



STAFF REPORT
CITY OF BEVERLY HILLS

For the Planning
Commission Meeting of
July 23, 2009

TO: The Planning Commission

FROM: Larry Sakurai, Principal Planner

SUBJECT: **General Plan Amendment—Commercial Common Interest Developments**
The Planning Commission will consider adding a policy to the General Plan and/or a Code amendment that would address common interest subdivisions (e.g. condominiums and stock cooperatives) in the City's commercial districts.

EXECUTIVE SUMMARY

At its June 16, 2009 meeting, the City Council directed staff to proceed with a General Plan amendment* that would address common-interest, airspace subdivisions of commercial property (staff report attached). The direction was in response to concerns that commercial Common-Interest Developments (CIDs) could limit opportunities to attract large tenants and present constraints in later improvement of such properties. The intent of the City Council was to enact a policy discouraging commercial common-interest development until the Council could be given a greater understanding of the long-term implications of commercial CIDs on the City's fiscal health and more comprehensively address commercial CIDs in the update of the City's General Plan land use policies (Step II in the current process).

BACKGROUND

Recently, City staff has received inquiries regarding commercial condominiums. As with residential condominiums, commercial condominiums can generate significant profits for the subdivider. However, commercial condominiums may limit the City's ability to attract desired businesses, such as entertainment offices or other land uses preferred in the City. The availability of competing blocks of Class A office space in Los Angeles has led to a

* The Zoning Code and the State's Planning & Zoning Law addresses how property can be used, but subdivisions change how property can be bought, sold, and owned; hence, the State's Subdivision Map Act looks to a community's general plan policies as a basis for whether a subdivision is appropriate.

number of high profile relocations out of the City. The continued conversion of more Class A office space to office condominiums may preclude attracting such tenants in the future. It may also result in a less competitive, outdated building stock, declining municipal revenues, and increased difficulties in code enforcement actions. Some of these adverse effects are the result of challenges associated with multiple-ownership properties (e.g. associated with stock cooperatives as well as condominiums). Opponents to the proposal argue that these concerns can be addressed through Covenants, Conditions, and Restrictions (CC&Rs) or other means.

In light of the economic downturn, staff anticipates that there will be greater interest to convert more existing commercial buildings into subdivided ownership units. Should this occur and if more applications are filed, some of the identified impacts above may be realized and significantly affect the City's ability to attract certain businesses. The immediacy of the proposal to proceed with a General Plan amendment was to preserve opportunities that might otherwise be lost if more commercial buildings were converted to condominiums at this time.

DISCUSSION

In summary, there are a number of concerns associated with commercial condominiums.

1. Parcelization of offices into relatively small, individually-owned spaces presents issues in assembling into large spaces (similar to assembling individual lots to form more viable development sites). This can be an impediment to enterprises needing large spaces.
2. A single owner can exercise greater control over the configuration of spaces in a building than a group of owners of individual spaces (flexibility in rearranging space to adapt to changing market conditions).
3. A single owner can more freely overhaul and update building systems to respond to changes in technology and contemporary market demands.
4. Multiple owners also present property assemblage issues when the occasion to redevelop a site arises.
5. Owner-occupied spaces in commercial buildings can reduce business tax revenues associated with commercial leases.

In a couple of occasions, staff has met with representatives of BHP Holdings, LLC, a party who is interested in converting one of the William Morris buildings south of Wilshire

Boulevard into commercial condominiums. The representatives proposed several suggestions to address the concerns raised above.

1. Large institutional tenants (e.g. CAA, ICM, Hilton HQ) typically need 80,000 square feet or more of contiguous space. Commercial CIDs could be restricted to smaller buildings which cannot accommodate such a space.
2. To compensate for loss in municipal revenue, the City could require a public benefit, which could be through a transfer fee and/or an owner association fee.
3. CC&Rs can provide the entity (building owner association) and mechanism for City can enforcement actions, including property maintenance requirements.
4. Rights of first refusal in the CC&Rs can provide some ability for businesses to expand within a building if desired.

Staff is continuing its evaluation of the fiscal, economic, and legal considerations of the approaches suggested above and proposes to return to the Planning Commission with more analysis after study and consultation with other cities, organizations, literature, and other resources.

PUBLIC NOTICE AND COMMENTS

Notice of the public hearing was published in the June 19, 2009 edition of the *Beverly Hills Courier* and in the June 25, 2009 edition of the *Beverly Hills Weekly*. No correspondence has been received in response to the public notice. However, a letter was submitted to the City Council for consideration at its June 16 meeting by Allan Abshez on behalf of BHP Holdings, in opposition to the proposed General Plan amendment, and a July 14 Frequently-Asked-Question Brief was also submitted on behalf of BHP (both attached).

RECOMMENDATION

It is recommended that the Planning Commission identify any information or issues it wishes to have studied in order to develop a recommendation on commercial common interest developments to the City Council, and that the hearing be continued to September 10, 2009 to allow time for for further study.



LARRY SAKURAI

Staff Report
General Plan Amendment–Commercial Common Interest Developments
For the the Planning Commission Meeting of July 23, 2009

Attachments:

June 16, 2009 staff report to City Council (study session)

June 15, 2009 letter from Allan Abshez

July 14, 2009 FAQ Brief

Staff Report
City Council Study Session
June 16, 2009



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: June 16, 2009
To: Honorable Mayor & City Council
From: Susan Healy Keene, AICP, Director of Community Development
Subject: Consideration of a General Plan Amendment to Prohibit Common Interest Subdivision of Commercially Zoned Property
Attachments: None

INTRODUCTION

This report identifies for the City Council a potential concern regarding the common interest, air space subdivision of commercial property and recommends a strategy to address associated concerns through a General Plan amendment that would proceed in advance of the stepped approach approved by the City Council last month.

BACKGROUND

Common interest airspace subdivisions of real property are governed by local regulations and state law. The typical subdivision application filed in this city relates to residential condominium development. In multi-family zones, one property owner could subdivide their parcel such that there may be several individual owners with each having a legal interest in the property. Unlike apartment units, individual condominium unit owners can transfer their legal interest to another party. There is a benefit to having a mix of both residential condominiums and multi-family apartment buildings in a community in terms of establishing and promoting stable residential neighborhoods and providing a greater degree of housing diversity and affordability.

Less common are commercial condominiums. However, a few projects over the last several years received approval from the City Council through a combination of land use entitlements and development agreements, which is a contractual arrangement between the city and an entity with legal or equitable interest in property. Development agreements confer certain rights to a developer while also typically ensuring the city receives certain public benefits. Development agreements are not subject to the constitutional limitations on exactions that apply to development projects that not accompanied by a development agreement.

Two other projects in the City, one located at 8383 Wilshire Boulevard (the Flynt Building), and the other located at 8536 Wilshire Boulevard (medical office / retail building) were approved without accompanying development agreements. The Flynt Building, however, never exercised its approval, which has since expired. The commer-

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cial condominium building at 8536 Wilshire Boulevard was approved by the Planning Commission in October 2008.

DISCUSSION

Recently, city staff has been contacted by property owner representatives interested in converting other existing commercial office buildings in the city into commercial condominiums. As with residential condominiums, commercial condominiums can generate significant profits for the subdivider. It may also benefit the city to some degree in that city may receive additional property tax revenue as individual units resale over time.

However, if more single owner commercial properties were to convert to common interest airspace subdivisions, the city could have less revenue in other areas. Specifically, the city currently collects a commercial rental tax when an owner leases his or her building, or portions of a building to a tenant. The city collects \$23.50 for every \$1000 collected by the owner, which represents approximately 18% of the city's annual revenue. The conversion of this space from rental to ownership will reduce the amount tax collected if the new owner occupies the space and does not lease it to another entity.

Additionally, commercial condominiums may also severely limit the city's ability to attract desired businesses, such as entertainment offices or other land uses preferred in the city. The availability of large blocks of Class A office space has lead to a number of high profile relocations out of the City and the conversion of other Class A office space to office condominiums may produce similar impacts in the future. It may also result in a less attractive building stock, property maintenance issues associated and increase the demand for code enforcement actions. Many of these negative effects are the result of challenges associated with multiple ownership properties.

In the past, when the city has sought to encourage certain businesses, opportunities existed to identify large commercial office space and seek agreements between the future tenant, the single property owner and in some cases the city itself. If the trend to convert more existing office space to multiple owner condominiums were to continue, it would be difficult to find available office space because different condominium owners in a building may be less willing, or unable due to existing lease agreements, to participate in any negotiation for one larger tenant that may extend into several ownership spaces. Should a space be identified, agreeing to terms and conditions, including financial considerations, would be more cumbersome than dealing with a single building owner and could likely discourage a future tenant.

With multiple owners of one building, it is significantly less likely that all owners would be willing to sell or upgrade the building at the same time. This tends to result in an older building stock that may be less attractive to certain land uses, and less able to evolve to the changing demands of the commercial real estate market, thus resulting in greater property maintenance and code enforcement related problems. Further, this could lead to underutilization of the City's commercial real estate inventory.

In light of the economic downturn, staff anticipates that there will be greater interest to convert more existing commercial buildings into subdivided ownership units. Should this occur and if more applications are filed, some of the identified impacts above may be realized and significantly affect the city's ability to attract certain businesses. Moreover, due to state-mandated criteria required to evaluate these applications, the city may find itself unable to deny certain projects without proactive action now by the City Council.

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In order to protect the city and preserve future land use flexibility, it is recommended that the City Council direct staff to begin the process of amending the General Plan to add policy language that would prevent future conversions of existing buildings to commercial condominiums and approval of new commercial condominium buildings until such time the issues associated with this type of development can be adequately addressed. It is anticipated that a more exhaustive examination of these issues can be considered in Step Two of the ongoing General Plan update, when the city explores various land use strategies that will guide future development over the next 20 years. However, staff believes time is of the essence with respect to the city's commercial condominium policy, and seeks direction to commence the process to add an appropriate policy immediately. A General Plan amendment adding such a policy would require noticed hearings before the Planning Commission and ultimately before the City Council.

FISCAL IMPACT

The recommendation in this report does not have any immediate or significant budget or fiscal related impacts. However, the policy direction received from the City Council would result in fewer commercial condominium applications being submitted and potentially affect future income related to property tax generated by commercial condominium sales, if future condominium applications are received. However, not implementing the policy is expected to decrease the amount of revenue collected through the city's commercial rental tax, which represents about 18% of the city's overall revenue. A reduction to this revenue source may impact of city services. The exact reduction would be based on the number of commercial buildings that are approved for conversion, the number of ownership units created, and the extent to which those new units are leased to or owned by the business entities occupying the space.

Additionally, adoption of the general plan policy would enable the city to preserve and enhance its inventory of commercial and office space and maximize flexibility with which to attract the highest and best uses to the city providing even greater financial returns.

RECOMMENDATION

It is recommended that the City Council direct staff to initiate a General Plan amendment to prohibit future commercial condominiums and conduct noticed public hearings before the Planning Commission and City Council.



Susan Healy Keene, AICP

Approved By

Letter from Allan Abshez
June 15, 2009



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June 15, 2009

VIA HAND DELIVERY

City Council
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210

Re: June 16, 2009 Study Session regarding Consideration General Plan Amendment to Prohibit Common Interest Subdivision of Commercially Zoned Property

Honorable Members of the City Council:

We are writing this letter on behalf of our client, BHP Holdings, LLC ("BHP"), to respectfully request that the City Council continue its consideration of Staff's recommendation to initiate a General Plan amendment to prohibit common interest subdivision of commercially zoned property indefinitely.

First and foremost, a continuance is appropriate because -- as discussed below -- Staff's 3-page report with respect to the June 16th City Council study session contains no facts whatsoever that would support Staff's recommended action. The Council and the City would be best served by deferring a study session of this topic until sufficient facts and analysis are developed by Staff and made available for the Council's and the public's review and thoughtful consideration.

Secondly, a continuance is also appropriate because the suggested initiation of a General Plan amendment appears to be a response to BHP's yet-unfiled application to convert the existing William Morris Agency ("WMA") commercial office building located at 150 S. El Camino Drive (the "Property") to office condominiums (the "Project"). The preemptive initiation of a General Plan amendment is unnecessary and would unfairly prejudice the Council's objective consideration of BHP's Project. In this regard, it should be noted that while BHP reached out to Staff several weeks ago to introduce its proposal and to gather feedback from the City, Staff did not notify BHP of the June 16th study session and has entirely surprised BHP with this proposed action. In fact, BHP might not have been aware of the June 16th study session at all had one of its representatives not stumbled upon the June 16th Council Agenda and Staff Report posted on line this past Friday.

BHP believes that when all the facts are placed before it, the Council will learn that the implications of commercial condominium conversions for the City are not negative but are in

fact quite positive. Indeed, as discussed in more detail below, BHP believes that its Project will benefit the City and is committed to working closely with Staff and the City Council to ensure that the Project will not have any negative fiscal effects. The principals of BHP have a distinguished track record of completing several successful Class A office condominium projects located at premium addresses in Chicago and Miami, which BHP is anxious to share with the Council.

Because there is no urgency to preemptively initiating a General Plan amendment at this point, and because the Staff Report is wholly lacking in data and empirical analysis to support its recommendation, the Council should defer this topic until after the Council has considered the fully developed record that will be forthcoming with BHP's application for the Project.

A. The 3-Page Staff Report is Unsupported by any Facts Whatsoever

A continuance is appropriate because the 3-page Staff Report contains barely more than one page of discussion, and contains no facts whatsoever that support Staff's concerns or would justify initiating a General Plan amendment to prohibit common interest subdivision of commercially zoned property. Indeed, as discussed in Section B, below, BHP submits that the facts actually show that its commercial condominium Project:

- Will increase revenues to the City;
- Will support high standards of property maintenance and upgrades;
- Will not stymie the sale or redevelopment of buildings; and
- Will help the City attract high quality businesses

1. There is No Evidence that Commercial Condominiums will Reduce Commercial Rental Taxes to the City

A building's form of ownership does not determine whether its owner will lease it to another entity or will occupy it. Some owners choose to rent the premises they own to third parties because their business objective is rental income. Others choose to rent the premises they own to businesses they control for partnership, tax or financing reasons. Still others simply choose to occupy the space they own without any rental.

The Staff Report's discussion of this issue consists only of conjecture and contains no empirical data or substantial evidence whatsoever -- notwithstanding the fact that commercial condominiums have been a fact of real estate life for nearly 40 years and are regularly created in jurisdictions such as New York and Chicago. Before a General Plan amendment is initiated which prohibits such well-known and well-established ownership mechanisms, Staff should gather information from other jurisdictions regarding their experiences and should be required to present empirical evidence justifying the need for such a dramatic prohibition.

As discussed in Section B, below, BHP's operating experience is that many of the owners of units in its commercial condominiums choose to lease them which, in the context of Beverly Hills, would result in continued -- or sometimes increased or even new -- commercial rental taxes to the City.

Before a General Plan amendment is initiated by the City Council, empirical data should be developed regarding what, if any, impact commercial conversions would have upon the rate of leasing of commercial properties.

2. There is No Evidence that Commercial Condominiums will lead to Reduced Maintenance Standards

The Staff Report also postulates that commercial condominiums will lead to decreased standards of maintenance and less attractive building stock. There is no support for this hypothesis, and the facts are otherwise.

A building's form of ownership does not determine how well it is maintained. The City is well aware of many building owners who fail to adequately maintain or reinvest in their commercial properties even though the buildings are not condominiums.

The regulations and structures pertaining to condominiums make it more likely -- not less likely -- that a condominium building will be well maintained. A commercial condominium is governed by a condominium declaration. The City has a right to review and reasonably condition the declaration which provides for, among other things, a board of directors. The California Civil Code requires that the declaration provide specific controls and obligations to ensure the condominium's adequate maintenance and the regulation of capital expenditures. The board also owes a fiduciary duty to the members of the association to act in their best interest, which includes maintaining the building.

This system of statutorily regulated as well as democratic control ensure superior maintenance standards. All of the owners of a commercial condominium have a common economic interest in the upkeep of their building. The Civil Code regulating condominiums also provides for the implementation of an annual operating budget and the creation of capital reserves. Additionally, the board can recommend capital upgrades and other special assessments to the association, which, subject to the terms of the declaration, may be adopted either by the board or a vote of the association. Indeed, the association is obligated by the Davis-Stirling Common Interest Development Act to levy regular and special assessments sufficient to perform its obligations under the governing documents. The payment of these assessments are secured by a lien right over each unit by the association. By contrast, the tenants of a landlord have no ability to compel their landlord to better maintain or upgrade a building. Accordingly, it is less likely that a condominium project will suffer maintenance and long-term improvement issues. None of these facts are discussed in the Staff Report.

In summary, there is no basis or evidence for Staff's concern that commercial condominiums will lead to decreased standards of maintenance and less attractive building stock. Rather, the evidence indicates that condominium ownership will likely support superior maintenance.

3. There is No Evidence that Commercial Condominiums will Stymie the Ability to Sell or Redevelop Property

The Staff Report theorizes that commercial condominiums will stymie the ability to sell or redevelop property, but does not provide any research or evidence justifying such a concern.

The fact that a building is owned by a single entity does not make it more or less likely that it will be sold or redeveloped by its owner. The City is well aware of building owners who view their ownership as permanent and who have no intention of redeveloping their properties.

Statutory and contractual safeguards are available to ensure that a single condominium owner cannot block the sale or redevelopment of a condominium building. Mechanisms are commonly included in the condominium declaration (which the City has a right to review and reasonably condition) to provide for the sale of the building or dissolution of the condominium regime in the event a sufficient number of owners wish to sell the entire project. Under such a declaration, as long as the required vote is obtained, all owners are obligated to abide by the association's decision. Indeed, the Civil Code contains express mechanisms to compel sales and prevent deadlocks where a condominium building has become obsolete and economic. See, e.g. California Civil Code Section Civil Code Section 1359. The Staff Report contains no discussion of these facts.

Because Staff's concern regarding this issue is based on inadequate research, the Council should take no action regarding the suggested Plan amendment until a complete and adequate analysis is presented for the Council's and the public's thoughtful consideration.

4. There is No Evidence that Commercial Condominiums will limit the City's Ability to Attract High Quality Businesses

Like its treatment of all of the foregoing topics, the Staff Report contains no evidence that commercial condominiums will limit the City's ability to attract high quality businesses.

As discussed in Section B, below, BHP's business model responds to the interests of affluent business owners in becoming long term "business residents" of the premises and the city in which they conduct their business, and their willingness to pay a premium for the privilege of ownership. Ownership provides these business residents with a personal and vested interest in maintaining and upgrading the quality of their business addresses. The diversification of owners and the size of spaces in an office condominium building also provides a hedge against large-

scale institutional lease vacancies. BHP's experience is that, if anything, the quality of businesses in a building improves when a building is operated as a commercial condominium.

Staff's discussion of this topic is entirely speculative and is contrary to BHP's actual operating experience, discussed below.

Conclusion

In summary, because the Staff Report's recommendation is based on only 1 page of discussion and contains no facts or substantial evidence that would support the initiation of a General Plan amendment to prohibit commercial condominiums, the City Council should continue this matter indefinitely.

B. BHP's Project will Benefit the City

The Council will be better able to consider all of the issues raised in the Staff Report when it has a fully developed record regarding BHP's Project before it. Indeed, BHP believes that the facts and implications of condominium ownership are quite different than the conjectures posited in the Staff Report. BHP believes that its Project will benefit the City and is committed to working closely with Staff and the Council to ensure that the Project will not have any negative fiscal effects on the City. The principals of BHP have a distinguished track record of completing several successful office condominium projects in Chicago and Miami, all of which are Class A buildings located at premium addresses.

BHP purchased the Property, which contains approximately 60,450 square feet of rentable space, from WMA in September 2008. WMA developed the Property in 1985 as part of what eventually became a three building complex, but is currently developing a single larger building at the corner of North Beverly Drive and Dayton Way that is more suitable to serve as its corporate headquarters. As discussed earlier, the Project, and BHP's business model, respond to the interests of affluent business owners in becoming long term "business residents" of the premises and the city in which they conduct their business. Such owners have a personal and vested interest in maintaining and upgrading the quality of their business addresses, and are willing to pay a premium for the privilege of ownership.

BHP's experience is that the diversification of owners and the size of spaces in an office condominium building also provides a hedge against large-scale institutional lease vacancies. In addition, many owners also choose to lease their interests, either to their own operating entities or to third-parties. In BHP's high-end Florida and Illinois projects, a minimum of 45% of the units have leases in place, and many similar projects are 25% or less owner-occupied. And significantly, it should be noted that an office condominium building does not result in any changes in building or land use, does not increase density, and does not create new traffic impacts or other environmental effects. Based upon its operating experience, BHP projects that the Project will increase both the value of the Property and fiscal revenues received by the City of Beverly Hills from the Property.

BHP's preliminary economic analysis of its Project's fiscal effects upon the City is set forth below and is based upon the following assumptions:

- The Property as currently configured (i.e., a single owner property) has a per square foot value of \$750. As subdivided into office condominiums, the Property would have an estimated per square foot value of approximately \$1,200.
- Real estate taxes are 1.1% of the fair market value.
- Based upon conversations with representatives of the City Treasurer's Office, \$0.17 of every dollar collected in real estate taxes by the County for property within Beverly Hills is returned to the City in one form or another (e.g., funding schools, municipal services, etc.).
- The City's real property transfer tax is 0.055% (i.e., \$0.55 per \$1,000 of value, exclusive of liens and encumbrances remaining at the time of sale).
- The City's business tax imposed on owners of commercial properties engaged in the business of leasing or renting commercial property is 2.35%.
- Based upon BHP's experience with similar projects in Chicago and Miami, a maximum of 55% of the Project would be owned and occupied by end users.

Based on its operating experience, BHP projects that the Property will be worth \$72,540,000 configured as an office condominium project, as opposed to \$45,337,500 as a single-owner property. The increased valuation results from the premiums buyers are willing to pay for condominium ownership of their office premises. Accordingly, following sell-out of the Project (estimated to be completed in the first year after conversion), BHP estimates that the real estate taxes from the Property will increase from \$498,713 to \$797,940 -- a nearly 60% increase -- resulting in approximately \$50,868 in increased fiscal revenues to the City in the first year.

Each condominium sale will also earn the City a transfer tax. BHP's initial sale of the Project's condominiums will generate a collective transfer tax of \$39,897. BHP projects that approximately 10% of the building's square footage will be resold annually, which will generate \$0.55 for every \$1,000 of value conveyed (or approximately \$4,000 annually to the City based upon currently assumed values).

The City can also expect to receive business rental tax from the operation of the Project. Based on BHP's operating experience, most office condominium owners choose to lease their offices -- either to an operating company which they control or to third parties. BHP's experience is that a minimum of 45% of office condominium units will have a lease in place, with many such projects being 25% or less owner-occupied. Assuming, for the purpose of conservative estimates, that only 45% of the building were to be leased, the City would still receive \$34,520 in business rental tax in the first year of stabilized operation based upon currently assumed values.

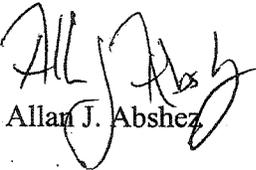
Finally, it should be noted that the Project would generate increased revenues to the City even as compared to the Property fully leased under a non-condominium scenario. Specifically, if the Property were 100% leased under a non-condominium scenario, the City would receive approximately \$76,711 in business rental taxes in the first year of stabilized operation. By contrast, under an office condominium scenario (assuming the Project is only 45% leased), the City would receive approximately \$89,388 from increased property tax and business rental tax (without considering the fiscal benefit of annual transfer taxes from condominium resales).

Conclusion

For all of the foregoing reasons, BHP respectfully requests that the City Council defer the consideration of a General Plan amendment to prohibit commercial condominiums until after BHP's Project has been considered by the Council, which will enable the Council to objectively consider the issues raised by Staff with the benefit of a fully developed factual record. BHP believes that the facts will show that Project will actually benefit the City, and BHP is committed to working closely with Staff and the City Council to ensure that the Project will not have any negative fiscal effects.

We look forward to answering any questions you may have at Tuesday's study session.

Very truly yours,


Allan J. Abshez

cc: Mr. Juan DeAngulo
Mr. Eduardo Covarrubias
Mr. Agustin Palacios-Bacque
Mr. Roderick J. Wood
Mr. Jonathan Lait
Mr. David Reyes

Frequently Asked Questions Brief
July 14, 2009

COMMERCIAL CONDOMINIUMS

FAQ BRIEF

July 14, 2009

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1- What is a Commercial Condominium and how is it different from a Residential Condominium?

A Commercial Condominium allows for individual offices to be purchased and owned by business owners, applying the same subdividing law mechanism used for Residential Condominiums to a commercial building. Both are operated under the same legal structure and are managed by an association of owners. This form of occupancy has many benefits, especially to those that desire stability and seek to take advantage of the many benefits which come from property ownership.

Commercial Condominiums also allow for more flexible expansion alternatives for business owners. Residential Condominiums are rigid in nature, with usually a variety of one, two and three-bedroom condos available for purchase. If someone purchases a two-bedroom Residential Condominium and needs more space, their only option is to sell the two-bedroom Residential Condominium and purchase or rent a larger unit in the same or different building. However, a Commercial Condominium, with the proper set of City-approved CC&Rs, can allow Commercial Condominium owners the ability to expand as their business needs require, similar to the rights available in a business leasing context.

Sample CC&R Language:

Declarant intends to establish a plan of condominium ownership and to develop the Property as a condominium project (the "CID") within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 1351(f), to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000 et seq.) and to subject the Property to certain limitations, restrictions, easements, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350 et seq. (commonly known as the Davis-Stirling Common Interest Project Act), or any successor statutes or laws. To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan for the benefit of all of the Owners, the Units, the Common Area, the Association Property and the future Owners of said Units, Common Area and Association Property.

"Office Condominium" shall mean and refer to an estate in the Property, or portions thereof, as defined in California Civil Code Section 1351(f), and shall consist of an undivided interest in common in a portion of the Property coupled with a separate interest in space called a Unit, the boundaries of which are described on the Condominium Plan.

Ownership of Office Condominiums. Each Office Condominium in the CID shall be conveyed to an Owner. Ownership of an Office Condominium shall include: (i) fee simple title to a Unit, (ii) an

appurtenant undivided fractional interest as tenant-in-common in the Common Area, and (iii) a membership in the Association.

2- What are the benefits for the City of Beverly Hills?

The opportunity of owning real estate in the most prestigious address in the world will position the City of Beverly Hills to attract high profile tenants that otherwise would view their office occupancy as simply an expense and prioritize other matters on their decision-making. For example, a high-profile production company or public relations firm that might otherwise prefer to locate close to the studios will forgo that benefit in exchange for the prestige of permanently owning a piece of an iconic address. **In short, office condominiums will position the City of Beverly Hills to attract highly visible companies not located in the City today.**

In addition to the attraction of high-profile tenants, the City will benefit from increased revenues from the Commercial Condominiums while creating a greater sense of pride of ownership by its occupants. While the City increases its revenue base, buildings will benefit from individual owners that will invest above and beyond a typical tenant improvement, due to the fact that what was then a landlord expense amortized in a lease, has now become an investment in their future when they decide to lease or sell their Commercial Condominium. Therefore, the presence of Commercial Condominiums becomes an additional benefit to the quality of the office space inventory in the City. Furthermore, many of these high profile buyers are likely to come from the entertainment industry and will be drawn back to Beverly Hills from other surrounding areas such as Century City, Santa Monica and West Hollywood. These companies will pay a higher business tax due to their revenues, therefore creating yet another benefit to the City.

Furthermore, the City of Beverly Hills will be able to attract new media, internet and clean technology companies who have flocked to cities such as Palo Alto and other Silicon Valley cities which have been adding Commercial Condominiums for years in order to diversify the available building stock. This has allowed many new and starting companies to enjoy the benefits of ownerships while allowing them the flexibility to grow and be around similar-minded businesses.

3- How will this form of ownership impact the City's ability to attract high profile companies that require large blocks of space?

Large institutional tenants (such as previous City tenants CAA, ICM and Hilton) typically look for 80,000-plus square feet of office space for their headquarters or regional hubs. This amount of contiguous space is usually only found in large buildings with a minimum of 100,000 square feet in total. These institutional tenants will also typically look to be in larger buildings offering amenities such as retail in the first floor and large lobbies.

Commercial Condominiums work best in smaller boutique properties that make the tenant community feel like an important part of the whole building. The average sizes per buyer are usually between 2,000 and 5,000 square feet.

A possible ordinance regulating Commercial Condominiums could establish a maximum available rentable square footage in a building in order for such building to qualify for construction or conversion. This could help to protect the City of Beverly Hills from losing its ability to attract large institutional tenants such as those mentioned above.

4 - Do Commercial Condominiums have to allow a mix of medical and office use?

No. Successful commercial condominiums often prohibit the mixing of medical and office use. High quality tenants, such as production companies and public relations firms, have no desire to make their permanent address in a building that will share its use with a high traffic of patients visiting their doctors. Furthermore, medical use requires the ongoing disposal of environmentally sensitive materials which provide an additional detriment for mixing its use with office. The CC&Rs of a Commercial Condominium building can specifically prohibit such use.

Sample CC&R language:

Use of Office Condominiums. Subject to the following, each Unit shall be permitted to operate in accordance with all Applicable Laws (a "Permitted Use"). Notwithstanding anything to the contrary set forth above as a Permitted Use, no Prohibited Use shall be permitted within a Unit.

"Prohibited Use" shall mean: (a) manufacturing, refining, agricultural, industrial or warehouse operations; (b) sleeping quarters, lodging or any other residential purposes; (c) food or beverage preparation or sales, other than the preparation of coffee, tea, hot chocolate, microwaveable items and similar items by Owners and their tenants for their employees and business visitors (d) medical or related medical uses (e) gambling, immoral or other unlawful practices or the display, sale, or rental to the public of any item or thing which, in the Association's sole opinion, is pornographic, lewd, vulgar, obscene, or immoral, (f) using the Units in any manner that involves an unusual risk of injury to any person; or (g) any unlawful use, including without limitation, any use that violates any zoning ordinances or regulations of any governmental bodies having jurisdiction over the CID. Notwithstanding the above, any prohibited uses shall be permitted in any Unit or Units which are being used for such purpose as of the date this Declaration is recorded for the duration of the existing lease.

5- Can a transfer fee be added over and above the property tax when owners sell their individual Commercial Condominium?

Yes. The Declarant may enter into a Development Agreement with the City of Beverly Hills that creates a specific impact fee for the transfer of units on the property. This will ensure that anytime a condominium unit trades hands, a revenue event will be created for the City of Beverly Hills.

Given that an Association will already be guaranteeing the business license taxes that the City would otherwise receive in a single ownership scenario, the increase of property taxes, added to the impact fee described herein, will guarantee that a Commercial Condominium will be revenue positive for the City of Beverly Hills.

6- Can an Association agree that as part of their fees to charge a separate fee equivalent to the then-prevalent business license tax rate?

Yes, although this may not be necessary, as many owners lease their units for certain tax and other purposes. However, in the case of owner-occupied units that do not have a lease in place, an Association may decide to charge a fee equivalent to the prevalent business license tax in order to secure at least a revenue neutral and potentially positive scenario for the City.

The CC&Rs of a Commercial Condominium building will establish an initial guideline and structure for the Association Budget, as well as governance for all leases entered into by the unit owners. In this portion of the CC&Rs the Declarant may establish a mechanism to ensure that the City of Beverly Hills will receive the equivalent to the current business license tax. Said provision should also prevent the duplication of said fee in the event that a unit owner decides to lease out the commercial condominium instead of occupying it without a lease.

It is important to note that based on the tax benefits of ownership, the majority of purchasers will probably establish a separate legal entity to hold title and then lease the premises back to the operating entity. This means that though a building might be subdivided into multiple units, the City of Beverly Hills would continue to receive the same business tax that it would receive if the building were simply leased, however without the other fees that come from the sale of property within the City.

Sample CC&R language:

Lease of Office Condominium.

Requirements of All Leases. Any Owner who wishes to lease his or her Office Condominium must satisfy each of the following requirements, and the lease will be subject to these requirements whether they are included within a lease or not:

- (j) All leases must be in writing; and
- (k) All leases shall be subject in all respects to the provisions of this Declaration and the other Governing Documents;

All Owners who lease their Office Condominiums shall promptly (not later than ten [10] business days after entering into such lease) notify the Secretary of the Association in writing of the names of all tenants. In addition, all Owners leasing their Office Condominium shall promptly notify the Secretary of the Association of the address and telephone number where the Owner and such tenant can be reached.

Taxation Against the Common Area and Association Property; Gross Receipt Tax. In the event that any taxes, including real property or gross receipts taxes, are assessed against the Common Area, the

Association Property, or the personal property of the Association, rather than against an individual Office Condominium, said taxes shall be added to the Regular Assessments, and, if necessary, a Special Assessment may be levied against the individual Office Condominiums in an amount equal to said taxes, to be paid upon the earlier of (i) thirty (30) days prior to the due date of any tax installment or (ii) five (5) business days prior to the date any installment may be paid at a discounted amount. Each Unit Owner shall be responsible for any gross receipts tax derived from the operations of its Unit. To the extent the Association becomes responsible for the payment of any gross receipts tax attributable to the operations of a Unit Owner, such gross receipts tax shall be payable by the applicable Unit Owner. If the Association pays the foregoing, the applicable Unit Owner shall reimburse the Association for such costs within ten (10) business days of receipt of a request for repayment, which request will provide evidence of payment.

7- Who manages a Commercial Condominium building and what authority and powers would they have in which to enforce the regulations of the State of California, the City of Beverly Hills and the CC&Rs?

When a Commercial Condominium is created, the Declarant (entity creating the condominium) grants certain powers and authorities to the owners association in the Conditions, Covenants and Restrictions (the "CC&Rs") for the purpose of enforcing regulations, including those imposed by the State of California and the City of Beverly Hills. In addition, a Declarant may reserve certain rights and powers if an Association is not fulfilling its duties under the CC&Rs. Furthermore, the CC&Rs may include provisions which give both individual owners and the City itself the power to enforce the CC&Rs and any other regulations if they are not being taken care of by the individual owners and/or the building association.

Sample CC&R language:

Declarant will cause the incorporation of the Owners Association, a California nonprofit mutual benefit corporation (the "Association"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), for the purpose of exercising the powers and functions set forth herein. The Association shall act as the management body for the CID, and shall be responsible for the operation, maintenance and control of the Common Area and Association Property. By virtue of owning an Office Condominium in the CID, each Owner shall also have a membership in the Association, which membership shall be appurtenant to and pass with title to the Office Condominium.

8- Would allowing Commercial Condominiums lead to a lack of maintenance in these buildings, possibly creating a more difficult path to redevelopment 50 to 75 years from now?

No. Commercial Condominium owners have a great deal of pride in their ownership and will continually seek to maintain the highest standards for the building. Furthermore, an Association has the right and responsibility to govern and oversee the ongoing maintenance of the building and its common areas. Typically, Associations will establish a reserve schedule for all capital and maintenance expenses such as roof, façade regular periods for painting if applicable and large mechanical replacements. In addition, if the individual owners or an Association fails to properly maintain the building, it is possible that other owners in the building, or even the City itself, may have the power to enforce the maintenance obligations set forth in the CC&Rs.

In the event that many decades down the road the building becomes truly obsolete, the CC&Rs may contain a provision that allows a supra-majority of the building owners to get together and decide to sell the building as a whole to an organization that might be interested in redeveloping the property.

Sample CC&R language:

General. The Association and all Owners are hereby required to maintain the areas described in this Article. For purposes of this Article "maintenance" shall include, without limitation, the painting, weatherproofing and cleaning of the items set forth below to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Office Condominium and the CID as scheduled and to protect the values thereof. The Board shall have the power to determine the standards of such maintenance, which shall be, at a minimum, in conformance with maintenance standards for similar buildings in the area.

Owner Responsibility.

Maintenance and Repair. Except for those portions of the CID that the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair the following in a safe, attractive and neat manner consistent with the highest standards of the surrounding properties (the "Maintenance Obligations"):

(l) All doors, attached to the Unit, whether interior or exterior, glass or otherwise, and windows, including the metal frames and tracks of such doors and windows, and hardware attached thereto; provided that painting or replacement of exterior doors and windows shall require the prior approval of the Board;

(m) The interior of such Owner's Unit, including the interior surfaces;

(n) Subject to obtaining any required consent or permits from the city to the installation of the same, external signs and awnings belonging to or otherwise installed by a Unit Owner, such Owner's tenants, and their successors and assigns (this obligation shall include the obligation to keep all signs and awnings in first-class operational condition including, without limitation, the replacement of all expired light bulbs or other lighting elements); it is understood that all exterior signs, awning shall be under a uniform program.

(o) The electrical, plumbing, heating, ventilating, sewer, water, telephone, exhaust and air-conditioning systems, which service such Owner's Office Condominium, including air-conditioning compressors, television and cable equipment, wires and connections, telephone wiring and all appliances, equipment and fixtures, lighting fixtures (including light bulbs), provided such systems are used or operated exclusively by such Owner and not in common with any other Owner (any of the foregoing facilities being herein referred to as a "Single Owner Facility").

Quality of Maintenance. All Owner maintenance shall be performed in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, and in compliance with the Rules and Regulations.

Compliance with Maintenance Obligations. By accepting a deed to an Office Condominium, each Owner acknowledges and agrees that such Owner is required to comply with all of the Maintenance Obligations.

Owner's Failure to Maintain; Willful or Negligent Act. In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board or its delegated committee, or if an Owner, or his invitees, cause the willful or negligent act or neglect of the same or any other area within the CID, the Board may notify the Owner of the work required and request that the same be done within a reasonable time under the specific circumstances but no need to exceed..... provided, however, the Board shall have the right to approve the person or company who shall perform the maintenance or repairs and the method of repair, which person or company, at a minimum, shall be licensed and bonded. In the event the Owner fails to carry out such maintenance or repair within said time period, the Board may, following notice and a hearing as provided in Section above, which notice requirement will be waived in the event of an Emergency, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the maximum rate authorized by law. It is understood that all work shall be done in accordance with the code of the city of Beverly Hills and all required permits shall be obtained if applicable before any work is commenced.

Responsibility of Association. The Association shall provide for adequate and reasonable replacement, maintenance and repair of the following:

(p) The maintenance, repair and replacement of the utility facilities described below, but excluding those utility facilities to be maintained by each Unit Owner pursuant to Section herein, the Common Area and the Association Property, including, but not limited to, walkways, lighting, doors of utility closets, mailboxes, if there is a common mailbox area at the CID (excluding mailbox locks, if any, and

replacement of any keys thereto, which shall be the responsibility of the individual Owners), trash enclosures, landscaped and open space areas, irrigation equipment, the exteriors, bearing walls, foundations, roofs, metal flashings between roofing and roofing vents, gutters and downspouts of the Building and other structures on the Property and all property that may be acquired or leased by the Association. The utility facilities that the Association shall maintain shall include the HVAC systems, electrical systems, fire safety systems, all gas, water and water pipes, and all sewers, ducts, flues, chutes, conduits, wires and other utility installations within the CID wherever located (except the Outlets thereof when located within a Unit) that do not solely service a single Unit. By way of example, and not limitation, an "Outlet" shall mean any portion of a utility facility which is located in an electrical or wiring box or panel and any pipe or other utility facility from the point at which it is reasonably accessible from within an Owner's Unit. More specifically, the term "Outlet" shall mean the point at which any utility facility can be serviced without the need for destructive entry into the walls, floors, ceilings or any portion of the Common Area or the Association Property.

- (q) The periodic inspection of: (i) all electrical, gas, water and cable utility controls and meters; (ii) all roofs and metal flashings for evidence of cracking, damage or exposure of underlying structures to the elements;
- (r) The maintenance, repair and replacement of any fixtures (lighting or otherwise) located within the Common Area and the Association Property, but excluding Exclusive Access Areas to the extent not required under Section....;
- (s) The maintenance, repair and replacement of Common Area and Association Property, but excluding Exclusive Access Areas to the extent not required under Section;
- (t) The periodic inspection of all Common Area and Association Property for wear and tear for purposes of ascertaining the necessity for remedial or long-term maintenance and repair to assure the integrity of such surface, and for the repair thereof when required;
- (u) All utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district, where such systems are used to provide services to Common Area or Association Property facilities;
- (v) Security and security systems serving the entire CID, if any; and
- (w) Such other areas, facilities, equipment, services or esthetic components of whatsoever nature as may from time to time be reasonably requested by the Consent of a Super-Majority of Members.

9- Will Commercial Condominium conversions have an adverse effect on neighboring areas?

No. Because any buildings that may be converted to Commercial Condominiums were previously used as commercial office spaces and there would be no change of use, there should be no effect on any neighboring areas, whether they are commercial or residential. There should be no additional traffic or other impacts due to the simple continuation of use. In addition, any Commercial Condominiums, new or conversions, would be required to adhere to all commercial building requirements already in effect.

10- What happens if some Commercial Condominium owners do not pay their fees for maintenance or violate provisions of the CC&Rs? How are they enforced, are they enforced through breach of contract, assessments, or foreclosure transactions similar to residential condominiums?

All owners are subject, per the CC&Rs, to an assessment for the operating expenses of the building. In the event that an owner does not comply with the assessment, an Association is granted the right to seek foreclosure proceedings. This enforcement procedure is recognized by the title companies for purposes of conducting a trustee sale. Prior to the sale the owner will be given a chance to correct the violation. Subsequent to the default, but except in cases of an emergency, an Association will have rights to enforce the above for the unit and all remaining owners will benefit from the proceeds of said foreclosure.

Sample CC&R language:

The Association, acting through the Board, shall have all of the powers of a California nonprofit mutual benefit corporation, and to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, as described and subject to the limitations set forth in this Declaration, the Articles and the Bylaws, including without limitation, the powers set forth below. Notwithstanding the foregoing, the Association shall not undertake any of the activities described below. Unless otherwise expressly provided hereunder, any reference to the acts or approval of the Association shall mean the Association acting through its Board.

Assessments. The Association shall have the power to establish, fix, and levy Assessments against the Owners and to enforce payment of such Assessments, in accordance with the provisions of the Governing Documents.

Right of Enforcement and Notice and Hearing.

(a) **Enforcement Actions.** The Association, in its own name and on its own behalf, may commence and maintain actions for damages, to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, the provisions of this Declaration. In addition, as more particularly discussed in Section.... below, the Association has the authority to suspend the membership rights and privileges and/or may assess monetary penalties against any Owner or other Person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions.

(b) **Notice and Hearing Requirements.** Before a decision to suspend membership rights or impose monetary penalties is reached by the Association, the offending Owner shall be provided an opportunity to be heard by the Board, orally or in writing, and shall be provided with at least fifteen (15) days prior

written notice of such hearing or any such longer period as may be required under California Corporations Code Section 7341, or any successor statute or law. Additionally, the Board shall provide the offending Owner with written notice of any sanctions to be imposed and the reasons for such sanctions not more than fifteen (15) days following the Board taking such action. For purposes of this Section ..., notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner or sent by first class registered or certified mail, return receipt requested or overnight courier addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices.

(c) **Suspension of Privileges; Fines.** In the event of an alleged violation of the Governing Documents by an Owner and after written notice of such alleged violation and an appropriate hearing has been provided in accordance with Section ... above, the Association, upon an affirmative vote of the Board, shall have the right (but without obligation to do so) to impose any one or more of the following penalties:

(i) suspend the membership rights and privileges of such violating Owner (and such Owner's Invitees), together with the voting rights of such violating Owner, for any period of time during which an Assessment on an Owner's Office Condominium remains unpaid;

(ii) suspend the membership rights and privileges of such violating Owner (and such Owner's Invitees), together with the voting rights of such violating Owner, during the continuance of an infraction of the Governing Documents and for a period of thirty (30) days following correction or discontinuance, as applicable, of such infraction;

(iii) levy monetary penalties against the violating Owner as a disciplinary measure for failure of the Owner to comply with the provisions of the CID Documents or Board resolutions, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in the repair of damage to the Common Area, Association Property and facilities for which such violating Owner was allegedly responsible, or in bringing the violating Owner and the violating Owner's Office Condominium into compliance with the Governing Documents or Board resolutions; provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

The provisions of item (iii) above expressly do not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments as more fully described in this Declaration. The rights of the Association to impose interest charges, accelerate Assessment payments, or to otherwise enforce the payment of Assessments, as elsewhere provided in the Declaration, shall not be subject to the provisions of Section ...or require the notice and hearing provided for herein. In the event legal counsel is retained or legal action is instituted by the Association pursuant to this Section, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs

and reasonable attorneys' fees. Repair or replacement costs shall not be deemed fines subject to the foregoing limitation. Any continuing violation shall be a separate violation for each day it continues. There shall be no limit on the aggregate amount of the fines for any violation. The failure of the Association to enforce the provisions of any Governing Documents shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by the Governing Documents shall be cumulative and none shall be exclusive. Notwithstanding the foregoing, use of Access Elements by a violating Owner which are necessary as a means of ingress and egress to such Owner's Unit from the public entrances to the Building shall not be restricted pursuant to this Section

Right to Enforce Assessments. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative may (x) enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity pursuant to California Civil Code Section 1367.1, but subject to California Civil Code Section 1367.4, (y) seek a foreclosure by judicial proceedings, or (z) through the exercise of the power of sale pursuant to Section below, enforce the lien rights created hereunder. The foregoing rights and remedies are not exclusive and the election to pursue one does not eliminate or prohibit the Board from pursuing another remedy. Suit to recover a money judgment for unpaid Assessments, together with all other additional charges described in Section.... hereafter, shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, monetary penalties imposed by the Association: (a) to reimburse the Association for costs incurred by the Association in the repair of damage to Common Area or Association Property for which the Member or the Member's Invitees were allegedly responsible, (b) as a disciplinary measure for failure of a Member to comply with the Governing Documents, or (c) as a disciplinary measure in bringing the Member and his or her Office Condominium into compliance with the governing instruments of the Association, may not be characterized nor treated as an assessment which may become a lien against the Member's Office Condominium enforceable by a sale thereof conducted in accordance with the provisions of Civil Code Sections 2924, 2924(b), 2924(c) and 1367, or any successor statute or law. The limitation in the preceding sentence however, does not apply to any additional charges.

Notice to Owner Prior to Lien of Assessment. Pursuant to Civil Code §1367.1, before the Association may place a lien upon an Owner's Unit to collect any Assessment which is past due, the Association shall provide written notice to the Owner by certified mail (an "Itemized Debt Notice") . The precise form and content of the Itemized Debt Notice is set forth in Civil Code §1367.1, but includes without limitation the following:

- (d) Fee and penalty procedures of the Association as described above;
- (e) An itemized statement of the charges owed by the Owner, including items on the statement which indicate (i) the principal owed, (ii) any late charges and the method of calculation, (iii) any attorney's fees, and (iv) the collection practices used by the Association, including the right of the Association to the reasonable costs of collection;

(f) A statement that the Owner has the right to inspect Association records pursuant to Corporations Code §8333;

(g) The following statement in 14-point boldface type if printed, or in capital letters, if typed:

"IMPORTANT NOTICE: IF YOUR UNIT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION"

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

(i) A statement that the Owner has the right to request a meeting with the Board as provided in Code §1367.1(c).

Lien of Assessment. At any time after (a) any Assessments levied by the Association affecting any Office Condominium have become delinquent, and (b) the Itemized Debt Notice relating thereto has been mailed to the Owner of such Office Condominium, the Board may file for recording with the County Recorder, a "Notice of Delinquent Assessment" as to such Office Condominium, which notice shall state all amounts which have become delinquent with respect to such Office Condominium and the costs (including attorneys' fees), late penalties and interest which have accrued thereon, the amount of any Assessments relating to such Office Condominium which is due and payable although not delinquent, a legal description of the Office Condominium with the name of the record or reputed record Owner of such Office Condominium, and the name and address of the trustee authorized by the Association to enforce the lien, if by non-judicial foreclosure as provided below. Such notice shall be signed by the President, Vice President, Secretary, or Chief Financial Officer of the Association, or by an authorized agent (as designated by resolution of the Board) of the Association. Immediately upon recording of any Notice of Delinquent Assessment pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such Notice, together with the costs (including attorneys' fees), late penalties and interest accruing thereon, shall be and become a lien upon the Office Condominium described therein, which lien shall also secure all costs (including attorney's fees), late penalties and interest accruing thereon. The lien may be enforced as provided in Section... below.

Notice of Default; Foreclosure. Subject to California Civil Code Section 1367.4, the Board or its authorized representative can record a notice of default and can cause the Office Condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or any successor statutes or laws, or through judicial foreclosure. However, for so long as California Civil Code Section 1367.1 or Applicable Law requires, the decision to record a lien for delinquent Assessments shall be made only by the Board, at an open meeting, and with the approval of a majority vote of the Board. In connection with any sale under California Civil Code Section 2924c, the Board is authorized to appoint its attorney, any officer or director of the Association, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If a delinquency is cured before completion of a non-judicial or a judicial foreclosure, as applicable, or it is determined that a lien

previously recorded against an Office Condominium was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1 or any successor statutes or laws, shall cause to be recorded in the Office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release of such lien; provided, however, in connection with a cure prior to foreclosure, the Board shall have no obligation to record a certificate until it receives payment from the delinquent Owner of the expenses incurred, including reasonable attorneys' fees, by the Association in collecting the delinquency. If the lien was satisfied, the Association shall provide the delinquent Owner a copy of the lien release or notice that the delinquent Assessment has been satisfied. If the Association files a rescission of lien, the Association shall provide such Owner with a declaration that the lien filing or recording was in error and a copy of the notice of rescission. Any payments made on delinquent Assessments shall be applied in accordance with California Civil Code Section 1367.1 or any successor statutes or laws. The Association, acting on behalf of the Owners, shall have the power to bid upon a delinquent owner's Office Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Office Condominium and vote as an Owner of the Office Condominium. Notwithstanding the foregoing, prior to initiating a foreclosure for delinquent Assessments, the Association shall offer the delinquent Owner and, if so requested by such Owner, shall participate in a "meet and confer" program in accordance with California Civil Code Section 1363.810 et seq.

Payment of Assessments. Any payment of sums due under this Article shall first be applied to Assessments then due. Any remaining amounts shall be applied to the most current delinquency until all delinquencies have been paid. Only after all Assessments owed (both current and delinquent) have been paid in full shall any remaining payments be applied to the fees and costs of collections, attorney's fees, late charges and interest. If an Owner requests a receipt after payment of a delinquent Assessment, the Association shall provide a receipt setting forth the date of payment and the individual who received such payment.

Delinquencies; Late Penalties; Interest on Assessments. Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater, and shall bear interest on all sums including the delinquent assessment, reasonable costs for collection and late penalties at an annual percentage not exceeding twelve percent (12%) commencing thirty (30) days after the assessment becomes due, or at the maximum legal rate as defined in the California Civil Code Section 1366, or any successor statute or law.

Association Policies and Practices Regarding Defaults.

Assessment defaults. The Board shall annually distribute during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Members' Office Condominiums.

Monetary Penalties and Fees. If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Governing Documents, including any monetary penalty relating to the activities of an invitee, the Board shall adopt and distribute to each Member, by personal delivery or first class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Member discipline contained in Section.... above; provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2024, 2024(b) and 2024(c) of the California Civil Code. The Board, however, shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to the Members.

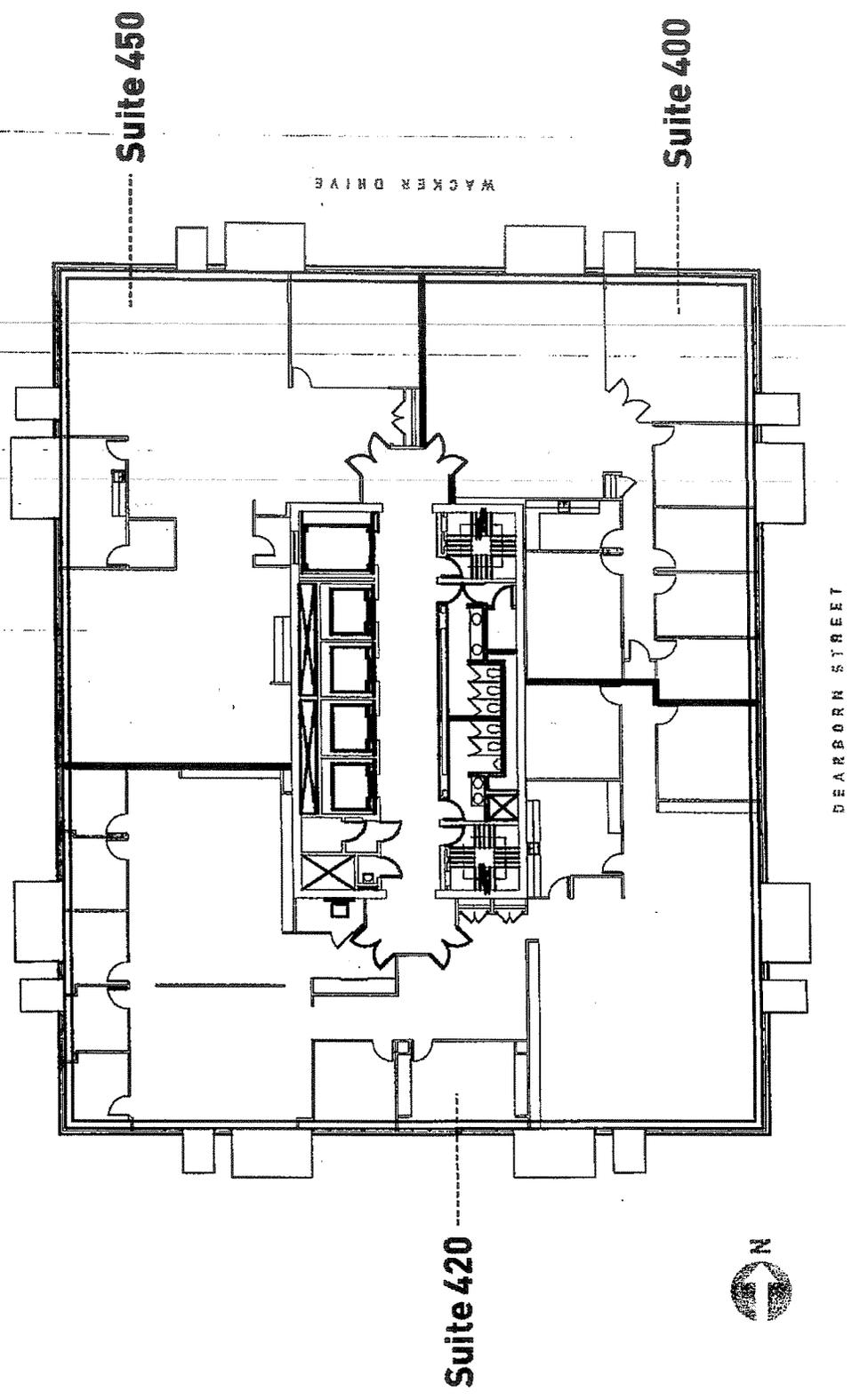
Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, subject to California Civil Code Section 1362.1(j) and any successor laws or statutes, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. Additional Charges include, but are not limited to, the following: (i) Attorneys' Fees Reasonable attorneys' fees and costs incurred to collect any Assessment or sum due, whether by suit or otherwise; (ii) a late charge in an amount to be fixed by the Board in accordance with California Civil Code Section 1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due or within any "grace" period established hereunder; (iii) costs of suit and court costs incurred as are permitted by the court; (iv) interest in an amount to be fixed by the Board in accordance with California Civil Code Section 1366, or any successor statute or law; and (v) any such other additional costs that the Association may incur in the process of collecting delinquent Assessments or sums.

11- What happens if a Commercial Condominium owner becomes successful and wants to expand? Can there be a provision for the right of first refusal provided for in the CC&Rs?

In a properly-subdivided Commercial Condominium building, the floor plates are divided into flexible (multiple) "units" that together will make up each office suite (please reference sample floorplan and corresponding subdivision survey below). This will allow for flexibility down the road if an owner desires to expand (by buying only a portion of the neighboring unit instead of the full unit). This translates into the ability of negotiation between owners, for predetermined pieces of space that have already received their own PIN number.

This flexible method of subdividing the property, allows for buyers to acquire a set of lots (each with its own property ID) which represent the physical layout. Ownership is fee simple, in nature with lots which typically ranging from 200 to 500 square feet each. The ultimate result for businesses seeking to expand is equally or more flexible to that of leasing. Under a leasing scenario, if a business desires to expand, it is not in control of the process but depends on the interests of the landlord. In the event that there is no space available, the business will need to seek office space elsewhere. In the case of ownership, the business is able to negotiate with other owners or sell its space and seek other alternatives. Ultimately, ownership provides more control.

In addition, some buildings may give owners the right of first refusal for expansion. This can be accommodated through provisions in the CC&Rs which require owners to be notified of space that comes available for sale before it goes to the open market or, in other instances, to a right of first refusal after another offer is submitted to an existing owner.



12- If I were to look at the specific property to determine if it should be eligible for conversion to a Commercial Condominium, what should be reviewed?

Not all commercial properties in the City of Beverly Hills are a good candidate for a Commercial Condominium. There are many characteristics that should be met in order for a building to be a good fit for a Commercial Condominium conversion. These characteristics include:

- a. Conformity of the general plan and zoning requirements.
 - i. The building should be in compliance with the general plan and zoning requirements by the city.
- b. Parking requirements (*i.e.*, is there a sufficient number of spaces to provide for employees, guests and invitees).
 - i. The building should comply with parking requirements and proper ratios to accommodate commercial use.
- c. What upgrades should be required for a property to be eligible for a conversion.
 - i. The company converting a building to Commercial Condominiums should, at a minimum, make upgrades to the common areas to make the building desirable as a permanent address for high-end business owners. Some upgrades might include lobby areas, corridors, elevators, restrooms and other common areas.
- d. Life safety issues.
 - i. The building should comply with all life safety requirements for commercial buildings in the City.

13- What areas are usually contained within common areas of Commercial Condominiums?

In the creation of a Commercial Condominium, the CC&Rs will specify certain parts of a building as Common Areas. These parts of a building include lobbies, restrooms and roofs, as well as access elements such as elevators, corridors loading docks, and parking ramps. An Association should be responsible for retaining a first-class property management company, which should provide the proper maintenance, operation and insurance to all these common areas. This property manager will be the primary point of contact with the city and all other third parties.

All Commercial Condominium Owners are also granted easements and rights of use over all common areas through the CC&Rs.

Sample CC&R language:

Common Area. Subject to the provisions of this Declaration, every Member of the Association shall have, for himself or herself, and such Member's Invitees, a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Common Area; and such easement shall be appurtenant to and shall pass with title to every Office Condominium in the CID, subject to the rights and restrictions set forth below.

In connection with each Owner and his Invitees being able to access their respective Unit(s) from the general entrances to the Building and the PKNG Unit and to evacuate the Building in the event of an emergency, each Owner of a Unit and his Invitees is hereby granted a perpetual, non-exclusive easement of ingress and egress in, to and over the Common Area, the Association Property, and those areas of the CID designated on the Condominium Plan for evacuation use in the event of an emergency.

14- Will Buyers have the ability to find financing for their purchase? Will the source of such funding be quality lenders?

Financing for Owner-Occupied commercial real estate is underwritten under completely different guidelines than investment real estate. Banks today have been hurt by residential real estate and investor loans, forcing them to have high requirements for cash to cover bad loans and ultimately resulting in no appetite for new real estate loans. Owner-User commercial real estate loans are considered BUSINESS LOANS, therefore not falling under the same category as real estate loans.

The combination of these realities results in very positive and attractive terms for owner-user commercial real estate. Rates, amortization and Loan-To-Value ratios are currently very favorable for buyers. This ultimately benefits the City, as the loans backing up the purchases of the Commercial Condominiums provides long term stability for the building based on the lenders currently engaged in these types of business loans.

Appendix A: Sample Economic Study:

		Building not converted 100% occupied	Building converted, 100% occupied
Building Area		50,000	50,000
Sales Price \$/ SQF	2%	750	1,200
Rent price \$/ SQF/ Annual	0.03	54	54
Business Tax to rents.	2.35%	63,450	63,450
Transfer Tax (first transfer)	0.06%	n/a	33,000
Real Estate Taxes	1.10%	412,500	660,000
City of BH share of. R. E. Taxes	17%	70,125	112,200
City Total Income		\$133,575	\$208,650

Additional income for the city, 10 years analysis: \$591,911

First year additional income for the city in the conversion scenario: \$75,075

Additional revenue from increased property tax: \$42,075

Assumptions used for the economic study.

- Real estate taxes are 1.1% of the fair market value.
- Based upon conversations with representatives of the City Treasurer's Office, \$0.17 of every dollar collected in real estate taxes by the County for property within Beverly Hills is returned to the City in one form or another (e.g., funding schools, municipal services, etc.).
- The City's real property transfer tax is 0.055% (i.e., \$0.55 per \$1,000 of value, exclusive of liens and encumbrances remaining at the time of sale).
- The City's business tax imposed on owners of commercial properties engaged in the business of leasing or renting commercial property is 2.35%.
- An increment of an annual 2% was used to project future resale prices and the lease escalations.
- The 100% occupancy rate used is based on the CC&R requirement to the Commercial Condominium to pay the 2.35% business tax after the recording date. The same 100% occupancy is used for the leasing scenario in order to provide for a comparison basis, however, probability says that in a leasing scenario there will be vacancy from time to time which will represent lost revenue for the city.
- The 10 year analysis is based on the projection of the same assumptions and assuming that in the Condo Scenario only 10% of the SQF will be traded once a year. In the unconverted case, the entire building will be transferred once in the 10 year period.

Beverly Hills Office usage greater than 25,000

SQF range	Owned		Leased	
	Qty.	Industry	Qty.	Industry
> 150,000	1	Entertainment		
149,000 - 125,000	2	Investment		
124,000 - 100,000	1	C. Headquarters		
99,000 - 75,000	1	Investment	2	Bank/ Entertainment
74,000 - 60,000	1	Entertainment	3	Entertainment Auto Dealer/
59,000 - 40,000	3	Entertainment	3	Investment
39,000 - 25,000	2	Entertainment	12	Bank/ RE/ Law/ Investment/ Entertainment
Total square footage		805,000		750,000

* Sort by size and usage.