respondents
40 MAIN STREET OFFICES, LLC,
GUNN MANAGEMENT GROUP, INC.,
THEODORE G. SORENSEN, and
GERALD J. SORENSEN

Exhibit 1

The stenographic notes taken in this proceeding are being translated instantaneously into their English equivalent through a process known in the industry as realtime translation. Prior to being edited and transcribed by the court reporter, these notes are commonly referred to as "raw" or "rough."

You may receive an uncertified ASCII disk at the conclusion of the proceedings. There will be discrepancies between the uncertified disk and final transcript, because the instant uncertified disk has not been edited, proofread, finalized, indexed or certified. There may be misspelled words, untranslated stenographic symbols, an occasional reporter's note and/or nonsensical word combinations. All such entries will be corrected on the final certified transcript, which will be delivered in accordance with our standard delivery terms, unless an expedited transcript is requested.

A. I probably did, yes.

Q. And you told Mr. Mordo again in the second meeting, I'm looking at the last sentence, that the Sorensens were dishonest. You told him that again?

A. Yes. Everything that's transpired has led me to the conclusion that they are totally dishonest.

MS. BARRETT: Read back my question, please.

(Whereupon, the record was read by the court reporter as follows:

"And you told Mr. Mordo again in the second meeting, I'm looking at the last sentence, that the Sorensens were dishonest. You told him that again?")

THE WITNESS: Yes.

Q. BY MS. BARRETT: Was Mr. Mordo on the city council at the time you told him that?

A. I believe so.

Q. Okay. Have you said these same sentiments to other people besides Mr. Mordo? And I'm not referring to your lawyers or the other claimants. Other people.

A. .

MS. NUCUM: What same sentiments? I'm sorry.

Q. BY MS. BARRETT: That the Sorensens are dishonest and that they stole money. How about that, let's start there?

A. Yes, I told you.

Q. Okay. And who else?

MS. BARRETT: Don't pass a note to him. Put that away. That is so improper and you know it. Would you kindly answer the question. Who else.

A. I don't recall who else I said that to.

Q. Okay. But you've said it to other people beside claimants and your lawyers and me?

A. Yeah, I might have.

Q. Okay.

MS. BARRETT: I'm going to call the judge if you pass notes to the witness while we're talking. That is way out of line, and you know it.

MS. NUCUM: I'm going to state it on the record it's a note on an administrative matter. That's it.

MS. BARRETT: Let me see it.

MS. NUCUM: (Hands note to Ms. Barrett.)

MS. BARRETT: That's not an administrative. That's a cheat sheet.

MS. NUCUM: That is not a cheat sheet.

MS. BARRETT: I'm sorry.

MS. NUCUM: You can read it on the record.

MS. BARRETT: Put this in the record. I want to admit this as Exhibit 178.

MS. NUCUM: I could read it on the record.

MS. BARRETT: No. I'm going to have it

admitted as an exhibit.

MS. NUCUM: And I can read it on the record.

MS. BARRETT: It says, "Liable," exclamation mark, exclamation mark, "pass word on to Sean." And it's been described by his Counsel -- I believe it was written by Mr. Packard, and it's described by his Counsel as an administrative matter.

MS. NUCUM: It is an administrative matter, which we don't have to explain --

MS. BARRETT: Exhibit Number --

MS. NUCUM: -- as to what it's an administrative matter for, but it is.

MS. BARRETT: -- 178.

MS. NUCUM: It's an administrative matter, because it's something that our representation covers. It's an administrative matter.

MS. BARRETT: Exhibit 178, please. It is improper.

MS. NUCUM: And that's your opinion. I know what the rules are. It's an administrative matter for us because we are his legal representatives. It's an administrative matter for us. Our representation covers that note. It's entered on the record. It's entered as an exhibit. That's fine with me --

MS. BARRETT: It is.

MS. NUCUM: --because it's an administrative matter.

(Whereupon, Exhibit 178 was marked for identification.)

MS. BARRETT: All right. For the record, Exhibit 178 is a sticky that was passed to the witness during examination with the word, "Liable," exclamation, exclamation, "Pass word on to Sean."

MS. NUCUM: And again, for the record, that note was passed as an administrative matter from the witness' legal representatives regarding a matter that is covered by that legal representation.

Q. BY MS. BARRETT: Okay. Looking at Exhibit 79, please. I'm showing the witness Exhibit 79, which is a e-mail from Dan Nero to Sean Corrigan and Erik Corrigan, Friday, June 10, 2011. Mr. Corrigan, do you recognize this document?

A. (Witness reviews document.) Yes.

Q. Okay. Looking at the fifth paragraph down, and it says, "I will have a better understanding of their actions once I get through the review of bank statements and checkbook. If my suspicions are confirmed, I plan to engage Counsel and sue the manager and Ted and Jerry in order to get back my entire investment." Did you discuss his review of the bank statements and checkbook

Libel!!

Pass word on to Sean.

Exhibit 2

Jon Maginot

From: Ron Packard
Sent: Monday, April 08, 2019 1:34 PM
To: City Council; Chris Jordan; Jon Maginot; christopher.diaz@bbklaw.com; Jon Biggs
Subject: RE: 40 Main Street Appeal
Attachments: 2017-09-18 Packard Decl. in support of anti-SLAPP (pp. 301-400).pdf

Email #6, with Packard Decl. (part 4)

From: Ron Packard
Sent: April 8, 2019 1:11 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal (Email #2, with Final Award)

Email #2, with Final Award

From: Ron Packard
Sent: April 8, 2019 1:08 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal

Dear Council members and staff,

Enclosed please find my letter and various backup information for the hearing tomorrow night. I respectfully request that the letter and the attachments be included in the administrative record for the hearing. Two of the attachments will be send in batches due to their size.

Thanks, Ron Packard

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Attorneys for Plaintiff
40 MAIN STREET OFFICES, LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFONIA

COUNTY OF SANTA CLARA

40 Main Street Offices, LLC, a California limited liability company, Plaintiff, v. Ronald D. Packard, individually; Von G. Packard, individually; FOUR MAIN STREET ASSOCIATES, L.P., a California limited partnership; and DOES 1-200, inclusive, Defendants.	**Case No.** 16CV301483 **COMPLAINT** DEMAND FOR JURY TRIAL Unlimited Civil Case

Plaintiff 40 MAIN STREET OFFICES, LLC, a California limited liability company, alleges as follows:

PARTIES

1. 40 Main Street Offices, LLC (hereinafter "Plaintiff") is, and at all times herein mentioned was, a California limited liability company organized under the laws of the State of California with its principal place of business in Santa Clara County, California.

2. Plaintiff is informed and believes, and thereupon alleges, that Defendant Ronald D. Packard (hereinafter "Ronald Packard"), is an individual who resides in Santa Clara County, California.

3. Plaintiff is informed and believes, and thereupon alleges, that Defendant Von G. Packard (hereinafter "Von Packard"), is an individual who resides in Santa Clara County, California.

4. Plaintiff is informed and believes, and thereupon alleges, that Defendant Four Main Street Associates, L.P. (hereinafter "Four Main Associates"), is a California limited partnership organized under the laws of the State of California with its principal place of business in Santa Clara County, California.

5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 200, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff prays leave to amend this Complaint to allege their true names and capacities when the same have been ascertained.

6. Plaintiff is informed and believes, and thereupon alleges that each of the Defendants sued herein is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages were proximately caused by such Defendants.

7. Plaintiff is informed and believes, and thereupon alleges that at all times herein mentioned each of the Defendants, was and were, at all times, acting within the purpose and scope of such agency and employment.

JURISDICTION

8. This Court has jurisdiction over this Complaint pursuant to California Code of Civil Procedure Section 395(a) as the transactions, occurrences, and omissions to act giving rise to the liability on the part of the Defendants occurred in Santa Clara County, California.

FACTS

9. Plaintiff owns real property located at 40 Main Street, Los Altos, California next door to property owned by Four Main Associates located at 4 Main Street, Los Altos, California.

10. Plaintiff filed a development application with the city of Los Altos to gain approval for developing a new three-story building ("Development Application") on its site on January 20, 2011.

11. The design was reviewed and recommended to the Planning Commission by the Architectural & Site Review Committee, a sub-committee of the Planning Commission, on September 14, 2011.

12. The Planning Commission considered the Development Application on January 19, 2012.

13. The Planning Commission reviewed the application, recommended minor changes to the form of the building that included a reduction of the square footage, and recommended approval by the Los Altos city council (hereinafter "Council").

14. The Development Application was heard by the Council on June 12, 2012 and rejected.

15. Plaintiff publically indicated its desire to reapply following the 2012 election.

16. On information and belief, Ronald D. Packard, Von Packard, and Lon Packard are limited partners of Four Main Associates.

17. After Ronald Packard learned of Plaintiff's acquisition of the neighboring parcel at 40 Main Street in March 2007 and Plaintiff's intent to submit the Development Application, Ronald Packard used his power of office to oppose the Development Application in violation of California Government Code Section 87100 ("Conflict of Interest Statute"): "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

18. At the time, Ronald Packard was in office as a Los Altos city council member and was restricted from making or participating in governmental decisions as a public official and he knew he had a conflict of interest. Yet, from the time that Ronald Packard became aware of the Development Application, several of his official acts had an effect on that Development Application and as such was a violation of the Conflict of Interest Statute.

19. After Ronald Packard became aware of the Development Application, at times he acted directly to amend provisions of the Los Altos Municipal Code on which Plaintiff had relied in preparing the Development Application.

20. At other times Ronald Packard spoke against the Development Application by addressing other matters that appeared to be about some other subject matter, but actually was a thinly veiled attempt to undermine approval of the Development Application.

21. The acts and actions of Ronald Packard were designed to prevent the Development Application from being approved as it was immediately adjacent to his property at Four Main Street and, in particular, to defeat Plaintiff's Development Application by every means available to him including his power as a public official during his tenure as a Los Altos city council member and while he held the position of mayor of Los Altos.

22. The potential effect of a number of governmental decisions on the part of Ronald Packard with respect to Los Altos zoning and his activities while a public official were directly related to his economic interests in Four Main Associates and were not distinguishable from their effect on the public generally.

23. A public official is allowed to participate if he can "establish that the governmental decision will affect the public official's economic interest in a manner which is indistinguishable from the manner in which the decision will affect the public generally." (2 CCR § 18707.) This is demonstrated by showing that the governmental decision will affect a significant segment of the public in substantially the same manner as it will affect the public official. (2 CCR § 18707.1.)

24. For each of the actions described herein, the exception was not met because Ronald Packard acted to make sure that no one constructed a 3-story building taller than the building owned by Four Main Associates in which he has an economic interest.

25. From the time that Ronald Packard met with Plaintiff's Manager on March 15, 2007, and throughout his term in office, Ronald Packard was fully aware of the fact that Plaintiff intended to bring forward the Development Application and, even after the Development

Application was rejected by the Council on June 12, 2012, Plaintiff intended to reapply for consideration by the next Council.

26. With respect to each act described herein, Ronald Packard was fully aware that his comments, purporting to be general in nature, and the changes to the Municipal Code that he was proposing, considering, and voting on related directly to the Plaintiff's Development Application and reapplication for approval, and, thus, the effects of his comments and governmental decisions were intended to further his economic interests and were clearly distinguishable from their effect on the public generally.

27. Certain actions by Ronald Packard to amend the Municipal Code were carefully crafted to appear to be unrelated to the Development Application but were intended by him to change several of the provisions of the Municipal Code on which the Development Application rested and to stifle any reapplication by Plaintiff.

28. One action by Ronald Packard related to limitation of particular downtown Los Altos zones to two-story buildings.

29. The Development Application was scheduled to be heard by the Los Altos Council on May 8, 2012. In late April, the Manager of Plaintiff received a telephone call from the Los Altos Planning Department informing Plaintiff's Manager that Los Altos Mayor Val Carpenter had bumped consideration of Plaintiff's Development Application and that, in its place, the Council would be considering a report from Mayor Carpenter and Ronald Packard (hereinafter "Report"). Ronald Packard should not have worked with Mayor Carpenter on this matter. He should have been recused and not have participated in any discussions with Mayor Carpenter or any other member of the community.

30. Since Ronald Packard had been working with Mayor Carpenter on the Report, on information and belief, Ronald Packard and Mayor Carpenter moved Plaintiff's Development Application off the agenda to allow Ronald Packard to speak directly to the Council about the Report and in a thinly veiled manner express his opposition to the Development Application in order to disguise his Conflict of Interest.

31. The Conflict of Interest was deflected by the following paragraph in the May 8, 2012 Report, written by Mayor Carpenter and Ronald Packard:

> "In order to avoid any concerns about a possible conflict of interests (sic), and consistent with the Council Norms to attempt to limit the scope of items so as to avoid any conflicts of interest, these proposals do not apply to projects that have not yet been submitted to the City prior to the final adoption of the proposed zoning changes, and is not to include any change to the CRS/OAD zone. Councilmember Packard has consulted with outside counsel and is satisfied that these zoning amendments, as presented above, do not create a conflict of interest since on two separate fronts they would not apply to the proposed development of 40 Main Street. As such, a special request is made not to discuss the pros and cons of projects included in the CRS/OAD zone, to have the change apply to outstanding applications that have not yet received final approval, or what impact they would have on any proposed project within the CRS/OAD zone."

32. Item 12 of the Agenda for the May 8, 2012 Council Meeting states:

> "12. Exceptions for Downtown zoning and two stories limitation." In order to avoid any conflict of interest for Councilmember Packard…these changes will not apply to the CRS/OAD Zone."

(The CRS/OAD Zone is the zone that includes the property owned by Four Main Associates and the property for which the Development Application was made.)

Council Minutes. Agenda Report: "From: Mayor Carpenter and Councilmember Packard", "Passed unanimously" (5-0).

33. However, during the meeting at 1:38:20, Ronald Packard stated the following:

> "I want it known that I am absolutely opposed to 3-story developments in the core of our downtown, the CRS district, that's Main Street and State Street. Now is it possible that some project development can come forward where I would consider otherwise? It's possible but that might have to be on some variance or some special circumstance but I don't want developers thinking they can manipulate the measurements and how you do things in order to get three-stories. I want it clear as it was before."

34. This statement by Ronald Packard, though ostensively referring to the CRS Zone, was intended to convey his position to all other council members that he wanted them to understand that he opposed Plaintiff's Development Application and wanted the Council to reject the Development Application when it came before the Council. The fact that

discussion of the Report was inserted into the Agenda in the spot set for Plaintiff's Development Application was apparent to the council members, and left nothing to the imagination that Ronald Packard's words were intended to convey his opposition to the Development Application for a three-story building on Main Street: "I don't want developers thinking they can manipulate the measurements and how you do things in order to get three stories. I want it clear as it was before." These words targeted Plaintiff's Development Application because they were not restricted to the CRS Zone and were directed at the other council members in violation of the Conflict of Interest Statute.

35. At the July 24, 2012 Council Meeting, Item 19 (taken before Item 18) of the Agenda states:

> "19. Downtown Zoning Committee Phase IV. Recommendation to approve the reconstitution of the Downtown Zoning Committee for a fourth phase to focus on more clearly defining how building heights are measured in the CRS and CRS/OAD zoning districts as well as allowable development incentives in all Downtown zoning districts."

36. Council member Ronald Packard recused himself with respect to the proposed rezoning of the CRS and CRS/OAD zone. As stated in the Council Minutes:

> "Packard recused himself due to a financial conflict with the proposal (owns property within 500 feet of the proposed planning area)"

37. However, during discussion of Item 18 at the July 24, 2012 Council Meeting, although no action was taken with respect to item 18, Council member Ronald Packard nevertheless commented about Item 19, although he had previously recused himself.

38. At the July 24, 2012 Council Meeting, Item 18 of the Agenda states:

> "18. Downtown Ordinance Amendments."
>
> Council Minutes. "Councilmember Packard returned to his seat on the dais. …
>
> No action was taken based on the action taken as part of item number 19."

39. However, from the video record, Ronald Packard takes the opportunity to comment on item 19 by making sure everyone in the room understood his view of what Downtown Zoning Committee IV should examine. He stated:

"Thank you the the (sic) concept of a development benefit was first introduced for the downtown area in in I think it was '91 or '92 when the urban design document was created.

And I think for the twenty years everything worked fine because no one ever tried to abuse it and um and the planning commissioners used discretion and judgment on the implementation of it aah and I think what has happened is we, this council has greatly expanded the development opportunities downtown for much of the downtown but we reached a balance. For better or worse that's what happened we allowed it on the outside but not in the core not on State and Main And there is a difference of opinion by some people of whether that is the right decision And if we have planning commissioners who would rather be policy makers and determine what the zoning should be they can use this as a means of doing that by by(sic) abusing it in a way that it has never been used before and that's whatever it's for for (sic) whatever whether that is for First and Main or for any other project that that becomes an issue and that is one of the reasons why I proposed to to (sic) take a look at this because it it it (sic) leads to a great deal of uncertainty for developers, for city staff and for planning commissioners, aah we need to have greater certainty of what should the parameters be. Now a I know I could have squawked, we have a council policy you know of trying to do things to not require a council member to be excluded because of a conflict and I could have squawked about the last agenda item saying it shouldn't include [CRS/]OAD because then I had a conflict and if it hadn't have then I could have participated but you know I say let the committee decide. I won't be able to participate but let it decide and umm but I want it known that that (sic) there's there's (sic) because we greatly expanded the development opportunities it allowed uncertainty to come forward on a provision that has been on the books for many years and the uncertainty I think is unfair to developers any developer whose has to spend a hundred, two hundred, three hundred thousand dollars, on architects and keep on coming back because they have some expectation because maybe somebody on staff said something or maybe they met with planning commissioners and they assured them of something and then it comes before the city council and the city council says forget it that doesn't help anyone so I I (sic) do hope that you know that however this provision is resolved for the CRS zone and that is what this agenda item is limited to that it it (sic) provides greater certainty to to (sic) everyone because it will because it will be a benefit to our community.

40. Ronald Packard, after first recusing himself, then spoke directly about expanding the limitation of two stories to the CRS/OAD Zone as well as the CRS Zone. Ronald Packard wanted to make sure that he instructed anyone who might serve on that Committee, or eventually voted on a CRS/OAD project on the Planning Commission, or on the Council, that he expected any attempt to use "development incentives" to gain an

exception for a portion of a parking requirement, with respect to a future development application related to any building, including those in the CRS/OAD Zone, should be unsuccessful—a direct attack on the Development Application.

41. Another action by Ronald Packard to amend the Municipal Code that was carefully crafted to appear to be unrelated to the Development Application but was intended by him to change the Municipal Code on which the Development Application rested and to stifle reapplication by Plaintiff was his effort which resulted in zoning amendments approved October 23, 2012 ("Packard Amendments"), with a second reading on the "Consent Calendar" on November 13, 2012.

42. At the October 23, 2012 Council Meeting, Item 5 was "Downtown and City-wide commercial ordinance amendments". The Agenda Report stated:

> "Council heard this recommendation at its July 24, 2012 meeting and voted to reconstitute …the Downtown IV Committee to hold a series of meetings on the subject….the committee moved to recommend approval of the ordinance amendment to the Planning and Transportation Commission....at the subsequent…Planning and Transportation Commission meeting, all three ordinance amendments were recommend for approval."

43. Two of the three ordinance amendments were "City-wide" and directly affected the CRS/OAD Zone (that includes the property owned by Four Main Associates and the property to which Plaintiff's Development Application pertained).

44. On the video record, Ronald Packard states:

> "I'm still in the room because this is proposed to apply to the CRS zone and not the entire downtown. If it had of then I'd have to recuse myself. Since it doesn't I'm here. I'm really pleased with this…."

45. The minutes of the October 23, 2012 Council meeting state Ronald Packard voted on all three ordinance amendments, including the two that directly affected his property and the Development Application.

46. As a result Ronald Packard violated the Conflict of Interest Statute:

a. The Council agenda and agenda report for the item both clearly state "Downtown and City-wide commercial ordinance amendments". Yet Ronald Packard stated the ordinance applied "to the CRS zone and not the entire downtown".

b. Ronald Packard recused himself at the July 24, 2012 Council meeting respecting item 19, the matter relating to the appointment of a committee to discuss the downtown zoning issues that were now coming before the Council as Item 5 at the October 23, 2012 Council meeting. However, he failed to recuse himself on Item 5 when the report of that committee, described as "Downtown and City-wide commercial ordinance amendments", was considered and voted on by the Council and affected the Four Main Associates property and the Development Application.

c. During the October 23, 2012 Council meeting neither Los Altos Assistant City Manager James Walgren (who wrote the agenda report respecting the amendments) nor Los Altos City Attorney Jolie Houston (who presumably wrote the amendments) clarified for Ronald Packard – as well as the entire Council – that, contrary to Ronald Packard's assertion, the zoning amendments under discussion directly affected the property owned by Four Main Associates in which Ronald Packard had an economic interest.

d. During the July 24, 2012 Council meeting, when Item 18 was considered after the discussion of Item 19, Ronald Packard proceeded to discuss the matters considered in Item 19, in an attempt to instruct any participants on how he thought the matter should be handled in spite of the fact that he recused himself from his participation in the process.

e. Also, Ronald Packard participated in the November 13, 2012 Council meeting when he moved for the approval of the "Consent Calendar" and then voted to approve all of the zoning matters before the Council on the "Consent Calendar", including the amendments approved on October 23, 2012 that directly affected both the property in which he has an economic interest and the adjoining property owned by Plaintiff.

47. As Plaintiff went through the public process of seeking approval for the Development Application, Plaintiff relied on certain facts relating to development of downtown Los Altos and certain portions of the Municipal Code, some of which had been changed to the advantage of the Development Application during Ronald Packard's tenure on the

Council based on the recommendations of Downtown Development Committee III. However, following the rejection of the Development Application by the Council on June 12, 2012 ("Rejection"), Ronald Packard sought to make changes designed to reverse those previous changes and took other steps to make a new submittal of the Development Application more difficult. These steps were initiated just prior to the Rejection. The following are steps taken by Ronald Packard in order to adversely influence later resubmission of the Development Application.

48. Ronald Packard has sought to influence interpretations or the Municipal Code itself to affect the Development Application ("Development Application Matters"):

a. Any issue that addresses parking.

b. Setback from existing buildings. Although there is a zero lot line between the property owned by Four Main Associates and Plaintiff's property, Ronald Packard requested that Plaintiff redesign its Development Application to include a setback from the lot line.

c. Height limitations in downtown according to the Municipal Code were 38' to the parapet. Plaintiff had relied on the fact that the parapet height was the only parameter that the Planning Commission and Council were concerned about.

d. The zoning code ignored the number of stories and focused on the actual height of buildings. In an earlier rezoning effort, the number of stories was removed from the Municipal Code but, in later rezoning analyses, Ronald Packard sought to reintroduce limitations on the number of stories.

e. Development Incentives. The Municipal Code allows for exceptions in the event that a developer offers a public benefit. Ronald Packard sought to reduce the applicability of Development Incentives required by the Development Application.

49. The Operating Agreement for Plaintiff established a contractual relationship between "Gunn Management Group, Inc. (the 'Manager'), and each of those persons who become a Company Member and/or Manager in accordance with the terms of this Agreement." In accordance with Section 2.1 of the Operating Agreement, "This Agreement shall be

deemed effective as of the date the Articles are filed ('Effective Date')." The Articles were filed on May 8, 2007.

50. The RECITALS of the Operating Agreement provide: "B. The purpose of the Company is to finance and construct certain improvements ('Improvements') to the Real Property to permit the construction and leasing or sale of residential and/or commercial real estate to the general public and such other authorized uses as the Manager shall determine from time to time under the terms of this Agreement."

51. Under Section 2.7 of the Operating Agreement, to carry out the "Purpose and Business of the Company," without requiring Member approval, the Company is authorized, among other actions: "2.7.7 To enter into, perform and carry out contracts of any kind necessary to, in connection with or incidental to, the accomplishment of the purposes of the Company;" "2.7.9 To prepay in whole or in part, refinance, recast, increase, modify, or extend any mortgage affecting any real property or other indebtedness of the Company and, in connection therewith, to execute any extensions, renewals or modifications of such other mortgages and indebtedness;" and "2.7.10 To take or cause to be taken all actions and to perform or cause to be performed all functions necessary or appropriate to promote the business of the Company and to realize and carry out its purposes." These powers are reposed in the Manager under Section 5.3 of the Operating Agreement.

52. Section 5.1 of the Operating Agreement reads:

> 5.1. Management of the Company by Manager.
>
> 5.1.1. ***Exclusive Management by Manager***. The business, property and affairs of the Company shall be managed exclusively by its Manager. Except for situations in which the approval of the Members is expressly required by the Articles or this Agreement, the Manager shall have full, complete and exclusive authority, power, and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs.
>
> 5.1.1.1. ***Interference by Members***. Every Member owes a duty to the Company to refrain from interference with the management of the Company by the Manager. For the purposes of this section, Interference ("Interference") includes any and all efforts by a Member or Members to oppose, directly or indirectly, the management of the Company by the Managers. Interference

includes, without limitation, efforts by a Member or Members to oppose approval of the Improvements by the City of Los Altos, efforts to gain financing for the building or construction of the Improvements, to interfere with proposed leases and any other effort to oppose the lawful operations of the Company. Interference does not include private discussions among Members regarding the effective management of the Company.

53. Section 14.10 of the Operating Agreement reads, in part:

> In the event of any breach of the terms of section 14.10 (Mediation and Arbitration), or of section 5.1.1.1 (Interference) it is understood by the Members that it will be difficult to attach a value to the damages caused by such breaches. It is acknowledged that any party's failure to follow the procedures set forth in section 14.10 or to use Interference against the Company will cause the party against whom an action was improperly filed or the Company ("Aggrieved Party") to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Aggrieved Party of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such breaches, the Members agree that liquidated damages may be assessed and recovered by the Aggrieved Party as against such Member or Members that wrongfully filed such action or actions or committed Interference against the Company. In the event of the filing of any such action, or of Interference, and without the Aggrieved Party being required to present any evidence of the amount or character of actual damages sustained by reason thereof; such Member or Members, or the Company, shall be jointly and severally liable to the Aggrieved Party for payment of liquidated damages in the amount of Fifty Thousand Dollars ($50,000) as an offset for legal fees and other damages that may occur. This amount is against any Member, if more than one Member participates then the amount shall be assessed against each participating Member. If any proceeding is brought in court, and it is determined that such proceeding should have been part of an arbitration or mediation procedure, or if the Arbitrator determines that a Member or Members have been guilty of Interference, then such liquidated damages shall be assessed by the arbitrator or court of competent jurisdiction in the proceeding or procedure that follows. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and the Member or Members shall pay them to the Aggrieved Party without limiting the Aggrieved Party's right to other remedies under the terms of this Agreement

54. Section 14.26 of the Operating Agreement reads, in part:

> 14.26 Proprietary and Confidential Information. Each Member and the Company acknowledge and agree that the Operating Agreement requires the Manager to make certain information available to Members from time to time, in writing or orally. In addition, it is understood and agreed that each Member may make

certain information of a personal, or financial, nature known to the Manager from time to time. All such information is defined as "Proprietary and Confidential Information." Proprietary and Confidential Information disclosed by one party ("Disclosing Party") to any other party ("Receiving Party") is protected by this Agreement. Each Member and the Company agree to take all reasonable precautions to protect the Disclosing Party's Proprietary and Confidential Information from disclosure to third parties. Each Member and the Company recognize and acknowledge the special value and the importance in protecting each other's Proprietary and Confidential Information. Therefore, each agrees not to provide, disclose or otherwise make available the Proprietary and Confidential Information of the other in any form to any other person, without the express written consent of the Disclosing Party. Any use or attempted use by a Member or the Company of Proprietary and Confidential Information in violation of the restrictions of this Section 14.26 shall constitute a material breach of this Agreement which will cause irreparable harm to the Disclosing Party entitling the Disclosing Party to injunctive relief in addition to all legal remedies.

FIRST CAUSE OF ACTION

(Breach of Duty by Ronald Packard as a Governmental Official)

55. Plaintiff incorporates herein by reference, the allegations contained in Paragraphs 1 through 54, inclusive.

56. Ronald Packard had a Conflict of Interest in participating or attempting to influence Plaintiff's development project and amendments to the Los Altos zoning ordinance. As a Los Altos Council member, Ronald Packard qualified as a public official. A public official makes a governmental decision when he votes on a matter before the City Council. (2 CCR § 18702.1(a)(1).) Ronald Packard participated in making governmental decisions and voted on various ordinances affecting the Development Application and Development Application Matters.

57. There are several economic interests which may give rise to a conflict of interest. Ronald Packard has several of these economic interests. Since the Four Main Street property in which Ronald Packard has a financial interest is located within 500 feet of the property which is the subject of the Development Application, his decisions regarding the development of Plaintiff's property directly involve a Conflict of Interest.

58. Any decision made by Ronald Packard to make or influence a governmental decision regarding the Development Application or Development Application Matters is material.

The aforementioned governmental participation and decisions by Ronald Packard affected:

a. the development potential of Plaintiff's property.

b. the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the property owned by Four Main Associates, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the property owned by Four Main Associates in which Ronald Packard has a financial interest.

c. cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decisions by Ronald Packard were of such a nature that their reasonably foreseeable effect would influence the market value of the property owned by Four Main Associates at the time he voted on each of the above-described matters.

59. For each of the actions that Ronald Packard took, his economic interests are distinguishable from the effect on the public generally, as for each action there is a direct or indirect effect on the property owned by Four Main Associates in which Ronald Packard has a financial interest. Furthermore, a quorum of the Council was able to act on the matters described above absent Packard's participation.

60. Ronald Packard either inconsistently recused himself on a variety of matters before the Council, indicating a violation in the associated matter, or he attacked one of the Development Application Matters. In each case, Ronald Packard violated the Conflict of Interest Statute.

61. Ronald Packard's violation of the Conflict of Interest Statute has proximately caused damage to Plaintiff in the amount of at least $3,000,000.

SECOND CAUSE OF ACTION

(Intentional Interference with Contractual Relations)

62. Plaintiff incorporates herein by reference, the allegations contained in Paragraphs 1 through 61, inclusive.

63. On information and belief, Defendant Ronald Packard engaged with Old Trace Partners, L.P. (Old Trace) shortly after the June 12, 2012 Council Meeting at which Plaintiff's Development Application was rejected by the Council.

64. Prior to that time Defendants Ronald Packard and Von Packard and Four Main Associates were opposed and continued to be opposed to Plaintiff's proposed development of Plaintiff's property which adjoins the property owned by Four Main Associates.

65. Defendants Ronald Packard and Von Packard and Four Main Associates knew that Old Trace was an investor and Member of Plaintiff under the then current Operating Agreement and owed a duty to Plaintiff, the Manager, and the other Members not to interfere with the business of Plaintiff.

66. In furtherance of their opposition to Plaintiff's proposed development of Plaintiff's property adjoining the property owned by Four Main Associates, Defendants Ronald Packard and Von Packard and Four Main Associates undertook to advise Old Trace and interfere with Development Application Matters.

67. Plaintiff believes and therefore alleges that Defendants Ronald Packard and Von Packard and Four Main Associates intended to interfere with the contractual relationship between the Plaintiff and Old Trace so that Plaintiff would be unsuccessful in continuing with the Development Application and Development Application Matters with Los Altos in the future.

68. Defendant Ronald Packard and Old Trace concealed their relationship from Plaintiff and caused Old Trace to breach the statutory and contractual obligations of good faith and fair dealing owed by Old Trace to Plaintiff.

69. Plaintiff believes and therefore alleges that Defendants Ronald Packard and Von Packard and Four Main Associates obtained confidential information of Plaintiff from Old Trace in breach of the Operating Agreement to aid Defendants Ronald Packard and Von Packard and Four Main Associates in continuing to oppose the Development Application and Development Application Matters.

70. By continuing to oppose the Development Application and Development Application Matters, Defendants Ronald Packard and Von Packard and Four Main Associates have interfered with Plaintiff's business.

71. Plaintiff believes and therefore alleges that Defendant Ronald Packard advised Old Trace to file a lawsuit instead of demanding arbitration in breach of the contractual obligations between Old Trace and Plaintiff set forth in the Operating Agreement to further interfere with Plaintiff's business.

72. The intentional interference by Defendants Ronald Packard and Von Packard and Four Main Associates with the contractual relationship between Old Trace and Plaintiff has resulted in damages of at least $1,000,000 to be proven at the time of trial.

73. Respondents are also entitled to exemplary damages and costs.

THIRD CAUSE OF ACTION
(Civil Conspiracy)

74. Respondents incorporate herein by reference, the allegations of their Counterclaims contained in Paragraphs 1 through 73, inclusive.

75. Defendants Ronald Packard and Von Packard and Four Main Associates knew that Daniel T. Nero and Kimberly Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group were additional investors and Members of Plaintiff under the then current Operating Agreement and owed a duty to Plaintiff, the Manager, and the other Members not to interfere with the business of Plaintiff.

76. In furtherance of their opposition to Plaintiff's proposed development of Plaintiff's property which adjoins the property owned by Four Main Associates, Defendants Ronald Packard and Von Packard and Four Main Associates conspired with Old Trace to have Daniel T. Nero and Kimberly Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group join in the lawsuit filed by Old Trace in breach of the then current Operating Agreement and to interfere with Development Application Matters.

77. Defendant Ronald Packard sent an email dated August 12, 2014 to Daniel T. Nero and Kimberly Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group with the intent to have them join Old Trace in the pending lawsuit in breach of their covenant of good faith and fair dealing implied in the Operating Agreement.

78. Plaintiff believes and therefore alleges that Defendants Ronald Packard and Von Packard and Four Main Associates intended to interfere with the contractual relationship between the Plaintiff and Daniel T. Nero and Kimberly Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group so that Plaintiff would be unsuccessful in continuing with the Development Application and Development Application Matters in the future.

79. On September 25, 2014 Old Trace; Daniel T. Nero and Kimberly Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group filed their Amended and Restated Complaint in the Superior Court for Santa Clara County, titled *Old Trace Partners, L.P.. et al. v. Sorensen, et al.;* Case No. 114CV266849 (referred to herein as the "Superior Court Action").

80. Pursuant to the Operating Agreement, the filing of the Superior Court Action is in direct violation of the terms in the Operating Agreement, Section 14.10.

81. Claimants have shown by their filing of the Superior Court Action that they breached the terms of Section 14.10 of the Operating Agreement.

82. Contrary to the express terms of Section 14.26 of the Operating Agreement, on information and belief Old Trace; Daniel T. Nero and Kimberly Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group have disclosed Proprietary and Confidential Information in violation of Section 14.26 of the Operating Agreement to Ronald Packard and others as instructed by Defendants Ronald Packard and Von Packard and Four Main Associates.

83. As a result of conspiracy and wrongful conduct by Defendants Ronald Packard and Von Packard and Four Main Associates in concert with Old Trace; Daniel T. Nero and

Kimberly Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group, approval of Plaintiff's Development Plan has been hindered resulting in delay of the approval, and Plaintiff has suffered damages to be proven at the time of trial.

84. In or about February 2016, Sean Corrigan, believed and therefore alleged to be acting on behalf of Old Trace, without authorization from Respondents, contacted Los Altos City Council member Jean Mordo with the intent of interfering with the approval process regarding the proposed development of the property owned by Plaintiff. The result was to interfere with the business between the Plaintiff and the City of Los Altos by casting aspersions on the Manager of Plaintiff and expressing dissatisfaction with the Development Application submitted by Plaintiff to the City of Los Altos for approval.

85. On or about March 3, 2016, Erik Corrigan, believed and therefore alleged to be acting on behalf of Old Trace, without authorization from Plaintiff, contacted Bridge Bank regarding the financing of the property owned by Plaintiff. The result was to interfere with the business relationship between Plaintiff and Bridge Bank by disrupting the banking relationship that Plaintiff had with Bridge Bank in general and loan officer Al Diaz in particular.

86. Subsequently, in or about March 2016 Daniel T. Nero contacted Bridge Bank by email and telephone without authorization from Plaintiff alleging Plaintiff was misrepresenting the facts regarding the Superior Court Action and with the intent of further disrupting the business relationship between Plaintiff and Bridge Bank including having Bridge Bank reconsider its refinancing of the property owned by Plaintiff.

87. Defendants Ronald Packard and Von Packard and Four Main Associates in concert with Old Trace; Daniel T. Nero and Kimberly Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group have shown that they intended by their acts of interference to disrupt the business of the Plaintiff.

88. As a result of the wrongful conduct by Defendants Ronald Packard and Von Packard and Four Main Associates in concert with Old Trace; Daniel T. Nero and Kimberly Nero;

VERIFICATION

I, THEODORE G. SORENSEN, declare:

I am an officer of GUNN MANAGEMENT GROUP, INC., which is the manager of the Plaintiff 40 MAIN STREET OFFICES, LLC, and I have been authorized to make this verification on its behalf.

I have read the forgoing Complaint and know the contents thereof; that the same is true of my own knowledge, except as to the matters which are therein stated on my information and belief, and to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed on this 21st day of October 2016, at Los Altos, California.

Theodore G. Sorensen

THEODORE G. SORENSEN

Gunn Management Group, Inc.,

Manager of 40 Main Street Offices, LLC

Exhibit 18

RONALD D. PACKARD (SBN 72173)
Packard, Packard & Johnson, P.C.
Four Main Street, Suite 200
Los Altos, CA 94022
T (650)823-6959
rdpackard@packard.com

Attorney for Ronald D. Packard, Von G. Packard, and Four Main Street Associates, L.P.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

40 MAIN STREET OFFICES, LLC, a California limited liability company Plaintiff, v. RONALD D. PACKARD, VON G. PACKARD, FOUR MAIN STREET ASSOCIATES, L.P., a California limited partnership, and DOES 1-200 inclusive Defendants.	Case No. 16CV301483 **DECLARATION OF DANIEL T. NERO IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE COMPLAINT PURSUANT TO CIV. PROC. CODE § 425.16** Date: 3-14-17 Time: 9:00 A.M. Dept.: 8 Complaint filed: October 21, 2016

I, Daniel T. Nero, do hereby declare as follows:

1. I make the statements herein based on my personal knowledge, and I could and would competently testify thereto if called as a witness.

2. I invested $284,000 to become a 10% ownership member of 40 Main Street Offices, LLC since its inception in 2007.

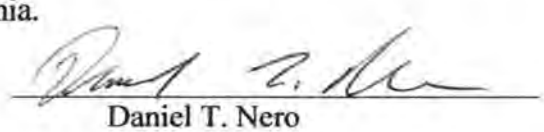
3. My first interaction with Ron Packard was in September 2013. Prior to that time, I had been told by the Sorensens that he was a dishonest and manipulative person. At present, I have

now come to believe that their demonization of Ron Packard was not correct, but that the persons who are dishonest and manipulative are the Sorensens.

4. Any suggestion that I or the other claimants in the arbitration sought after or received legal or business advice from Four Main Street Associates, LLP, the limited partnership owned by Ron Packard and his brothers, is not true and simply nonsense. I looked to Ron Packard as a prospective attorney, and then as the non-testifying expert consultant for my attorney Julienne Nucum. My only interaction with Von Packard was right before the arbitration when the Sorensens took Ron Packard's disposition, and limited interaction during the arbitration hearing. I did not have any contact with either of them in advance of my attorney, Mark Boennighausen interacting with Torrey Pines bank on November 2012.

5. Over the years I have heard generalized statements from the Sorensens blaming Ron Packard for violating conflict of interest obligations, but they did not provide me with any particular explanation of why his actions created a conflict outside of their insistence that he was not a friendly neighbor.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, and that this Declaration was entered into on this 26th day of January, 2017, in Los Altos, California.



Daniel T. Nero

Exhibit 19

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However, you've totally taken her deposition; is that correct?

MS. BARRETT: That is correct.

THE ARBITRATOR: I'm going to deny the motion to strike her testimony.

MS. NUCUM: Thank you, Your Honor.

THE ARBITRATOR: Now, we have a renewed motion to disqualify Mr. Packard as counsel for claimants. Any further argument on that?

MR. MILKS: Yes, Your Honor. In reviewing both the renewed motion as well as the opposition, the opposition ignores a couple of what I consider to be critical facts.

Number one, the passing of the instructions from Mr. Packard who was attending as an observer to counsel and on to the witness being deposed which is unacceptable in any circumstance much less by an observer in a deposition who has morphed his role as nontestifying expert to I'm co-counsel, I'm not co-counsel to I am co-counsel to I am counsel of record in this case.

It seems like he maneuvers and changes his position at whim in this case just to suit his own individual purposes, but that being said, an observer passing a note to counsel to instruct a witness is

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totally improper.

Secondly, based on the privilege log, Mr. Packard has represented or relates back his representation to October of 2012 in that period of time and attached to the amended and restated complaint in this case, the correspondence from Mr. Mark Boennighausen to myself in connection with issues raised by Old Trace Partners LLP and Daniel Nero with respect to providing documentation in this case, it is clear undisputed of record that I was representing 40 Main Street Offices LLC at that point in time.

Approximately a year later, Mr. Packard is holding meetings with represented parties and communicating with them about issues regarding the subject matter of this case, which is totally improper.

Thirdly, Your Honor, the opposition seems to make a point that well, respondents have two lawyers and therefore, and claimants have two lawyers.

I question the role of Mr. Wong. He is a lawyer, he attended every deposition and every aspect from this case from day one. In fact, there's not a hearing, attendance or deposition or otherwise Mr. Wong has not been present.

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Either they're discounting Mr. Wong's role or conveniently omitting reference to that role.

We only have two lawyer on this case. They have two lawyers. Why do they need a third? I think there is a red herring argument on their part.

THE ARBITRATOR: Do I see three lawyers to my left?

MR. PACKARD: Mr. Duperrault is here as an observer, Your Honor. He has not made an appearance in this case.

THE ARBITRATOR: Yes, he has. He stated his appearance on the record. He's appearing.

MR. PACKARD: At this point. Up to this point, no.

THE ARBITRATOR: I'm not going to count lawyers.

MR. MILKS: They did, so I thought it was fair to respond.

MS. NUCUM: Your Honor, if I may, the renewed motion is basically a rehashing of the motion you denied on September 23rd and when we were here with you on October 21 you gave specific instructions to respondents' counsel to include a very specific set of questions they will be asking Mr. Packard when he is called as a percipient witness, which they did not in

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this renewed motion.

The note was also discussed in that same hearing and for the same reasons the motion -- the renewed motion today should also be denied.

MR. MILKS: Your Honor, I don't remember you saying give a set of specific questions to ask as though they are written interrogatories.

THE ARBITRATOR: He has been deposed?

MS. NUCUM: Yes, Your Honor, for a full day.

THE ARBITRATOR: Mr. Packard, do you want to add anything?

MR. PACKARD: No.

THE ARBITRATOR: I'm going to deny the request to disqualify him. It might be different if we were in front of a jury. I don't think that the conduct that's complained of is not necessarily something that I would approve of is disqualifying.

I think that the parties who have the real right to object are the parties he's representing and they have not objected and I'm assuming he has complied with the California Rules of Court and the Canons of Ethics in ensuring that they are aware of the conflict of interest that may exist, if any.

And so I'm going to deny the motion to disqualify him and that will be the order.

Exhibit 20

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deny, that is correct.
Q. And for the planning commission hearing, the staff recommendation was to deny due to noncompliance, correct?
A. They had multiple reasons that they recommended denial.
Q. Were you disappointed in the planning commission results?
A. Yes, I was disappointed in just the tone and tenor of the meeting.
Q. Were you very disappointed in the results?
A. I was disappointed in the results.
They made a recommendation for 12,900 square feet based on the parking credit of 15 stalls for the paseo. We had hoped we would get a 20-stall credit which would have made it a larger building and better for our investors. We were disappointed in that.
Q. One item the planning commission requested in their January 2012 meeting was that representatives of 40 Main and 4 Main meet?
A. That was something that Mr. Baer was absolutely adamant about and the rest of the planning commission went along with to end the meeting, yes.
Q. Apparently, you and your brother decided instead of the principals meeting, that I should speak

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with your architect in San Francisco?
A. My understanding is you wanted to understand how the buildings would relate.
So I don't offer a lot in that conversation, but Erin Uesugi and Shakti offer quite a bit.
Q. Do you have anything in writing that supports your statement that I wanted to see how the two buildings relate?
A. No, I'm only referring to what the planning commission directed.
Q. Do you have any reason to believe that I had spoken to any of the planning commissioners or Mr. Baer about meeting?
A. I believe that you had.
Q. You believe that I broke the Brown Act and the law by talking to Mr. Baer?
A. I believe that you communicated in one way or another with Mr. Baer, but how you did that, I don't know, but I think if we looked at the minutes, you'd see the minutes discuss how our building could better relate to your building.
I think that's what the direction was.
Q. And you find it inconceivable they could have had those concerns on their own?
MS. BARRETT: Objection, argumentative.

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THE WITNESS: I didn't hear your objection.
MS. BARRETT: I'm sorry, objection, argumentative.
THE ARBITRATOR: Sustained.
BY MR. PACKARD:
Q. Now, it's your understanding I did go up and meet with the architect?
A. It is my understanding, yes.
Q. And I brought with me my architect and Scott Atkinson?
A. You brought an architect, I don't know that it was your architect, you brought an architect.
It was not the architect of your building.
Q. Okay. You were not at the meeting, were you?
A. I was not at the meeting.
Q. After the meeting you sent to your architect a detailed draft letter supposedly confirming the substance of our meeting with your goal of putting me in a box, correct?
A. That is correct.
Q. Let's look at that draft letter which I believe is Exhibit 132.
Exhibit 132, now, at the first part, to lay the foundation, I'm going to read the first paragraph.
"I have taken the liberty to draft an e-mail

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that I believe you should send to Mr. Packard summarizing your Friday meeting. My goal of course is to put him into a box with his comments. The strategy would be to list out his objectives and patiently and respectedly knock them off."
Let me jump down to the last sentence in that paragraph.
"I want to be sure to include his architect in the original e-mail because this will make it significantly more difficult for him to lie about the meeting."
Now, had you had a conversation with her prior to sending this e-mail to her?
A. So first of all, I think you misspoke.
You said patiently and I wrote respectfully and I don't think that's the word you used.
Q. Okay. I'm sorry. Patiently and respectfully knock them off.
A. And the answer to the question asked is yes, I had, immediately after you left the office, Erin and Shakti called us to basically share with us their contents of the meeting.
Q. The statements you included in your draft letter you believe them to have been truthful?
A. I believe I listed seven items that at the

Exhibit 21

SUM-100

AMENDED SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

RONALD D. PACKARD, individually; VON G. PACKARD, individually; FOUR MAIN STREET ASSOCIATES, L.P., a California limited partnership; and DOES 1-200, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

40 Main Street Offices, LLC, a California limited liability company

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED

2017 JAN 26 P 2:03

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY PJauregui DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

*¡**AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Santa Clara County Superior Court
191 N. First Street, San Jose CA 95113

CASE NUMBER:
(Número del Caso):
16CV301483

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
William C. Milks, III, LAW OFFICES OF WILLIAM C. MILKS, III, 900 San Antonio Rd, Palo Alto, 94303

DATE: JAN 26 2017 *(Fecha)*

DAVID H. YAMASAKI Chief Executive Officer/Clerk of the Court

Clerk, by *(Secretario)* PJauregui , Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

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Attorneys for Plaintiff
40 MAIN STREET OFFICES, LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFONIA

COUNTY OF SANTA CLARA

40 MAIN STREET OFFICES, LLC, a California limited liability company, Plaintiff, v. RONALD D. PACKARD, individually; VON G. PACKARD, individually; FOUR MAIN STREET ASSOCIATES, L.P., a California limited partnership; and DOES 1-200, inclusive, Defendants.	**Case No. 16CV301483** **FIRST AMENDED COMPLAINT** DEMAND FOR JURY TRIAL Unlimited Civil Case Complaint Filed October 21, 2016

Plaintiff 40 Main Street Offices, LLC, a California limited liability company, alleges as follows:

PARTIES

1. 40 Main Street Offices, LLC (hereinafter "Plaintiff") is, and at all times herein mentioned was, a California limited liability company organized under the laws of the State of California with its principal place of business in Santa Clara County, California.

2. Plaintiff is informed and believes, and thereupon alleges, that Defendant Ronald D. Packard (hereinafter "Ronald Packard") is an individual who resides in Santa Clara County, California.

3. Plaintiff is informed and believes, and thereupon alleges, that Defendant Von G. Packard (hereinafter "Von Packard") is an individual who resides in Santa Clara County, California.

4. Plaintiff is informed and believes, and thereupon alleges, that Defendant Four Main Street Associates, L.P. (hereinafter "Four Main Associates") is a California limited partnership organized under the laws of the State of California with its principal place of business in Santa Clara County, California.

5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 200, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff prays leave to amend this First Amended Complaint to allege their true names and capacities when the same have been ascertained.

6. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants sued herein is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages were proximately caused by such Defendants.

7. Plaintiff is informed and believes, and thereupon alleges, that at all times herein mentioned each of the Defendants, was and were, at all times, acting as principals or agents, employees, or representatives within the purpose and scope of such agency, employment, or representation as being responsible in some manner for the occurrences herein alleged.

JURISDICTION

8. This Court has jurisdiction over this First Amended Complaint pursuant to California Code of Civil Procedure Section 395(a) as the transactions, occurrences, and omissions to act giving rise to the liability on the part of the Defendants occurred in Santa Clara County, California.

FACTS

9. Plaintiff owns real property located at 40 Main Street, Los Altos, California next door to property owned by Four Main Associates located at 4 Main Street, Los Altos, California.

10. Plaintiff filed an entitlements application with the City of Los Altos to gain approval for developing a new three-story building ("Development Application") on its site on January 21, 2011.

11. The design Development Application was reviewed and recommended to the City of Los Altos Planning Commission by the Architectural & Site Review Committee, a sub-committee of the Planning Commission, on September 14, 2011.

12. The Planning Commission considered the Development Application on January 19, 2012.

13. The Planning Commission reviewed the Development Application, recommended minor changes to the form of the building that included a reduction of the square footage, and recommended approval by the Los Altos City Council (hereinafter "Council").

14. After making the recommended changes, the Development Application was heard by the Council on June 12, 2012. However, the Council denied the Development Application.

15. Plaintiff publically indicated its desire to reapply following the 2012 Council election.

16. On information and belief, Ronald Packard, Von Packard, and Lon Packard are limited partners of Four Main Associates.

17. After Ronald Packard learned of Plaintiff's acquisition of the neighboring parcel at 40 Main Street in May 2007 and Plaintiff's intent to submit the Development Application, Ronald Packard used his power of office to oppose the Development Application in violation of California Government Code Section 87100 ("Conflict of Interest Statute"): "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to

influence a governmental decision in which he knows or has reason to know he has a financial interest."

18. At the time, Ronald Packard was in office as a Los Altos City Councilmember and was restricted from making or participating in governmental decisions as a public official and he knew he had a conflict of interest. Yet, from the time that Ronald Packard became aware of the Development Application, several of his official acts had an effect on the Development Application and as such was a violation of the Conflict of Interest Statute.

19. After Ronald Packard became aware of the Development Application, at times he acted directly to amend provisions of the Los Altos Municipal Code on which Plaintiff had relied in preparing the Development Application.

20. At other times Ronald Packard spoke against the Development Application through his agents Von Packard who is a co-owner of Four Main Associates and Scott Atkinson an employee of Four Main Associates and by personally addressing other matters is his capacity as a public official that appeared to be about some general subject matter, but actually was a thinly veiled attempt to undermine approval by the Council of the Development Application.

21. The acts and surreptitious actions of Ronald Packard were designed to prevent the development of property adjacent to Four Main Street in which he has a financial interest and, in particular, to defeat Plaintiff's Development Application by every means available to him including his power as a public official during his tenure as a Los Altos City Councilmember including while he held and abused his position as Mayor of Los Altos.

22. The potential effect of a number of governmental actions on the part of Ronald Packard with respect to Los Altos zoning ordinances and his activities while a public official were directly related to his economic interests in Four Main Associates and were not distinguishable from their effect on the public generally.

Exhibit 22

RONALD D. PACKARD (SBN 72173)
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Attorney for Ronald D. Packard, Von G. Packard, and Four Main Street Associates, L.P.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

40 MAIN STREET OFFICES, Plaintiff, a California limited liability company) Plaintiff, v. RONALD D. PACKARD, VON G. PACKARD, FOUR MAIN STREET ASSOCIATES, L.P., a California limited partnership, and DOES 1-200 inclusive Defendants.	Case No. 16CV301483 **MOTION OF ALL DEFENDANTS TO STRIKE COMPLAINT PURSUANT TO CIV. PROC. CODE § 425.16 AND REQUEST TO POST BOND** Date: March 14, 2017 Time: 9:00 A.M. Dept.: 8

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INTRODUCTION

This lawsuit is by a limited liability company ("Plaintiff") primarily against one of the attorneys, Ron Packard ("Packard"), who, with co-counsel, has been representing forty percent of its investors. Since 2014, those investors have been suing Plaintiff and its managers, had a ten-day hearing in November 2016, completed the post-hearing briefing on January 23, 2017, and is now before retired Judge Jack Komar with JAMS for a final award. (Packard Decl. ¶ 22.) Many of the issues of that arbitration completely overlap the claims made in the all of the causes of action in this lawsuit, except the first (alleged violations of the Government Code). What particularly bothers Plaintiff, however, is that Packard owns property next door to that of Plaintiff, and four years ago he was on the Los Altos city council. This lawsuit contains three causes of action, each of which involve constitutionally protected rights to petition or free speech, and all of which should be dismissed under the anti-SLAPP (strategic lawsuit against public participation) statute. The complaint was amended on January 26, 2017, and now attempts to censor Packard for speaking to the Los Altos city council on an agenda item that indirectly impacts their application, even though Ted Sorensen also spoke on the same item. This is a classic example of a party abusing the litigation process to prevent public participation by another, which is protected under the law.

FACTUAL BACKGROUND

The complaint was filed on October 21, 2016, by Plaintiff, 40 Main Street Offices, a California limited liability company, and verified by Theodore G. Sorensen. Plaintiff is managed exclusively by Gunn Management, a corporation formed for that purpose and owned exclusively by Theodore G. Sorensen and his brother, Gerald J. Sorensen (the "Sorensens") (Packard Decl. ¶ 11.) Plaintiff owns the real property at 40 Main Street, Los Altos, which is next door to the property at 4 Main Street, owned by defendant Four Main Street Associates, a California limited partnership. (Amended Complaint ¶ 9.) Four Main Street Associates, LLP, is owned by Packard and his two brothers, Von Packard and Lon Packard. (*Id.,* ¶ 16.) Plaintiff purchased the real property at 40 Main Street in March 2007 (*Id.,* ¶ 17). Almost four years later, on January 21, 2011, Plaintiff filed with the City of Los Altos a development application for that property. (*Id.,* ¶ 10.) The application was

reviewed and rejected by the Los Altos City Council on June 12, 2012. (*Id.,* ¶ 14.) Packard served on the Los Altos City Council from 2003 through December 4, 2012 (Packard Decl. ¶ 5), and recused himself every time that matter came before the city council (*Id.,* ¶ 12). During this entire period, each of the three Packards have been members of the California State Bar, in good standing and three of the four shareholders of the law firm Packard, Packard & Johnson, P.C. (*Id.,* ¶ 10.)

Plaintiff alleges that from March 2007 through most of 2012, when Packard served on the Los Altos City Council, he violated Government Code Section § 87100 by illegally opposing Plaintiff's development application and using his power of office to thwart Plaintiff's development efforts. (Amended Complaint ¶¶ 17-27.)

The specific meetings or votes taken by Packard for which Plaintiff alleges violation of Govt. Code § 87100 are the following: (1) his participation in the preparation of Agenda Item 11, and his statements regarding that Item during the May 8, 2012 city council meeting (*Id.,* ¶¶ 28-34); (2) his comments on Agenda Items 18 and 19 during the July 24, 2012 city council meeting (*Id.,* ¶¶ 35-40); and (3) his statements during the first and second reading of Agenda Item 5 at the October 23, 2012 and November 13, 2012 city council meetings (*Id.,* ¶¶ 41-46). In addition, there are various generalized allegations of wrongdoing over many years based on Packard's participation in the legislative process and statements he made as a councilmember. (*Id.,* ¶¶ 17-22, 47-48.) The Plaintiff alleges that as a result of Packard's alleged violations of Government Code Section § 87100, it has suffered damages of at least $3,000,000, and makes a prayer for that amount. (*Id.,* ¶ 61, and prayer.)

On the other hand, Packard has been consistent in his statements to the California Fair Political Practices Commission, and during his deposition and declarations in the pending arbitration, that:

> During my entire term on the Los Altos City Council, not once did I speak to any council member, commissioner, city staff, city attorney or city manager about the merits or demerits of Plaintiff's proposed project at 40 Main. The application came before the City Council on June 12, 2012. As indicated in the video and the minutes of that meeting (both of which are available on the city's website), I recused myself due to a conflict of interest, stepped down from the dais and left the room. Although I was allowed to do so, I never

> appeared in the audience, or remained in the room, for any hearing on their application before the Planning Commission, city council, or other government body.

(Packard Decl. ¶ 12)

Fellow council member David Casas confirms Packard's statements, in that "we never communicated, directly or indirectly, regarding the Sorensens' project at 40 Main Street" and that Packard "was always very careful to avoid any conflict of interests." (Casas Decl. ¶ 4.) Contrary to Plaintiff's speculations as to why Casas and others voted against its application, Casas explains the reasons as follows:

> While on the City Council I have often voted against the position taken by Ron Packard. He never became bitter, but instead would say that we need to vote the way we believe, and not hold grudges. When the 40 Main Street items came before the council on June 12 2012, I was initially prepared to vote in favor of it if I thought it was the right thing for the City of Los Altos, and I was not concerned that Ron Packard would hold any ill-will. In the end, my vote was based on the fact that I ultimately considered the proposed project to be a bad idea for Los Altos, and not to curry a favor for Ron Packard. I disapproved of the application based on the merits, and not on any supposed political influence of Ron Packard.

(Casas Decl. ¶6.)

Packard was twice elected to the Mountain View city council, served as its Mayor in 1983-1984, was twice elected to the Los Altos city council, and serviced twice as its Mayor. He has also served on various government boards of non-profit entities. In all those years of public service, he has never been accused of any impropriety, unethical behavior or illegal actions, with the sole exception being by the Sorensens and their supporter Kim Cranston. (Packard Decl. 9.) Those self-serving accusations have been an attempt to bring sympathy for Plaintiff's non-conforming application for a three-story building that violated numerous zoning codes.

In September 2014, almost two years after Packard was off the Los Altos City Council, Ted Sorensen filed with the California Fair Political Practices Commission ("FPPC") a complaint against him alleging that Packard violated Gov't Code 87100 by voting on zoning issues during the October 23, 2012 council meeting. (Packard Decl. ¶ 13, and Ex. A thereto.) That complaint was not supported with any exhibits of meetings, agendas, minutes, etc. Later that month, September 2014, Packard sent to the FPPC a detailed response to the complaint, with numerous exhibits. (Packard

Decl. ¶ 13, and Ex. B thereto.) In the following month, October 2014, Ted Sorensen filed with the FPPC a second complaint against Packard. (*Id.,* ¶ 13, and Ex. B thereto.) The second complaint included at least thirty claims of violations, again consisting of mere allegations, conclusions and without any supporting exhibits. (Packard Decl. ¶ 14, and Ex. C thereto.) This time the FPPC did not even request Packard to respond, and the FPPC refused to pursue the matter. (*Id.,* ¶ 14.) Many of the rejected claims made by Ted Sorensen in his two complaints with the FPPC are now repeated in Plaintiff's first cause of action (alleged Gov't Code violations). (*Id.,* ¶ 14.)

One of the investors and members of Plaintiff, Old Trace Partners ("Old Trace"), via Sean Corrigan, contacted Packard in October 2012 to consider engaging his services as an attorney to represent Old Trace in possible litigation against Plaintiff. (*Id.,* ¶ 16.) A prospective attorney client relationship was established during that initial contact. (*Id.,* ¶ 16.) Other than emails that day and the following day, there was no further contact until a year later in August 2013 between Packard and Sean Corrigan or any of the other investors who eventually joined in the lawsuit/arbitration against Plaintiff. (*Id.,* ¶ 16.) Prior to the initial contact between Corrigan and Packard, Corrigan had been told by the Sorensens that Packard was a dishonest and manipulative person, although he later came to believe that those statements were not correct. (Corrigan Decl. ¶ 3) Before Corrigan's first contact with Packard, he had already become convinced that the two Sorensens were dishonest and corrupt managers of Plaintiff. (*Id.,* ¶ 4) As Corrigan has testified:

> One of the reasons I wanted Ron Packard to represent me as my attorney is that he has a vast understanding of the Los Altos community, downtown dynamics, and what type of development would be conforming to the zoning requirements. That was very important to me since I believed that the Sorensens are talented in glossing over issues and speaking in generalities that are misleading. I wanted as my attorney someone who already knew the general facts regarding downtown Los Altos, could see through any smoke screens and would press for details: who, what, when, where, etc.

(Corrigan Decl. ¶ 5)

In 2014, Old Trace eventually engaged the services of licensed attorney Julienne Nucum (of Miranda & Nucum, LLP, located in San Jose, California), who engaged Packard as a non-testifying consulting expert. (Packard Decl. ¶ 17.) Old Trace filed on June 19, 2014, a lawsuit in the Santa

Clara County Superior Court against the two Sorensens, and their wholly owned management company, Gunn Management, alleging fraud, breach of fiduciary duties, and other causes of action. (*Id.,* ¶ 17.) Several months later, on September 25, 2014, an amended complaint was filed, which was substantially the same, except that four of the other investors joined the lawsuit as plaintiffs (now constituting 40% of the investors), Plaintiff was added as a defendant, and a receivership cause of action was included. (*Id.,* ¶ 18 and Ex. D thereto.)

One of the additional claimants was Daniel Nero, who had invested $284,000 in Plaintiff. (Nero Decl. ¶ 2.) His first interaction with Packard was in September 2013. (Nero Decl. ¶ 3.) Prior to that time, he too had been told by the Sorensens that Packard was a dishonest and manipulative person, but he later came to believe that "their demonization of Ron Packard was not correct, but that the persons who are dishonest and manipulative are the Sorensens." (Nero Decl. ¶ 3.) In addition, he testifies:

> Over the years I have heard generalized statements from the Sorensens blaming Ron Packard for violating conflict of interests obligations, but they did not provide me with any particular explanation of why his actions created a conflict outside their insistence that he was not a friendly neighbor.

(Nero Decl. ¶ 5)

In 2016, as the arbitration approached, respondents thereto (Plaintiff herein), added an additional co-counsel law firm, and Packard's deposition was taken for a full day by Mr. Milks, Plaintiff's co-counsel in the arbitration and sole counsel in this present lawsuit. (Packard Decl. ¶ 19.) Thereafter and prior to the arbitration hearing, Packard became the attorney of record for Old Trace, and Julienne Nucum continued as the attorney of record for the remaining investors who were claimants in the arbitration. (*Id.,* ¶ 20.) The respondents in the arbitration, which includes Plaintiff in this action, twice made motions to have Packard disqualified as an attorney of record for various reasons, including alleged receipt of confidential information, a claim that Ms. Nucum committed wrongdoing by engaging Packard, and that Packard's role as a non-testifying expert had been "concealed" from Plaintiff, but both times the motions were denied by the arbitrator, retired Judge Jack Komar. (*Id.,* ¶ 21.) The second ruling against Plaintiff was issued on September 24,

2016, and in less than a month, this lawsuit was filed by respondents in the arbitration against Packard, his brother and the LLP (*Id.,* ¶ 21).

Plaintiff's second cause of action alleges that even though Packard and the other defendants in this lawsuit knew that Old Trace was an investor in Plaintiff and owed a duty of good faith and fair dealing toward Plaintiff, they nevertheless "undertook to advise Old Trace," and thereby improperly interfered with the development activities of Plaintiff. (Amended Complaint ¶¶ 67-68.) Plaintiff further alleges that Packard concealed his relationship with Old Trace as an expert from Plaintiff, and that Old Trace provided confidential information to defendants. (*Id.,* ¶¶ 69-70.) Plaintiff concludes that these activities interfered with Plaintiff's business, and resulted in damages of at least $1,000,000. Incredibly, Plaintiff alleges that Four Main Street Associates provided advice to the claimants, but as Nero explains:

> Any suggestion that I or the other claimants in the arbitration sought after or received legal or business advice from Four Main Street Associates, LLP, the limited partnership owned by Ron Packard and his brothers, is not true and simply nonsense. I looked to Ron Packard as a prospective attorney, and then as the non-testifying expert consultant for my attorney Julienne Nucum. My only interaction with Von Packard was right before the arbitration when the Sorensens took Ron Packard's disposition, and limited interaction during the arbitration hearing. I did not have any contact with either of them in advance of my attorney, Mark Boennighausen interacting with Torrey Pines bank on November 2012.

(Nero Decl. ¶ 4.)

Plaintiff's third cause of action alleges that even though each of the defendants knew that the other five plaintiffs/complainants in the lawsuit/arbitration were investors in Plaintiff and owed a duty toward Plaintiff, they nevertheless had them "join in the lawsuit," and thereby improperly interfered with the development activities of Plaintiff. (*Id.,* ¶¶ 78-79.) Plaintiff alleges that Packard sent an email on August 12, 2014 to various of the investors in Plaintiff, with the intent of having them join Old Trace as plaintiffs/complainants in the lawsuit/arbitration, which they did, supposedly in violation of their duties of good faith and fair dealing with Plaintiff. (*Id.,* ¶¶ 80-81.) Plaintiff alleges that filing the lawsuit, instead of filing in arbitration, was a violation of various provisions of Plaintiff's operating agreement. (*Id.,* ¶¶ 82-84.) Plaintiff further alleges that these additional investors provided confidential information to Packard in violation of the operating

agreement. (*Id.,* ¶ 85.) Plaintiff then lists various acts by some of the investors which it considers interference, but does not name those investors as defendants (*Id.,* ¶¶ 84-86.) The amended complaint alleges that defendants, "in concert" with those investors, interfered and disrupted the business of Plaintiff. (*Id.,* ¶¶ 92-93.) The amended complaint goes so far as to allege wrongdoing by Packard for speaking during the city council meeting of January 24, 2017, and making a public records request of the city on January 26, 2017. (*Id.,* ¶ 91.)

Packard is involved with a non-profit organization called "Friends of Los Altos," that accused a Los Altos city parking committee of violating the Brown Act, and requested the matter to be reviewed by an outside ethics expert. The City of Los Altos engaged a San Francisco expert who concluded that there had been Brown Act violations, and the Los Altos council unanimously adopted Resolution No. 2016-10 that acknowledged the violation and disbanded the committee. (Packard Decl. ¶ 23, Ex. G thereto for City resolution.) Plaintiff is suing Packard for his participation in bringing to light the Brown Act violations. (Amended Complaint ¶ 87.)

Defendants' counsel has twice sent a meet and confer letter to Plaintiff's counsel regarding deficiencies in the original complaint and defendants' intent to file an anti-SLAPP motion. (Packard Decl. ¶ 23, Ex. E attached thereto.) Other than granting a 15-day extension to respond to the original complaint, Plaintiff's counsel never responded to the meet and confer letter. (Packard Decl. ¶ 23.) Instead, Plaintiff filed its First Amended Complaint that is substantially identical. As such, Plaintiff's First Amended Complaint was a loud rejection of the issues raised in Defendants' prior meet and confer letter and this motion is ripe.

LEGAL ARGUMENT

1. First cause of action – Gov't Code § 87100 conflict of interest

The first cause of action appears to be limited to Ron Packard, and does not involve Von Packard nor Four Main Street Associates, LLP. In any event, neither Von Packard nor Four Main Street Associates have been elected officials subject to Gov't Code § 87100, so it is assumed that the first cause of action does not involve them and thus should be dismissed. The pending arbitration does not directly overlap the allegations made in this first cause of action.

(a) The first cause of action involves constitutionally protected activity.

The first step in an anti-SLAPP motion is for the defendant to make a prima facie showing that his actions fall under constitutionally protected activities. The actions complained of in the first cause of action are Packard's involvement and statements made while he was on the Los Altos city council, or recently as a private citizen before the city council. These alleged actions clearly fall under constitutionally protected activities, as recently explained by the California Supreme Court in *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 423:

> The councilmembers' participation in the meeting that preceded the vote was constitutionally protected activity. "[P]ublic meetings, at which council members discuss matters of public interest and legislate, are conduct in furtherance of the council members' constitutional right of free speech in connection with public issues and issues of public interest. 'Under the First Amendment, legislators are "given the widest latitude to express their views" and there are no "stricter 'free speech' standards on [them] than on the general public." [Citations omitted.] The councilmember defendants' votes were cast in furtherance of their rights of advocacy and communication with their constituents on the subject of the Athens contract.

City of Montebello v. Vasquez (2016) 1 Cal.5th 409, 423.

Under *Montebello*, the First Amendment of the Constitution gives Packard "the widest latitude to express [his] views" and to discuss and vote "in furtherance of [his] rights of advocacy and communication with [his] constituents on the subject" matters. This is precisely what Plaintiff allege happened in their complaint: that Packard participated in the preparation of Agenda Item 11, and made statements regarding that Item during the May 8, 2012 city council meeting, (Amended Complaint, ¶¶ 29-34); that Packard made comments on Agenda Items 18 and 19 during the July 24, 2012 city council meeting (*Id.,* ¶¶ 35-40); and he made statements during the first and second reading of Agenda Item 5 at the October 23, 2012 and November 13, 2012 city council meetings. (*Id.,* ¶¶ 41-45). All the actions alleged in the first cause of action clearly fall within Packard's constitutionally protected activity, and thereby shift the burden onto Plaintiff to show a probability that it will prevail on the claim.

(b) Plaintiff cannot show a probability it will prevail on the first cause of action

Once the defendant makes a prima facie showing that his actions were taken in furtherance

of his right of petition or free speech under the United States or California Constitution, as Packard has done, the burden then shifts to the Plaintiff who has "to establish a probability it will prevail on the claim." Code of Civil Proc. § 425.16(b)(1). This will be extremely difficult, if not impossible. Plaintiff's problems are lack of standing, statute of limitations, and inability to show an actual violation of Gov't Code § 87100.

First, the right to bring a private action based on violation of Gov't Code § 87100 rests on Gov't Code § 91005(b):

> Any designated employee or public official specified in Section 87200, except an elected state officer, who realizes an economic benefit as a result of a violation of Section 87100 or of a disqualification provision of a conflict of interest code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.

Gov't Code § 91005(b)

For a person to have standing to sue under that code section, however, there must be compliance with Gov't Code § 91007(a), which "provides that persons bringing civil actions under sections 91004 and 91005 must first file a written request with the civil prosecutor" *Steadman v. Osborne* (2009) 178 Cal. App. 4th 950, 955):

> **(a) Any person, before filing a civil action** pursuant to Sections 91004 and 91005, **must first file with the civil prosecutor a written request for the civil prosecutor to commence the action.** The request shall include a statement of the grounds for believing a cause of action exists. The civil prosecutor shall respond to the person in writing, indicating whether he or she intends to file a civil action.

Cal. Gov't Code § 91007(a) (emphasis added)

The Complaint fails to state that Plaintiff, 40 Main Street Offices, LLC, made such a written request, and thus the Complaint is defective on its face. In their meet and confer letter, Defendants raised this issue and requested confirmation one way or the other, but Plaintiff refused to respond. (Packard Decl., Ex. B.) This is not a trivial matter, particularly since there are no reported cases of a private resident suing a former elected official for damages under Gov't Code § 87100. Plaintiff cannot "establish a probability it will prevail on the claim" since it fails to have standing.

Apart from standing, the applicable four-year statute of limitations forecloses Plaintiff from showing a probability it will prevail on all the claims of wrongdoing that pre-date October 21, 2012. "The statute of limitations in the Political Reform Act is found in section 91011. It is a four year statute. . . . the time begins running from the date the violation occurred." *McCauley v. Howard Jarvis Taxpayers Assn.,* (1998) 68 Cal. App. 4th 1255, 1260–61. That removes from the complaint the numerous paragraphs of supposed conflicts of interest found throughout the complaint, except only one possible item. The only item mentioned in the complaint that occurred after October 21, 2012 was Packard's participation and vote on an agenda item involving three zoning changes during the October 23, 2012 council meeting, with the second reading on November 24, 2012.

Those votes in late 2012, however, have already been the subject of a review by the FPPC in September 2014, based on a complaint filed by Ted Sorensen. After Packard provided a detailed explanation, the FPPC chose to drop the matter. (Packard Dec. ¶ 13.) For good cause, since there were no violations of the conflict of interest laws. Not once did he speak to any council member, commissioner, city staff, city attorney or city manager about the merits or demerits of Plaintiff's proposed project at 40 Main. (*Id.,* ¶ 12.)

The details of the Sorensen's complaint with the FPPC were allegations that at the city council meeting on October 23, 2012, there were three zoning changes passed: Code § 14.48.180 (the public benefit provision for the CRS zone); Code § 14.66.230 (the citywide definition of height); and Code § 14.66.230 (the citywide definition of parapet) and that it would be reasonably foreseeable that the decisions would have a material financial effect on his property at 4 Main Street. (*Id.,* ¶ 13, Ex. A attached thereto.) Gov't Code § 87103 requires that the financial benefit must be "reasonably foreseeable" and "material:"

> A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following: . . ..

Cal. Gov't Code § 87103

The FPPC has been charged with developing regulations on how to determine if a "decision will have a material financial effect." Under then applicable Reg. § 18704.2(b), since the "decision solely concerns the amendment of an existing zoning ordinance . . . which is applicable to all other properties designated in that category," any economic interest was considered "indirectly involved" and controlled by then applicable Reg. § 18705.2(b), which presumed that the decision was not financially material. Under said applicable Reg. § 18705.2(b), the "financial effect of a government decision on real property which is indirectly involved in the government decision is presumed not to be material." This meant that there was a presumption that his vote on the three Municipal Code sections was not economically material to his ownership of 4 Main, and not prohibited by any conflict of interest rules. That was, however, only a presumption that could be rebutted if it could be shown that it was *reasonably foreseeable* that the decision would have a material financial effect on Packard's property at 4 Main Street.

Ted Sorensen's first complaint with the FPPC also contains a legal analysis, and he too came to the conclusion that Packard's vote was "indirectly" involved, and thus entitled to a presumption of immaterial:

> Thus, Packard's property is considered "indirectly" involved in the governmental decision to amend the ordinance. [¶] Under the FPPC's regulations in effect at the time the governmental decisions were made, the financial effect of a governmental decision with an indirect effect on a public official's property is presumed to be immaterial. (2 CCR§ 18705.2(b)(l).)

(Packard Dec., Ex. A attached thereto, p. 8, ¶ 4(a)(ii), & p. 9 ¶ 5(a).)

Overcoming the presumption requires a showing that the financial benefit had a "substantial likelihood" and was "reasonably foreseeable," words used in Gov't Code § 87103.

The courts have given credence to the FPPC's interpretation of these provisions, and have held that a mere possibility is not reasonably foreseeable:

> For example, the FPPC has stated: "An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable." We recognize, as Degnan points out, that advice letters are not legal authority. However, the above statement is consistent with the ordinary meaning of the term and is based upon the construction of a conflict of interest prohibition in U*.S. v. Mississippi Valley Co*. (1961) 364 U.S. 520, 555, 560, 81 S.Ct. 294, 312, 314–15, 5 L.Ed.2d 268.

Smith v. Superior Court (1994) 31 Cal. App. 4th 205, 212.

In Sorensen's 2014 FPPC complaint, after he recognized that Packard's vote was entitled to a presumption of not being material, he then argued that the presumption should be overcome, since, according to him, (1) the properties in the CRS/OAD zone would find it easier to obtain public benefit exceptions, thus making them more attractive than properties in the CRS zone, (2) the change in how building heights are measured would ensure that the 4 Main Street building would be the only three-story building downtown (not true, there are several); and (3) the change in height would allow more light to 4 Main, thus making it easier to lease space. (Packard Dec. ¶ 13, Ex. A attached thereto.) These arguments, however, were and are not based in reality. Packard's response in September 2014 to the FPPC explained in detail why each of theses are not credible, and the FPPC did not pursue Ted Sorensen's complaint. (*Id.,* ¶ 13, and Exhibit B attached thereto.)

In summary, since the burden shifts to Plaintiff "to establish a probability it will prevail on the claim.," Plaintiff needs to show standing, then that Packard's actions took place after October 21, 2012, and then shoulder the burden of proof with specific facts that the financial benefit for the three zoning changes were material, with a substantial likelihood that was reasonably foreseeable. This they cannot do.

c. Demand for $3,000,000 is contrary to law.

Gov't Code § 91005(b) quoted above provides that under the private right to bring a civil action, the potential recovery is "for an amount up to three times the value of the benefit." In other words, the limit of recover is not based on damages, but on supposed financial benefit. Review of each of the three supposed benefits, as provided in Ted Sorensen's complaint with the FPPC, and detailed in Packard's letter to the FPPC (Packard Decl., Ex. D), evidences that that there simply were no financial benefits.

2. Second and third causes of action – serving as an attorney

a. The second and third causes of action also involve constitutionally protected activity.

The actions complained of in the second and third causes of action are against each of the

defendants for their alleged involvement in assisting forty percent of the investors in their litigation against the Plaintiff and the Sorensens for fraud, breach of fiduciary duties, and other wrongdoing. However, "[t]he filing of lawsuits is an aspect of the First Amendment right of petition" (*Soukup, supra,* 39 Cal.4th at p. 291), a claim based on actions taken in connection with litigation fall "squarely within the ambit of the anti-SLAPP statute's 'arising from' prong. (§ 425.16, subd. (b)(1))." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 90, fn. omitted.) "Thus, statements, writings, and pleadings in connection with civil litigation or in contemplation of civil litigation are covered by the anti-SLAPP statute, ..." (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 472.) Accordingly, the alleged actions of defendants under the second and third causes of action also fall squarely within constitutionally protected activities under the anti-SLAPP statute.

b. Plaintiff cannot show the required probability it will prevail on the second or third causes of action

With the burden shifted onto Plaintiff "to establish a probability it will prevail on the claim" (CCP 425.16(b)(1)), it is extremely doubtful that they can provide the required evidence to meet that standard. The investors had the right to approach and engage Packard as their attorney. It is a fundamental right of a person to select an attorney and to communicate freely with that attorney, subject only to prior representation by the attorney of the opposing party, which is not applicable here. Any claim that Four Main Associates, LLP, engaged in the illegal practice of law or otherwise advised the investors is bizarre and non-sense. Packard disclaims any such activity (Packard Decl. ¶ 24), and Nero considers any such suggestions as "simply nonsense." (Nero Decl. ¶ 4.) It will be extremely difficult, if not impossible, for Plaintiff to present evidence otherwise, much less meet the required burden under this motion.

Packard's role as a prospective and eventual attorney in behalf of the claimants has already been the subject of two attacks by Plaintiff in the arbitration to have him removed, both rejected by retired Judge Komar, who held a ten-day hearing of the disputed claims and counterclaims between the claimant investors and the respondents. The counterclaims by Plaintiff against the investors included the same issues presented in the current complaint, that the investors violated their duties

by engaging Packard as their prospective and then actual attorney, sharing information with him, and filing the lawsuit instead of arbitration. In addition, there are three paragraphs in the Complaint that allege wrongdoing not by defendants, but by the investors. (Amended Complaint ¶¶ 84-86.) Apart from indispensable party issues, there can be no interference with contract rights if the arbitrator determines that the contract is void due to fraud. These allegations are part of the arbitration and will be resolved there. The closing reply briefs in the arbitration were filed on January 23, 2017, and a final award is expected any time. It is likely that any such award will have a major impact on this lawsuit, including collateral estoppel.

In addition to meeting its burden of proof, Plaintiff would have to overcome the litigation privilege, under Civil Code § 47. The privilege applies "to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) [having] some connection or logical relation to the action. [Citations.]" (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) The privilege applies even if the communication took place outside the courtroom. (*Id*. at pp. 219-220.) And the privilege extends to all torts other than malicious prosecution.

Another hurdle for Plaintiff is the difficulty of satisfying its burden of proof when there is an attorney-client privilege that has not been waived.

Finally, the Plaintiff must also show that the Amended Operating Agreement was valid, since the alleged causes of action are based on that Agreement. But the validity of that Agreement is one of the subjects of the pending arbitration. If the arbitrator rules that the Agreement is void, then Plaintiff cannot prevail on its claims that defendants caused the investors to violate the terms of that Agreement.

3. Bond Request.

To avoid abuse of the private actions under Gov't Code for supposed conflicts of interest, Govt' Code § 91012 specifically requires the Court to impose on the private plaintiff who has standing (which is unlikely here) the posting of a bond: "On motion of any party, a court shall require a private plaintiff to post a bond in a reasonable amount at any stage of the litigation to

guarantee payment of costs." If the first cause of action is not stricken, then it is reasonably anticipated that the law firm of Packard, Packard & Johnson, P.C., which has been retained by Four Main Street Associates, will incur at least $100,000 of legal fees on such action should this case proceed to trial. (Packard Decl. ¶ 26.)

SUMMARY

This lawsuit is the archetypical example of a SLAPP lawsuit. All of the Gov't Code conflict of interest claims against Packard fail for lack of standing, most also fail due to the statute of limitations. Only one could remain, but that alleged action was of a general nature and so immaterial, lacking the required financial benefit with a substantial likelihood that was reasonably foreseeable. Even the FPPC was unwilling to pursue the matter. The second and third causes of action are premised on the assumption that forty percent of Plaintiff's investors could not have properly engaged Packard as their prospective or actual attorney to sue Plaintiff. Those claims face insurmountable judicial privilege obstacles and attempt to dismantle the longstanding right of an individual to engage any attorney they choose. In addition, the Complaint does not state proper causes of action against Von Packard and Four Main Street Associates LLP, neither of which held any public office or provided legal services to the claimants in the arbitration proceeding. Since Plaintiff cannot meet its burden of proof under the anti-SLAPP statute, the complaint should be stricken as to all defendants. If it is not stricken, the plaintiffs should be required to post bond in the amount of $200,000, as required under Govt' Code § 91012.

Dated: February 6, 2017

Respectfully submitted,
Packard, Packard & Johnson, P.C.

Ronald D. Packard, Esq.

Exhibit 23

RONALD D. PACKARD (SBN 72173)
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T (650)823-6959
rdpackard@packard.com

Attorney for Ronald D. Packard, Von G. Packard, and Four Main Street Associates, L.P.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

40 MAIN STREET OFFICES, LLC, a California limited liability company Plaintiff, v. RONALD D. PACKARD, VON G. PACKARD, FOUR MAIN STREET ASSOCIATES, L.P., a California limited partnership, and DOES 1-200 inclusive Defendants.	Case No. 16CV301483 **DECLARATION OF SEAN CORRIGAN IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE COMPLAINT PURSUANT TO CIV. PROC. CODE § 425.16** Date: 3-14-17 Time: 9:00 a.m. Dept.: 8 Complaint filed: October 21, 2016

I, Sean Corrigan, do hereby declare as follows:

1. I make the statements herein based on my personal knowledge, and I could and would competently testify thereto if called as a witness.

2. My family's investment vehicle, Old Trace Partners, L.P. invested $284,000 to become a 10% ownership member of 40 Main Street Offices, LLC, since its inception in 2007.

3. My first interaction with Ron Packard was in late 2012. Prior to that time I had been told by the Sorensens that he was a dishonest and manipulative person. At present I have now come to believe that those statements were not correct.

4. By the time I engaged Ron Packard as a prospective attorney, I had become convinced that Ted Sorensen and his brother Jerry Sorensen, with their wholly owned management company Gunn Management, are dishonest and corrupt managers of 40 Main Street Offices, LLC, As a result of the arbitration, I have became convinced that (a) the original Operating Agreement was invalid and unenforceable due to fraud in the inducement regarding potential developments in Los Altos, (b) the amendments to the Operating Agreement in 2012 were procedurally and substantially invalid, and also involved the breach of fiduciary duties by the managers and by the majority against the minority, (c) that the terms of the amendments were improper and not binding, all the more so since I was not given an opportunity to review or sign the documents until weeks after the amendment was circulated to the majority in an effort to collude against us the minority members, (d) those amendments were not clear and did not give fair warning that they would claim liquidated damages of $50,000 if I were to engage Ron Packard as my attorney, and (e) that the Sorensens and their management company have engaged in significant breaches of their obligations under the Operating Agreement, such as improperly taking over $500,000 of management fees, nonpayment of rents, self-dealings without required membership approval, undocumented and self-dealing transactions involving thousands of dollars without the required approvals, admitted doctoring the books, likely misleading of the banks, unfair and differential treatment of the investors, refusal to allow me to inspect the books, and failure to make the required quarterly reports and annual budgets.

5. One of the reasons I wanted Ron Packard to represent me as my attorney is that he has a vast understanding of the Los Altos community, downtown dynamics, and what type of development would be conforming to the zoning requirements. That was very important to me since I believed that the Sorensens are talented in glossing over issues and speaking in generalities that

are misleading. I wanted as my attorney someone who already knew the general facts regarding downtown Los Altos, could see through any smoke screens and would press for details: who, what, when, where, etc.

6. In 2014 I verified the original lawsuit against the Sorensens and others. I believed then, and after 10 days of arbitration hearings before Judge Komar (retired) at JAMS, I believe now that the claims we made were fully justified. I am all the more convinced that the Sorensens cannot be trusted, that they have repeatedly used Ron Packard as their scapegoat to cover up their own wrongdoing, and that I made the correct choice by selecting Mr. Packard to be involved in the arbitration.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, and that this Declaration was entered into on this 26 day of January, 2017, in Los Altos, California.

Sean Corrigan

Exhibit 24

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 114083	FOR COURT USE ONLY
NAME: William C. Milks, III FIRM NAME: Law Offices of William C. Milks, III STREET ADDRESS: 40 Main Street CITY: Los Altos STATE: CA ZIP CODE: 94022 TELEPHONE NO.: 650-930-6780 FAX NO.: E-MAIL ADDRESS: bmilks@sbcglobal.net ATTORNEY FOR (Name): Plaintiff, 40 Main Street Offices, LLC	PROPOSED 2017 MAR -1 P 2:06 CLERK OF THE COURT SUPERIOR COURT OF CA COUNTY OF SANTA CLARA C. Page DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown	
Plaintiff/Petitioner: 40 Main Street Offices, LLC Defendant/Respondent: Ronald Packard, Von Packard, Four Main Street Associates, LP	
REQUEST FOR DISMISSAL	CASE NUMBER: 16CV301483

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☒ Without prejudice
   b. (1) ☒ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☐ Other *(specify)*:*

2. *(Complete in all cases except family law cases.)*
   The court ☐ did ☒ did not waive court fees and costs for a party in this case. *(This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).*

Date: 3/1/17
William C. Milks, III
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ William C. Milks, III
(SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross Complainant

3. **TO THE CLERK:** Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶
(SIGNATURE)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross Complainant

(To be completed by clerk)

4. ☐ Dismissal entered as requested on *(date)*: MAR – 1 2017
5. ☐ Dismissal entered on *(date)*: as to only *(name)*:
6. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

7. a. ☐ Attorney or party without attorney notified on *(date)*: MAR – 1 2017
   b. ☐ Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to be conformed ☐ means to return conformed copy

Date: MAR – 1 2017 Clerk, by C. Page, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
CIV-110 [Rev. Jan. 1, 2013]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.; Gov. Code, § 68637(c); Cal. Rules of Court, rule 3.1390
www.courts.ca.gov

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:

CIV-110

COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover $10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name):*
2. The person named in item 1 is *(check one below):*
   a. ☐ not recovering anything of value by this action.
   b. ☐ recovering less than $10,000 in value by this action.
   c. ☐ recovering $10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. ☐ All court fees and court costs that were waived in this action have been paid to the court *(check one):* Yes No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY MAKING DECLARATION)

(SIGNATURE)

Exhibit 25

Los Altos Town Crier (/)
Serving Los Altos California and Surrounding Communities Since 1947

NEWS

Free parking: At what cost?: Rethinking use of downtown could reverse economic fortunes (/news/sections/news/215-news-briefs/20231-J18480)

Published: 05 August 2009 Written by Bruce Barton - Town Crier Staff Writer

Photo Photos By Elliott Burr/Town Crier

Cars nestle in free two-hour parking stalls along Main Street in downtown Los Altos, above, while a no parking sign on Third Street limits the capacity of incoming traffic the city can handle, inset.

It's easy to use the current recession as the scapegoat for downtown Los Altos' continuing retail struggles. But statistics point to a greater problem. City-compiled data reports that sales-tax revenues, based on the fortunes of downtown businesses, have declined steadily over a 13-year period when adjusted for inflation. Three other cities used for comparison, Mountain View, Burlingame and Los Gatos, all registered upswings.

Getting serious about solutions, city officials and business leaders are launching marketing campaigns, currently highlighted by Los Altos A to Z (see Page 5), sprucing up landscaping and discussing plans that include additional office and living space to draw more people downtown.

How big a role does parking play? It's a perennial subject of debate. For some, the downtown simply does not have a parking problem. For others, preserving retail and restaurant activity downtown depends on increasing the number of available stalls.

Development options

To that end, a 12-member Los Altos Downtown Development Committee has reviewed options during the past 18 months. It started with consideration of a 200-stall above-ground parking garage next to Los Altos Grill on San Antonio Road. That evolved into a more ambitious plan involving office space and underground parking in the three south parking plazas off San Antonio Road.

The goal, according to the committee, is to bring more people downtown to generate demand for goods and services. Creating more parking is seen as part of the equation.

"A great solution is to have a city-owned parking garage so that many employees and some customers will know that parking is available," said downtown commercial real estate broker Ron Labetich, a committee member. "But funding is nonexistent."

Bringing in a developer to build office space in the plazas could be a sound strategy, said Anne Stedler, the city's economic coordinator. That developer, she said, would greatly reduce city costs for additional parking.

"Almost half of the (19-acre) downtown core is public," Stedler said. "The public has enormous leverage as to what happens downtown."

Under committee discussion are three test cases for office and parking development under a public/private partnership. The scenarios project an additional 500-800 office workers downtown and 600-712 parking stalls (200 additional spaces in each case). The options, included in a "Downtown Los Altos Public Parking Plazas Opportunity Study," are scheduled for further discussion Aug. 25 during a study session between the committee and the Los Altos City Council.

"The committee believes these public benefits are seriously, perhaps critically, needed for the economic well-being of our downtown," said Councilwoman Val Carpenter, chairwoman of the committee. "In a time when our downtown is steadily growing less competitive as a retail destination, the committee's study lays out feasible opportunities we can realistically pursue."

â€˜High cost of free parking'

Enter two Los Altos brothers, both active downtown businessmen, who have a revelatory take: Free parking is a problem that thwarts economic growth. But changing the parking model, they contend, also provides the solution.

Ted and Jerry Sorensen discovered this as they researched building a three-story office building downtown. This sparked their months-long study.

Along the way, they came across UCLA professor and planning expert Donald Shoup, author of "The High Cost of Free Parking" (American Planning Association, 2005). In the book, Shoup maintains that free parking is costing hundreds of billions of dollars and that everyone pays for it "except the motorist." Shoup (no relation to Los Altos founder Paul Shoup) also contends in his book that free parking encourages more vehicle trips and more solo drivers, thus creating more auto pollution. Paid parking results in the opposite.

"The space required for parking has made downtowns less vibrant, less walkable and reduced its aesthetic charm," wrote Ted Sorensen and Forrest Linebarger in their report, "The New Science of Parking." The study is credited to the GreenTown Los Altos Sustainable Land Use Group of which Linebarger is chairman and Ted Sorensen is vice chairman. The Sorensens and Linebarger presented their report at the July 21 downtown development committee meeting.

The Sorensens calculate that each new parking stall costs $90,000. That's money better spent on actual building space, they said.

"There's currently 40 percent more (downtown) parking than building," Ted Sorensen said.

His figures show 486 public spaces in the downtown core.

Jalfrezi stir-fries fish with a twist

New breweries are thriving on the Peninsula

The Sorensens contend that the downtown layout, with its parking plazas, was fine for the 1960s and 1970s but became outdated as market forces changed. Free parking allows employees to park closest to businesses, frustrating potential customers. In addition, the Sorensens said the current Los Altos requirement of four stalls per 1,000 square feet of added floor space not only inhibits development, but creates stalls that go unused much of the time. The result, they said, is wasted money and less potential profit for businesses.

Parking meters downtown?

What the Sorensens want to do might be considered counter intuitive at first: install paid parking meters in the downtown core. This, in theory, forces employees to park in outlying areas and clears space for customers.

The city currently has a prepaid employee-parking program in place downtown, monitored with parking decals. However, that hasn't stopped employees from parking close to stores, then moving to different spaces when the time limit expires. The decal also doesn't stop the city's Community Services Officer Rod Sayre from issuing $54 tickets when vehicles exceed the time limit.

The Sorensens said a "tiered parking" solution could allow customers free parking for the first 90 minutes, then charge for "stay-over fees" without the risk of getting ticketed. Employees could be incentivized to park farther away with free, all-day parking. "Smart meters" can accept credit cards as payment, so there would be no issue of finding change to feed the meter. Such systems, already in place in communities like Pasadena and Redwood City, have been successful, they said.

"We were skeptical at first, but the more we looked into it, the more it made sense," said Jerry Sorensen, adding that in other cities where meters were installed, they "created revenue that caused (cities) to spruce up the place."

The Sorensens also want to see private lots that go unused after 5 p.m., when the workday ends, open to public use during the evenings.

"There are 900 empty stalls every second of every day," Jerry Sorensen said. "But they're all private."

They'd like to see the city make arrangements with private owners for stall use, with the city assuming the liability.

Other ideas in "The New Science of Parking" report include employee incentives to use alternative transportation and use of "spillover" sites, such as the Hillview Community Center, near the downtown.

"The GreenTown â€¦ presentation does present some interesting ideas in that many private parking lots are underutilized throughout the downtown." Labetich said. "Reallocating the existing parking program (gives) more value to street parking by shifting the free parking time allowed."

Changing the formula

Then there's the matter of parking-to-floor development ratios. The Sorensens suggest a reduction in the ratio of required stalls per 1,000 square feet of office space, from the current 4 to a range of 1.6 to 2.4.

These ratios, the Sorensens said, better reflect average parking use. Just changing these standards, they said, would encourage more building and would bring millions of additional dollars to the city.

"The beauty of it is, it can happen overnight," Jerry Sorensen said.

A three-pack of fun

Stedler said the downtown development committee is recommending a reduction to 3.3 stalls per 1,000 square feet.

"If we go to 3.3 per 1,000, we significantly increase the viability of the (public/private office) project," she said.

While the Sorensens support the options outlined in the opportunity study, they contend the city could reorganize its parking program instead of paying for a garage, profiting in the process.

Meters, the Sorensens estimated, could generate yearly revenues of up to $1.2 million while reducing congestion by 30 percent. Proceeds could go into a "Parking Benefit District" to fund downtown improvements.

"You put in the meters and your problems are solved," Ted Sorensen said.

Not everyone agrees.

"I think it's a very bad idea," said Los Altos City Councilman Ron Packard, a member of the downtown development committee. "Our two major competitors are Stanford Shopping Center and Santana Row, and they have free parking. (Meters) would draw people away from Los Altos."

"I think the devil's in the details," Carpenter said of the Sorensens' plan. "I don't think we have a parking problem now. â€¦ But parking (requirements) does hold down redevelopment."

Downtown property owner Jon Rayden said he thought installing meters might be a good idea.

"If there was a no-hassle way to accomplish that, if you had a system without coins, I think (meters) would help," he said.

However, Rayden said he sees three additional issues key to downtown revival: more office employees, more residents living here and "a vibrant nightlife. You need all four."

Time-limit changes welcome

"It's not just about parking," said Nancy Dunaway, executive director of the Los Altos Village Association, the downtown merchants' group. "The city should be more concerned about the (downtown) vacancy rate (9.45 percent) than the parking."

She said the recent change from the Los Altos Police Department in expanding parking limits from two to three hours in the central parking plaza was a welcome one.

"(Police) really heard people's concerns that they didn't have enough time (to do business) without moving their cars," Dunaway said.

"I felt it was a good opportunity (for downtown business) to increase tha

Mike | 98 Months Ago

Paid parking? That\'s a good way to kill downtown

Reply comment | Quote

Jon Wiener | 98 Months Ago

Paid parking is a good way to make downtown more pleasant and to reduce taxes (and therefore rents and prices). It's a tried and true recipe for making downtown more competitive.

http://nemesisofevil.com/2009/08/12/a-revelation-about-downtown-los-altos-parking-policy/

Reply comment | Quote

Georges Rosenmann | 97 Months Ago

In my book, "The Time is NOW!", I wondered how much of every dollar collected in parking meter fees is used to maintain the parking meter bureaucracy. In other words, what percentage of every dollar collected is used to maintain the operating bureaucracy and what percentage (leftover) actually goes back to the city as "profit"? While I still do not have my answer, this article certainly provides a boatload of ammunition for my position, namelythe elimination of parking meters altogether.

Reply comment | Quote

Exhibit 26

Los Altos Town Crier (/)
Serving Los Altos California and Surrounding Communities Since 1947

NEWS

LA group suggests ways to boost downtown vibrancy (/news/sections/news/215-news-briefs/23587-J21976)

Published: 17 August 2010 Written by Jana Seshadri - Town Crier Staff Writer

It's no secret that downtown Los Altos has been hamstrung by a struggling economy. With several interested parties striving to improve the situation, one local group – Los Altos 2025 – Aug. 5 presented its plan for revitalizing downtown to the Los Altos Planning Commission.

Jerry Sorensen, longtime resident and group member, provided details of "Vibrant Downtown: The Heart and Soul of America's Communities," a report that outlines why thriving downtowns are important to cities and the elements that contribute toward their strength.

A central commercial area can increase property and retail values, protect historical resources, attract new businesses and create new jobs, Sorensen said.

"A vibrant Los Altos downtown could contribute approximately $3 million annually to the Mountain View Los Altos Union High School District, $3 million to the Los Altos School District and $4 million to the city," he said.

In a recent study by the group that compared daytime jobs in downtowns, Los Altos ranked lowest with 2,511 jobs – 23.3 percent of the city's population, while Mountain View had 19,320 jobs, 73.2 percent, and Burlingame had 20,147 jobs, 91.6 percent, in their downtowns.

"If we had more jobs, we would likely have a much larger 'feet on the street' count," said Sorensen's brother, Ted. "The obvious answer is to build more offices to produce a higher daytime census – that will allow better restaurants and shops that will support better nightlife."

During a one-hour, weekday, midday count, downtown Los Altos had 225 people, while Castro Street in Mountain View had 475 and California and University avenues in Palo Alto had 512 and 709 people, respectively.

Vibrancy is directly proportional to the number of people in the downtown area at any given time, said Los Altos 2025 Chairwoman Robin Abrams. Small, incremental steps don't create enough change in economic environment for retailers, she added.

“The key driver is to get more feet on the street,” Abrams said. “People attract more people, and people buying from our retailers and restaurants will create a sense of community. Some of the ‘feet’ will live downtown, some will work downtown and some will visit downtown.”

Creating density and a sense of place in the downtown area are achievable targets, Jerry Sorensen said.

Out of 890,000 square feet of office, retail and residential area in the downtown triangle, only 65,000 square feet – 10 properties – have been developed or redeveloped in the past 20 years, Abrams said.

Statistics might indicate that conditions are not attractive enough for developers or retailers to develop or redevelop their properties.

“As a community, we should have a master plan on what we want to happen over the next 20 years for our kids and grandkids,” Abrams said. “We need a visioning process.”

Contact Jana Seshadri at janas@latc.com (mailto:janas@latc.com).

- SHARE (http://addthis.com/bookmark.php?v=250&pub=xa-4af3e1272f178ef0)

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Jalfrezi stir-fries fish with a twist

New breweries are thriving on the Peninsula

Exhibit 27

Vibrant Downtown

The Heart and Soul of America's Communities

Reaching the Boiling Point

Presentation by Clifton Consulting Group
Los Altos Forward
July 11, 2012

Vibrant Downtown

Is Los Altos Dense?

1. Marked by compactness or crowding together of parts
2. Slow to understand
3. Having high or relatively high opacity

Vibrant Downtown

Who is the Clifton Consulting Group?

- Ted & Jerry Sorensen
  - 30 year residents

Vibrant Downtown

Who is the Clifton Consulting Group?

- *Ted Sorensen*
  - *Attorney*
  - *15+ years real estate development*
  - *Master Degree in Engineering*
  - *Transportation/economic planning*

Vibrant Downtown

Who is the Clifton Consulting Group?

- *Jerry Sorensen*
  - *25+ years real estate*
  - *Market Center management/development*
  - *Vibrant Buildings*
  - *Trade Shows*
  - *Management Consulting*

Exhibit 28

Jon Biggs

From: Joseph Field <mjfield@gmail.com>
Sent: Thursday, June 01, 2017 12:00 PM
To: Jon Biggs; Chris Jordan; City Council
Subject: 40 Main Street

Hello,

My name is Dr. Joseph Field and I own the dental practices at 99 Third Street and 20 First Street. I am writing in regards to my concerns with the proposed building at 40 Main Street. I think allowing this building to go through without the required 29 spaces and exceeded the building height by 8 feet would be incredibly irresponsible. The impact on the already overcrowded downtown parking would be detrimental to me, my patients and my practice. Not to mention the issue with the height of the building and the aesthetic detriment that would cause.

Please vote no on this proposal. It is the wrong thing to do.

Thank you,
Joseph

Jon Biggs

From: Walter Van Hooff <walter@qoesystems.com>
Sent: Thursday, June 01, 2017 10:57 AM
To: Jon Biggs
Subject: Office bldg 40 Main

Dear Mr. Biggs,

Although I'm all for progress and increased tax revenue, the building proposed for 40 Main Street is totally unacceptable as currently proposed, because:

1/ it exceeds the building code height limitation by a significant 8 feet!! which will change the character of the environment significantly.

2/ it does not provide any parking, although an office building of this nature requires 53 parking spaces!!

3/ an earlier similar proposal was rejected unanimously by the then City Council of 2012, now these developers helped Jean Mordo to be elected to the council, this reeks of corruption.

I could go on. But such a building needs to comply with the building code in both design (2 story, not 3 requiring the extra 8 ft, and a parking facility in the basement), and nature as to not change the environment created by the adjacent buildings.

Thank you for your considerations to protect our city from unscrupulous developers.

Walter van Hooff | President
QoE Systems, Inc. | www.qoesystems.com | 650-314-0112

Jon Biggs

From: Scott Riches <sriches@pinewood.edu>
Sent: Thursday, June 01, 2017 10:51 AM
To: City Council
Cc: Chris Jordan; Jon Biggs
Subject: Project at 40 main St.

Dear City Council Members,

I understand that the proposed project at 40 Main St. goes before the city council this evening for discussion along with public comment. Unfortunately, I can not attend the meeting but felt it important to share my brief comments here. My wife and I have been Los Altos residents for 21 years and we appreciate the look, feel and charm of Los Altos. At the same time, we are also in favor of new development as it is important to keep up with the times and also meet the needs and wants of the residents. Assuming that I understand all the facts, what is most concerning to me about this project is that it won't be providing any of the required 29 parking stalls. Yesterday, I was trying to find parking in the plaza directly behind the proposed project location going into Wells Fargo bank and I had to circle the area for 10-15 mins. I can not imagine a new building going into that area that will only require additional parking than what is already there, yet the proposed project is suggesting that they can get away with less parking.

I also understand that the project is requesting to build a non-conforming office building exceeding the building height by 8 ft. I am not as educated in this area but If this is correct I would hope that there would need to be some compelling reason for the council to make an exception to this.

Again, I am all in favor of new development. I would hope that at tonight's meeting there could be good discussion with the developers that could allow them to move forward with their project but also address the parking situation along with staying within the existing building guidelines of what is allowed in the downtown area.

Scott and Sarah Riches

Jon Biggs

From: David Lowe <david.lowe@los-altos.com>
Sent: Wednesday, May 31, 2017 11:25 AM
To: Jon Biggs
Subject: Proposed Development of 40 Main Street

Greetings –

I am a tenant of the property immediately adjacent to 40 Main Street. My clients, many of whom are elderly, report having problems finding parking. I am extremely concerned that the proposed development of 40 Main Street with a three story office, with no provision for additional parking, will further exacerbate the already existing parking shortage. With new tenants scheduled to occupy the spaces formerly occupied by Maltby's and Main Street Café, parking in the neighborhood will be further compromised.

Thank you for your consideration of the above.

David L. Lowe
4 Main Street, Suite 220
Los Altos, CA 94022

Los Altos Community Development Director Jon Biggs, May 30, 2017

Subject: 40 Main CEQA Report / Mitigated Negative Declaration

In my opinion, 40 Main Mitigated Negative Declaration data has not been provided as required by CEQA for Section 4.16 Traffic and Transportation to make decisions on level of mitigation required.

California Senate Bill 743 [2013] updated Transportation Impacts Analysis in the CEQA Guidelines. Essence of update was to no longer use signalized intersection "level of service" data but to use "effective miles traveled" as a more complete measure of impact on environment. Guidelines show use of actual miles traveled blended with time stopped at intersections plus time in "system gridlock" to measure how long a car engine is running and impacting environment. Guidelines also allow alternates to methodology tool. Alternates if used, must be justified in CEQA report,

Guidelines also indicate use of Traffic Analysis Simulation programs that only measure intersection "level of service" need to be upgraded to factor in system traffic flow restrictions like short buffers at Main / First to Foothill, Edith / First to Foothill, and San Antonio / Cuesta to Foothill. They also need to factor in pedestrian demand. TRAFIX simulation program used in 40 Main report for traffic count, only uses count and intersection configuration for "level of service" calculation.

Guidelines require use of current [30 months] traffic count data. Based on my notes, traffic count data for "level of service" summary in 40 Main report was taken early fall 2011, before large growth of job and business vitality increased traffic that use our downtown streets.

Thank you for your consideration,

Jim Wing

666 Milverton Road

Los Altos, CA

Exhibit 29

Ron Packard,
Almond-Edith-Jardin · 13 Jun

Proposed non-conforming 3-story building downtown without required Open Government notice

Dear neighbors, Two developers, Ted and Jerry Sorensen, are proposing a non-conforming 3-story development at 40 Main Street for our downtown. The city staff is recommending denial, but the Sorensens have been very politically involved. Their proposal greatly exceeds height limits and provides 0 of the required 29 parking stalls. (They went to Boise, Idaho to find an expert who wrote a report saying that such an addition will not cause any problems for our downtown. Really?) While the hearing before the Planning & Transpiration Commission is this Thursday night (at 7:00 pm city hall), they have failed to comply with the city's Open Government policy of providing, prior to the notice two weeks ago, city-approved story poles for the development, which are supposed to then be certified by an engineer to be accurately installed. Instead, at the last minute they have put up some story poles that do not comply with the city's requirements that provide safeguards to make sure they are accurate. Can they be trusted? Recently, after a ten-day hearing before a retired Superior Court judge, they were found guilty of misrepresentation of key facts to their investors on this same project, and an award of over $2.5 million was granted against them. Please email our city officials prior to this Thursday that this agenda item needs to be re-scheduled for a date after they have fully complied with the story poles requirements of the city. Also, if you think the project is a bad idea for the charm of our downtown, please also state that. As one resident recently said, such an eye-sour would be a gateway of disaster for our downtown. The email addresses to our city leaders are as follows: jbiggs@losaltosca.gov; cjordan@losaltosca.gov; council@losaltosca.gov; dkornfield@losaltosca.gov; Call me should you have any questions. Ron Packard at 823-6959, or at rdpackard@packard.com. For anyone interested, the city's Store Poles Policy can be found on the city's website at http://www.losaltosca.gov/sites/default/files/fileattachments/Community%20Development/page/431/story_poles_policy_and_guidelines.pdf

Edited 17 Jun · 52 neighborhoods in General

Reply

21 Thanks · 70 Replies

Roger Heyder, University/Madonna·13 Jun

I agree that this structure should be opposed. Aside from writing city council on this, please visit preservelosaltosnow.org and sign the petition which requests conformance to building codes.

Thank

1 Thank

Adam Nash, Old Los Altos Alley·13 Jun

Ron, are you referring to this project (from 2012)? https://www.losaltosonline.com/news/sections/news/40638-J42122 I just reviewed the plans on the city website (anyone can see the design here)

http://www.losaltosca.gov/sites/default/files/fileattachments/Community%20Development/page/266/skmbt_c25314012815190.pdf It looks gorgeous. Perfectly in keeping with the surrounding buildings. I honestly do not understand why people fight so hard against wonderful improvements to our downtown. I'm just reading up on this now, but it sounds like you own the property next door, and you recused yourself from the issue previously for that reason? The hotel across the street is 38', and 4 Main Street is 34'. So the height issue cannot possibly be the reason here.
Thank
13 Thanks

Roger Heyder, University/Madonna·Edited 13 Jun
I don't own a building downtown and I oppose it. The hotel received a number of variances, including height and no parking. Hopefully if one building manages to avoid the building codes, it does not exempt all future buildings. This is the real problem with a precedent. With this attitude, oversized buildings will progress into the downtown, leveraging the building next door (or across the street) as an excuse for exceeding the building height. I gather the 'community benefit' is a paseo - what a joke. If honesty is difficult, I guess it is best to just pretend..... maybe nobody will notice.
Thank
1 Thank

Nancy Bremeau, Old Los Altos Alley·13 Jun
Dear Friends and Residents of Los Altos, Please don't fall for this incomplete and misleading thread, posted by Ron Packard. Long time Los Altos residents (30+ years), and property owners Ted and Jerry Sorenson have been struggling to get approval for their project for more than 10 years, blocked at every turn by their next door neighbor, author of this Nextdoor thread, Ron Packard, (not related to the Hewlett-Packard families in any way). Why is he fighting so hard against his nextdoor neighbors? Because of a personal grudge? Unhappy that the new building will be 4 feet taller? Whatever the reason he has carried this grudge too far. As far as being politically involved and motivated, it is on public record that Ron Packard was a City Council member for 8 years, and ex-Mayor of Los Altos. Mr. Ron Packard has been a known political figure in this town for many years. He has also brought law suits against the City of Los Altos. The building at 40 Main Street is an example of a well designed office building which will add important Class A office space and help support our downtown businesses. It is located across from Enchante Hotel in an area well suited to offices. The opposition to 40 Main Street is focused on two issues, building height and parking. Height The height of the building is 38-feet to the top of the parapet which is allowed by the code. But the Los Altos code has a different technical specification to measure interiors of buildings which is to the roof deck. Consequently while the building meets the allowed exterior height measurement it does not meet the technical specification for interior height which is a measurement that can not be seen by the public, yet is important to the economic feasibility of the project. Parking Because the project is part of the original parking district and is on a small lot it is unable to provide on-site private parking (this is VERY typical of most commercial lots in downtown Los Altos) - which is why a parking in-lieu fee needs to be instated by our Council but never has been. As a solution, Ted and Jerry Sorenson have offered to redevelop Parking Plaza Ten which would be a wonderful public benefit and which includes undergrounding the overhead utilities and adding 16 to 20 additional spaces. They have also identified how to create up to an additional 16 on-street spaces surrounding

plaza 10, for a total of up to 36 additional public parking spaces. This proposal is allowed by City code. Public Benefit In addition to re-designing parking plaza 10, the property owners are offering a new, pass through (or paseo) for public use, which will take up more than 15% of their buildable land. It will be a safe and convenient feature and located almost exactly in the middle of the second longest block in downtown Los Altos. To anyone reading this post, please remember it is important to have both sides of a story before drawing a conclusion.

Thank

20 Thanks

Nancy Bremeau, Old Los Altos Alley·Edited 13 Jun

Here is a rendition of the building, as seen on the public notice board at the front of 40 Main Street. The design fits nicely into downtown Los Altos and the charm that we all hold in high regard. The exterior height of the building is 38' to the top which is allowed by code. Compared to the neighbors building at 34' and the Hotel at 38' it fits nicely into the surrounding area and buildings. This building and its tenants will help support our downtown businesses and bring property taxes to our City and Schools. As a resident of Los Altos I believe we can and should welcome smart and well designed buildings into our town. This project has been unreasonably delayed for many years, I think the time has come to move forward, it works for our City.

Thank

11 Thanks

Ron Packard, Almond-Edith-Jardin·14 Jun

Nancy's rely makes a few statements that need clarification. Grudge For almost ten years the Sorensens have insisted on developing a non-conforming building. During the first 5 years I was on the city council, and recused myself from any city decision making or interaction with commissioners, council members, or staff as to their project. Nevertheless, they have relentlessly blamed me for all their failures, and have filed frivolous complaints against me with state agencies and the DA’s office. Since there was no factual support for any of those, they were all quickly abandoned. They even recently sued me for speaking to the city council this last January on an agendized item. I filed an Anti-SLAPP motion to summarily dismiss their lawsuit as frivolous, and they dismissed the lawsuit instead of answering the motion. After ten days of arbitration hearings in which they likewise attacked me, the very experienced Judge Komar ruled that their failures were not due to me, but due to their refusal to submit a plan that was conforming to height and parking requirements. Indeed, they had represented to their investors that they could build a two-story office building, satisfy both the height and parking requirements, and make a profit of close to $6 million with a 106% return on investment. He also found that I had not done nothing wrong. Even so, I have tried working with the Sorensens to help them with a profitable two-story building, only to be rebuffed. In summary, they have used me as their scapegoat, and some have bought into that excuse. Height The maximum height of their proposal is not 38-feet as Nancy suggests, but 45 feet. (See the staff report on the

city's website.) The 38 feet she referenced is to the roof line, which is not allowed. It should be 30 feet. The standard used in Los Altos to measure the height of a building is the most common used by other municipalities: the outside height of the roof line. Previously, it was to the height of the interior ceiling on the top floor, but a dishonest developer could easily manipulate that by putting it unusually low, only to surreptitiously put it higher after final approval. Rendering Renderings are prepared by the developer and are notoriously inaccurate as to height and bulk. One should not be too swayed by pretty pictures that can be most misleading. Suing the city Nancy said that I have brought lawsuits against the City of Los Altos. That is absolutely false. No one can identify even one lawsuit I have filed against the city. This is another falsehood perpetuated by the Sorensens, and, unfortunately, assumed to be true by others. Parking The "wonderful" solution of restriping the parking plazas involves destroying all the mature trees and making the parking stalls narrower so that you can enjoy the pleasure of dings on your car. But all of that will not make up for the deficiency of the parking demands by their proposed 3-story building. Public Benefit The subject block already has two walking paths connecting Main Street to the parking plaza – the driveway for Wells Fargo and the pleasant paseo next to the dental office. There is no need for a third. I do agree with Nancy that it is good to see both sides of a story. But both sides need to be accurate.
7 Thanks

Mariette Wharton, Middlebury/Edith/Cypress·14 Jun

I agree that re-strping spaces to make them more narrow can lead to dings and more time getting into the spots (and therefore more traffic), but is it possible to design them in an offset pattern or at an angle to reduce that risk? Also, I would like to see more commercial space downtown so we can have more daytime foot traffic to support better retail options. The two are highly correlated as evidenced in the similar population of Menlo Park, MP's higher ratio of commercial space and their better mix of stores and places to eat. I also think that developers are entitled to make a profit so that should not be held against ten, but it is unclear to me if they need the additional height for the building to be profitable as I don't know enough about the topic. Is it that the code doesn't make sense for developers?
Thank

Robert Sandor, Los Altos Hills Town Hall Circle·14 Jun

The building in my opinion is a beautiful building in conformance with all Los Altos design elements that will help bring new life to a sleepy downtown. I understand the developers have even offered at their own expense to improve that horrible parking plaza 10 by improving efficiency, safety, lighting, new landscaping and additional parking slots far in excess of any town requirements. Mr. Packard unfortunately is calling the kettle black. He owns a neighboring, ugly building, is VERY politically connected and believes this new, handsome building will somehow negatively impact his property value. I totally support the building, and encourage my neighbors to attend the meeting to add their support to improve our community.
Thank
6 Thanks

David Roode, South Clark·Edited 14 Jun

The 30 foot height was adopted at the request of citizens who don't want dense development. 38 feet is a lot higher than 30 feet. There's no reason to be granting variances to this 30 foot height. Remember the building is a lot taller than this measurement because you have structures on the roof to consider too. One remedy is to at least propose a setback for the 3rd story to reduce the apparent mass of the building and the daylight blocking effects, but that doesn't address the density issue by much.

Thank

3 Thanks

Norma Schroder, Eastenders·Edited 17 Jun

I saw those story poles today and thought they looked incomplete. The building plan is one 38 foot box with some articulation on the front facade. The poles don't outline a box like they should. Please put up proper story poles.

Thank

1 Thank

Norma Schroder, Eastenders·17 Jun

I was just in parking plaza 10 today and it is not "horrible." Plenty of users are accustomed to the wide spaces and the shade of the trees. When this building project plan was first submitted 4 years ago, the developer volunteered he could repave and restripe plaza 10 with smaller stalls and get another 15 (?)or so stalls on it. The trees would have to go. I believe he is making a similar offer now in order to be granted a height variance and a parking requiement variance. Worth it? Hmmmm. Then there is the 'public benefit " of the plan's paseo ...which will 99% be used by the building's tenants IMO. And wouldn't the paseo be better on the northside, giving the Parkard neighbor more side yard setback? [photo taken from a vantage point in plaza 10]

Thank

2 Thanks

Nancy Bremeau, Old Los Altos Alley·17 Jun

Exhibit 30

Ron Packard,
Almond-Edith-Jardin · 10 Jul

Should City of Los Altos allow private developer use parking plaza to develop 3 story building?

Since my post last month on Los Altos downtown issues generated a lot of interest, here is my second. Tomorrow night the Los Altos city council we decide on whether to consider allowing a developer to re-stripe Parking Plaza 10 (the one at Main and Edith) to assist them in meeting their parking requirements for a non-conforming 3-story office building. This is the property at 40 Main Street that currently has storypoles erected. (Note the storypoles are supposed to be 38 feet high for most of the project, and 45 feet high for the tower, but they are only 34 feet high.) In the interest of disclosure, I am one of the owners of the adjacent property, 4 Main Street, and as such, have keep myself informed on the ongoing process. Here are my key concerns: 1. Allowing a private developer to use city land is generally not a good idea. The Council has been entrusted by the citizens of Los Altos to protect our assets and lands, and unless there is a very compelling reason, allowing private use of public land should be avoided. If that is to be allowed, why not put it out to bid to all the private property owners adjacent to Plaza 10. I could be interested, if it would decrease the already over-congestion, and not be automatically used up by additional offices without providing their required parking. 2. The LACI proposed project on First Street may be different, since they will be providing substantial additional parking. This proposed project at 40 Main Street is not. The few stalls that re-stripping will provide are NOT the 52-61 needed. Potential shoppers, already concerned about the lack of parking, will shop elsewhere. Thus, allowing the project to use public land will hurt, not help, the vibrancy of downtown. Studies have shown that office workers do little or no retail shopping. The “feet on the streets” we need are shoppers, not office workers. And making the parking stalls narrower, and allowing them to be filled with office workers who will overflow and fill other parking plazas and residential streets, will hurt retailers and the vibrancy of our downtown. 3. The Sorensens are asking the Council to do what they previously accused the Council on which I sat to have done – selected winners and losers, played favoritism. While we never did such, it is an easy charge to make in the public forum, and hard to disprove. Sure, we went through a public process of open hearings, just as the current council is about to do. Doesn’t matter. People will accuse them of playing favorites, and this time, they may be right. If the decision doesn’t set a precedent, then it is clearly favoritism. One of the key beginning charges by Jean Mordo to the now defunct Parking Committee was to determine if the building standards were uniformly applied during my time on the Council. The current proposal is to make exceptions as you go, prior to completion of the downtown visioning process. Favoritism at its worst. 4. The Car Park report (the Sorensens’ consultants from Boise, Idaho, who concluded that no or little additional parking would be required) calculated that 53 parking stalls are required for this 17,428 square feet office building with a net square footage of 15,872 based on a parking stall for each 300 square feet of building floor area. Thus, after the 23 (later changed to 24) parking stall "credit" there is the remaining 30 (later changed to 29) parking stalls for the project to supply. The question that should be asked is where will the 53 parking stalls (NOT only 30 or 29) be provided within Plaza 10, or on adjacent parking plazas or residential streets. The Car Park report then goes on to argue that substantially less parking stalls are needed. (if interested, the actual report is attached to the staff report on the city's website:

http://los-altos.granicus.com/MetaViewer.php?view_id=4&clip_id=1220&meta_id=51043) 5. A standard reference, without bias, for parking requirements of an office building is the Institute of Transportation Engineers, Parking Generation, 4th Edition, 2010. Even the Car Park report references this. There are two categories listed, "urban" and "suburban", both having an 85th percentile as the goal (NOT 95%). For the urban setting, an 85th percentile would require 52 parking places (17.428 x 2.98 = 51.94) For the suburban setting, which was used in the 2009 Fehr & Peers Parking Report, an 85th percentile would require 61 parking places (17.428 x 3.45 = 60.13). As such, any suggestions that their 17,000+ square foot project would require only 24 or less parking stalls is fantasy. 6. A key support for their fantasy regarding the parking needs is the October 8, 2015, Parking Demand analysis prepared by Nelson/Nygaard for the Sorensens. As stated therein, much of the data upon which that analysis was based was gathered by the Sorensens, who had a conflict of interest and have since been found guilty (after a 10-day hearing before a retired judge) of fraud, by making false statements regarding this project to their investors. Much of the remaining data was from properties located along El Camino Real or San Antonio Road, outside of the Downtown Triangle. These irregularities will explain why their conclusions for parking requirements is so substantially inconsistent with and less than those based on the accepted Institute of Transportation Engineers, Parking Generation. Of course, there is the additional issue that the report was paid for by the Sorensens, and that Nelson/Nygaard are not licensed civil engineers, but planners. 7. Parking Plaza 10 is only around 413 feet from 164 Main Street, the property partially owned by Council member Prochnow. Since it is clearly less than 500”, she has a direct conflict of interest and cannot participate in the discussion or voting on this agenda item. Hopefully, at least two of our remaining four council members will do the right thing by not approving this premature and ill-conceived favoritism. If you agree, please email your thoughts to the following: council@losaltosca.gov; with a copy to me at rdpackard@packard.com. Best regards, Ron Packard

Edited 10 Jul · 47 neighborhoods in General

Reply

3 Thanks · 71 Replies

Robert Sandor, Los Altos Hills Town Hall Circle·10 Jul

Thank you for letting us know Ron, however I disagree with your perspectives. Very much in favor of the remodel project as parking plaza 10 right now is extremely unsafe. The suggested improvement will greatly improve capacity, usability, safety while removing a town eyesore with a very nicely landscaped lot. As per your suggestion, I have emailed the town council and copied you on it. Sounds to me from your tone that you have a beef with the owners of 40 Main, too bad as from my perspective it's clouding your judgement.

Thank

9 Thanks

Roberta Phillips, Eastenders·10 Jul

Hi Ron I agree that allowing a private developer to use city land is generally not a good idea. The Council has been entrusted by the citizens of Los Altos to protect our assets and lands, and unless there is a very compelling reason, allowing private use of public land should be avoided. The LACI project is not an exception For too long developers have ben allowed to ignore our zoning laws and have variances granted. The LACI project has too much mass and bulk, will create traffic problems, privacy problems for neighbors and impinge on our public land. Our City Policy should uphold our

zoning laws with out exception and regardless of how large a public benefit is offered. Do the rich get the laws waived for them ? I say NO to a Quid Pro Quo.

Thank

1 Thank

Norma Schroder, Eastenders·10 Jul

The real unspoken City Council issue is whether letting the Sorensens perhaps eventually PAY FOR restripping the plaza 10 would ever be allowed by City Council to substitute for the 29 required parking spaces the Sorensens don't have for their building plan permit to be approved. //What is before council tomorrow...is just something more basic ...whether council wants to encourage the Sorensens to use their own money to develop a concrete set of Plaza 10 plan drawings that could go out to bid. The proposed retripping would add spaces...not 29 stalls though as I recall. I assume the CITY would select the contractor for Plaza 10 , and not ever let the Sorensens do the implementation. Also...Staff points out that letting the Sorensens spend money on these plaza 10 drawings does not mean the City would necessarily ever repave the plaza, NOR that the Council would ever approve of the Sorensen building plan.// I suspect that tomorrow this Council will let the Sorensens spend their money on plaza 10 plans. /// We surely don't want the folks who put up those sub-standard story poles a couple of weeks ago to depict their project...also selecting a paving contractor!

Thank

Jon Baer, Marvin/Pepper·10 Jul

If the City thinks re-stripping is a good idea then the city should do it and pay for it as a way of increasing parking for those property owners in the parking district who need parking for their first floor of development. Property owners who need parking for their second or third story of development should build it underground-or wait until there is a city parking garage which they can pay into and cover the actual cost of that additional parking. I personally think that a re-stripping effort will remove too many trees for the benefit that can accrue, but others may have a different opinion. I frankly am astounded when i hear people complaining as to the poor condition of the parking plaza-it is no better nor worse than any others in town. and even if it were, giving it to a private developer who should be providing their own parking is just wrong.

Thank

2 Thanks

Norma Schroder, Eastenders·10 Jul

I agree with @jon baer that most residents aren't ready to see a reduction of shade trees on any of the surface downtown parking plazas 1- 10 in the next 10-30 years. [Thus if City Council tomorrow lets the Sorensens spend their money on a drawing up a plan for restripping Plaza 10, ...I predict that later on the City won't implement it, because so many residents will have protested the loss of shade trees.] //And I agree that the downtown parking plazas are NOT currently in poor condition. And personally I have not experienced any terrible "traffic flow" problems in plaza 10. // AND YES @jon baer, property redevelopment to 2 or 3 stories along Main and State desperately needs a

Parking In Lieu Program (PILP) to be established in the City. Personally, I am excited that the LACI First Street Green project could create underground city garage stalls that the City could use for a PILP. But that won't be ready till 2019 or so, if that LACI project even happens. Since the LACI parking would be underground parking, I guess the City would have to charge around $50K per stall.
Thank

David Roode, South Clark·Edited 10 Jul
The LACI project isn't even in the parking district. So comparisons to it are quite different. Still, it's worth noting that every property in the district has the same issue--being constrained by the cost of providing parking. How can one justify an exception for 40 Main? It's just not fair, whether the city demand estimates are accurate or not. I think this lot 10 is a good spot for a parking structure. A simple one might be built there with just a single raised deck, and the current parking could be lowered 5 feet down to minimize the height overall. There doesn't need to be a roof above the raised parking. So it would cost less than underground parking. However such added spaces would still cost 50 times more than painting new lines on the surface. The applicant is trying to skate by without paying a fair cost for the needed parking.
Thank
1 Thank

David Roode, South Clark·10 Jul
Interestingly, the previous city study on re configuring all parking plazas estimated an average cost of $110,000 per added space. So you can bet this applicant has something in mind to cut back that cost, and this something might be something very unsatisfactory. This is then something else to consider. How is this plaza different from the average?
Thank

Nancy Bremeau, Old Los Altos Alley·10 Jul
Hi Norma, I agree with most of what you said...although I do think that some of our parking lots do need a considerable amount of improvements. Plaza 10 has some major issues related to traffic flow and entering and then re-entering off of Edith. I do think there are improvements to be made. I also agree we are way overdue for a PILP program. I would love to see a future in 30 or 40 years where all of our parking plaza's are undergrounded, with parks, plaza's and green space on top...in the meantime I don't think it would prevent any future efforts by allowing plaza 10 to be improved and redeveloped by the owners of 40 Main Street, there is already a City Code allowing this. On a separate note, I don't see how anyone could argue that we would lose shade trees...if this plaza is redeveloped or improved by the City or the owners of 40 Main Street, new trees would be planted...replacing aging trees that are there now...and most likely more of them. Those trees might not be as small as you imagine...planting a decent size tree and taking care of it, should allow it to grow quickly and provide shade for many years to come.
Thank

David Roode, South Clark·Edited 10 Jul
Or the plaza could be improved with a split level parking structure 2nd level rising no more than 5 feet above ground. Then larger planting areas would be possible than are there now, as opposed to fewer space for plantings necessitated by more parking slots in a tighter arrangement. Lot 10 is a

real good place for such a split level parking structure and it would nearly double the number of spaces compared to what's there now, not just add 15 puny ones. The developer would be able to provide the full number of spaces needed for such a large building, 50-60 and more new ones to spare.
Thank
1 Thank

Jon Baer, Marvin/Pepper·11 Jul
Several points that require clarification. First a parking in lieu program only works when the cost of a replacement parking spot is covered by the in lieu fee-for above ground parking structures that is typically $30-50k, for underground parking it is $75-100K per spot. Secondly the in lieu parking has to be nearby the proposed project otherwise it doesn't accomplish the goal of providing parking that will be used. Case in point-there is almost always parking available in the Safeway garage, yet people go in circles looking for parking in the plazas. With regard the point that Nancy Bremeau makes that our City code currently allows a developer to redevelop and improve the parking plazas-that is not correct. And even if it were true, in this case the developer wants credit for the parking that they need for a second and third story. The math here doesn't work-they need over 40 spots total to satisfy the parking demand for a new building, yet at most a re-stripe would add less than half. An underground parking garage would require eliminating all the current trees on the plaza and replacing them with far fewer trees that would be very limited in size-a structure with a split level parking configuration only makes the problem worse as there is even less soil depth in which to plant.
Thank

Roger Heyder, University/Madonna·Edited 11 Jul
It is relevant to look at the origin of the whole problem - why is there such a need for larger commercial structures in the small village?? Los Altos is a RESIDENTIAL community, and there is simply no additional space to grow a commercial area Here we are discussing unnatural acts to try and create a few extra parking spots to enable an oversized building (as defined by city code). The 'feet on the street' argument has been pretty well debunked, so what is left? What it all comes down to is MONEY. MONEY for the owner/developer and MONEY for the city (through more taxes). Why is this such a priority for the city, when this is a RESIDENTIAL community and the impacts on the residents seem negative?? Also, the city is running at a budget surplus, thanks to residential property tax, so the city doesn't NEED more MONEY. The owner/developer purchased the building knowing the code limitations, so it should not be considered a downside, just reality. The upside for the owner/builder is when the city council sells out the residents and continues to enable the owners/builders. This has happened already in several locations in town (most recent being 1st and San Antonio and LACI). What do the residents get from these buildings besides an eyesore and more crowded infrastructure ?? Perhaps all the side discussions are useful to distract from the core problem, but the core problem is oversized buildings in an area with a fixed infrastructure (roads and parking). It's is not about 'progress' or 'modernizing', and certainly not about 'beautifying', it is purely about MONEY. The city council should simply be ashamed about what they are doing.
Thank
3 Thanks

Ron Packard, Almond-Edith-Jardin·11 Jul
Well stated. Ron

Exhibit 32

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(Old Trace Partners, L.P., et al. v. Sorensen, et al. -- JAMS Reference No. 1110001721)

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09/16/14	Email	Ron Packard	Stephen Fick, Alan Truscott	ACP; WPP
09/16/14	Email with attachment	Ron Packard	Alan Truscott, Julienne Nucum	ACP; WPP
09/16/14	Attached document	Ron Packard	Document sent to Julienne Nucum, Dan Nero, Sean Corrigan, Erik Corrigan	ACP; WPP
09/16/14	Email	Sean Corrigan	Julienne Nucum, Ron Packard, Erik Corrigan	ACP; WPP
09/16/14	Email	Stephen Fick	Julienne Nucum, Ron Packard	ACP; WPP
09/16/14	Email with attachment	Stephen Fick	Ron Packard	ACP; WPP
09/16/14	Attached document	Stephen Fick	Document sent to Julienne Nucum, Ron Packard	ACP
09/16/14	Attached document	Stephen Fick	Document sent to Ron Packard	ACP
09/17/14	Email	Alan Truscott	Julienne Nucum, Ron Packard	ACP; WPP
09/17/14	Email with attachment	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero	ACP; WPP
09/17/14	Attached document	Ron Packard	Document sent to Julienne Nucum, Dan Nero, Sean Corrigan, Erik Corrigan	ACP; WPP
09/17/14	Email with attachment	Stephen Fick	Julienne Nucum, Ron Packard	ACP; WPP
09/17/14	Attached document	Stephen Fick	Document sent to Julienne Nucum, Ron Packard	ACP
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09/19/14	Email	Dan Nero	Sean Corrigan, Ron Packard, Julienne Nucum, Erik Corrigan, Alan Truscott	ACP; WPP
09/19/14	Email with attachment	Erik Corrigan	Ron Packard	ACP; WPP
09/19/14	Attached document	Erik Corrigan	Document sent to Ron Packard	ACP
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09/21/14	Email with attachment	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan	ACP; WPP
09/21/14	Attached document	Ron Packard	Document sent to Julienne Nucum, Sean Corrigan, Erik Corrigan	ACP; WPP
09/22/14	Email with attachment	Alan Truscott	Dan Nero, Sean Corrigan, Ron Packard, Julienne Nucum, Erik Corrigan	ACP; WPP
09/22/14	Attached document	Alan Truscott	Document sent to Dan Nero, Sean Corrigan, Ron Packard, Julienne Nucum, Erik Corrigan	ACP
09/22/14	Email	Ron Packard	Sean Corrigan, Erik Corrigan, Julienne Nucum	ACP; WPP
09/22/14	Email	Sean Corrigan	Julienne Nucum, Ron Packard, Erik Corrigan	ACP; WPP
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09/29/14	Email	Dan Nero	Julienne Nucum, Ron Packard, Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein	ACP; WPP
09/29/14	Email	Sean Corrigan	Julienne Nucum, Ron Packard, Erik Corrigan, Dan Nero, Alan Truscott	ACP; WPP
09/30/14	Email	Dan Nero	Ron Packard, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott	ACP; WPP

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Privilege Log - Ronald D. Packard

(Old Trace Partners, L.P., et al. v. Sorensen, et al. -- JAMS Reference No. 1110017211)

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09/30/14	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein	ACP; WPP
11/13/14	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Stephen Fick, Paul Klein, Ron Packard	ACP; WPP
11/19/14	Email	Sean Corrigan	Julienne Nucum, Ron Packard, Erik Corrigan, Dan Nero, Alan Truscott	ACP; WPP
11/20/14	Email	Alan Truscott	Sean Corrigan, Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
11/20/14	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Ron Packard, Paul Klein	ACP; WPP
11/20/14	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein, Stephen Fick	ACP; WPP
11/20/14	Email	Sean Corrigan	Alan Truscott, Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
11/21/14	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Stephen Fick, Paul Klein, Ron Packard	ACP; WPP
12/08/14	Email	Dan Nero	Ron Packard, Sean Corrigan, Julienne Nucum, Erik Corrigan	ACP; WPP
12/08/14	Email	Ron Packard	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan	ACP; WPP
12/15/14	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
12/15/14	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
12/22/14	Email	Erik Corrigan	Julienne Nucum, Sean Corrigan, Dan Nero, Paul Klein, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
02/11/15	Email	Alan Truscott	Julienne Nucum, Sean Corrigan, Ron Packard, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick	ACP; WPP
02/12/15	Email with attachment	Stephen Fick	Alan Truscott, Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein, Ron Packard	ACP; WPP
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02/13/15	Email	Dan Nero	Ron Packard, Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
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02/13/15	Email	Sean Corrigan	Ron Packard, Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Alan Truscott	ACP; WPP
02/23/15	Email	Dan Nero	Julienne Nucum, Ron Packard, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
02/23/15	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein	ACP; WPP
02/23/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
03/02/15	Email with attachment	Alan Truscott	Julienne Nucum, Sean Corrigan, Ron Packard, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
03/02/15	Attached document	Alan Truscott	Document sent to Julienne Nucum, Sean Corrigan, Ron Packard, Erik Corrigan, Dan Nero, Paul Klein	ACP
03/02/15	Email	Dan Nero	Paul Klein, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Ron Packard	ACP; WPP
03/02/15	Email	Paul Klein	Julienne Nucum, Dan Nero, Sean Corrigan, Erik Corrigan, Alan Truscott, Ron Packard	ACP; WPP
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03/04/15	Email with attachment	Paul Klein	Ron Packard, Julienne Nucum, Sean Corrigan, Dan Nero, Stephen Fick	ACP; WPP
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03/05/15	Email	Alan Truscott	Julienne Nucum, Sean Corrigan, Ron Packard, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick	ACP; WPP
03/05/15	Email	Dan Nero	Julienne Nucum, Ron Packard, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick	ACP; WPP
03/09/15	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein, Stephen Fick	ACP; WPP
03/10/15	Email	Dan Nero	Julienne Nucum, Ron Packard, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick	ACP; WPP

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Privilege Log - Ronald D. Packard

(Old Trace Partners, L.P., et al. v. Sorensen, et al. -- JAMS Reference No. 1110017 21)

Date	Item	From	To	Privilege
03/15/15	Email	Alan Truscott	Sean Corrigan, Dan Nero, Stephen Fick, Ron Packard, Paul Klein, Julienne Nucum	ACP; WPP
03/15/15	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Paul Klein, Alan Truscott, Ron Packard, Stephen Fick	ACP; WPP
03/15/15	Email	Sean Corrigan	Dan Nero, Alan Truscott, Julienne Nucum, Erik Corrigan, Stephen Fick, Ron Packard	ACP; WPP
03/16/15	Email	Dan Nero	Stephen Fick, Sean Corrigan, Ron Packard, Alan Truscott, Julienne Nucum	ACP; WPP
03/20/15	Email with attachment	Alan Truscott	Erik Corrigan, Dan Nero, Stephen Fick, Sean Corrigan, Ron Packard, Julienne Nucum	ACP; WPP
03/20/15	Attached document	Alan Truscott	Document sent to Erik Corrigan, Dan Nero, Stephen Fick, Sean Corrigan, Ron Packard, Julienne Nucum	ACP
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03/20/15	Attached document	Dan Nero	Document sent to Sean Corrigan, Alan Truscott, Julienne Nucum, Erik Corrigan, Stephen Fick, Ron Packard	ACP
03/20/15	Email	Erik Corrigan	Dan Nero, Sean Corrigan, Stephen Fick, Ron Packard, Alan Truscott, Julienne Nucum	ACP; WPP
03/20/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Stephen Fick, Alan Truscott, Ron Packard	ACP; WPP
03/23/15	Email	Alan Truscott	Ron Packard, Julienne Nucum, Sean Corrigan, Dan Nero, Stephen Fick, Paul Klein	ACP; WPP
03/23/15	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Dan Nero, Alan Truscott, Paul Klein, Stephen Fick	ACP; WPP
03/23/15	Email	Stephen Fick	Ron Packard, Julienne Nucum, Sean Corrigan, Alan Truscott, Dan Nero, Paul Klein, Erik Corrigan	ACP; WPP
03/24/15	Email	Dan Nero	Ron Packard, Julienne Nucum, Sean Corrigan, Stephen Fick, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
03/24/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Stephen Fick, Alan Truscott, Ron Packard	ACP; WPP
03/25/15	Email with attachment	Alan Truscott	Julienne Nucum, Sean Corrigan, Dan Nero, Stephen Fick, Ron Packard, Paul Klein, Erik Corrigan	ACP; WPP
03/25/15	Attached document	Alan Truscott	Document sent to Julienne Nucum, Sean Corrigan, Dan Nero, Stephen Fick, Ron Packard, Paul Klein, Erik Corrigan	ACP
03/25/15	Email	Paul Klein	Julienne Nucum, Dan Nero, Sean Corrigan, Stephen Fick, Ron Packard	ACP; WPP
03/25/15	Email	Sean Corrigan	Dan Nero, Alan Truscott, Julienne Nucum, Erik Corrigan, Stephen Fick, Ron Packard	ACP; WPP
03/28/15	Email	Dan Nero	Sean Corrigan, Alan Truscott, Julienne Nucum, Erik Corrigan, Paul Klein, Ron Packard	ACP; WPP
03/28/15	Email	Ron Packard	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott	ACP; WPP
03/29/15	Email	Alan Truscott	Ron Packard, Dan Nero, Sean Corrigan, Erik Corrigan, Julienne Nucum	ACP; WPP
03/29/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Stephen Fick, Alan Truscott, Ron Packard	ACP; WPP
04/17/15	Email	Dan Nero	Sean Corrigan, Alan Truscott, Julienne Nucum, Erik Corrigan, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
04/27/15	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
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04/29/15	Email	Alan Truscott	Ron Packard, Julienne Nucum, Sean Corrigan, Dan Nero, Erik Corrigan	ACP; WPP
04/29/15	Email	Dan Nero	Sean Corrigan, Alan Truscott, Julienne Nucum, Erik Corrigan, Stephen Fick, Paul Klein, Ron Packard	ACP; WPP
04/29/15	Email	Sean Corrigan	Alan Truscott, Julienne Nucum, Erik Corrigan, Dan Nero, Stephen Fick, Ron Packard	ACP; WPP
04/29/15	Email with attachment	Stephen Fick	Dan Nero, Ron Packard, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein	ACP; WPP
04/29/15	Attached document	Stephen Fick	Document sent to Dan Nero, Ron Packard, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein	ACP
05/01/15	Email with attachment	Alan Truscott	Julienne Nucum, Stephen Fick, Dan Nero, Sean Corrigan, Ron Packard, Erik Corrigan	ACP; WPP
05/01/15	Attached document	Alan Truscott	Document sent to Julienne Nucum, Stephen Fick, Dan Nero, Sean Corrigan, Ron Packard, Erik Corrigan	ACP
05/01/15	Email with attachment	Sean Corrigan	Alan Truscott, Julienne Nucum, Erik Corrigan, Dan Nero, Stephen Fick, Ron Packard	ACP; WPP
05/01/15	Attached document	Sean Corrigan	Document sent to Alan Truscott, Julienne Nucum, Erik Corrigan, Dan Nero, Stephen Fick, Ron Packard	ACP
05/02/15	Email	Dan Nero	Sean Corrigan, Ron Packard, Julienne Nucum, Erik Corrigan, Alan Truscott, Stephen Fick, Paul Klein	ACP; WPP
05/02/15	Email	Ron Packard	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein, Stephen Fick	ACP; WPP
05/02/15	Email	Sean Corrigan	Ron Packard, Julienne Nucum, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein	ACP; WPP
05/12/15	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
05/12/15	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
05/12/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP

Privilege abbreviations:
ACP = Attorney Client Privilege
WPP = Work Product Protection

Jon Maginot

From: Ron Packard
Sent: Monday, April 08, 2019 1:35 PM
To: City Council; Chris Jordan; Jon Maginot; christopher.diaz@bbklaw.com; Jon Biggs
Subject: RE: 40 Main Street Appeal
Attachments: 2017-09-18 Packard Decl. in support of anti-SLAPP (pp. 401-426).pdf

Email #7, with Packard Decl. (part 5)

From: Ron Packard
Sent: April 8, 2019 1:11 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal (Email #2, with Final Award)

Email #2, with Final Award

From: Ron Packard
Sent: April 8, 2019 1:08 PM
To: 'council@losaltosca.gov' <council@losaltosca.gov>; 'cjordan@losaltosca.gov' <cjordan@losaltosca.gov>; 'jmaginot@losaltosca.gov' <jmaginot@losaltosca.gov>; 'christopher.diaz@bbklaw.com' <christopher.diaz@bbklaw.com>; 'Jon Biggs' <jbiggs@losaltosca.gov>
Subject: RE: 40 Main Street Appeal

Dear Council members and staff,

Enclosed please find my letter and various backup information for the hearing tomorrow night. I respectfully request that the letter and the attachments be included in the administrative record for the hearing. Two of the attachments will be send in batches due to their size.

Thanks, Ron Packard

Privilege Log - Ronald D. Packard

(Old Trace Partners, L.P., et al. v. Sorensen, et al. -- JAMS Reference No. 1110017 21)

Date	Item	From	To	Privilege
05/28/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
05/29/15	Email with attachment	Dan Nero	Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein, Julienne Nucum	ACP; WPP
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05/29/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
06/03/15	Email	Alan Truscott	Dan Nero, Sean Corrigan, Erik Corrigan, Ron Packard	ACP; WPP
07/28/15	Email with attachment	Alan Truscott	Paul Klein, Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Stephen Fick, Ron Packard	ACP; WPP
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10/06/15	Email	Alan Truscott	Julienne Nucum, Dan Nero, Sean Corrigan, Paul Klein, Ron Packard, Erik Corrigan	ACP; WPP
10/07/15	Email	Alan Truscott	Sean Corrigan, Dan Nero, Ron Packard, Paul Klein, Julienne Nucum, Erik Corrigan	ACP; WPP
10/07/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
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11/05/15	Email	Paul Klein	Julienne Nucum, Dan Nero, Stephen Fick, Sean Corrigan, Ron Packard	ACP; WPP
11/19/15	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
11/19/15	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
11/20/15	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
11/20/15	Email	Paul Klein	Julienne Nucum, Dan Nero, Alan Truscott, Sean Corrigan, Erik Corrigan, Ron Packard	ACP; WPP
12/10/15	Email	Alan Truscott	Ron Packard, Dan Nero	ACP; WPP
12/10/15	Email	Ron Packard	Alan Truscott	ACP; WPP
12/11/15	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
12/11/15	Email	Paul Klein	Ron Packard	ACP; WPP
12/11/15	Email	Ron Packard	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein	ACP; WPP
12/14/15	Email	Sean Corrigan	Ron Packard	ACP; WPP
12/14/15	Email	Sean Corrigan	Julienne Nucum, Ron Packard	ACP; WPP
01/10/16	Email	Dan Nero	Ron Packard	ACP; WPP
01/20/16	Email	Ron Packard	Dan Nero	ACP; WPP
01/22/16	Email	Dan Nero	Ron Packard	ACP; WPP
01/27/16	Email	Alan Truscott	Julienne Nucum, Dan Nero, Stephen Fick, Sean Corrigan, Ron Packard, Erik Corrigan	ACP; WPP
01/27/16	Email with attachment	Ron Packard	Sean Corrigan, Erik Corrigan, Alan Truscott, Dan Nero, Paul Klein, Stephen Fick, Julienne Nucum	ACP; WPP
01/27/16	Attached document	Ron Packard	Document sent to Sean Corrigan, Erik Corrigan, Alan Truscott, Dan Nero, Paul Klein, Stephen Fick, Julienne Nucum	ACP; WPP
01/27/16	Email	Sean Corrigan	Alan Truscott, Julienne Nucum, Erik Corrigan, Dan Nero, Stephen Fick, Ron Packard	ACP; WPP
02/05/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
02/05/16	Email	Ron Packard	Alan Truscott, Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
02/05/16	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
02/11/16	Email	Alan Truscott	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Ron Packard	ACP; WPP
02/11/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
02/11/16	Email	Ron Packard	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
02/11/16	Email	Sean Corrigan	Dan Nero, Julienne Nucum, Erik Corrigan, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
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02/12/16	Attached document	Ron Packard	Document sent to Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein	ACP; WPP
02/13/16	Email	Dan Nero	Sean Corrigan, Julienne Nucum, Ron Packard, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick	ACP; WPP
02/14/16	Email	Dan Nero	Sean Corrigan, Julienne Nucum, Ron Packard, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick	ACP; WPP
02/14/16	Email	Sean Corrigan	Dan Nero, Julienne Nucum, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
02/16/16	Email	Alan Truscott	Sean Corrigan, Dan Nero, Ron Packard, Paul Klein, Julienne Nucum, Erik Corrigan, Stephen Fick	ACP; WPP
02/16/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein, Stephen Fick	ACP; WPP
02/16/16	Email	Sean Corrigan	Dan Nero, Julienne Nucum, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
02/16/16	Email with attachment	Stephen Fick	Ron Packard, Julienne Nucum, Sean Corrigan, Dan Nero, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
02/16/16	Attached document	Stephen Fick	Document sent to Ron Packard, Julienne Nucum, Sean Corrigan, Dan Nero, Erik Corrigan, Paul Klein, Alan Truscott	ACP
02/19/16	Email	Alan Truscott	Ron Packard, Sean Corrigan, Erik Corrigan, Dan Nero, Stephen Fick, Julienne Nucum	ACP; WPP
02/19/16	Email	Dan Nero	Ron Packard, Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott, Stephen Fick	ACP; WPP
02/19/16	Email	Ron Packard	Sean Corrigan, Erik Corrigan, Alan Truscott, Dan Nero, Paul Klein, Stephen Fick, Julienne Nucum	ACP; WPP
02/19/16	Email	Sean Corrigan	Dan Nero, Julienne Nucum, Erik Corrigan, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
02/23/16	Email	Dan Nero	Ron Packard, Julienne Nucum	ACP; WPP

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Date	Item	From	To	Privilege
02/23/16	Email	Ron Packard	Paul Klein, Julienne Nucum	ACP; WPP
02/23/16	Email	Ron Packard	Dan Nero, Julienne Nucum	ACP; WPP
02/23/16	Email	Ron Packard	Stephen Fick	ACP; WPP
02/23/16	Email	Ron Packard	Alan Truscott	ACP; WPP
02/23/16	Email with attachment	Stephen Fick	Ron Packard	ACP; WPP
02/23/16	Attached document	Stephen Fick	Document sent to Ron Packard	ACP
02/24/16	Email	Alan Truscott	Ron Packard	ACP; WPP
02/24/16	Email	Ron Packard	Alan Truscott, Paul Klein, Paul Klein, Stephen Fick, Dan Nero, Julienne Nucum	ACP; WPP
02/24/16	Email with attachment	Ron Packard	Erik Corrigan, Sean Corrigan, Julienne Nucum	ACP; WPP
02/24/16	Attached document	Ron Packard	Document sent to Erik Corrigan, Sean Corrigan, Julienne Nucum	ACP; WPP
02/24/16	Email	Sean Corrigan	Ron Packard, Julienne Nucum, Dan Nero	ACP; WPP
02/25/16	Email	Alan Truscott	Ron Packard, Julienne Nucum	ACP; WPP
02/25/16	Email	Dan Nero	Ron Packard, Julienne Nucum	ACP; WPP
02/26/16	Email	Alan Truscott	Ron Packard, Julienne Nucum	ACP; WPP
02/26/16	Email	Ron Packard	Dan Nero, Julienne Nucum	ACP; WPP
02/26/16	Email	Ron Packard	Alan Truscott	ACP; WPP
02/27/16	Email	Alan Truscott	Ron Packard, Julienne Nucum	ACP; WPP
02/27/16	Email with attachment	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein	ACP; WPP
02/27/16	Attached document	Ron Packard	Document sent to Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein	ACP; WPP
02/28/16	Email	Dan Nero	Ron Packard, Sean Corrigan, Alan Truscott, Julienne Nucum, Erik Corrigan, Paul Klein	ACP; WPP
02/28/16	Email	Ron Packard	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein	ACP; WPP
02/29/16	Email with attachment	Alan Truscott	Ron Packard, Julienne Nucum	ACP; WPP
02/29/16	Attached document	Alan Truscott	Document sent to Ron Packard, Julienne Nucum	ACP
02/29/16	Email	Sean Corrigan	Ron Packard, Julienne Nucum, Dan Nero	ACP; WPP
02/29/16	Email with attachment	Stephen Fick	Ron Packard, Julienne Nucum	ACP; WPP
02/29/16	Attached document	Stephen Fick	Document sent to Ron Packard, Julienne Nucum	ACP
03/01/16	Email with attachment	Dan Nero	Ron Packard, Sean Corrigan, Alan Truscott, Julienne Nucum, Erik Corrigan, Paul Klein, Stephen Fick	ACP; WPP
03/01/16	Attached document	Dan Nero	Document sent to Ron Packard, Sean Corrigan, Alan Truscott, Julienne Nucum, Erik Corrigan, Paul Klein, Stephen Fick	ACP
03/01/16	Email	Erik Corrigan	Ron Packard, Sean Corrigan	ACP; WPP
03/01/16	Email	Ron Packard	Erik Corrigan, Sean Corrigan	ACP; WPP
03/01/16	Email with attachment	Ron Packard	Stephen Fick	ACP; WPP
03/01/16	Attached document	Ron Packard	Document sent to Erik Corrigan, Sean Corrigan	ACP; WPP
03/01/16	Email	Sean Corrigan	Ron Packard, Erik Corrigan	ACP; WPP
03/01/16	Email with attachment	Stephen Fick	Ron Packard, Julienne Nucum	ACP; WPP
03/01/16	Attached document	Stephen Fick	Document sent to Ron Packard, Julienne Nucum	ACP
03/02/16	Attached document	Ron Packard	Document sent to Erik Corrigan, Sean Corrigan, Julienne Nucum	ACP; WPP
03/02/16	Email	Sean Corrigan	Julienne Nucum, Ron Packard	ACP; WPP
03/06/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
03/13/16	Email	Dan Nero	Paul Klein, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott	ACP; WPP
03/14/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Stephen Fick, Ron Packard	ACP; WPP
03/15/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Stephen Fick, Ron Packard	ACP; WPP
03/18/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Ron Packard	ACP; WPP

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(Old Trace Partners, L.P., et al. v. Sorensen, et al. -- JAMS Reference No. 1110017211)

Date	Item	From	To	Privilege
03/18/16	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
03/19/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
03/23/16	Email	Alan Truscott	Ron Packard, Sean Corrigan, Erik Corrigan, Dan Nero, Stephen Fick, Paul Klein	ACP; WPP
03/23/16	Email	Dan Nero	Alan Truscott, Sean Corrigan, Erik Corrigan, Stephen Fick, Ron Packard, Paul Klein	ACP; WPP
03/23/16	Email	Ron Packard	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein, Stephen Fick	ACP; WPP
03/23/16	Email	Sean Corrigan	Dan Nero, Julienne Nucum, Erik Corrigan, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
03/23/16	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
03/23/16	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
03/23/16	Email with attachment	Stephen Fick	Dan Nero, Erik Corrigan, Sean Corrigan, Alan Truscott, Paul Klein, Julienne Nucum, Ron Packard	ACP; WPP
03/23/16	Attached document	Stephen Fick	Document sent to Dan Nero, Erik Corrigan, Sean Corrigan, Alan Truscott, Paul Klein, Julienne Nucum, Ron Packard	ACP
03/24/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Ron Packard	ACP; WPP
03/24/16	Email	Sean Corrigan	Dan Nero, Julienne Nucum, Erik Corrigan, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
03/25/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Ron Packard	ACP; WPP
03/26/16	Email	Alan Truscott	Ron Packard, Sean Corrigan, Erik Corrigan, Stephen Fick, Paul Klein	ACP; WPP
03/26/16	Email	Ron Packard	Sean Corrigan, Erik Corrigan, Alan Truscott, Dan Nero, Paul Klein, Julienne Nucum	ACP; WPP
03/26/16	Email with attachment	Ron Packard	Alan Truscott, Paul Klein, Paul Klein, Dan Nero, Julienne Nucum, Erik Corrigan	ACP; WPP
03/26/16	Attached document	Ron Packard	Document sent to Sean Corrigan, Erik Corrigan, Alan Truscott, Dan Nero, Paul Klein, Julienne Nucum	ACP; WPP
03/26/16	Email	Sean Corrigan	Alan Truscott, Ron Packard, Julienne Nucum, Dan Nero, Erik Corrigan, Paul Klein	ACP; WPP
03/29/16	Email	Alan Truscott	Ron Packard, Dan Nero, Sean Corrigan, Erik Corrigan, Julienne Nucum,	ACP; WPP
03/30/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
03/30/16	Email	Sean Corrigan	Dan Nero, Julienne Nucum, Erik Corrigan, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
03/31/16	Email	Alan Truscott	Julienne Nucum, Dan Nero, Sean Corrigan, Stephen Fick, Ron Packard	ACP; WPP
03/31/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Stephen Fick	ACP; WPP
03/31/16	Email	Stephen Fick	Ron Packard	ACP; WPP
04/01/16	Email	Paul Klein	Ron Packard, Julienne Nucum, Sean Corrigan, Alan Truscott, Dan Nero, Stephen Fick, Erik Corrigan	ACP; WPP
04/01/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein	ACP; WPP
04/01/16	Email	Ron Packard	Paul Klein, Julienne Nucum, Sean Corrigan, Dan Nero, Alan Truscott, Stephen Fick	ACP; WPP
04/01/16	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
04/07/16	Email	Paul Klein	Sean Corrigan, Dan Nero, Ron Packard, Julienne Nucum, Erik Corrigan	ACP; WPP
04/07/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Alan Truscott, Paul Klein	ACP; WPP
04/07/16	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
04/08/16	Email	Ron Packard	Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein, Julienne Nucum	ACP; WPP
04/12/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
04/13/16	Email	Alan Truscott	Ron Packard, Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
04/13/16	Email	Paul Klein	Julienne Nucum, Dan Nero, Sean Corrigan, Erik Corrigan, Ron Packard	ACP; WPP
04/13/16	Email	Ron Packard	Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Paul Klein	ACP; WPP
04/13/16	Email	Sean Corrigan	Alan Truscott, Ron Packard, Julienne Nucum, Dan Nero, Erik Corrigan, Paul Klein	ACP; WPP
04/22/16	Email	Dan Nero	Ron Packard, Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
04/22/16	Email	Ron Packard	Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
04/23/16	Email	Dan Nero	Ron Packard, Paul Klein, Julienne Nucum, Sean Corrigan, Stephen Fick, Erik Corrigan, Alan Truscott	ACP; WPP
04/23/16	Email	Paul Klein	Ron Packard, Dan Nero, Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott, Stephen Fick	ACP; WPP
04/23/16	Email	Ron Packard	Paul Klein, Julienne Nucum, Sean Corrigan, Dan Nero, Alan Truscott, Stephen Fick	ACP; WPP

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ACP = Attorney Client Privilege
WPP = Work Product Protection

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(Old Trace Partners, L.P., et al. v. Sorensen, et al. -- JAMS Reference No. 1110017211)

Date	Item	From	To	Privilege
04/26/16	Email	Ron Packard	Paul Klein, Julienne Nucum, Sean Corrigan, Dan Nero, Alan Truscott, Stephen Fick	ACP; WPP
05/04/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Ron Packard	ACP; WPP
05/04/16	Email with attachment	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
05/04/16	Attached document	Ron Packard	Document sent to Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
05/05/16	Email with attachment	Erik Corrigan	Julienne Nucum, Sean Corrigan, Paul Klein, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP; WPP
05/05/16	Attached document	Erik Corrigan	Document sent to Julienne Nucum, Sean Corrigan, Paul Klein, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	ACP
05/27/16	Email with attachment	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
05/27/16	Attached document	Ron Packard	Document sent to Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
05/27/16	Attached document	Ron Packard	Document sent to Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
06/06/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
06/06/16	Email	Sean Corrigan	Julienne Nucum, Ron Packard	ACP; WPP
06/07/16	Email	Alan Truscott	Julienne Nucum, Dan Nero, Sean Corrigan, Erik Corrigan, Ron Packard, Paul Klein	ACP; WPP
06/07/16	Email	Dan Nero	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Ron Packard	ACP; WPP
06/24/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Alan Truscott	ACP; WPP
06/24/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
06/24/16	Email	Sean Corrigan	Julienne Nucum, Ron Packard, Erik Corrigan, Alan Truscott	ACP; WPP
06/28/16	Email	Alan Truscott	Sean Corrigan, Julienne Nucum, Erik Corrigan, Dan Nero, Ron Packard, Paul Klein	ACP; WPP
06/28/16	Email	Dan Nero	Sean Corrigan, Julienne Nucum, Erik Corrigan, Paul Klein, Alan Truscott, Ron Packard	ACP; WPP
06/28/16	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein	ACP; WPP
06/29/16	Email	Dan Nero	Ron Packard, Julienne Nucum, Stephen Fick, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
06/29/16	Email	Ron Packard	Stephen Fick, Julienne Nucum	ACP; WPP
06/29/16	Email	Ron Packard	Dan Nero, Julienne Nucum	ACP; WPP
06/29/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Stephen Fick	ACP; WPP
06/29/16	Email with attachment	Ron Packard	Stephen Fick, Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein	ACP; WPP
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06/29/16	Attached document	Ron Packard	Document sent to Stephen Fick, Julienne Nucum	ACP; WPP
06/29/16	Email	Sean Corrigan	Ron Packard, Julienne Nucum, Sean Corrigan, Dan Nero, Paul Klein, Erik Corrigan	ACP; WPP
06/29/16	Email	Stephen Fick	Ron Packard, Julienne Nucum, Sean Corrigan, Dan Nero, Paul Klein, Erik Corrigan	ACP; WPP
06/30/16	Email with attachment	Ron Packard	Stephen Fick, Julienne Nucum	ACP; WPP
06/30/16	Attached document	Ron Packard	Document sent to Stephen Fick, Julienne Nucum	ACP; WPP
06/30/16	Email with attachment	Stephen Fick	Ron Packard, Julienne Nucum	ACP; WPP
06/30/16	Attached document	Stephen Fick	Document sent to Ron Packard, Julienne Nucum	ACP
07/11/16	Email with attachment	Ron Packard	Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein, Julienne Nucum	ACP; WPP
07/11/16	Attached document	Ron Packard	Document sent to Sean Corrigan, Erik Corrigan, Dan Nero, Paul Klein, Julienne Nucum	ACP; WPP
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07/13/16	Email with attachment	Alan Truscott	Ron Packard, Julienne Nucum	ACP; WPP
07/13/16	Attached document	Alan Truscott	Document sent to Ron Packard, Julienne Nucum	ACP
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07/14/16	Email	Alan Truscott	Ron Packard	ACP; WPP
07/14/16	Email with attachment	Dan Nero	Ron Packard, Julienne Nucum	ACP; WPP
07/14/16	Attached document	Dan Nero	Document sent to Ron Packard, Julienne Nucum	ACP

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07/14/16	Email with attachment	Sean Corrigan	Ron Packard, Julienne Nucum	ACP; WPP
07/14/16	Attached document	Sean Corrigan	Document sent to Ron Packard, Julienne Nucum	ACP
07/14/16	Email with attachment	Stephen Fick	Ron Packard, Julienne Nucum	ACP; WPP
07/14/16	Attached document	Stephen Fick	Document sent to Ron Packard, Julienne Nucum	ACP
07/15/16	Email	Dan Nero	Ron Packard, Sean Corrigan, Alan Truscott, ErikCorrigan, Paul Klein	ACP; WPP
07/15/16	Email with attachment	Ron Packard	Sean Corrigan, ErikCorrigan, Dan Nero, Paul Klein, Julienne Nucum	ACP; WPP
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07/16/16	Email	Sean Corrigan	Ron Packard, Dan Nero, ErikCorrigan, Paul Klein, Alan Truscott,	ACP; WPP
07/16/16	Email with attachment	Stephen Fick	Julienne Nucum, Ron Packard, Sean Corrigan, ErikCorrigan, Dan Nero, Alan Truscott,	ACP; WPP
07/16/16	Attached document	Stephen Fick	Document sent to Julienne Nucum, Ron Packard, Sean Corrigan, ErikCorrigan, Dan Nero, Alan Truscott,	ACP
07/18/16	Email	ErikCorrigan	Sean Corrigan, Dan Nero, Alan Truscott, Ron Packard, Julienne Nucum	ACP; WPP
07/18/16	Email	Ron Packard	Stephen Fick, Julienne Nucum	ACP; WPP
07/18/16	Email	Ron Packard	Dan Nero, Sean Corrigan, ErikCorrigan, Paul Klein	ACP; WPP
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07/19/16	Email	Ron Packard	Dan Nero	ACP; WPP
07/19/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan	ACP; WPP
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07/21/16	Email	Alan Truscott	Ron Packard, Sean Corrigan, Julienne Nucum, ErikCorrigan, Dan Nero, Paul Klein	ACP; WPP
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07/21/16	Email	Ron Packard	Sean Corrigan, ErikCorrigan, Dan Nero, Paul Klein, Julienne Nucum	ACP; WPP
07/21/16	Email	Sean Corrigan	Ron Packard, Dan Nero, ErikCorrigan, Paul Klein, Alan Truscott,	ACP; WPP
07/22/16	Email	Alan Truscott	Sean Corrigan, Julienne Nucum, ErikCorrigan, Dan Nero, Paul Klein, Ron Packard	ACP; WPP
07/22/16	Email	ErikCorrigan	Julienne Nucum, Paul Klein, Dan Nero, Sean Corrigan, Alan Truscott, Ron Packard	ACP; WPP
07/22/16	Email	ErikCorrigan	Julienne Nucum, Paul Klein, Dan Nero, Sean Corrigan, Alan Truscott, Ron Packard	ACP; WPP
07/22/16	Email	ErikCorrigan	Sean Corrigan, Dan Nero, Ron Packard, Julienne Nucum, Paul Klein	ACP; WPP
07/22/16	Email	Paul Klein	Julienne Nucum, Sean Corrigan, ErikCorrigan, Dan Nero	ACP; WPP
07/22/16	Email	Sean Corrigan	Ron Packard, Dan Nero, ErikCorrigan, Paul Klein, Alan Truscott,	ACP; WPP
07/28/16	Email with attachment	Ron Packard	Julienne Nucum, Sean Corrigan, ErikCorrigan, Dan Nero, Paul Klein	ACP; WPP
07/28/16	Attached document	Ron Packard	Document sent to Julienne Nucum, Sean Corrigan, ErikCorrigan, Dan Nero, Paul Klein	ACP; WPP
07/29/16	Email	Alan Truscott	Julienne Nucum, Ron Packard	ACP; WPP
07/29/16	Email	Alan Truscott	Ron Packard	ACP; WPP
08/01/16	Email with attachment	Ron Packard	Julienne Nucum, Sean Corrigan, ErikCorrigan, Paul Klein, Alan Truscott	ACP; WPP

Privilege abbreviations:
ACP = Attorney Client Privilege
WPP = Work Product Protection

Privilege Log - Ronald D. Packard

(Old Trace Partners, L.P., et al. v. Sorensen, et al. -- JAMS Reference No. 1110017211)

Date	Item	From	To	Privilege
08/01/16	Attached document	Ron Packard	Document sent to Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
08/01/16	Email	Stephen Fick	Ron Packard	ACP; WPP
08/10/16	Email	Paul Klein	Julienne Nucum, Ron Packard	ACP; WPP
08/15/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
08/16/16	Email	Alan Truscott	Ron Packard, Julienne Nucum, Sean Corrigan, Erik Corrigan, Dan Nero, Stephen Fick	ACP; WPP
08/16/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
08/17/16	Email	Alan Truscott	Julienne Nucum, Dan Nero, Sean Corrigan, Ron Packard	ACP; WPP
08/17/16	Email	Ron Packard	Julienne Nucum, Sean Corrigan, Erik Corrigan, Paul Klein, Alan Truscott	ACP; WPP
08/18/16	Email with attachment	Sean Corrigan	Julienne Nucum, Sean Corrigan	ACP
08/18/16	Attached document	Sean Corrigan	Document sent to Julienne Nucum, Ron Packard	ACP; WPP
05/04/16	Email	Sean Corrigan	Julienne Nucum, Erik Corrigan, Dan Nero, Paul Klein, Stephen Fick, Ron Packard	
04/24/14 to 8/31/06	Emails & draft pleadings	Ron Packard	Julienne Nucum	ACP; WPP
05/01/14 to 8/31/06	Emails & draft pleadings	Julienne Nucum	Ron Packard	ACP; WPP
01/01/13 to 8/31/06	Legal research & memos	Ron Packard	Ron Packard and/or Julienne Nucum	ACP; WPP

Privilege abbreviations:
ACP = Attorney Client Privilege
WPP = Work Product Protection

Exhibit 33

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Attorney for Claimants Old Trace Partners, L.P., et al.

ARBITRATION

JAMS – SILICON VALLEY

Old Trace Partners, L.P., et al.,
Claimants,

and
.

Sorensen, Theodore, et al.,
Respondents.

JAMS Reference No. 1110017521

DECLARATION OF RONALD D. PACKARD IN SUPPORT OF PRIVILEGES

Arbitrator: Hon. Jack Komar (Ret.)

I, Ronald D. Packard, do hereby declare as follows:

1. I make the statements herein based on my personal knowledge, and I could and would competently testify thereto if called as a witness.

2. My legal work for many years has generally involved Federal False Claims Act cases that are complex, filed in federal court with the judge issuing a sealing order, and a copy given to the Department of Justice in Washington D.C., and another to the local U.S. Attorney's office. As part of that, it has been my custom and practice for many years that during my first telephone interaction with a potential new client that I explain and we agree that we are creating a prospective attorney-client relationship. That has been important to me since I want our communications from day one to be privileged.

3. Towards the end of October, 2012, I received an unsolicited telephone call from one or both of the Corrigans (of Claimant Old Trace Partners, L.P.). They wanted to engage my services as their attorney regarding 40 Main Street. Consistent with my normal practice, during that first telephone conversation there was a discussion and agreement that we create a prospective attorney client relationship between Sean Corrigan, Erik Corrigan and myself with regarding to their investment in 40 Main Street. Prior to that time, I had no attorney-client relationship with them.

4. At some time in late 2013, I had my initial contact with Claimant Dan Nero. During that initial contact, and consistent with my normal practice, we discussed and agreed that there would be a prospective attorney-client relationship between him and me. Prior to that time, I had no attorney-client relationship with him.

5. When Julienne Nucum first began representing the Corrigans and Dan Nero, which I believe was in or around May 2014, I was engaged by her as her consultant and non-testifying expert. I have continued in that role to the present.

6. In or about September 2014, I was contacted by Alan Truscott, Steven Fick, and Paul Klein. During my initial contact with each of them, we agreed that there would be a prospective attorney-client relationship. Prior to that time, I had no attorney-client relationship with any of them.

7. In or about July 2016, my role as a prospective attorney became an actual attorney for each of the Claimants, yet I still was not an attorney of record. My new role as an attorney, as opposed to merely a prospective attorney, along with that of a non-testifying expert and consultant, has continued up to the present.

8. In summary, during all my interactions with each of the Claimants, from my initial contact with them up to the present, I had a prospective or actual attorney-client relationship with that Claimant, and from around May 2014 to the present, I have also had a consulting and non-

testifying expert relationship with Julienne Nucum. I have had no other attorney-client relationship with any of the Claimants on any other matter.

9. While I do not consider it relevant, in the deposition of each of the first two Claimants, counsel for Respondents has inquired whether they had signed a waiver of any conflict of interests. Each has answered in the affirmative. Prior to my involvement in this case, I was aware of professional Rule 3-310 regarding avoiding the representation of adverse interests unless there is an informed written consent. The rule allows a client to select an attorney that has a conflict of interests, but requires there to be both a written disclosure of the conflict of interests and a written waiver of those conflict of interests, i.e., an informed written consent. I understand that at the September 23, 2016, hearing Claimants' counsel offered to allow the Arbitrator to view in camera the written disclosures and waivers signed by each of the Claimants, but the Arbitrator expressed no interest in doing so. If that position were to change, I am still willing to allow an in camera review.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct, and that this Declaration was entered into on this 9th day of October, 2016, in Los Altos, California.

Ronald D. Packard

Exhibit 34

HEARING BEFORE HONORABLE JACK KOMAR

Taken On July 19, 2017

OLD TRACE PARTNERS, L.P. -VS- THEODORE G. SORENSEN, ET AL.

PAGE 1 TO PAGE 35

CONDENSED TRANSCRIPT

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HEARING BEFORE HONORABLE JACK KOMAR

ARBITRATION
JAMS SILICON VALLEY

OLD TRACE PARTNERS, L.P., a California limited partnership, et al.,
Claimants,
vs. Case No. 1110017521
Santa Clara County
THEODORE G. SORENSEN, Individually and dba GUNN MANAGEMENT GROUP, INC., et al.,
Case No. 114CV266849

Respondents.

HEARING BEFORE HONORABLE JACK KOMAR

Date: Wednesday, July 19, 2017
Time: 9:06 a.m.
Location: JAMS
160 West Santa Clara Street
Suite 1600
San Jose, CA 95113

Reported By: Lisa Glanville
CSR #9932

#53846

HEARING JULY 19, 2017

APPEARANCES:

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(Continued)

APPEARANCES:
(Continued)

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Also Present: Alan Truscott

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--oOo--

PROCEEDINGS:

THE ARBITRATOR: All right. This is in the matter of Old Trace Partners versus Sorensen. I'm Judge Komar. I'm going to ask each Counsel to identify themselves for the court reporter.

Also present is Mr. Alan Truscott, who is one of the parties' Claimant. Let's start with the Claimants.

MS. NUCUM: Julienne Nucum of Miranda and Nucum, LLP for Claimant.

MR. PACKARD: Ron Packard for Old Trace Partners, Claimants, and them only.

MR. WONG: Preston Wong of Miranda and Nucum, LLP for Claimants.

THE ARBITRATOR: Okay.

MR. MILKS: William Milks appearing on behalf of Ted G. Sorensen, Jerry Sorensen, Gunn Management, Incorporated and 40 Main Street Offices, LLC.

THE ARBITRATOR: Ms. Barrett.

MS. BARRETT: Kathryn Barrett, Silicon Valley Law Group, on behalf of Gunn Management, Inc.

MR. DUPERRAULT: David Duperrault, Silicon Valley Law Group, on behalf of Gunn Management and the Sorensens.

THE ARBITRATOR: All right. This hearing was

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scheduled for two purposes; one, to hear any further argument concerning the comments that Counsel have submitted to me with regard to the Order following the hearing of April the 12th of 2017, as well as the request for further attorneys' fees incurred by Claimants following that Order being issued.

The Arbitrator has reviewed all of the comments received from both parties with regard to that Order following the April 12th hearing, and obviously the record will show that there have been other issues raised by the Respondents that have been addressed administratively by the -- by JAMS, and so at this point I have reviewed those comments, and I have made some adjustments with regard to the fees that were incurred up to the time of the hearing on April the 12th, 'cause I believe some of the comments from Respondents were correct.

And let's see if I can perhaps go through some of the findings in terms of dollar amounts in particular that I have made and will be reflected in the Final Award, which I will try to issue promptly.

Okay. First, the damages on the award were $1,136,000. Interest pursuant to the agreement of the parties, which was contained in the -- in both versions of the LLC that was created, provides for interest at

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the legal rate. Computing that number, we erroneously took a number that was not accurate. It should have been 1,136,000, which represents 10 percent essentially over ten years. The new Final Award will reflect those numbers.

The attorneys' fees for Ms. Nucum were $172,510 up through the final Interim Award. Obviously there were attorneys' fees that were incurred after that, and I'll address those in a moment or two. The attorneys' fees reflected an additional $8,325 for Mr. Wong. Claimants have conceded that was an error that had already been included in the fees that were billed by Ms. Nucum, so that the Final Award will reflect the absence, or the correction I should say, of that to eliminate that as part of the award.

The attorneys' fees for the post Interim Award that I intend to award for Ms. Nucum and her firm will be the total sum of an additional $10,140, which involves both the work done with regard to providing the additional comments on the award, plus the additional attorneys' fees incurred in connection with the disqualification motion.

And I'll let Counsel, if they wish to further argue in opposition to that, do so. But it is my opinion that the fees incurred by Claimants in opposing

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the disqualification motion relate to the dispute between the parties, the disqualification motion had as its stated purpose to essentially rescind the award, the Interim Award that was made, and I'm assuming to have essentially a new arbitration so that there's no doubt in my mind that those are appropriate fees incurred in defending the award. And those fees were through June 21, 2017.

The attorneys' fees for work performed by Ronald Packard were $136,360. The fees post Interim Award were $16,887.50 and $200 costs through June 20 of 2017. That is a combined number of Mr. Packard's efforts post the final Interim Award and in addition to that in connection with the opposition to the disqualification motion that was filed.

The Claimants costs for deposition reporters was $20,483.71. Arbitration transcript reporters' fees are not recoverable pursuant to the terms of the agreement of the parties.

Other costs and expenses were $11,400 incurred by Claimants in connection with expenses up to the time of the Interim Final Award. The sum of $6,246.05, JAMS arbitration's fees advanced by Claimants on behalf of Respondents, will be returned to Claimants by JAMS. Ultimately Respondents paid their own fees so that

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that'll be a refund from JAMS.

The sum of $825, which represents fees owed to Jeffrey Looney, will remain as part of the award. I believe those fees have still not been paid.

Respondents are entitled to attorneys' fees and sanctions in the sum of $4,512.50, which are sanctions in connection with the discovery abuses in effect that were found to be true by the Arbitrator in connection with the earlier motion that was required to be filed by Respondents. That sum will be an award to Respondents. Respondents are also entitled to attorneys fees in the sum of $43,001.25, plus parking costs in the sum of $6.25 and filing fees in the sum of $1,335 in connection with the necessity of their petition to compel arbitration. Respondents will take nothing by virtue of their cross-complaint.

Those are the corrections that I've made, and I think that accurately reflects what both parties' essentially agreed were the proper numbers, whether they agreed that the award should have included those numbers or not.

So is there any further comment with regard to that? And I would note that one of the issues that the Court -- that the Arbitrator reserved was the question of Mr. Wong's fees, which are purported to be based upon

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a theory of public benefit, which -- and the Arbitrator in the Order following the April 12 hearing, invited Counsel if they had further competent evidence concerning that to present it. That didn't happen. I'm assuming that you're waiving any further evidence or argument concerning that.

So at this point are the numbers accurate? I'm not asking you to agree to them, but are they accurate based upon the comments that you've made?

MS. BARRETT: It appears so. I just had a couple questions on the post fees. The universe of post fee -- post fees --

THE ARBITRATOR: Yes.

MS. BARRETT: -- to Miranda and Nucum you said was 10,430?

MS. NUCUM: I have --

MS. BARRETT: And then on the just 172,510.

THE ARBITRATOR: Let me just find it on my notes here.

MS. NUCUM: 10,140.

MS. BARRETT: Okay. And similarly, the post fees in addition to Mr. Packard's 136,360 is 16,887?

THE ARBITRATOR: 887.50.

MS. BARRETT: I just wanted the clarification.

THE ARBITRATOR: All right. Is there any

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further argument concerning the award of fees incurred by Claimants in connection with the disqualification motion?

MS. BARRETT: Your Honor, we've put our argument in the papers. We don't have anything to add.

THE ARBITRATOR: All right. Okay. Is there anything further that we should consider at this time? Any other issues?

MS. NUCUM: There was -- there is one wording requested by Claimant, and it's just to include from section 14.20 in both versions of the Operating Agreement wording similar to, "Any judgment or order entered in such action shall contain specific provisions providing further recovery of attorneys' fees and costs incurred in enforcing such judgment," a language that we think would be helpful when we find ourselves in Superior Court on the confirmation proceeding. And then I do have a copy.

MS. BARRETT: And we've objected to that as surplusage. There's a -- in the comments, it's about an additional paragraph with a laundry list of post attorneys' fees that is requested to be added into the motion -- or into the Order.

MR. MILKS: And I would suggest that's a matter for the Superior Court on any further litigation in this

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matter and not in your jurisdiction.

MR. PACKARD: May I address this, Your Honor?

THE ARBITRATOR: Well, what I'm doing is adopting the claim provisions within the -- the LLC, and 14.20 of the Operating Agreement certainly provides for that, and one of the issues before the Arbitrator was to interpret that agreement and its validity, and I think that including those terms is not inappropriate. Whether the court, trial court, wishes to enforce those terms is up to the trial court, not me.

MR. PACKARD: Along those lines, Your Honor, it does say, "any judgment or order," and I assume that means Final Award, also, but any judgment or order entered in such action shall contain a specific provision, and what I'm worried about is it is so easy to try to confuse a subsequent judge that doesn't have the benefit that you have had, so our request is in the Final Award specifically say, "Based upon paragraph 14.20, the Claimants are the prevailing party, and they are entitled to," and then just follow the language of what it says should be included in the final judgment or order. That's our request.

THE ARBITRATOR: All right. Okay. Is there anything further?

MR. MILKS: Yes. You mentioned $200 costs in

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addition to the Packard, and I've quickly looked at Mr. Packard's declaration, including the attachment, and I see no reference to $200 to support that.

THE ARBITRATOR: I'm assuming I took that from his application for fees and costs.

MS. NUCUM: If I remember correctly, that was itemized in the previous request for attorney fees --

THE ARBITRATOR: Yeah.

MS. NUCUM: -- prior to the final Interim Award.

THE ARBITRATOR: That related --

MS. NUCUM: I'm sorry. Prior to the --

THE COURT: That related to the costs incurred in connection with the arbitration itself prior to the time of the Interim Final Award.

MR. MILKS: I see. So not in connection with the --

THE ARBITRATOR: That's correct.

MR. MILKS: -- motion for additional attorneys' fees.

THE COURT: That's correct.

MS. NUCUM: I believe it was for parking.

MR. PACKARD: It was for parking only.

MS. BARRETT: And, Your Honor, with respect to wording in the Order, I don't know if you were intending

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to rewrite a unified final order --
THE ARBITRATOR: No. I intend to incorporate by reference with the additional changes that are reflected in the final, it will be a Final Award.
MS. BARRETT: Okay.
THE COURT: But I'm not going to restate everything that was in the Interim Award or in the Order of the hearing following April 12.
MS. BARRETT: Okay. Your Honor, we would just simply request that possible language be clarifying Claimants, through their Counsel, have been publishing things and -- publishing the Order and then publishing statements that the Sorensens have been found guilty by you of fraud and using criminal constructs in publications, and it's not a criminal construct, and if there's a potential for clarification -- I'm looking at Mr. Packard's e-mail to a bunch of citizens of Los Altos, we're looking at misrepresentations of the Order, and we would like clarification on the Order.
THE ARBITRATOR: Well, nowhere have I said that the Sorensens were guilty of fraud. That's not found anywhere.
MS. BARRETT: Except in --
THE ARBITRATOR: I found there was a negligent misrepresentation. That's in the Interim Final Award.

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I can't make that any clearer, and I don't see -- I'm not going to get involved in what the parties might be doing following the arbitration with regard to what they may say or may not say with regard to any part of this. That's really not within my jurisdiction to do, and I'm not going to -- I don't understand why I would ever say that any more than I've already said that I find no fraud.
MS. BARRETT: Thank you, Your Honor.
MR. PACKARD: On the other hand, I believe your Order does say that negligent misrepresentation is a form of fraud, and it is.
THE ARBITRATOR: As a matter of law, that is true. But I'm not certainly finding they had fraudulent intent. They were negligent.
MR. PACKARD: Yes.
MR. DUPERRAULT: Your Honor, David Duperrault. I wanted to just say something, this may be the last opportunity to address you and the --
THE ARBITRATOR: Could you speak up a little, please.
MR. DUPERRAULT: Yes, I'm sorry. Yeah, David Duperrault. I want to address something that's sort of at the basis of the integrity of this process and the reason people seek arbitration and they trust JAMS.

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They trust --
THE ARBITRATOR: I'm still having trouble hearing you.
MR. DUPERRAULT: Okay. I'll come closer.
MR. MILKS: Why don't you take my chair.
MR. DUPERRAULT: Thank you.
THE ARBITRATOR: I don't know if it's my ears or the room or what it is.
MR. DUPERRAULT: It's maybe my voice, Your Honor.
THE ARBITRATOR: I apologize --
MR. DUPERRAULT: No, it's -- no, not at all.
THE ARBITRATOR: -- but I have to ask you to repeat yourself.
MR. DUPERRAULT: Not at all. Yeah, I mean, I think the -- just to follow up on what Ms. Barrett said, again, this is -- and it is beyond I think the Arbitrator's scope and certainly of what powers you have or wish to exercise here, but to have Mr. Packard, who owns the building next door and has been fighting for years and years to kill this project, representing the folks who actually own the project and then for him to accuse the Sorensens of being guilty, the word "guilty" of fraud and publicizing, submitting this to the Planning and Transportation Commission and to the City

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Council who are approving this project or not approving this application to develop this project, it's pretty shocking.
And I'm not asking the court to do anything. I'm just thinking -- I'm sorry, the Arbitrator to do anything, I just think it's important to understand what's really happening out there in the real world with respect to this process.
There is one thing I do want to address, though. On the very first day of the trial, I'll call it the trial, I'm not sure what the correct term is.
THE ARBITRATOR: Hearings.
MR. DUPERRAULT: Hearings. We had lots of hearings. Well, we had lots of hearings. This is the long three-week hearing.
THE ARBITRATOR: All right.
MR. DUPERRAULT: On the very first day you were sitting sort in the other room in the same position you were, and I was sitting over here, and I came up to greet you and say hello, having appeared before you a number of times during your career on the bench, and you kind of turned away from me and wanted to read and didn't really want to interact, and at first I thought that was a little bit strange, and then I thought oh, I see, he's just trying to convey that he's being

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impartial, he's not going to -- he's unbiased, he's going to hear the evidence and make a decision based on the evidence and the law, and he doesn't want to convey to any of the parties that he's partial to any of the other parties or the lawyers or any connections he's had in the past would have any effect on his decision. I thought that's a good thing.

Contrast that, though, however, with what the parties saw with respect to your interaction with the Corrigans, and particularly with Erik Corrigan. The warmth and the avuncular personal affection that you showed toward this -- to this man was very disturbing to the folks, and I think that it very rightly raised some serious concerns in their minds about what was happening.

And so I just -- I haven't said this before. I just wanted to say that the contrast between the way you interacted with me personally, physically in the room and the way you interacted with Erik Corrigan, and you asked personal questions about Wilf Corrigan and his health, we don't know how you learned about Wilf Corrigan's health and the details of his procedures and where he was. That's not in any of the record.

So obviously there are ex parte communications, or you learned about some of these things in some other

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way that we haven't been able to discover.

THE ARBITRATOR: Well, I will tell you how I learned that. I learned that in the arbitration hearing room when the issue came up as to whether or not Mr. Corrigan was going to appear or not. I was told in the presence of everybody that Mr. Corrigan was in New York, he was having health issues and was about ready to have some sort of a heart procedure.

I have personally had a number of heart procedures. I'm well aware of what processes, and I asked a question. It was an open hearing, there was no subterfuge. I have never seen Mr. Corrigan, Wilfred Corrigan, since the early 1980s, when I represented his son. I did not know his son, which one of his sons had been involved in that juvenile traffic case. I have had no contact with any member of the Corrigan family other than what has happened in the arbitration hearing room.

There have been no ex parte communications of any kind, and what you're describing to me might be a perception that you had about my deciding to not be friendly to you and be friendly to others. I tried to be courteous to everybody in this hearing throughout the process. At no time did I ever favor anybody. I didn't even know Erik Corrigan was the person who was the juvenile until the start of the arbitration hearing

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itself, which was the day that you first appeared.

I had no friendly, warm conversations with Erik Corrigan, any friendlier than I would with any other person who was in the room who might have asked me something and -- and I recall that Erik Corrigan identified himself, because I didn't know which one of the Sorensen -- or the Corrigan children sons had been involved in that juvenile case. I had no idea.

In fact, I don't think I would have remembered that case but for the fact that Wilfred Corrigan was a very prominent person in the Valley, having -- and I know this only from what I read in the paper, having been one of the founders or the founder of LSI Logic. But certainly over the last 30 plus years I had no contact with them.

I -- I know you as a lawyer. Frankly, if you were to ask me how many times you appeared in my court when I was on the bench, I wouldn't be able to answer that question. I have no idea, okay. But I certainly was not being unfriendly to you. And if I was engrossed that very first day in determining, first of all, who was here in the hearing room, and secondly, how we were going to proceed, then I might have not been quite as avuncular as I might otherwise be during the course of the arbitration in communicating with you or any other

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lawyer.

But certainly it was -- it was my effort, I will tell you this, to make sure that everybody was treated appropriately, fairly and with appropriate courtesy and consideration. And at no time, at no time did any particular person have any greater attention from me than any other person.

And in terms of the evidence, I based my decision on the evidence. I think it's perfectly fine for lawyers to disagree with determinations made by a court or an arbitrator. There's nothing wrong with claiming error. But to claim bias and to infer certain things from their personal subjective perception I think is wrong.

And I can tell you this, that absolutely nothing that I did in this case or any other case in my entire life as a lawyer or a judge reflects any kind of bias or prejudice that I might have for or against any party. And I think that my reputation is pretty clear that cases are decided on the merits, and you let the chips fall where they may. And I think that if you were to talk to former colleagues of mine as lawyers who ultimately ended up appearing in my court, they would be happy to tell you they got no preference at all.

In fact, one of my very close friends who has

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appeared with waivers, appropriate waivers in my court, on jury trials and other kinds of cases will tell you he never won a case in my court.

So it's not a matter of bias, it's not a matter of prejudice, it's a matter of what are the facts, and the chips will fall where they may. And I can assure you that that's exactly the way I treated this case. I felt badly for the Sorensens, but feeling badly for somebody does not mean that you rule in their favor.

So having said that, I don't know what else I can say to you, other than I'm sorry you've developed the perception that you did.

MR. DUPERRAULT: I have nothing further.

MR. PACKARD: Your Honor, since my role has been a subject of attack for a long time, let me just say that for the last eight years, eight years, I've been subject to all sorts of wrong accusations by the Sorensens. And I've worked through them, but when you go into the -- from the courtroom to the political process, there are certain liberties allowed, maybe I crossed the line, but I could go on about how things they are currently doing that I think are misleading and false. Putting up story poles that are supposed to be 38 feet and they're only 34. But that's not what this arbitration is about.

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And so I just want to say that it's been a challenge for me for eight years, because the Sorensens lash out at whomever doesn't support them, whether it's city staff or as me as a neighbor, whether it's the arbitrator, and it's just been a very difficult situation for me.

THE ARBITRATOR: Well, okay. I don't know what more I can say to any of you about this process. I will tell you that when I was personally attacked as basing my decision on something other than the merits and bias, I was very disappointed. It's very disappointing to see lawyers that you think you know acting professionally would, in my judgment, make an attack that is totally unjustified. And it's never happened to me before, and I will tell you that I would be shocked if anybody ever said it again. But I can't stop lawyers from being lawyers, and that's just the way it is.

MS. BARRETT: Your Honor, let me just point out that we've all been in this community for a very long time.

THE ARBITRATOR: I'm sorry?

MS. BARRETT: We've all been in this community for a very long time, and I understand your view. We are advocates and what we saw was Judge Komar on the bench would never presided over a trial where the lead

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party witness was a former client, and all we pointed out to JAMS was JAMS' standards should not be lower. It is not a personal attack. Whatever happened happened, but we're all in this community.

I think at the end of the day respect is earned all the way around, but we're advocates, and we have to not take this personally. It's advocacy. And we need to advocate for our clients, and that was our grounds.

THE ARBITRATOR: I understand the advocacy issue. I have no problem with a lawyer being an advocate, that's your job --

MS. BARRETT: It is.

THE ARBITRATOR: -- but I do have a problem with an accusation of personal conduct or misconduct that I don't believe was justified by anybody's perception.

The other thing that I would just indicate is that it's -- it does seem to me that the minute that I saw the -- for the very first time the name Corrigan, and remember that I was precluded from doing anything with this case until shortly before the motion to interpret the agreement and the scope of the arbitration and the scope of the arbitrator's powers, that was the first time I saw the document that was signed by Mr. Corrigan as a general partner of Old Trust (sic).

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And the minute I saw that, I pursued it further to see what the first name was, and then I searched my memory, and it didn't take me long to remember that I had represented his son in connection with a traffic case more than 30 years ago in the early 1980s. I couldn't even tell you now exactly what the year was, but I believe it would have been probably around 1982 and even possibly the year before or the year after, but it was sometime in that time.

And I recollected it only because he was a prominent person, but not anybody that I had seen, not anybody that I had had any communication or contact with, not anybody that I knew anything at all about and certainly had never, ever had any kind of a relationship with them, other than representing his son at that time. And it was a very brief period of representation. It involved San Mateo County Court. I was -- made one appearance. The matter was resolved, and that was the end of it, never to be heard from again.

So when it showed up, what was the first thing that I did? I notified everybody that I had represented a person that I believed was his son, and I sent out a notice, and the very next day we had a hearing on the interpretation of the agreement, and I believe the -- or I should say the interpretation of the scope of the

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arbitrator's powers, and we -- if I remember correctly, a number of the Claimants were present at that time, including at least one or two of the Corrigans, I don't know, you can tell me if that is correct or not.

MS. NUCUM: I recall only attorneys were present, myself, Mr. Wong and Mr. Milks, and I know that JAMS has an attendance sheet in every single hearing. That could always be referred to, but I don't think any of the Claimants started --

THE ARBITRATOR: Well, I just remembered -- I remember mentioning did you receive the notice that I sent out, and everybody said yes, they did. I said any problems. Everybody said no. And then I assumed that if you were going to look further into whether or not there was anything else to be looked at, you would have done so. And I put it basically in your court, and I heard nothing.

And we went all the way through the hearing, and on the very first day of the hearing, when the Corrigans were present, and this was the hearing for the arbitration itself, I do recall everybody identifying themselves, and I still didn't know which one of the Corrigans I had represented. It didn't matter. And I didn't inquire until they told me. And they told me in the presence of everybody. And I might have smiled.

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That's very possible. I've been known to do that sometimes, okay. But that certainly does not indicate in any way that I felt well, this is a man who's got to win this lawsuit or anything of the sort.

I had heard no evidence at that point. I had a completely open mind, and I was willing to let the evidence persuade me. And so that's what happened. And for then to receive this -- these declarations from Counsel impugning my integrity I found really troubling and disappointing, and I was very surprised to receive that.

So I did what I was supposed to do. I notified JAMS, I said deal with it, they did, and obviously you're not happy about that. But that's not my problem, that's your problem. So I'm sorry that happened. But it's the way it is.

MR. MILKS: Well, speaking of perception, I think your perception is incorrect. You were not accused of bias. And, in fact, quite the opposite. The motion to disqualify or alternatively to look into the matter, discovery and so forth and have an administrative hearing was to get to the bottom of whether or not there was evidence of bias. There was no challenge to your integrity at that point.

THE ARBITRATOR: I beg to differ with you. If

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you read Ms. Barrett's --

MR. MILKS: Well, you may be --

THE ARBITRATOR: If you read Ms. Barrett's declaration, you would find to the contrary. And I'm not holding that against anybody. You know, I don't resent it. It's just disappointing. That's all I can say, okay.

MR. PACKARD: May I move on to possibly the final topic, and that is that --

THE ARBITRATOR: Well, I interrupted Mr. Milks.

MR. PACKARD: Okay.

THE ARBITRATOR: And I didn't mean to do that.

MR. MILKS: And secondly, this is not accusing you of bias. Even the letter to JAMS, under Rule 15, was -- it's a matter of disclosure at this juncture and whether or not both JAMS and in this case Claimants followed the rules that governed this entire arbitration, and that should not be lost sight of.

The integrity of the arbitration process lies at its heart in disclosure. It's not, as you've characterized it, you've punted the ball into the Respondent's court to deal with it. That is totally inappropriate, and if you read the rules, or recall the

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rules, it's a matter of disclosure, and it's a very strict universal and unquestionable duty at the beginning and throughout the entire arbitration process to provide disclosure. That's why the courts defer to arbitration where there is an arbitration provision.

THE ARBITRATOR: Did you read my disclosure?

MR. MILKS: The e-mail that was sent out?

THE ARBITRATOR: Yes.

MR. MILKS: Yes, I did.

THE ARBITRATOR: Did you understand what that said?

MR. MILKS: I understood what it said to the extent that it said that.

THE ARBITRATOR: And you --

MR. MILKS: But it did not --

THE ARBITRATOR: Wait a minute. You understood that it said something different than what the original disclosure said, right? It was an additional disclosure.

MR. MILKS: Was a supplemental, but incomplete disclosure, wasn't it?

THE ARBITRATOR: Well --

MR. MILKS: It was incomplete. It was not complete. You have made many statements about well, you knew Wilf Corrigan, but you followed on because he's a

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prominent person in Silicon Valley, you didn't know who the son was. You know, why didn't that come out before the arbitration hearing?

THE ARBITRATOR: I didn't even know who he was.

MR. MILKS: Well --

THE ARBITRATOR: All I know was that I represented a kid whose last name was Corrigan who was the son of Wilfred Corrigan. I knew that, or I thought I knew that, and so I let you know that.

There was no objection to it. There was no objection to not having known that when I made my initial disclosures. You went all the way through the arbitration hearing, you waited until the Interim Award, and then you waited until after the motion for clarification and for fees and costs incurred and only then did you file any kind of an objection or motion to disqualify.

And frankly, I don't understand why. If you were so concerned about the duty of disclosure and felt that I hadn't properly made a disclosure in the very first instance when you got that second e-mail that told you about the representation, you still said nothing.

So I'm not going to argue with you, Mr. Milks, but I will tell you that I think that the late motion to

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disqualify is very suspicious in my mind. But that's all I'll say about that. And it's not a matter of punting --

MR. MILKS: Well, I think the word was --

THE ARBITRATOR: -- it back to you.

MR. MILKS: -- is that you -- you put basically the --

THE ARBITRATOR: I said the ball was in your court.

MR. MILKS: -- ball in the Respondent's court.

THE ARBITRATOR: Yes. All right. So I don't think there's any more that we need to really talk about here, is there?

MR. PACKARD: There's one last minor issue, and that is during the discovery phase a number of subpoenas were issued and -- by Mr. Milks with the promise that they would be reimbursed for their costs. One was sent to John Baer, and I sent you an e-mail recently saying that he's not entitled to his time except as allowed by the statute, so there's $108.95 that is due from Respondents to Mr. Baer. Has that been paid?

MR. MILKS: I talked to Mr. Baer, and I agreed that we would reimburse him for the cost of the copies and at his copy rate, which is more than the other.

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That's it. He's not entitled to his time.

MR. PACKARD: When did you have that conversation, recently?

MR. MILKS: No. Previously. It just needs to be paid, that's all. It'll be dealt with. This is not part of the arbitration.

MR. PACKARD: Well, it was part of the arbitration, because the subpoena was issued as part of this arbitration, and you have so far refused to reimburse him for his costs.

MR. MILKS: I agreed to reimburse him for his costs, copies.

MR. PACKARD: You haven't done it.

MR. MILKS: It will be done.

MR. PACKARD: So my final request is that the Final Award instruct the Respondents to pay the cost for the subpoenas that they're obligated to do.

THE ARBITRATOR: Well, I don't think it's appropriate for me to do that at this time.

MR. PACKARD: Okay. Okay.

THE ARBITRATOR: I think that everything that has been submitted and has been said is essentially final.

MR. PACKARD: Okay.

THE ARBITRATOR: And this was a hearing so that

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I could issue the Final Award based upon the issues that we had at that -- following the April 12th hearing. And so I think I -- I think I got it, okay.

And let me add one more thing here, okay. I've appreciated the advocacy of Counsel throughout these proceedings. The very first issue that we had to decide was what the arbitrator's scope of authority was. I think it was intelligently argued. I understand both sides. I understand everybody's position with regard to those issues. And for every hearing that we ever had I can't say that anybody ever acted other than professionally, courteously, and appropriately.

What goes on outside the arbitration hearing room and the procedure, what people say to each other and to others about what's going on out there is not anything that impacts anything that I do here, as far as I'm concerned.

And I appreciated the professionalism that I saw from everybody here during these arbitration proceedings, and I think that one of the things that is interesting to me is that -- and this isn't true in every arbitration, but one of the things that I really appreciated was everybody acted as though they were in a courtroom with that same high level of professionalism and attention to the evidence, the rules of procedure

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and so on. And that was very gratifying to me, particularly in a very lengthy arbitration of this scope.

I'm very sorry that somebody has to lose a case, okay. That happens. I always feel badly for them, but that can have no impact whatsoever on any decision that I make, and obviously it has not made any impact on any decision in this case.

At our April 12 hearing, I recall making a comment that if the parties really wanted to end this by resolution, they ought to sit down and talk to each other, and maybe they should have a mediator, but it's certainly nothing, as the arbitrator, that I can do or can do anything about, but this is a case that could go on and on and could be very expensive for a lot of people. It's not over.

Even though my award will be final, and I would urge you, as Counsel, to confer with your clients on both sides and see if you can figure out a way to end this dispute without all of the further acrimony that goes on during the litigation process.

Remember, lawyers are counselors and advisors, as well as advocates, and I think that if you act on behalf of your clients' best interests, you'll try to figure out a way to end this pain and -- however that

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might be. So that's my only comment, and I would urge that upon you. So thank you very much.

MR. PACKARD: Thank you, Your Honor.

MS. NUCUM: Thank you, Your Honor.

MR. DUPERRAULT: Thank you.

THE ARBITRATOR: We're in recess.

(Whereupon, the Hearing was concluded at 9:56 a.m.)

--oOo--

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I, LISA GLANVILLE, C.S.R. #9932, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing Hearing was taken before me at the time and place set forth and was taken down by me in shorthand and thereafter reduced to computerized transcription under my direction and supervision, and I hereby certify the foregoing Hearing is a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor interested in the outcome of this action.

Witness my hand this _____ day of July, 2017.

_____

LISA GLANVILLE
CSR No. 9932
State of California

Exhibit 35

WILLIAM C. MILKS, III (SBN 114083)
LAW OFFICES OF WILLIAM C. MILKS, III
40 Main Street
Los Altos, CA 94022
Telephone: (650) 930-6780
Fax: (650) 949-0844
Email: bmilks@sbcglobal.net

Attorneys for Respondents and Counterclaimants
Theodore G. Sorensen, Gerald J. Sorensen, Gunn Management Group, Inc., and 40 Main Street Offices, LLC

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

OLD TRACE PARTNERS, L.P., a California limited partnership; DANIEL T. NERO; KIMBERLY A. NERO; PAUL L. KLEIN, JR.; MARY ELLEN KLEIN; ALAN E. TRUSCOTT; and FICK INVESTMENT GROUP, a California general partnership,

Plaintiffs and Counterdefendants,

v.

THEODORE G. SORENSEN, individually and dba GUNN MANAGEMENT GROUP, INC.; GERALD J. SORENSEN, individually and dba GUNN MANAGEMENT GROUP, INC.; GUNN MANAGEMENT GROUP, INC., a California corporation; 40 MAIN STREET OFFICES, LLC, a California limited liability company; and DOES 1-20, inclusive,

Defendants and Counterclaimants.

AND RELATED COUNTERCLAIMS

Santa Clara County Case No. 114CV266849

Unlimited Jurisdiction

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' PETITION TO CONFIRM AND DEFENDANTS' PETITION TO VACATE CONTRACTUAL ARBITRATION AWARD

Date: September 21, 2017
Time: 9:00 AM
Department: 8
Before: Honorable Maureen A. Folan

THEODORE G. SORENSEN, an individual; GERALD J. SORENSEN, an individual; GUNN MANAGEMENT GROUP, INC., a California corporation; and 40 MAIN STREET OFFICES, LLC, a California limited liability company,

Plaintiffs,

v.

RONALD D. PACKARD, an individual, and DOES 1 to 25, inclusive,

Defendants.

THEODORE G. SORENSEN, an individual; GERALD J. SORENSEN, an individual; GUNN MANAGEMENT GROUP, INC., a California corporation; and 40 MAIN STREET OFFICES, LLC, a California limited liability company,

Plaintiffs,

v.

JAMS, Inc., a California corporation, and DOES 1 to 25, inclusive,

Defendants.

Pursuant to this Court's Order filed August 23, 2017, 40 Main Street Offices, LLC (the "Company"); the Manager of the Company, Gunn Management Group, Inc. ("Gunn"); and two of the founders and principals of the Manager of the Company, Theodore G. ("Ted") and Gerald J. ("Jerry") Sorensen (collectively referred to hereinafter as "Respondents") hereby oppose the Petition to Confirm Contractual Arbitration Award filed by a group of disgruntled investors in the Company: Old Trace Partners, L.P. ("Old Trace," whose principals are Wilfred, Sean, and Erik Corrigan); Daniel T. and Kimberly A. Nero; Paul L. Klein, Jr. and Mary Ellen Klein; Alan E. Truscott; and Fick Investment Group (collectively referred to hereinafter as "Claimants"). Respondents also hereby submit their Petition to Vacate Contractual Arbitration Award.

Respondents request that this Court deny Claimants' Petition to Confirm and grant Respondents' Petition to Vacate. Alternatively, Respondents request that the Court stay consideration of the Petitions to Confirm and Vacate pending the outcome of the related counterclaims and cross-complaints filed by Respondents against Claimants and one of their attorneys, Ronald D. Packard, Esq. ("Packard"), and Judicial Arbitration and Mediation Services, Inc. ("JAMS") which conducted a corrupted arbitration.

I. INTRODUCTION

A. Procedural Background

This Court was assigned this case following Judge Overton's grant of Respondents' Petition to Compel Arbitration on November 17, 2014. Respondents then filed a motion for liquidated damages resulting from Claimants' improvident filing of the Superior Court action instead of demanding arbitration. In response, Claimants filed an arbitration demand with JAMS on December 15, 2014.

This Court ruled on April 27, 2015 that it lacked jurisdiction to consider Respondents' liquidated damages motion. Respondents appealed that ruling on May 5, 2015.

During the appeal, JAMS pressed forward with initiating arbitration. JAMS insisted on nominating and appointing an arbitrator on August 4, 2015. Hon. Jack Komar (Ret.) ("Komar") was appointed as the arbitrator on August 5, 2015.

Respondents' appeal was dismissed on November 16, 2015. Claimants filed a motion

Jon Maginot

From: Becky Hayman
Sent: Wednesday, April 03, 2019 9:35 AM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Subject: No, No, and No!

Please stop turning our beautiful bedroom community into a San Francisco wannabe! We've been here nearly 40 years, and we've watched the quiet peace and tranquility of this wonderful town get turned sideways and inside-out. This area is already dense enough. We do NOT need more height, width, or capacity! Just say NO!

40 Main Street Project | City of Los Altos California

40 Main Street Project | City of Los Altos California

Rebecca Hayman

Los Altos, CA 94022

Jon Maginot

From: Dorothy Metcalf
Sent: Wednesday, April 03, 2019 9:41 AM
To: Jon Maginot
Cc: Chris Jordan
Subject: 40 Main Street building proposal

Please consider this my formal request to continue to deny the request by the Sorrensons for a building at 40 Main Street that substantially violates city ordinances. We feel strongly that such a monstrosity is not in keeping with our town and certainly a bad precedent to set for other such violations, some of which have already been done to the detriment of our town.
Thankyou.
Dorothy Metcalf

Los Altos , Ca.

Sent from my iPhone

Jon Maginot

From: Scott Metcalf
Sent: Wednesday, April 03, 2019 9:54 AM
To: Jon Maginot
Subject: Reject 40 Main plans

Please record my strong opposition to the plan for a 5 story building at 40 Main. The plan is out of character for our wonderful town. Over five decades of working in Silicon Valley I have witnessed many tech and building booms and busts. This building's lack of character, inadequate parking, and incompatibility with electric vehicle charging will make it an undesirable building in short order.

Regards,

Scott Metcalf

Los Altos, Ca 94022

Sent from my iPhone

Jon Maginot

From: Chris Jordan
Sent: Wednesday, April 03, 2019 11:10 AM
To: Jon Maginot; Jon Biggs
Subject: FW: Reject 5 Story Building on Main Street

-----Original Message-----
From: Stephanie Vargo
Sent: Wednesday, April 03, 2019 11:05 AM
To: City Council <council@losaltosca.gov>
Subject: Reject 5 Story Building on Main Street

Dear Los Altos Council Members,

I am a 20 year resident of Los Altos and a registered and active voter.

I was pleased to hear that you rejected the Sorenson's proposal for the non-compliant building being proposed for Main Street.

I understand they are using bullying tactics to try to get a 5 story, 60 ft building approved on Main Street.

This proposal is dramatically outside the boundaries of current zoning guidelines and doesn't address any of the auxiliary issues like street parking. Not to mention this location is a primary focal point for the entrance to town with significant visual impact.

I respectfully request that you continue to hold your ground on this proposal and reject the Sorenson's 5 story building proposal for Main Street.

Best Regards,
-Stephanie

Sent from my iPad

Jon Maginot

From: Lisa Bourgeault
Sent: Wednesday, April 03, 2019 12:54 PM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Subject: 40 Main Street

Dear Sirs and Madams:

In reading the materials for this project, I was interested to see that they are claiming that 2 out of 15 units being affordable is equivalent to 25% (see below). Have you done the math? 2 of 15 is closer to 13%, which does not get them the concession, which requires 20%, as far as I can tell. I hope you can clarify or look into this.

2. Density Bonus: Government Code Section 65915, Affordable Housing Compliance and Density Bonus Entitlement The project is a rental project, so the provisions of GC Sec. 65915(b)(l)(A), 6591S(d){2)(B), and 65915(1)(1) apply with respect to levels of affordability and percentages of units as do the commensurate levels of density bonus and concessions/incentives. ***In the case of the proposed project, 25% of base project units will be provided at 80% AMI, allowing for up to a 35% density bonus, even though the SB 35 application would only require 10% of all units to be affordable at less than 80% AMI. It also provides that the project is allowed up to two concessions/incentives. [Emphasis added]*** The project has chosen to avail itself to only one concession/incentive from the approved list. See Attachment O for the Density Bonus Report, which includes a broader discussion of waivers/modifications and concessions/incentives.

Thank you,
Lisa Bourgeault

Los Altos 94022

Jon Maginot

From: Joan Takenaka <
Sent: Tuesday, April 02, 2019 4:43 PM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Subject: Please do NOT approve the building proposed for 40 Main Street!

Dear Council Members—

As a resident of Los Altos, I implore you NOT to cave to the bullying efforts being employed to push through the monstrosity at 40 Main Street. My family and I love our downtown and appreciate that it is not crammed with huge towering structures. Our city has zoning laws and planning restrictions to help maintain the feel of our downtown for a reason. Allowing this developer to push this building through would be the first domino to fall in taking away the feel of our downtown. If making this stucture so huge is the only way for this developer to turn a profit, they are clearly doing something wrong!

Please do NOT cave to their threats and do NOT approve this proposal!

Sincerely,
Joan Takenaka

(Resident of Los Altos since 2006)

Sent from my iPhone

Jon Maginot

From: Brett Beedle
Sent: Tuesday, April 02, 2019 5:25 PM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Subject: 66 Foot Building Proposed at 40 Main Street

Please do not approve the building proposed by the Sorenson group for 40 Main Street. It is zoned 30 feet and will be an eyesore for our quant town of Los Altos. If approved, it will pave the way for other developers and destroy our town.

Thank you,
Brett Beedle

Los Altos, CA 94024

Sent from Mail for Windows 10

Jon Maginot

From: Ilene Sokoloff
Sent: Tuesday, April 02, 2019 5:49 PM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Cc: Vic Ringel
Subject: 40 Main Street

I encourage council members to not reverse staff's rejection of the 66' Sorenson project at 40 Main Street. We have limits for a reason. Do not let this project pervert our town's character.
Respectfully,
Ilene Sokoloff
Los Altos Resident

Jon Maginot

From: Marji Karlgaard
Sent: Tuesday, April 02, 2019 6:32 PM
To: City Council
Cc: Jon Maginot; Chris Jordan; Jon Biggs; christopher.diaz@bbklaw.com
Subject: Building height restrictions at 40 Main Street

To all Los Altos City Council Members,

I support the City staff in not approving the design for a building at 40 Main Street which proposes more than double the height limit for downtown Los Altos and provides an inadequate number of parking places for an outsized edifice.

My understanding of this project is that it has been denied since 2017 when presented with these deficits in the plan. Please continue to resist such imposing alterations to the downtown area.

I pledge to attend the Council meeting on April 9 at 7pm to support the City staff's decision and resist the legal threats of the property owners towards our city's decisions on planning.

Sincerely,
Marjorie Karlgaard

Los Altos, CA 94024

Jon Maginot

From: Laynette Blackfield
Sent: Tuesday, April 02, 2019 10:26 PM
To: Jon Maginot
Subject: Please keep Los Altos liveable

Hi,

I have seen that someone is threatening to sue the City if they don't get their way to put an incredibly inconsistent building in downtown Los Altos. A 5 story building has NO PLACE in downtown. The planning comminssion, I believe, Have recommended against this building but the owners are trying to push their way into an expedited process with no story poles -- the parking downtown is already over crowded, The one thing we do not need downtown is an over tall building with inadequate parking, ruining the atmosphere most of us cherish.

Please do not approve this buiding. Keep within decided zoning.

Sincerely,
Laynette and Bruce Blackfield
Los Altos

Jon Maginot

From: Phil Underwood <
Sent: Tuesday, April 02, 2019 3:47 PM
To: City Council; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Subject: 40 Main Street Project

Dear Mayor Eng and Members of the City Council:

Approving this project would be crazy. It changes the look, feel, personality of Los Altos - why we moved, here, why we live here, why we love the city.

Please under no circumstances approve this Project. Ignore the bullying legal threats that are wholly inappropriate and offensive. There have been enough, less than ideal, building projects over recent years - this would be the worst of them.

The City council should be much more circumspect in the planning decisions they make and protecting the jewel that Los Altos is.

Sincerely.

Phil Underwood
Los Altos Resident
(for the last six years)

Jon Maginot

From: Chris Jordan
Sent: Tuesday, April 02, 2019 7:57 AM
To: Jon Biggs; Jon Maginot
Subject: FW: No on 5 story building on Main

From: Nancy Larsson
Sent: Monday, April 01, 2019 9:31 PM
To: Chris Jordan <cjordan@losaltosca.gov>
Subject: No on 5 story building on Main

Please ask do not approve the Sorensen building on Main Street! It is not at all in keeping with our town. And would make a terrible entry point to our town!!

Nancy Larsson

Los Altos

Jon Maginot

From: Chris Jordan
Sent: Tuesday, April 02, 2019 7:57 AM
To: Jon Biggs; Jon Maginot
Subject: FW: 40 Main St.

-----Original Message-----
From: Tim Twerdahl <
Sent: Monday, April 01, 2019 8:15 PM
To: City Council <council@losaltosca.gov>
Subject: 40 Main St.

Do not let this absurd proposal pass. It will forever mar our downtown. And don't be threatened by their litigious nature. Right will prevail.

Jon Maginot

From: Chris Jordan
Sent: Monday, April 01, 2019 4:09 PM
To: Susan Heimans
Cc: Jon Maginot; City Council
Subject: RE: Proposed hi rise on Main St.

Susan –

The appeal of the City's staff denial of the project is to be heard by the City Council on Tuesday, April 9 at 7:00. The public can provide oral testimony then, or can provide written testimony in advance by sending an email to the City Clerk at jmaginot@losaltosca.gov.

Chris Jordan

From: Susan Heimans
Sent: Monday, April 01, 2019 3:03 PM
To: City Council <council@losaltosca.gov>
Subject: Proposed hi rise on Main St.

Hello council members,

I'm writing about the 5 story building that the Sorenson brothers want to build on Main st.
I am extremely concerned and appalled that this might be approved. As I'm sure you are aware it would change the entire look and feel of downtown Los Altos, gone would be the charm and character that attracted so many of us to move to Los Altos.
I have never been an overt activist/protestor but I feel very strongly and I'm sure others do as well.
Can you please let me know how citizens like me can protest. Are there others who have contacted you about this disturbing issue? I know that many were upset when the Safeway and all new construction along 1st street was built. I hoped that a lesson would have been learned and that mistake would not be repeated.

Are there no laws limiting height? Can we start an initiative to either limit height to 2 stories, and/or repeal the law currently in place. Maybe even a special election on this one issue.

Please reply ASAP,
Thank you
Susan Hughes

Jon Maginot

From: Jon Biggs
Sent: Tuesday, April 02, 2019 8:44 AM
To: Chris Jordan; Jon Maginot; Christopher Diaz
Cc: Wendy Meisner
Subject: FW: Proposed 5 story Building

-----Original Message-----
From: patricia fausett
Sent: Tuesday, April 02, 2019 12:05 AM
To: Jon Biggs <jbiggs@losaltosca.gov>
Subject: Proposed 5 story Building

No! No! No!
This building is NOT what Los Altos citizens want! It violates the heights allowed in our city! The will not be enough parking unless they go underground.
Don't let this contractor bully you all. Please don't approve and ruin our town!

Respectfully
Pat Fausett

Citizen of our town over 50 years!

Sent from my iPhone

Jon Maginot

From:
Sent: Tuesday, April 02, 2019 10:11 AM
To: City Council; Chris Jordan; Jon Maginot; Jon Biggs; christopher.diaz@bbklaw.com
Subject: 5 story building

Hello all,

Please do whatever you can to ensure that our beautiful town is saved from this 5 story building. I have lived at Los Altos for over 30 years. I love our town and don't want someone to come in and ruin it.

Please help save our town.

Thank you and kind regards,

Judy

Judy Paulson
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