

RECORDING REQUESTED BY:)
)
WHEN RECORDED MAIL TO:)
David Deutscher Co.)
367 Civic Dr., Ste. 14)
Pleasant Hill, CA 94523)
)

AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

TRACT NO. 5415

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (TRACT NO. 5415) (“**Amended Declaration**”), made this ___ day of _____, 200__, by Solano Business Park Association, a California non-profit mutual benefit corporation (“**Association**”), is made with reference to the following Recitals:

RECITALS

A. On September 14, 1979, that certain Declaration of Covenants, Conditions and Restrictions for Tract No. 5415 was recorded in Book 9528, Page 377 of Official Records, Contra Costa County, California (“**Official Records**”), as Document No. 79-129225 (the “**Original Declaration**”).

B. The Original Declaration was subsequently amended by (1) that certain Amendment to Declaration of Covenants, Conditions and Restrictions Tract No. 5415 recorded on November 13, 1979 in Book 9615, Page 796 of Official Records, and (2) that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions Tract No. 5415 recorded on November 20, 1979 in Book 9626, Page 354 of Official Records (together with the Original Declaration, the “**Prior Declaration**”).

C. By the Prior Declaration, Galindo Associates, a limited partnership, established a common scheme and plan for the use, enjoyment, maintenance, and improvement of the real property in the County of Contra Costa, California, described as Tract No. 5415, as shown on a map recorded in Book 226, Pages 9 to 10, inclusive, Official Maps, Records of Contra Costa County, California (“**Tract 5415**”). That common scheme and plan is hereby reaffirmed, subject to the amendments and modifications expressly provided in this Amended Declaration.

D. The Association, on behalf of the Owners (as defined below), desires to amend and restate the Prior Declaration in its entirety by this Amended Declaration. Section 5 of Article IX of the Prior Declaration, provides that the Prior Declaration may be amended with the affirmative assent or vote of at least seventy-five percent (75%) of the Owners. All of the conditions for amendment under Section 5 of Article IX of the Prior Declaration have been satisfied, including the assent or vote of at least seventy-five percent (75%) of the Owners to amend and restate the Prior Declaration by this Amended Declaration, and the fact that all such

conditions have been achieved is attested by the execution of this Amended Declaration by duly authorized officers of the Association. Upon recordation of this Amended Declaration, the Prior Declaration shall be deemed to be amended and restated by this Amended Declaration.

NOW THEREFORE, in furtherance of such intent, the Association, on behalf of the Owners, hereby declares that the Association shall be delegated and assigned the powers of maintaining and administering the Common Area for the use of the Owners of the Lots (as such terms are defined below) in the Property, and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to; and the Association hereby covenants, agrees and declares that all of said Lots and Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of the whole parcel and all of the Property described herein and the Owners thereof, their successors and assigns. These covenants, conditions, restrictions and easements shall run with the said real property and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each Owner thereof and are imposed upon said real property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

ARTICLE I DEFINITIONS

The following terms used in these covenants, conditions and restrictions shall be applicable to this Amended Declaration and are defined as follows:

Section 1. “**Common Area**” shall mean all of the portion of the Tract 5415 lying outside the exterior boundaries of Lots 1 through 43, inclusive, to be maintained and administered by the Association for the common use and enjoyment of the Members of the Association, and such other real property as may in the future be annexed thereto pursuant to the provisions of this Amended Declaration.

Section 2. “**Community Services**” shall include any and all of the purposes set forth in the Articles of Incorporation of the Association, or the amendments thereto, including but not limited to the landscaping and maintenance of the Common Area, maintenance of other improvements (including exterior painting and the exterior walls of such buildings), driveways, sidewalks and off-street parking areas within the Common Area.

Section 3. “**Conveyance**” shall mean and refer to conveyance of a fee simple title or lease of any part of the property.

Section 4. “**Deed of Trust**” shall mean the conveyance of any Lot to secure the performance of an obligation.

Section 5. “**Lot**” shall mean and refer to any one of said Lots 1 through 43, inclusive, of Tract 5415.

Section 6. “**Member**” shall mean and refer to every person or entity who holds membership in the Association.

Section 7. “**Owner**” shall mean and refer to the person or entity who is the record owner of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. “**Property**” shall mean and refer to all of the real property known as, described and included in said Tract No. 5415, and any additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II MEMBERSHIP

Section 1. Membership. Every person or entity owning a fee or undivided fee interest in any Lot shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

The terms and provisions set forth in this Amended Declaration, which are binding upon all Owners of all Lots and all Members in the Association, are not exclusive as both the Member and the Lot owned by the Member shall, in addition, be subject to the terms and provisions of the Articles of Incorporation and the By-Laws of the Association (collectively with the Amended Declaration, “**Management Documents**”).

Section 2. Transfer. A membership shall not be transferred, pledged or alienated in any way except upon the transfer of title to a Lot and then only to the transferee of such title. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. Upon the transfer of any Lot, the Association shall record the transfer of the membership attributable to such Lot upon the books of the Association.

Section 3. Voting Rights. The Association shall have one class of membership, being the Class A membership. Class A Members shall be all Owners and shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE III PROPERTY RIGHTS IN THE LOTS AND COMMON AREA

Section 1. Members’ Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area, including but not limited to a right of access, an easement for parking purposes as specified below, and easements for utilities, sewage and drainage, and such easements shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) The right of the Association to establish uniform rules and regulations (“**Rules and Regulations**”) pertaining to the use of the Common Area;

(b) The right of the Association to suspend the voting rights and right to use the Common Area by a Member for any period during which any assessment against his Lot remains unpaid and delinquent for a period not to exceed thirty (30) days from any single infraction of the Rules and Regulations of the Association, provided that any suspension of such voting rights or right to use the Common Area, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the By-Laws of the Association. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any Member's right to use any portion of the Property necessary for such Member to gain access to his or her Lot;

(c) Attached hereto, marked **Exhibit "A"** and made a part hereof, is a plat showing Tract 5415, on which the large divisions numbered 1 through 43, inclusive, represent Lots 1 through 43, inclusive, on Tract 5415. Also shown on **Exhibit "A"** are smaller divisions representing designated parking spaces, most of which bear numbers corresponding to the numbers of the Lots to which the respective parking spaces pertain, but twenty-three (23) others of which bear lettered designations from A to W, inclusive. The Owner or Owners of a Lot shall have the exclusive right to the use of the parking spaces bearing the same number as the numbered designation of such Owner's Lot, as an appurtenance to such Lot. The Association reserves to itself all rights to the use of lettered parking spaces, including the right to allocate all or some of them permanently or temporarily, and upon such terms, as the Association shall determine, to the use of the Association and/or any other Owner or Owners of some or all of the Lots shown on said map. All parking spaces shall be for the sole purpose of parking motor vehicles as defined by the California Vehicle Code, and shall not be used for trailers, unmounted campers, boats or recreational vehicles. The right of the Association to grant or transfer all or any part of its easements in the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such grant or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance; provided, that no such dedication or transfer may adversely affect the specific parking areas appurtenant to any Lot without the consent of the Owner or Owners of such Lot.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area to his employees, his tenants, sublessees or contract purchasers who work on the property and invitees.

Section 3. Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot.

Section 4. Easement Over the Lots and Exterior Walls of Buildings. A perpetual and nonexclusive easement for the purpose of ingress and egress in connection with the maintenance of the exterior of all buildings, structures or other improvements within the Property (including exterior painting of the exterior walls) is hereby granted to the Association over each Lot, together with the right to grant and transfer the same.

Section 5. Encroachment Easement. Every Lot shall have an encroachment easement which shall permit any portion of the structures constructed thereon, including the roof, eaves, walls and footing to encroach up to two feet into the Common Area or into any adjoining Lot. Such easement shall be appurtenant to and shall pass with the title to each Lot.

ARTICLE IV
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot in the Property, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association: (1) regular assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular and special assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the Members of the Association and their employees and, in particular, for the improvement and maintenance of the Property, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area.

Section 3. Regular Assessments. The amount and time of payment of regular assessments shall be determined by the Board of Directors of the Association ("**Board**") pursuant to the Articles of Incorporation and By-Laws of said Association after giving due consideration to the current maintenance costs and future needs of the Association. Written notice of the amount of an assessment, regular or special, shall be sent to every Owner, and the due date for the payment of same shall be set forth in said notice.

Section 4. Special Assessments for Capital Improvements. In addition to the regular assessments, the Association may levy in any calendar year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting.

Section 5. Rate of Assessment. Both regular and special assessments shall be fixed at a rate for all Lots based upon the square footage of the building located on the Lot and may be collected on a monthly basis; provided, however, should one or more lettered parking spaces shown on Exhibit "A" attached hereto be assigned to a Lot Owner for use by such Lot Owner in

addition to the use of numbered parking spaces, an additional assessment amount shall be made to such Lot Owner's regular assessment to cover the cost of maintenance of such lettered parking space or spaces. The Association shall provide notice by first-class mail to the Owners of any increase in the regular or special assessments not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 6. Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether the regular and special assessments on a specified Lot have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Exempt Property. All property dedicated to and accepted by a local public authority shall be exempt from the assessments created herein.

ARTICLE V NONPAYMENT OF ASSESSMENTS

Section 1. Effect of Nonpayment of Assessments; Remedies of the Association. Any installment of an assessment is delinquent if not paid within fifteen (15) days of the due date established by the Board. Any assessment installment not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided herein bears interest at the maximum rate permitted by law commencing thirty (30) days from the date the assessment becomes due until paid. The Board may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(e)(2) (or any amendment or successor statute thereto).

Each Owner vests in the Association or its assigns the right and power to bring all actions at law and in equity and exercise such other remedies provided herein against such Owner for the collection of delinquent assessments. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against such Owner as set forth in the Management Documents. In addition to any other remedies herein or by law provided, the Association may enforce the obligations of the Owners to pay the assessments in any manner provided by law or in equity, and, without any limitation of the foregoing, by any or all of the following procedures:

(a) Suspension of Rights; Monetary Penalties. The Board shall notify the delinquent Owner in writing, by either personal delivery or first-class mail, at least ten (10) days prior to a meeting of the Board to consider suspension of an Owner's rights and/or imposition of monetary penalties. The notification shall contain, at a minimum, the date, time and place of the meeting, the reasons for the proposed suspension and/or imposition of monetary penalties, and a statement that the delinquent Owner has the right to attend the Board meeting and may address the Board at the meeting. The Board shall meet in executive session if so requested by the delinquent Owner. Upon compliance with the foregoing procedure, the Board may (a) suspend the voting rights of such Owner, (b) impose reasonable monetary penalties

pursuant to a monetary penalty schedule established and posted by the Board bearing interest at a rate not to exceed the maximum limit imposed by law, and/or (c) suspend such Owner's right to use the Common Area for any period during which any assessment against such Owner's Lot remains unpaid; provided, however, that these provisions shall not operate or be construed to deny or restrict ingress or egress of any Owner to and from such Owner's Lot. The Board shall provide the delinquent Owner with written notification of the suspension or imposition of monetary penalties by either personal delivery or first-class mail within fifteen (15) days following Board action to impose such suspension or imposition of monetary penalties.

(b) Enforcement by Suit. By commencement and maintenance of a suit at law or equity against any Owner or prior Owner to enforce the assessment obligation, such suit is to be maintained in the name of the Association. Any judgment rendered in any such action may include the amount of the delinquency, interest thereon at the maximum legal rate per annum from the date of the delinquency, court costs and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner.

(c) Enforcement by Lien.

(1) There is hereby created a "**Claim of Lien**", with power of sale, on each and every Lot to secure payment to the Association of any and all assessments which may be charged against any and all Lots pursuant to this Amended Declaration, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At least thirty (30) days prior to recording a lien upon a delinquent Owner's Lot to collect delinquent assessments, personal charges and any related charges, fees and costs of collection, reasonable attorneys' fees and interest, the Association shall provide a notification (a "**Notice of Delinquency**") to the Owner in writing by certified mail of the following:

a. A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner has the right to inspect the Association's records, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "**IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION**" (or such other statement as may be required by any amendment or successor to Civil Code Section 1367.1).

b. An itemized statement of the assessments, personal charges and charges, fees and costs of collection, reasonable attorneys' fees and interest owed by the Owner.

c. A statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined that the assessment was paid on time to the Association.

d. The right to request a meeting with the Board as provided in Civil Code Section 1367.1(c)(3) (or any amendment or successor statute thereto).

e. The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to Article IX.

f. The right to request alternative dispute resolution with a neutral third party pursuant to Article IX.

(2) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of the Notice of Delinquency to the secondary address provided. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that if a secondary address is identified or changed during the collection process, the Association shall only be required to send notice to the indicated secondary address from the point in time when the Association receives the request.

(3) Any payments made by the delinquent Owner toward the debt set forth in the Notice of Delinquency shall first be applied to the assessments owed by that Owner and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges or interest. When a delinquent Owner makes a payment, that Owner may request a receipt, which the then shall provide to the Owner. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(4) The delinquent Owner may submit a written request (a "**Request for Payment Plan**") to meet with the Board of Directors to discuss a payment plan for the debt noticed in the Notice of Delinquency. The Association shall provide its Members with the standards for payment plans, if any exist. The Board shall meet with the requesting Owner in executive session within forty-five (45) days after the postmark of the Owner's Request for Payment Plan, if the Request for Payment Plan is mailed by the Owner within fifteen (15) days after the date of the postmark of the Notice of Delinquency, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Board members to meet with that Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien of the delinquent Owner's Lot to secure payment of the delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(5) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to Section 1(b) of Article IX, and prior to initiating a foreclosure for delinquent assessments, the Association shall offer the delinquent Owner, and if so requested by that Owner, shall participate in dispute resolution pursuant to Section 1(b) of Article IX or

alternative dispute resolution with a neutral third party pursuant to Section 1(c) of Article IX. The decision to pursue dispute resolution pursuant to Section 1(b) of Article IX or alternative dispute resolution with a neutral third party pursuant to Section 1(c) of Article IX shall be the choice of the delinquent Owner. If it is determined through dispute resolution pursuant to Section 1(b) of Article IX or Section 1(c) of Article IX that the Association has recorded a lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, cost of collection, costs imposed for the notice prescribed in Section 1(c)(1) of Article V, and costs of recordation and release of the lien authorized under Section 1(c)(13) of Article V, and pay all costs related to the dispute resolution or alternative dispute resolution.

(6) At any time after the thirty (30) day period following delivery of the Notice of Delinquency to the delinquent Owner, the Association may elect to file and record in the Office of the Contra Costa Recorder a notice of delinquent assessment (a "**Notice of Delinquent Assessment**") against the Lot of the defaulting Owner. The decision to record a Notice of Delinquent Assessment shall be made only the Board of Directors and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting. The Notice of Delinquent Assessment shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- a. the name of the delinquent Owner;
- b. the legal description of the Lot against which the delinquent assessment is made;
- c. the total amount of the delinquency, interest thereon, collection costs and reasonable attorneys' fees if then known (with any proper offset allowed);
- d. a statement that the Claim of Lien is made by the Association pursuant to this Amended Declaration and that a lien is claimed against said Lot in an amount equal to the amount stated; and
- e. the name and address of the trustee authorized by the Association to enforce the Claim of Lien by sale.

(7) The itemized statement described in Section 1(c)(1)b of Article V shall be recorded together with the Notice of Delinquent Assessment.

(8) No later than ten (10) calendar days after recordation of the Notice of Delinquent Assessment, the Association shall mail, by certified mail, a copy of the recorded Notice of Delinquent Assessment to the Owner's legal representative and every person whose name is shown in the Association's records as an Owner of the Lot against which the delinquent Assessment is made.

(9) Upon recordation of a duly executed original or copy of such Notice of Delinquent Assessment and mailing a copy thereof to the delinquent Owner, the lien claimed therein shall immediately attach and become effective. After the expiration of thirty (30) days after the recordation of the Notice of Delinquent Assessment, the lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended.

(10) The decision to initiate foreclosure of a lien for delinquent assessments shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to Members. The Board shall maintain the confidentiality of the delinquent Owner by identifying the matter in the minutes by the lot number of the delinquent Owner's Lot rather than by the name of the delinquent Owner. The Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale. If the delinquent Owner occupies the Lot, the Board shall provide notice by personal service as required by law to the delinquent Owner or to the Owner's legal representative. If the delinquent Owner does not occupy the Lot, the Board shall provide notice by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the delinquent Owner to the Association of a mailing address, the address of the delinquent Owner's Lot may be treated as the delinquent Owner's mailing address.

(11) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption as set forth in Civil Code Section 1367.4 (or any amendment or successor statute thereto). A notice of sale in connection with the Association's foreclosure of a Lot shall include a statement that the Lot being sold is subject to this right of redemption. The notice of sale shall also comply with the requirements of Civil Code Section 2924(f) (or any amendment or successor statute).

(12) The Association shall have the power to bid in at any foreclosure sale, trustee's sale or judgment sale and to purchase, acquire, lease, hold, mortgage and convey any Lot. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

(13) Notwithstanding the foregoing, if the amount of the delinquent assessments is less than One Thousand Eight Hundred Dollars (\$1,800.00), exclusive of any accelerated assessments, late charges, fees and costs of collection, reasonable attorneys' fees and interest, the lien claimed in a Notice of Delinquency may not be foreclosed by judicial or nonjudicial foreclosure until the "**Permissible Foreclosure Date**", which shall be the earlier of (i) the date on which the amount of the delinquent payments is equal to or exceeds One Thousand Eight Hundred Dollars (\$1,800.00), exclusive of any accelerated assessments, late charges, fees and costs of collection, reasonable attorneys' fees and interest, or (ii) the date on which such delinquent assessments are more than twelve (12) months delinquent. Until the Permissible Foreclosure Date, the Association may attempt to collect or secure the debt of the delinquent Owner in either of the following ways: (1) file a civil action in small claims court

pursuant to Chapter 5.5 (commencing with Section 116.110) of Title I of the California Code of Civil Procedure, (2) record a lien on the Owner's Lot in accordance with the procedure set forth above in this Section 1(c) of Article V. which the Association may not foreclose upon until the Permissible Foreclosure Date, or (3) attempt to collect or secure the delinquent payments by any other manner provided by law, except for judicial or nonjudicial foreclosure.

(14) The proceeds of any foreclosure, trustee's or judgment sale provided for in this Amended Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs, costs of the sale, and all other expenses of the proceedings and sale, and the balance of the unpaid sales proceeds after satisfaction of such charges and unpaid assessments hereunder or any liens, shall be paid to the defaulting Owner. Any purchaser at such sale shall thereupon be entitled to a deed to the Lot and immediate possession of the Lot and shall have the right to apply to a court of competent jurisdiction for such orders as may be reasonable for the purpose of acquiring and possessing the Lot. It shall be a condition of such sale, and the deed so made shall provide, that the purchaser shall take the interest in the sold Lot subject to this Amended Declaration.

(15) Within twenty-one (21) days after the timely curing of any default for which a Notice of Delinquent Assessment was filed by the Association, the officers of the Association are hereby authorized and directed to record an appropriate release of such lien in the Office of the Contra Costa Recorder.

Section 2. Assignment of Rents. As security for the payment of all such liens, each Owner hereby gives to and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of the Owner's Lot, reserving unto the Owner the right, prior to any default by such Owner in performance of such Owner's obligation under this Amended Declaration or any other Management Documents, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, upon ten (10) days written notice to such Owner, either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Lot or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness to the Association or in performance of any agreement hereunder, and in such order as the Association may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Amended Declaration.

The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder or beneficiary of any first deed of trust on any Lot, to do the same or similar acts.

Section 3. Annual Distribution of Documents. The Association shall distribute to each Member annually (i) not less than sixty (60) days prior to the beginning of the fiscal year, a notice regarding assessments and foreclosure in the form required by Civil Code Section

1365.1(b)(or any amendment or successor statute) and (ii) in the manner prescribed in Corporations Code Section 5016, the summary required by Civil Code Section 1369.590 (or any amendment or successor statute) regarding alternative dispute resolution, which summary shall include (1) the following language: “Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law” and (2) a description of the internal dispute resolution procedure set forth in Article IX, Section 1(b).

ARTICLE VI
ARCHITECTURAL CONTROL

Section 1. Architectural Approval. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee (“**Committee**”) provided for in Section 3 of this Article. In the event said Committee, or its designated representatives, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have base submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Landscaping Approval. No trees, bushes, shrubs or plants shall be planted or emplaced until the plans and specifications for the species and placement of any such trees, bushes, shrubs or plants have been submitted to and approved in writing by the Architectural Committee provided for in Section 3 of this Article. Said plans as submitted shall show in detail the proposed elevations and locations of said trees, bushes, shrubs or plants, including the location and elevation of same in relation to all other Lots subject to these restrictions.

Section 3. Architectural Committee. The Architectural Committee shall be appointed by the Board of Directors and shall be composed of three (3) or more representatives who need not be Members of the Association.

Section 4. General Provisions. The members of such Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of such Committee shall cease on and after forty (40) years from the date of the recording of the Original Declaration. Thereafter the approval described in this covenant shall not be required unless, prior to said date and effective thereon, a written instrument shall be executed and duly recorded by the then record Owners of a majority of the Lots appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by said Committee. Said representatives may be the members of the Board of Directors.

ARTICLE VII
DUTIES AND POWERS OF THE ASSOCIATION

Section 1. Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Maintain and otherwise manage all of the Common Area and all facilities, improvements and landscaping thereon, and all property acquired by the Association;

(b) Have the authority to obtain, for the benefit of all of the Common Area, all water, gas and electric services and refuse collection, including refuse collection and water service to each Member's Lot;

(c) Grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots;

(d) Maintain such policy or policies of insurance as the Board of Directors deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members; i.e. the Association shall maintain fire, casualty, liability, workmen's compensation and other insurance for the Lot Owners and bonding of Members of the Association. The review period for re-evaluation of insurance coverage shall be once every year at the annual Association meeting;

(e) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association;

(f) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Directors;

(g) Have a duty to maintain (i) the Common Area and (ii) maintenance, including painting of the roofs and outer walls of all buildings, structures, or other improvements upon the property;

(h) Have the power and duty to enforce the provisions of this Amended Declaration by appropriate means, including without limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement of actions.

ARTICLE VIII
USE RESTRICTIONS

Section 1. All Lots in the property shall be used for no purpose other than business purposes, save and except for the Common Area on which there may be placed landscaping, parking areas and private streets. No building shall be erected, altered, leased, placed or permitted to remain on any Lot other than a building used for business purposes.

Section 2. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any residential or other non-business purpose.

Section 3. No sign or billboard of any kind shall be displayed to the public view on any portion of the properties of any Lot, except for: flags of the United States if displayed in accordance with California Civil Code Section 1353.5 (or any amendment or successor statute thereto); noncommercial signs, posters, flags or banners displayed in accordance with California Civil Code Section 1353.6 (or any amendment or successor statute thereto); and one sign for each separate and distinct business occupying any portion of a building constructed on any building site, each such sign which shall not be more than twelve (12) inches by forty-eight (48) inches and of a style subject to the approval of the Architectural Committee. Also all signs shall be approved by the City of Concord (“**City**”) and must meet all requirements of the City’s sign ordinance.

Section 4. No noxious or offensive trade or activity shall be carried on upon any Lot or part of the Property, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot, or which shall in any way increase the rate of insurance.

Section 5. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred (500) feet below the surface of the Property, except that the Association may install a petroleum dispensing facility on the Common Area for use by its Members. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 6. No television, radio or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any of the buildings constructed on the Lots unless permitted by law or unless and until the same shall have been approved in writing by the Architectural Committee and the Board of Directors.

Section 7. All drainage of water from any Lot and the improvements thereon may drain or flow into adjacent streets, but shall not be allowed to drain or flow upon adjoining Lots unless an easement for such purpose has been granted by this Amended Declaration.

Section 8. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. All exterior refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot without the prior written approval of the Architectural Committee.

Section 9. No structure of a temporary character, trailer, camper, boat or similar equipment shall be permitted to remain upon the exterior portion of any Lot without the prior written approval of the Architectural Committee.

Section 10. Those Owners who have a common wall separating their structures shall have the right to the use of such wall, except that each shall have the exclusive right to the use of the

interior surface of the wall on his side. Neither Owner shall use any portion of the wall so as to interfere with the use and enjoyment of the other Owner. This wall shall be considered to adjoin and abut against the property line from the bottom of the foundation over the full length and height of any such structure. In the event that any portion of such a wall, except the interior surface of one side, is damaged or injured from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at the joint expense of such adjoining Owners.

ARTICLE IX

DISPUTE RESOLUTION

Section 1. Alternative Dispute Resolution (Association Disputes). The Association shall, and each Owner by acceptance of a deed to a Lot agrees to, participate fully and in good faith in the resolution of any dispute to which the Association is a party in accordance with the provisions of this Section 1.

(a) **Notice of Intent to Initiate Prosecution.** The Association or Owner shall provide one-hundred and twenty (120) days advance notice of the Board or Owner's intent to initiate the prosecution of any civil action and of the nature and basis of the dispute to each Owner and each person who is a prospective party to the civil action unless any applicable statute of limitations would expire prior thereto or the giving of such notice would prejudice the Association's rights to enforce the Management Documents. Notwithstanding the foregoing, no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce assessment obligations.

(b) **Attempt to Resolve Dispute.** Upon receipt of a written request to meet and confer received from the Association or an Owner, as the case may be, the Association (through a designee appointed by the Board) shall and each Owner may make a reasonable effort, in good faith, to meet promptly at a mutually convenient time and place, explain their positions to each other and confer in good faith in an effort to resolve the dispute, including without limitation, discussion of available alternative processes for resolving the dispute, available processes for avoiding or reducing costs or losses by the involved parties, and the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure. A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association. Such agreement shall bind the parties and shall be enforceable so long as (i) the agreement is not in conflict with law or the Management Documents and (ii) the agreement is either consistent with the authority granted by the Board to its designee or the agreement is ratified by the Board. An Owner may not be charged a fee to participate in the process described in this Section 1(b).

(c) **Alternative Dispute Resolution.** Prior to filing an action solely for declaratory, injunctive or writ relief, or for such relief in conjunction with a dispute for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the Code of Civil Procedure, the Association and each Owner who is a party or prospective party to the action shall endeavor to submit their dispute to alternative dispute resolution by serving on all other parties to the dispute a request for resolution, which shall contain a brief description of the dispute, a request for alternative dispute resolution, a notice that

the party receiving the request is required to respond within thirty (30) days of receipt of the request or the request will be deemed rejected, and if the request is served on an Owner, a copy of California Civil Code Sections 1369.510 through 1369.590 (as may be amended, the “**Civil Code Provisions**”). Service of the request shall be by personal delivery, first-class mail, express mail, facsimile transmission or other means reasonably calculated to provide the party on whom the request is served actual notice of the request. A party on whom a request is served shall have thirty (30) days after service to accept or reject the request. Failure to accept the request within such thirty (30) day period shall be deemed a rejection of such request. If the recipient of the request accepts the request, the parties shall complete the alternative dispute resolution within ninety (90) days (unless extended by written stipulation of the parties to the dispute) after the requesting party receives the acceptance. This Section 1(c) does not apply to assessment disputes except as otherwise provided in Section 1(c) of Article V.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, any Owner, the successor in interest of any Owner or the City of Concord as a third party beneficiary shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Amended Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violations; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Amended Declaration shall run with and bind the Lots, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to the Amended Declaration, their respective legal representative, heirs, successors and assigns, for a term of fifty-five (55) years from the date the Original Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least 75% of the then Owners of the Lots, has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Amended Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a business complex and the Common Area. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. This Amended Declaration may be amended only the affirmative assent or vote of not less than seventy-five percent (75%) of the Owners and, further, this amendment provision shall not be amended to allow amendments by the assent or vote of less than seventy-five percent (75%) of the Owners.

Section 6. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any Deed of Trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

Section 7. Singular Includes Plural. Whenever the context of this Amended Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 8. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation contained in this Amended Declaration is violated in whole or part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the Architectural Committee, the Association or any other land Owner in the parcel. Such remedy shall be deemed cumulative and not exclusive.

Section 9. In the event that two or more adjacent Lots are purchased by the same party, these Lots may be connected by the opening of one approved doorway between the Lots, provided that a building permit is applied for with the City of Concord in each instance. Any such doorway must meet all building code requirements and shall be maintained to provide adequate fire separation between the Lots. If an Owner of more than one Lot subsequently sells any of the Lots, then any doorway between the Lots must be closed and restored to its original condition.

Section 10. There can be no outside storage near any of the buildings except vehicles which can be parked only in designated parking places (as shown on Exhibit "A"). If anything else is stored outside of the building walls, the Association shall have the right to remove them and charge the violating party for the cost of such removal and storage if necessary so as to enforce this restriction.

Section 11. Approximately four (4) acres directly adjacent (North and West) to Tract 5415 are subject to an easement appurtenant to Tract 5415 for the use of the surface for parking and landscaping. The use of this easement is subject to a number of conditions and will expire November 1, 2026. Members of the Association wishing to use the four acres for parking, or other storage, must submit a plan including the layout and scope of their use to the Board of Directors so that a determination can be made, as to the feasibility of the plan, and as to an amount to be paid to the Association for the maintenance and use of the property. All such uses shall be for a maximum of one year, renewable each year subject to the approval of the Board. The driveway on the north boundary of the Common Area passes over said easement. Upon expiration of the easement the driveway will be eliminated, after which a new driveway, if needed, can be constructed around the north and of Building 2 as shown on Exhibit "A".

Section 12. Maintenance. “Maintenance” shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related improvements and fixtures in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation, and other garden management practices necessary to promote a healthy, weed free environment for optimum plant growth.

Section 13. Common Area Ownership and Use. The Common Area shall be owned by the Association.

Subject to the exclusive rights to use designated parking spaces, as specified above, and except as provided for in section 1354 of the California Civil Code, the Common Area shall remain undivided, and there shall be no judicial partition thereof.

The Common Area is subject to a non-exclusive easement for ingress, egress and support through the Common Area appurtenant to each Lot. Officers, agents, or employees of any governmental department or bureau shall have the right of immediate access to all Common Area for reasons of public health, safety, and welfare, except where such Common Area is accessible only through a private Lot.

Section 14. Utility Easements. Public Utility access easements for installation, maintenance, and public service shall be provided for: fire protection, water, storm drainage, sanitary sewers, gas, electricity, and telephone. Also an interior easement shall be provided for electrical service to entrance lighting.

Section 15. Lot Boundaries. The boundaries of each Lot shall include: the interior surfaces of the perimeter walls, floors, ceiling, windows, and doors of the Lot. The existing physical boundaries of a Lot shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or plan, regardless of settling or lateral movement of the building.

Section 16. Shut-Off Valves and Meters. All Lots shall be provided with separate shut-off valves for all utilities and separate meters for all utilities except water. The water service lines, however, shall include an outside shut-off valve and yoke for the installation of a meter. The Association shall have the right for any reason to install meters if it is determined that meters are necessary on any or all Lots in order to monitor individual usage.

Section 17. The Association or its agents shall have the right to enter a private Lot for any reason related to construction, maintenance, or repair for the benefit of the Common Area or the Lots in common. Such entry of a private Lot shall be scheduled after prior notification to the Lot Owner. Notification shall be in writing at least 24 hours prior to entry. Any entry shall be in accordance with Concord Municipal Code #44746, or its successor statute.

Section 18. Unless prohibited by law or any local, state or federal regulation, the Association shall have the right to terminate the contract or to renegotiate the contract of any person or organization engaged by the developer to perform management or maintenance duties three months after the Association assumes control of the project.

Section 19. The covenants and restrictions of this Amended Declaration shall run with and bind the land and shall be for the direct benefit of the City of Concord, a municipal corporation,

as well as the Owners of Lots and the Association, for the term of 55 years from the date this Amended Declaration is recorded, after which time they shall be automatically extended for successive periods of 10 years each unless, prior to any such extension, an instrument signed by not less than 75% of the Lot Owners is recorded, terminating this Amended Declaration. This Amended Declaration may be amended by an instrument signed by not less than 75% of the Lot Owners, after first obtaining the written consent of the City of Concord. Any amendment must be recorded.

Section 20. Use of the Common Area for manufacturing or assembly operations shall be prohibited.

Section 21. In the event that two or more adjacent Lots are purchased by the same party, the common wall between the Lots may be opened to a greater degree than permitted under Section 9, provided that the lot line between the Lots is first removed by filing a parcel map. Any such removal of a lot line between two Lots shall in no way affect the voting rights or rate of assessment for the Lots in question. Assessments shall be paid and a vote may be cast for each original Lot prior to the combination of the Lots. If an Owner of more than one Lot, who has combined the Lots, as described above, subsequently desires to sell one of the Lots, then a parcel map shall be filed to re-establish the lot line between the Lots and the common wall shall be restored to its original condition. In no event may an existing Lot be further divided than originally recorded under Tract 5415.

Section 22. Subject to the provisions of Section 9 and Section 23 of this Article X, no Owner or other occupant of any Lot shall have the right to penetrate or alter the roof or any other exterior surface of a Lot.

Section 23. The Association shall have the right to use the electric service in any Lot for the benefit of the Association provided said Lot is reimbursed for any power used.

IN WITNESS WHEREOF, the Association has hereunto caused this Amended Declaration to be executed as of the date first set forth above.

“ASSOCIATION”

Solano Business Park Association,
a California non-profit mutual benefit corporation

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____(here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

Exhibit "A" to

AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

TRACT NO. 5415

Parking Schedule of Solano Business Park

(See attached.)