

Office of the City Engineer

Los Angeles, California

To The Honorable Council
Of the City of Los Angeles

NOV 14 2007

Honorable Members:

C.D. No. 4 ✓

SUBJECT:

Final Map of Tract No. 66869

RECOMMENDATIONS:

Approve the final map of Tract No. 66869 lying easterly of Hyperion Avenue and northerly of Tracy Street and accompanying Subdivision Improvement Agreement and Contract with security documents.

FISCAL IMPACT STATEMENT

The subdivider has paid a fee of \$6,540.00 for the processing of this final tract map pursuant to Section 19.02(A) (2) of the Municipal Code. No additional City funds are needed.

TRANSMITTALS:

1. Map of Tract No. 66869.
2. Unnumbered file for Tract No. 66869.
3. Subdivision Improvement Agreement and Contract with attached security documents.

DISCUSSION:

The Advisory Agency conditionally approved the tentative map of Tract No. 66869 on January 16, 2007, for 1-lot, a maximum 5-unit Joint Living and Work Quarter condominium project.

The Advisory Agency has determined that this project will not have a significant effect on the environment.

The conditions of approval for the tract map have been fulfilled including a payment of the Recreation and Parks fee in the amount of \$ 22,310.00. Transmitted Subdivision Improvement

Agreement and Contract with attached security documents guarantees construction of the required improvements. Upon approval by the Council the tract map will be transmitted to the County Engineer for filing with the County Recorder.

The expiration date of the tentative map approval is January 16, 2010.

The subdivider and engineer / surveyor for this subdivision are:

Subdivider:

Xterra Development, LLC
7586 Woodrow Wilson Drive
Los Angeles, Ca 90046


Engineer / Surveyor:

Iacobellis & Associates, Inc.
11145 Tampa Avenue, Suite 15-B
Northridge, Ca 91326

Report prepared by:
Land Development Group

Respectfully submitted,

Alan Lee
Civil Engineer
Phone: 213-977-8932


Edmond Yew, Manager
Land Development Group
Bureau of Engineering

GLM/EY/rcsc
Tr. 66869

DEPARTMENT OF
CITY PLANNING
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

CITY PLANNING COMMISSION

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Decision Date: January 16, 2007

Appeal Period Ends: January 26, 2007

Xterra Development (O)(A)
Attn: Serko Khatchadourian
7586 Woodrow Wilson Drive
Los Angeles, CA 90046

Iacobellis and Associates, Inc. (E)
Thomas D. Iacobellis
11145 Tampa Avenue #15-B
Northridge, CA 91326

Re: Tentative Tract No.: 66869
Related Case: ZA-2006-9628-ZV
Address: 2508 N. Hyperion
Avenue
Council District: 4
Existing Zone: [Q]C2-1VL
Community Plan: Silver Lake-
Echo Park-Elysian Valley
ENV No.: ENV-2006-5268-MND-
REC1
Fish and Game: Exempt

In accordance with provisions of Section 17.03 of the Los Angeles Municipal Code, the Advisory Agency approved Tract Map No. 66869 composed of 1 lot, located at 2508 N. Hyperion Avenue for a maximum 5-unit Joint Living and Work Quarter condominium units as shown on the map stamp-dated June 16, 2006 in the Silver Lake – Echo Park – Elysian Valley Community Plan. This unit density is based on the [Q]C2-1VL zone and a Zone Variance (Case Number ZA-2006-9628-ZV). (The subdivider is hereby advised that the Municipal Code may not permit this maximum approved density. Therefore, verification should be obtained from the Department of Building and Safety, which will legally interpret the Zoning code as it applies to this particular property.) For an appointment with the Subdivision Counter call (213) 978-1362. The Advisory Agency's approval is subject to the following conditions:

NOTE on clearing conditions: When two or more agencies must clear a condition, subdivider should follow the sequence indicated in the condition. For the benefit of the applicant, subdivider shall maintain record of all conditions cleared, including all material supporting clearances and be prepared to present copies of the clearances to each reviewing agency as may be required by its staff at the time of its review.



BUREAU OF ENGINEERING - SPECIFIC CONDITIONS

1. That a 2-foot wide strip of land be dedicated along Hyperion Avenue adjoining the subdivision to complete a 45-foot wide half right-of-way dedication in accordance with Secondary Highway Standards.

DEPARTMENT OF TRANSPORTATION

2. That prior to recordation of the final map, satisfactory arrangements shall be made with the Department of Transportation to assure:
 - a. A minimum of 20-foot reservoir space be provided between any security gate(s) and the property line.
 - b. Parking stalls shall be designed so that a vehicle is not required to back into or out of any public street or sidewalk.
 - c. A parking area and driveway plan shall be submitted to the Citywide Planning Coordination Section of Department of Transportation for approval prior to submittal of building permit plans for plan check by the Department of Building and Safety. Transportation approvals are conducted at 201 N. Figueroa Street Suite 400, Station 3.

Please contact this section at (213) 482-7024 for any questions regarding the above.

FIRE DEPARTMENT

3. That prior to the recordation of the final map, a suitable arrangement shall be made satisfactory to the Fire Department, binding the subdivider and all successors to the following (MM):
 - a. Submit plot plans for Fire Department approval and review prior to recordation of Tract Map Action.
 - b. No building or portion of a building shall be constructed more than 300 feet from an approved fire hydrant. Distance shall be computed along path of travel. Exception: Dwelling unit travel distance shall be computed to front door of unit.
 - c. Any required fire hydrants to be installed shall be fully operational and accepted by the Fire Department prior to any building construction.
 - d. Where rescue window access is required, provide conditions and improvements necessary to meet accessibility standards as determined by the Los Angeles Fire Department.

- e. No proposed development utilizing cluster, group, or condominium design of one or two family dwellings shall be more than 150 feet from the edge of the roadway of an improved street, access road, or designated fire lane.
- f. Where above ground floors are used for residential purposes, the access requirement shall be interpreted as being the horizontal travel distance from the street, driveway, alley, or designated fire lane to the main entrance of individual units.
- g. The entrance or exit of all ground dwelling units shall not be more than 150 feet from the edge of a roadway of an improved street, access road, or designated fire lane.
- h. No building or portion of a building shall be constructed more than 150 feet from the edge of a roadway of an improved street, access road, or designated fire lane.
- i. Adequate public and private fire hydrants shall be required.
- j. Access for Fire Department apparatus and personnel to and into all structures shall be required.
- k. The Fire Department may require additional vehicular access where buildings exceed 28 feet in height.

For additional information, please contact Inspector Terrence O'Connell of the Construction Services Unit at (213) 482-6504.

DEPARTMENT OF WATER AND POWER

- 4. Satisfactory arrangements shall be made with the Los Angeles Department of Water and Power (LADWP) for compliance with LADWP's Water System Rules and requirements. Upon compliance with these conditions and requirements, LADWP's Water Services Organization will forward the necessary clearances to the Bureau of Engineering. (This condition shall be deemed cleared at the time the City Engineer clears Condition No. S-1. (c).)

BUREAU OF STREET LIGHTING

- 5. Street light improvements shall be made to the satisfaction of the Bureau of Street Lighting and/or the following street lighting improvements shall be required. (This condition shall be deemed cleared at the time the City Engineer clears Condition S-3. (c).)

No street lighting requirements if there is no street widening. Otherwise, one

- (1) impacted existing street light on Hyperion Ave. to be relocated and upgraded.

BUREAU OF SANITATION

6. Satisfactory arrangements shall be made with the Bureau of Sanitation, Wastewater Collection Systems Division for compliance with its sewer system review and requirements. Upon compliance with its conditions and requirements, the Bureau of Sanitation, Wastewater Collection Systems Division will forward the necessary clearances to the Bureau of Engineering. (This condition shall be deemed cleared at the time the City Engineer clears Condition No. S-1. (d).)

INFORMATION TECHNOLOGY AGENCY

7. That satisfactory arrangements be made in accordance with the requirements of the Information Technology Agency to assure that cable television facilities will be installed in the same manner as other required improvements. Refer to the Los Angeles Municipal Code Section 17.05N. Written evidence of such arrangements must be submitted to the Information Technology Agency, 200 N. Main Street, 12th Floor, Los Angeles, CA 90012, (213) 922-8363.

DEPARTMENT OF RECREATION AND PARKS

8. That the Quimby fee be based on the R3 density. (MM)

DEPARTMENT OF CITY PLANNING-SITE SPECIFIC CONDITIONS

9. Prior to the recordation of the final map, the subdivider shall prepare and execute a Covenant and Agreement (Planning Department General Form CP-6770) in a manner satisfactory to the Planning Department, binding the subdivider and all successors to the following:
 - a. Limit the proposed development to a maximum of 5 Joint Living and Work Quarters condominium units.
 - b. Provide a minimum of 2 covered off-street parking spaces per dwelling unit, plus ¼ guest parking spaces per dwelling. All guest spaces shall be readily accessible, conveniently located, specifically reserved for guest parking, posted and maintained satisfactory to the Department of Building and Safety.
 - c. That prior to issuance of a certificate of occupancy, a minimum 6-foot-high slumpstone or decorative masonry wall shall be constructed adjacent to neighboring residences, if no such wall already exists, except in required front yard. (MM)

- d. The applicant shall install an air filtration system(s) to reduce the effects of diminished air quality on occupants of the project. (MM)
 - e. That a solar accesses report shall be submitted to the satisfaction of the Advisory Agency prior to obtaining a grading permit.
 - f. That the subdivider considers the use of natural gas and/or solar energy and consult with the Department of Water and Power and Southern California Gas Company regarding feasible energy conservation measures.
 - g. Recycling bins shall be provided at appropriate locations to promote recycling of paper, metal, glass, and other recyclable material. (MM)
10. That prior to the issuance of the building permit or the recordation of the final map, a copy of case number ZA-2006-9628-ZV shall be submitted to the satisfaction of the Advisory Agency.

DEPARTMENT OF CITY PLANNING-ENVIRONMENTAL MITIGATION MEASURES

11. That prior to recordation of the final map the subdivider shall prepare and execute a Covenant and Agreement (Planning Department General Form CP-6770 and Exhibit CP-6770. M) in a manner satisfactory to the Planning Department requiring the subdivider to identify (a) mitigation monitor(s) who shall provide periodic status reports on the implementation of mitigation items required by Mitigation Condition No(s). 12 of the Tract's approval satisfactory to the Advisory Agency. The mitigation monitor(s) shall be identified as to their areas of responsibility, and phase of intervention (pre-construction, construction, postconstruction/maintenance) to ensure continued implementation of the above mentioned mitigation items.
12. Prior to the recordation of the final map, the subdivider will prepare and execute a Covenant and Agreement (Planning Department General Form CP-6770) in a manner satisfactory to the Planning Department, binding the subdivider and all successors to the following:
- MM-1 All open areas not used for buildings, driveways, parking areas, recreational facilities or walks shall be attractively landscaped and maintained in accordance with a landscape plan, including an automatic irrigation plan, prepared by a licensed landscape architect to the satisfaction of the Planning Department.
 - MM-2 Outdoor lighting shall be designed and installed with shielding, so that the light source cannot be seen from adjacent residential properties.

- MM-3 The design and construction of the project shall conform to the Uniform Building Code seismic standards as approved by the Department of Building and Safety.
 - MM-4 Compliance with the Uniform Building Code Chapter 18. Division 1 Section 1804.5 Liquefaction Potential and Soil Strength Loss, which requires the preparation of a geotechnical report. The geotechnical report shall assess potential consequences of any liquefaction and soil strength loss, estimation of settlement, lateral movement or reduction in foundation soil-bearing capacity, and discuss mitigation measures that may include building design consideration.
 - MM-5 Building design considerations may include, but are not limited to: ground stabilization, selection of appropriate foundation type and depths, selection of appropriate structural systems to accommodate anticipated displacements or any combination of these measures.
 - MM-6 Concrete, not metal, shall be used for construction of parking ramps.
 - MM-7 The interior ramps shall be textured to prevent tire squeal at turning areas.
 - MM-8 Parking lots located adjacent to residential buildings shall have a solid decorative wall adjacent to the residential uses.
 - MM-9 Payment of school fees to the Los Angeles Unified School District to offset the impact of additional student enrollment at schools serving the project area.
 - MM-10 The project shall comply with the Bureau of Engineering's requirements for street dedications and improvements that will reduce traffic impacts in direct portion to those caused by the proposed project's implementation.
13. **Construction Mitigation Conditions - Prior to the issuance of a grading or building permit, or the recordation of the final map, the subdivider shall prepare and execute a Covenant and Agreement (Planning Department General Form CP-6770) in a manner satisfactory to the Planning Department, binding the subdivider and all successors to the following:**
- CM-1. That a sign be required on site clearly stating a contact/complaint telephone number that provides contact to a live voice, not a recording or voice mail, during all hours of construction, the construction site address, and the tract map number. **YOU ARE REQUIRED TO POST THE SIGN 7 DAYS BEFORE CONSTRUCTION IS TO BEGIN.**

- Locate the sign in a conspicuous place on the subject site or structure (if developed) so that the public can easily read it. The sign must be sturdily attached to a wooden post if it will be freestanding.
 - Regardless of who posts the site, it is always the responsibility of the applicant to assure that the notice is firmly attached, legible, and remains in that condition throughout the entire construction period.
 - If the case involves more than one street frontage, post a sign on each street frontage involved. If a site exceeds five (5) acres in size, a separate notice of posting will be required for each five (5) acres, or portion thereof. Each sign must be posted in a prominent location.
- CM-2. All unpaved demolition and construction areas shall be wetted at least twice daily during excavation and construction, and temporary dust covers shall be used to reduce dust emissions and meet SCAQMD District Rule 403. Wetting could reduce fugitive dust by as much as 50 percent.
- CM-3. The owner or contractor shall keep the construction area sufficiently dampened to control dust caused by construction and hauling, and at all times provide reasonable control of dust caused by wind.
- CM-4. All loads shall be secured by trimming, watering or other appropriate means to prevent spillage and dust.
- CM-5. All materials transported off-site shall be either sufficiently watered or securely covered to prevent excessive amount of dust.
- CM-6. All clearing, earth moving, or excavation activities shall be discontinued during periods of high winds (i.e., greater than 15 mph), so as to prevent excessive amounts of dust.
- CM-7. General contractors shall maintain and operate construction equipment so as to minimize exhaust emissions.
- CM-8. The project shall comply with the City of Los Angeles Noise Ordinance No. 144,331 and 161,574, and any subsequent ordinances, which prohibit the emission or creation of noise beyond certain levels at adjacent uses unless technically infeasible.
- CM-9. Construction and demolition shall be restricted to the hours of 7:00 am to 6:00 pm Monday through Friday, and 8:00 am to 6:00 pm on Saturday.
- CM-10. Construction and demolition activities shall be scheduled so as to avoid

operating several pieces of equipment simultaneously, which causes high noise levels.

- CM-11. The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices.
- CM-12. The project sponsor must comply with the Noise Insulation Standards of Title 24 of the California Code Regulations, which insure an acceptable interior noise environment.
- CM-13. All waste shall be disposed of properly. Use appropriately labeled recycling bins to recycle construction materials including: solvents, water-based paints, vehicle fluids, broken asphalt and concrete, wood, and vegetation. Non-recyclable materials/wastes must be taken to an appropriate landfill. Toxic wastes must be discarded at a licensed regulated disposal site.
- CM-14. Clean up leaks, drips and spills immediately to prevent contaminated soil on paved surfaces that can be washed away into the storm drains.
- CM-15. Do not hose down pavement at material spills. Use dry cleanup methods whenever possible.
- CM-16. Cover and maintain dumpsters. Place uncovered dumpsters under a roof or cover with tarps or plastic sheeting.
- CM-17. Use gravel approaches where truck traffic is frequent to reduce soil compaction and limit the tracking of sediment into streets.
- CM-18. Conduct all vehicle/equipment maintenance, repair, and washing away from storm drains. All major repairs are to be conducted off-site. Use drip pans or drop clothes to catch drips and spills.

DEPARTMENT OF CITY PLANNING-STANDARD JOINT LIVING AND WORK CONDITIONS

- LW-1. That prior to recordation of the final map, the subdivider shall make arrangements with the Housing Authority for certification of the development in accordance with Section 12.39A of the Los Angeles Municipal Code relating to low and moderate housing. The Housing Authority shall transmit a copy of its determination to the Bureau of Engineering and the Department of Building and Safety.
- LW-2. Prior to the recordation of the final map, the subdivider shall pay or guarantee the payment of a park and recreation fee based on the latest fee rate schedule applicable. The amount of said fee to be established by the Advisory Agency in

accordance with Section 17.12 of the Los Angeles Municipal Code and to be paid and deposited in the trust accounts of the Park and Recreation Fund.

- LW-3. That a landscape plan, prepared by a licensed landscape architect, be submitted to and approved by the Advisory Agency in accordance with CP-6730 prior to obtaining any grading or building permits before the recordation of the final map.

In the event the subdivider decides not to request a permit before the recordation of the final map, a covenant and agreement satisfactory to the Advisory Agency guaranteeing the submission of such plan before obtaining any permit shall be recorded.

- LW-4. In order to expedite the development, the applicant may apply for a building permit for a joint living and work building. However, prior to issuance of a building permit for joint living and work units, the registered civil engineer, architect or licensed land surveyor shall certify in a letter to the Advisory Agency that all applicable tract conditions affecting the physical design of the building and/or site, have been included into the building plans. Such letter is sufficient to clear this condition. In addition, all of the applicable tract conditions shall be stated in full on the building plans and a copy of the plans shall be reviewed and approved by the Advisory Agency prior to submittal to the Department of Building and Safety for a building permit.

OR

If a building permit for joint living and work units will not be requested, the project civil engineer, architect or licensed land surveyor must certify in a letter to the Advisory Agency that the applicant will not request a permit for a joint living and work building and intends to acquire a building permit for a joint living and work condominium building(s). Such letter is sufficient to clear this condition.

- LW-5. That approval of this tract constitutes approval of model home uses, including a sales office and off-street parking. Where the existing zoning is (T) or (Q) for multiple residential uses, no construction or use shall be permitted until the final map has recorded or the proper zone has been effectuated. If models are constructed under this tract approval, the following conditions shall apply:

1. Prior to recordation of the final map, the subdivider shall submit a plot plan for approval by the Division of Land Section of the Department of City Planning showing the location of the model dwellings, sales office and off-street parking. The sales office must be within one of the model buildings.
2. All other conditions applying to Model Dwellings under Section 12.22-A, 10

and 11 and Section 17.05-O of the Code shall be fully complied with satisfactory to the Department of Building and Safety.

BUREAU OF ENGINEERING - STANDARD CONDITIONS

- S-1. (a) That the sewerage facilities charge be deposited prior to recordation of the final map over all of the tract in conformance with Section 64.11.2 of the Municipal Code.
- (b) That survey boundary monuments be established in the field in a manner satisfactory to the City Engineer and located within the California Coordinate System prior to recordation of the final map. Any alternative measure approved by the City Engineer would require prior submission of complete field notes in support of the boundary survey.
- (c) That satisfactory arrangements be made with both the Water System and the Power System of the Department of Water and Power with respect to water mains, fire hydrants, service connections and public utility easements.
- (d) That any necessary sewer, street, drainage and street lighting easements be dedicated. In the event it is necessary to obtain off-site easements by separate instruments, records of the Bureau of Right-of-Way and Land shall verify that such easements have been obtained. The above requirements do not apply to easements of off-site sewers to be provided by the City.
- (e) That drainage matters be taken care of satisfactory to the City Engineer.
- (f) That satisfactory street, sewer and drainage plans and profiles as required, together with a lot grading plan of the tract and any necessary topography of adjoining areas be submitted to the City Engineer.
- (g) That any required slope easements be dedicated by the final map.
- (h) That each lot in the tract comply with the width and area requirements of the Zoning Ordinance.
- (i) That 1-foot future streets and/or alleys be shown along the outside of incomplete public dedications and across the termini of all dedications abutting unsubdivided property. The 1-foot dedications on the map shall include a restriction against their use of access purposes until such time as they are accepted for public use.
- (j) That any 1-foot future street and/or alley adjoining the tract be dedicated for public use by the tract, or that a suitable resolution of acceptance be

public use by the tract, or that a suitable resolution of acceptance be transmitted to the City Council with the final map.

- (k) That no public street grade exceed 15%.
 - (l) That any necessary additional street dedications be provided to comply with the Americans with Disabilities Act (ADA) of 1990.
- S-2. That the following provisions be accomplished in conformity with the improvements constructed herein:
- (a) Survey monuments shall be placed and permanently referenced to the satisfaction of the City Engineer. A set of approved field notes shall be furnished, or such work shall be suitably guaranteed, except where the setting of boundary monuments requires that other procedures be followed.
 - (b) Make satisfactory arrangements with the Department of Traffic with respect to street name, warning, regulatory and guide signs.
 - (c) All grading done on private property outside the tract boundaries in connection with public improvements shall be performed within dedicated slope easements or by grants of satisfactory rights of entry by the affected property owners.
 - (d) All improvements within public streets, private street, alleys and easements shall be constructed under permit in conformity with plans and specifications approved by the Bureau of Engineering.
 - (e) Any required bonded sewer fees shall be paid prior to recordation of the final map.
- S-3. That the following improvements be either constructed prior to recordation of the final map or that the construction be suitably guaranteed:
- (a) Construct on-site sewers to serve the tract as determined by the City Engineer.
 - (b) Construct any necessary drainage facilities.
 - (c) Install street lighting facilities to serve the tract as required by the Bureau of Street Lighting.
 - (d) Plant street trees and remove any existing trees within dedicated streets or proposed dedicated streets as required by the Street Tree Division of the

Bureau of Street Maintenance. All street tree planting's shall be brought up to current standards. When the City has previously been paid for tree planting, the subdivider or contractor shall notify the Street Tree Division ((213) 485-5675) upon completion of construction to expedite tree planting.

- (e) Repair or replace any off-grade or broken curb, gutter and sidewalk satisfactory to the City Engineer.
- (f) Construct access ramps for the handicapped as required by the City Engineer.
- (g) Close any unused driveways satisfactory to the City Engineer.
- (h) Construct any necessary additional street improvements to comply with the Americans with Disabilities Act (ADA) of 1990.
- (i) That the following improvements be either constructed prior to recordation of the final map or that the construction be suitably guaranteed:

Improve Hyperion Avenue being dedicated and adjoining the subdivision by the construction of the following:

- (1) A concrete curb, a concrete gutter, and a 10-foot full-width concrete sidewalk with tree wells.
- (2) Suitable surfacing to join the existing pavement and to complete a 35-foot partial roadway.
- (3) Any necessary removal and reconstruction of existing improvements.
- (4) The necessary transitions to join the existing improvements all satisfactory to the City Engineer.

Any questions regarding this report should be directed to Mr. Danny Ho of the Land Development Section, located at 201 North Figueroa Street, Suite 200, or by calling (213) 977-6983.

NOTES:

The Advisory Agency approval is the maximum number of units permitted under the tract action. However the existing or proposed zoning may not permit this number of units.

Approval from Board of Public Works may be necessary before removal of any street trees in conjunction with the improvements in this tract map through Bureau of Street Services Urban Forestry Division.

Satisfactory arrangements shall be made with the Los Angeles Department of Water and Power, Power System, to pay for removal, relocation, replacement or adjustment of power facilities due to this development. The subdivider must make arrangements for the underground installation of all new utility lines in conformance with Section 17.05N of the Los Angeles Municipal Code.

The final map must record within 36 months of this approval, unless a time extension is granted before the end of such period.

The Advisory Agency hereby finds that this tract conforms to the California Water Code, as required by the Subdivision Map Act.

No building permit will be issued until the subdivider has secured a certification from the Housing Authority that the development complies with the requirements for low-and moderate-income housing, per Section 12.39-A of the LAMC.

The subdivider should consult the Department of Water and Power to obtain energy saving design features, which can be incorporated into the final building plans for the subject development. As part of the Total Energy Management Program of the Department of Water and Power, this no-cost consultation service will be provided to the subdivider upon his request.

Indemnification. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

FINDINGS OF FACT (CEQA)

The Department of City Planning issued Mitigated Negative Declaration No. ENV-2006-5268-MND-REC1 on January 8, 2007. The Department found that potential negative impact could occur from the project's implementation due to:

- Aesthetics (visual character, light);
- Air Quality (construction, operational);
- Geology and Soils (construction, seismic);
- Hazards and Hazardous Materials (liquefaction);
- Hydrology and Water Quality (stormwater);
- Noise (construction, operational);

Public Services (fire, schools, street improvements);
Recreation (parks);
Transportation/Circulation (emergency access);
Utilities (Solid Waste).

The Deputy Advisory Agency, certifies that Mitigated Negative Declaration No. ENV-2006-5268-MND-REC1 reflects the independent judgment of the lead agency and determined that this project would not have a significant effect upon the environment provided the potential impacts identified above are mitigated to a less than significant level through implementation of Condition No(s). 3, 8, 9c, 9d, 9g, 12 and 13 of the Tract's approval. Other identified potential impacts not mitigated by these conditions are mandatorily subject to existing City ordinances, (Sewer Ordinance, Grading Ordinance, Flood Plain Management Specific Plan, Xeriscape Ordinance, Stormwater Ordinance, etc.) which are specifically intended to mitigate such potential impacts on all projects.

The Initial Study prepared for the project identifies potential adverse impacts on fish or wildlife resources as far as earth, air, water, plant life, and risk of upset are concerned. However, measures are required as part of this approval, which will mitigate the above, mentioned impacts to a less than significant level. Furthermore, the project site, as well as the surrounding is presently developed with structures and does not provide a natural habitat for either fish or wildlife. In light of the above, the project qualifies for the De Minimis Exemption for Fish and Game fees (AB 3158)

In accordance with Section 21081.6 of the Public Resources Code (AB3180), the Deputy Advisory Agency has assured that the above identified mitigation measures will be implemented by requiring reporting and monitoring as specified in Condition No. 11.

Furthermore, the Advisory Agency hereby finds that modification(s) to and/or correction(s) of specific mitigation measures have been required in order to assure appropriate and adequate mitigation of potential environmental impacts of the proposed use of this subdivision.

FINDINGS OF FACT (SUBDIVISION MAP ACT)

In connection with the approval of Tentative Tract Map No. 66869, the Deputy Advisory Agency of the City of Los Angeles, pursuant to Sections 66473.1, 66474.60, .61 and .63 of the State of California Government Code (the Subdivision Map Act), makes the prescribed findings as follows:

- (a) THE PROPOSED MAP WILL BE/IS CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

The adopted the Silver Lake – Echo Park – Elysian Valley Community Plan designates the subject property for the Community Commercial land use with the

corresponding zones of RAS3, CR, C2, C4, and P. The property contains approximately 6,580.63 net acres and is presently zoned of [Q]C2-1VL. The proposed development of 5 Joint Living and Work Quarter condominium units is allowable under the current adopted zone and the land use designation. The project will provide much needed new home ownership opportunities for the Community Plan area.

The site is not subject to the Specific Plan for the Management of Flood Hazards (floodways, floodplains, mud prone areas, coastal high-hazard and flood-related erosion hazard areas).

Therefore, as conditioned, the proposed tract map is consistent with the intent and purpose of the applicable General and Specific Plans.

- (b) THE DESIGN AND IMPROVEMENT OF THE PROPOSED SUBDIVISION ARE CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

Hyperion Avenue is a Secondary Highway dedicated to an 83-foot width at the project's street frontage. The Bureau of Engineering is requiring a 2-foot dedication to complete a 45-foot wide half street dedication in accordance with Secondary Highway Street Standards. This project is not subject to any Specific Plan requirements. The proposed project will provide 11 parking spaces in conformance with the Los Angeles Municipal Code and the Deputy Advisory Agency's parking policy for condominium projects in non-parking congested areas. As conditioned the design and improvements of the proposed project are consistent with the applicable General and Specific Plans.

- (c) THE SITE IS PHYSICALLY SUITABLE FOR THE PROPOSED TYPE OF DEVELOPMENT.

The site is currently under construction (as apartments). It is one of the few under-improved properties in the vicinity. The development of this tract is an infill of an otherwise mix-density residential and commercial neighborhood.

The site is level and is not located in a slope stability study area, high erosion hazard area, or a fault-rupture study zone.

The tract has been approved contingent upon the satisfaction of the Department of Building and Safety, Grading Division prior to the recordation of the map and issuance of any permits.

- (d) THE SITE IS PHYSICALLY SUITABLE FOR THE PROPOSED DENSITY OF DEVELOPMENT.

Adjacent land uses are multi-family to the east in the RD2-1VL zone, a single family home to the south in the [Q]C2-1VL zone and across Hyperion Avenue to the west in the R2-1XL zone, and a gym to the north in the [Q]C2-1VL zone. The proposed project would provide an appropriate transitional development between the commercial uses along Hyperion and the residential uses adjacent to the project site to the east. The site is currently under construction (as apartments), and the proposed project would provide 5 joint living and work quarters condominium units. The proposed project will comply with all L.A.M.C requirements for parking, yards, and open space. As conditioned the proposed tract map is physically suitable for the proposed density of the development.

- (e) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS ARE NOT LIKELY TO CAUSE SUBSTANTIAL ENVIRONMENTAL DAMAGE OR SUBSTANTIALLY AND AVOIDABLY INJURE FISH OR WILDLIFE OR THEIR HABITAT.

The Initial Study prepared for the project identifies no potential adverse impact on fish or wildlife resources as far as earth, air, water, plant life, animal life, risk of upset are concerned. However measures required as part of this approval will mitigate the any mentioned impacts to a less than significant level. Furthermore, the project site, as well as the surrounding area is presently developed with structures and do not provide a natural habitat for either fish or wildlife.

In light of the above, the project qualifies for the De Minimis Exemption for Fish and Game fees (AB 3158).

- (f) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS ARE NOT LIKELY TO CAUSE SERIOUS PUBLIC HEALTH PROBLEMS.

There appear to be no potential public health problems caused by the design or improvement of the proposed subdivision.

The Bureau of Engineering has reported that the proposed subdivision does not violate the existing California Water Code because the subdivision will be connected to the public sewer system and will have only a minor incremental impact on the quality of the effluent from the Hyperion Treatment Plant.

- (g) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS WILL NOT CONFLICT WITH EASEMENTS ACQUIRED BY THE PUBLIC AT LARGE FOR ACCESS THROUGH OR USE OF PROPERTY WITHIN THE PROPOSED SUBDIVISION.

No such easements are known to exist. Needed public access for roads and utilities will be acquired by the City prior to recordation of the proposed tract.

- (h) THE DESIGN OF THE PROPOSED SUBDIVISION WILL PROVIDE, TO THE EXTENT FEASIBLE, FOR FUTURE PASSIVE OR NATURAL HEATING OR COOLING OPPORTUNITIES IN THE SUBDIVISION. (REF. SECTION 66473.1)

In assessing the feasibility of passive or natural heating or cooling opportunities in the proposed subdivision design, the applicant has prepared and submitted materials which consider the local climate, contours, configuration of the parcel(s) to be subdivided and other design and improvement requirements.

Providing for passive or natural heating or cooling opportunities will not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map was filed.

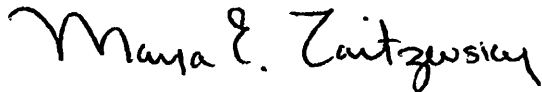
The lot layout of the subdivision has taken into consideration the maximizing of the north/south orientation.

The topography of the site has been considered in the maximization of passive or natural heating and cooling opportunities.

In addition, prior to obtaining a building permit, the subdivider shall consider building construction techniques, such as overhanging eaves, location of windows, insulation, exhaust fans; planting of trees for shade purposes and the height of the buildings on the site in relation to adjacent development.

These findings shall apply to both the tentative and final maps for Tract Map No. 66869.

S. Gail Goldberg, AICP
Advisory Agency



MAYA ZAITZEVSKY
Deputy Advisory Agency

MZ:TI:MS:jh

Note: If you wish to file an appeal, it must be filed within 10 calendar days from the decision date as noted in this letter. For an appeal to be valid to the City Planning Commission, it must be accepted as complete by the City Planning Department and appeal fees paid, prior to expiration of the above 10-day time limit. Such appeal must be submitted on Master Appeal Form No. CP-7769 at the Department's Public Offices, located at:

Figueroa Plaza
201 N. Figueroa St., 4th Floor
Los Angeles, CA 90012
213.482.7077

Marvin Braude San Fernando
Valley Constituent Service Center
6262 Van Nuys Blvd., Room 251
Van Nuys, CA 91401
818.374.5050

Forms are also available on-line at www.lacity.org/pln.

The time in which a party may seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits, which also affect your ability to seek judicial review.

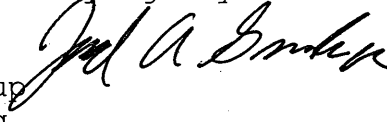
If you have any questions, please call Subdivision staff at (213) 978-1362.

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: July 31, 2006

To: Ms. S. Gail Goldberg, Director
Department of City Planning
Attention: Deputy Advisory Agency

From: Edmond Yew, Manager
Land Development Group
Bureau of Engineering



Subject: Tentative Tract Map No. 66869 - Transmittal of Map.

Transmitted is a print of tentative map of Tract Map No. 66869 lying easterly of Hyperion Avenue and northerly of Tracey Street in Council District No. 4.

This map has been filed for a 5-unit new live-work purposes. The subdivision layout is satisfactory as submitted.

There is an existing sewer available in Hyperion Avenue adjoining the subdivision. The construction of house connection sewers will be required to serve the tract. This tract will connect to the public sewer system and will not result in violation of the California Water Code. I therefore recommend that you make the necessary determination.

I recommend that the tentative map of Tract No. 66869 be approved, subject to the standard conditions issued by your department and the following special conditions:

1. That a 2-foot wide strip of land be dedicated along Hyperion Avenue adjoining the subdivision to complete a 45-foot wide half right-of-way dedication in accordance with Secondary Highway Standards.
2. That the following improvements be either constructed prior to recordation of the final map or that the construction be suitably guaranteed:

Improve Hyperion Avenue being dedicated and adjoining the subdivision by the construction of the following:

- (1) A concrete curb, a concrete gutter, and a 10-foot full-width concrete sidewalk with tree wells.
- (2) Suitable surfacing to join the existing pavement and to complete a 35-foot partial roadway.

Ms. Goldberg

-2-

- (3) Any necessary removal and reconstruction of existing improvements.
- (4) The necessary transitions to join the existing improvements all satisfactory to the City Engineer.

Any questions regarding this report should be directed to Mr. Danny Ho of the Land Development Section, located at 201 North Figueroa Street, Suite 200, or by calling (213) 977-6983.

EY/DH/gt

H:\ldg4\gtWP104

Enc.

cc: Central Group Engineering District Office

Tom Iacobellis

Fax: (818) 366-4813

CITY OF LOS ANGELES
CALIFORNIA

DEPARTMENT OF
CITY PLANNING
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801
CITY PLANNING COMMISSION
JANE ELLISON USHER
PRESIDENT
ANDRES F. IRLANDO
VICE-PRESIDENT
DIEGO CARDOSO
REGINA M. FREER
ROBIN R. HUGHES
SABRINA KAY
FR. SPENCER T. KEZIOS
WILLIAM ROSCHEN
MICHAEL K. WOO
GABRIELE WILLIAMS
COMMISSION EXECUTIVE ASSISTANT
(213) 978-1300



ANTONIO R. VILLARAIGOSA
MAYOR

TT FEE PAID

EXECUTIVE OFFICES

S. GAIL GOLDBERG, AICP
DIRECTOR
(213) 978-1271
GORDON B. HAMILTON
DEPUTY DIRECTOR
(213) 978-1272
ROBERT H. SUTTON
DEPUTY DIRECTOR
(213) 978-1274
FAX: (213) 978-1275
INFORMATION
(213) 978-1270
www.lacity.org/PLN

LAND DEVELOPMENT GROUP
06 JUN 21 PM 1:22

JUN 16 2006

Filing Notification and Distribution

ADDRESS: 2508 N. Hyperion Avenue

COMMUNITY: Silver Lake-Echo Park-Elysian Valley

**EXPEDITED
PROCESSING
SECTION**

DATE OF FILING AND MAP STAMP

DATE: June 16, 2006

TRACT MAP NO: 66869

DEEMED COMPLETE AND DISTRIBUTION

DATE: June 20, 2006

Hillside: () Yes (X) No

- (X) COUNCIL DISTRICT NO: 4
- (X) Neighborhood Planning (Check Office below)
 - () Valley
 - () West Los Angeles
 - () Harbor
 - (X) Metro E/S
- Department of Public Works
 - (X) Bureau of Engineering
 - (X) Bureau of Sanitation
- Department of Building and Safety
 - (X) Grading Engineer
 - (X) Zoning Engineer
- (X) Department of Transportation
- Department of Water and Power
 - () Underground Design
 - (X) Real Estate
 - (X) Water System
 - (X) Fire Department (mark "Fire")

- () Community Plan Revision
- (X) Department of Recreation and Parks
- (X) Department of Telecommunications
- (X) Bureau of Street Lighting (No. P.S.)
- () Community Redevelopment Agency
(See Counter Map) (No. P.S.)
- () Animal Regulation (Hillside)
- (X) Housing Department
- (X) Board of Education (No P.S.)
- (X) Los Angeles County Health Department
(No P.S.)
- () City of Beverly Hills
(See Counter Map) (No P.S.)
- () Dan O'Connell (if Mulholland Scenic Corridor)
- (X) Imaging Services
- (X) GIS - c/o Fae Tsukamoto

The above tract has been filed with the Advisory Agency.

The Advisory Agency will await your report and recommendation regarding the above matter for 39 days. If we have not received a written report from you after 40 days from the date of filing, we will assume that you have no report to make.

S. Gail Goldberg
Director

Joni Herrera
MAYA ZAITZEVSKY
Deputy Advisory Agency

CP-6300 (5/23/00)

EXPEDITED PROCESSING CASE
DATE DUE: 07 / 29 / 06
 Please forward reports to the following e-mail addresses:
Joni.Quinn@lacity.org
Josephine.Herrera@lacity.org



APPROVED FOR THE
CITY ENGINEER BY
D. Engle
BOND CONTROL

ACCEPTED
RISK MANAGEMENT
CITY ADMINISTRATIVE OFFICE

@A0070233
6-20-07

City of Los Angeles
DEPARTMENT OF PUBLIC WORKS
SUBDIVISION IMPROVEMENT AGREEMENT AND CONTRACT

THIS AGREEMENT AND CONTRACT, made and entered into, by and between the CITY OF LOS ANGELES, hereinafter designated as the CITY; and **XTERRA DEVELOPMENT, LLC**

hereinafter designated as SUBDIVIDER; WITNESSETH:

ONE: For, and in consideration of the approval of the final map of that certain division of land known as:

TRACT NO. 66869

and for acceptance of the dedication therein by the CITY, the SUBDIVIDER hereby agrees, at his own costs and expense, to construct and install all public improvements required in and adjoining and covered by the final map which are shown on plans, profiles and specifications, previously supplied to the City Engineer; and to furnish all equipment, labor and materials necessary to construct, install and complete the required improvements in a good and workmanlike manner. The estimated cost for completion of the above-mentioned work and improvement is the sum of **FORTY ONE THOUSAND AND NO/100 Dollars (\$41,000.00)**.

TWO: It is agreed that the SUBDIVIDER has furnished to the City Engineer all necessary final plans, profiles and standard specifications for the required public improvements; or, that in lieu of such final plans, profiles and specifications, the City Engineer has been furnished preliminary plans that are of sufficient detail so as to be approved by the City Engineer for use in the preparation of the estimated cost of the required improvements. In consideration of the acceptance of such preliminary plans by the City Engineer, the SUBDIVIDER hereby agrees to furnish all necessary final plans, profiles and specifications in a form that will be sufficient to be processed and approved by the City Engineer not later than six (6) months from the date the final map of said subdivision of land is filed for record with the County Recorder, County of Los Angeles, State of California.

THREE: The SUBDIVIDER agrees to perform all of the above-mentioned work under permit or permits to be issued by the Board of Public Works, hereinafter designated as the BOARD. All work shall be performed in accordance with the standards and specifications of the BOARD, as amended, and to the approval of the City Engineer. The SUBDIVIDER further agrees to pay for such inspection of work and improvements as may be required by the BOARD, and the performance of the work shall be further conditioned upon due compliance with all of the provisions of Article 7 of Chapter 1, and Sections 62.105 through 62.117, inclusive, of the Los Angeles Municipal Code, as amended.

Continuation Sheet For:

SUBDIVISION IMPROVEMENT AGREEMENT AND CONTRACT

FOUR: In the event said work is required to be performed under Class "B" Permit as defined in Section 62.106 of the Municipal Code, the SUBDIVIDER hereby agrees to obtain said permit from the City Engineer, including payment of all necessary fees as required under the provisions of Sections 62.110 and 62.111 of said Code, prior to certification of the final map by the City Engineer.

FIVE: If the planting of street trees is required under the conditions of approval established by the Advisory Agency, the SUBDIVIDER shall pay all necessary planting fees for each tree to be installed by the CITY; and shall pay all maintenance fees for each tree required to be planted, either by the CITY or by the SUBDIVIDER, in accordance with the maintenance fee schedule set forth in Section 62.176 of the Municipal Code. Said fees shall be paid to the Bureau of Street Maintenance of the DEPARTMENT OF PUBLIC WORKS or, if a Class "B" Permit is required, said fees shall be included in the permit fee deposit.

SIX: The SUBDIVIDER agrees to perform any changes or alterations required by the CITY in the construction and installation of the required improvements, provided that all such changes or alterations do not exceed ten (10) percent of the original estimated cost of such improvements; and the SUBDIVIDER further agrees; to install such devices for the abatement of erosion or flood hazard as may be required under the provisions of Section 61.02 of the Municipal Code; the costs of each of the above to be borne by the SUBDIVIDER.

SEVEN: The SUBDIVIDER expressly agrees to perform the above-mentioned work in a diligent and workmanlike manner so as to complete the construction and installation of all required public improvements on or before twenty-four (24) months from the date the final map is filed for record with the County Recorder, County of Los Angeles, State of California; or within any lawful extension of said term, or as otherwise provided by law. The SUBDIVIDER acknowledges that in the event any extension of term is granted, the City Engineer may impose additional conditions in accordance with Section 17.08G-3 of the Municipal Code.

EIGHT: The SUBDIVIDER agrees to warrant all work performed against any defective workmanship, or labor done, or defective materials furnished in the performance of the work required by this contract. The term of this warranty shall expire one year from the date of acceptance of the completed improvements by the City Engineer, all as required under Chapter 5 of Division 2 of Title 7 of the State of California Government Code, known as the "Subdivision Map Act," and as amended. The estimated amount sufficient for warranty is the sum of NONE.

NINE: The CITY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring from or to the works specified in this contract prior to the completion and acceptance of the same by the City Engineer; nor shall the CITY, nor any officer or employee thereof, be liable for any persons or property injured by reason of the nature of said work, or by reason of the acts or omissions of the SUBDIVIDER, his agents or employees, in the performance of said work; but all of said liabilities shall be assumed by the SUBDIVIDER. The SUBDIVIDER further agrees to protect, defend and hold harmless the CITY and its officers and employees from all loss, liability or claim because of, or arising out of, the acts or omissions of the SUBDIVIDER, or his agents and employees, in the performance of this contract, or arising out of the use of any patent or patented article in the construction of said work.

Continuation Sheet For:

SUBDIVISION IMPROVEMENT AGREEMENT AND CONTRACT

In the event of such default, the SUBDIVIDER hereby grants to the CITY and/or the Surety upon any Surety Bond, the irrevocable permission to enter upon the lands of the subject division of land for the purpose of completing the required improvements. The CITY reserves the right if it elects to do the work to exclude the SUBDIVIDER from the site in order to complete the required work either by CITY forces or by separate contract.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named SUBDIVIDER on JUNE 6, 2007.

XTERRA DEVELOPMENT, LLC

Sarkis Khatchadourian

Sevak Khatchadourian

[Signature]
[Signature]

SEE INSTRUCTIONS FOR SIGNATURES AND ACKNOWLEDGMENTS ON "NOTICE TO CLASS B PERMIT AND BOND APPLICANTS" (FORM ENG. 3.693-REVISED)

District Design Office: **CENTRAL**

Council District No.: **4**

Date Issued: **05/28/2007**

Location: **2508 N. HYPERION AVE**

Continuation Sheet For:

SUBDIVISION IMPROVEMENT AND WARRANTY PERFORMANCE BOND

AS PART OF THE OBLIGATION SECURED HEREBY, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered therefor.

THE SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the annexed agreement, or to the work to be performed thereunder, or to the specifications accompanying the work to be performed, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said agreement, or to the work, or to the plans and specifications. The provisions of Section 2945 of the Civil Code are not a condition precedent to the Surety's obligation hereunder, and are hereby waived by the SURETY.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named PRINCIPAL and SURETY on JUNE 6, 2007.

*executed on 6-11-2007

Principal Signatories

XTERRA DEVELOPMENT, LLC

Sarkis Khatchadourian
Sarkis Khatchadourian

[Signature]
[Signature]

SURETY: SureTec Insurance Company

By: [Signature] (Attorney-in-Fact)

David Noddle, Attorney-in-fact

Surety's Address: 3033 5th. Ave., Ste. 300 San Diego, Ca. 92103

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On June 6, 2007 before me, Carolyn S. Mulhall, Notary Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Sarkis Khatchadourian and Sevak Khatchadourian,
NAME(S) OF SIGNER(S)

personally known to me - **OR** - 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.



WITNESS my hand and official seal.

Carolyn S. Mulhall
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL
- CORPORATE OFFICER

- PARTNER(S) LIMITED
- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of Los Angeles)

On 6-11-2007 before me, Christopher John Rizzotti - notary public
(here insert name and title of the officer)

personally appeared David Noddle

personally known to me (or 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.

WITNESS my hand and official seal.

Signature of Notary Public



(Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

"Premium Included In Performance Bond"

City of Los Angeles
DEPARTMENT OF PUBLIC WORKS
Office of the City Engineer

4361609
SURETY'S BOND NO.

CENTRAL

District/Division Design Office
Council District No. 4
Date Issued: **05/28/2007**

CAO-RISK MANAGEMENT NO.

SUBDIVISION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, **XTERRA DEVELOPMENT, LLC**

as PRINCIPAL and SureTec Insurance Company a corporation ~~xxxx~~
incorporated under the laws of the State of California ~~xxxxxxx~~ Texas and authorized by the
laws of the State of California to execute bonds and undertakings as sole surety, as SURETY, are
held and firmly bound unto the City of Los Angeles, in the JUST and FULL SUM of **TWENTY
THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$20,500.00)** . lawful money of the United
States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs,
executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The CONDITION of the foregoing obligation is such that WHEREAS the PRINCIPAL has entered
or is about to enter into a contract with the CITY, pursuant to the authority of an act of the
Legislature of the State of California known as the "Subdivision Map Act" (Division 2, commencing
with Section 66410, of Title 7 of the Government Code) and amendments thereto, for the
construction and installation of certain public improvements in accordance with the terms and
conditions stipulated in said contract, and WHEREAS, pursuant to said Code, the PRINCIPAL
must give this PAYMENT BOND as a condition to the execution of said contract, and for approval
by the CITY of that certain division of land known as:

TRACT NO. 66869

NOW, THEREFORE, if said PRINCIPAL fails to pay the Contractor or his Subcontractors, or fails
to pay persons renting equipment or furnishing labor or materials of any kind for the performance
of said contract, or fails to pay amounts due under the Unemployment Insurance Act with respect
to such work or labor, then said SURETY will pay the same in an amount not exceeding the
amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition
to the face amount thereof, costs and reasonable expenses and fees, including reasonable
attorney's fees, incurred by the CITY in successfully enforcing such obligation, to be awarded and
fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

Continuation Sheet For:

SUBDIVISION LABOR AND MATERIAL PAYMENT BOND

IT IS EXPRESSLY STIPULATED AND AGREED that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns to any suit brought upon this bond.

SHOULD THE CONDITION of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

THE SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder, or to plans and specifications for the work to be performed, shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition. The provisions of Section 2845 of the Civil Code are not a condition precedent to the SURETY's obligation hereunder and are hereby waived by the SURETY.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named PRINCIPAL and SURETY on JUNE 6, 2007.

*executed on 6-11-2007

Principal Signatories

Principal Signatories

XTERRA DEVELOPMENT, LLC

Sarkis Khatchadourian
Serdak Khatchadourian

[Signature]
[Signature]

SURETY: Suretec Insurance Company

By: [Signature] (Attorney-in-Fact)

David Noddle, Attorney-in-fact

Surety's Address: 3033 5th. Ave., Ste. 300 San Diego, Ca. 92103

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

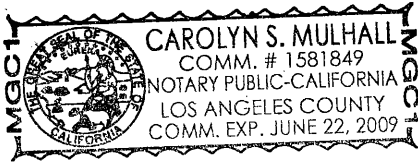
State of California

County of Los Angeles

On June 6, 2007 before me, Carolyn S. Mulhall, Notary Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Sarkis Khatchadourian and Sevak Khatchadourian,
NAME(S) OF SIGNER(S)

personally known to me - **OR** - 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.



WITNESS my hand and official seal.

Carolyn S. Mulhall
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S) LIMITED
- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
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- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

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NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of Los Angeles)

On 6-11-2007 before me, Christopher John Rizzotti - notary public
(here insert name and title of the officer)

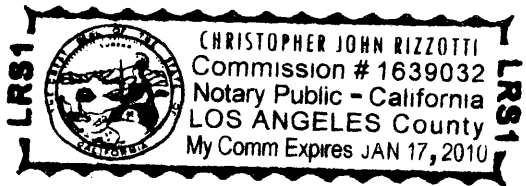
personally appeared David Noddle

personally known to me (or 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.

WITNESS my hand and official seal.

(Handwritten Signature)

Signature of Notary Public



(Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

David Noddle

of Tarzana, CA its true and lawful Attorney(s)-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety, providing the bond penalty does not exceed

Five Million Dollars and no/100 (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment shall continue in force until 10/31/08 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

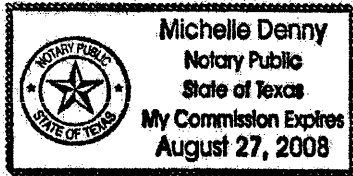
In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 20th day of June, A.D. 2005.

State of Texas ss:
County of Harris



SURETEC INSURANCE COMPANY
By: [Signature]
B.J. King, President

On this 20th day of June, A.D. 2005 before me personally came B.J. King, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Michelle Denny
Michelle Denny, Notary Public
My commission expires August 27, 2008

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 11th day of June, 20 07, A.D.

[Signature]
M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.

**Management by All
Members With
Officers**

OPERATING AGREEMENT

FOR

XTERRA DEVELOPMENT, L.L.C.

This Agreement is effective as of
March 20, 2002

NOTE: *Italicized citations to the California Corporations Code Act are for reference by the drafting attorney only and should be deleted in preparing the execution original.*

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**OPERATING AGREEMENT
FOR
XTERRA DEVELOPMENT, L.L.C.**

Recital

This Operating Agreement is entered into effective as of the March 20, 2002, among the persons who are signatories to this Agreement and shall govern the relationship among the persons as Members of Company and between Company and the persons as Members, pursuant to the Act and the Articles, as either may be amended from time to time. In consideration of their mutual promises, covenants, and agreements, the parties as signatories to this Agreement do hereby promise, covenant, and agree as follows:

**ARTICLE I
Introductory Matters**

1.1 **FORMATION, REQUIRED NUMBER OF MEMBERS, TERMS AND PURPOSES**

Pursuant to the Act, Sevak Khatchadourian, acknowledges and confirms he is the initial Member of the limited liability company organized under the laws of the State of California known as XTERRA DEVELOPMENT, L.L.C. whose Articles were filed, effective the February 27, 2002. A copy of the Articles is attached. Company shall at all times have at least One member. Unless sooner terminated, Company shall have the term provided in the Articles.

Act § 17050(b).

The general purposes for the organization of Company shall be those set forth in its Articles. Company may, as provided in its Articles and the Agreement, exercise all of the powers described in Title 2.5 of Corporations Code of the State of California also known as the Beverly-Killea Limited Liability Company Act, as the Act may be amended from time to time.

1.2 **REGULATION OF INTERNAL AFFAIRS BY OPERATING AGREEMENT**

Consistent with the Articles and the Act, the internal affairs of Company and the conduct of its business shall be governed and regulated by the Agreement as it shall be amended by Members from time to time. The term of the Agreement shall begin on the date the Articles are filed and accepted by the Secretary of State and shall be co-terminus with the period of duration of

Company provided in the Articles unless Company is earlier terminated upon its voluntary or involuntary dissolution in accordance with the Agreement.

Act § 17001(ab).

1.3 LAWS GOVERNING OPERATING AGREEMENT

The Agreement is subject to, and governed by, the mandatory provisions of the Act and the Articles filed with the Secretary of State, as both may be amended from time to time. In the event of a direct conflict between the provisions of the Agreement and the mandatory provisions of the Act or the provisions of the Articles, such provisions of the Act or the Articles, as the case may be, will be controlling.

1.4 USE OF FULL LEGAL NAME OF COMPANY REQUIRED

All business of Company shall be conducted under the name XTERRA DEVELOPMENT, L.L.C. until such time as Members shall designate otherwise and file amendments to the Articles in accordance with the Articles and the Act. The phrase "L.L.C." shall always appear as part of the name of Company on all correspondence, stationery, checks, invoices and any and all documents and papers executed by Company and as otherwise required by the Act.

1.5 AUTHORITY OF MEMBERS

Every Member is a Manager who acting alone or with other Members shall have any authority to act for, or to undertake or assume, any obligation, debt, duty or responsibility on behalf of the Company.

1.6 LIMITATION ON POWER TO CONTRACT DEBTS

Except as otherwise provided in the Agreement including Subparagraph 3.4B, no debt shall be contracted or liability incurred by or on behalf of Company, except by one or more Members, as provided in the Articles and the Agreement.

1.7 TITLE TO ALL PROPERTIES IN NAME OF COMPANY

Real and personal property owned or purchased by Company shall be held and owned, and conveyance made, in the name of Company. Instruments and documents providing for the acquisition, mortgage or disposition of property of Company shall be valid and binding upon Company, except as otherwise limited in the Agreement including Subparagraph 3.4B., if executed by one (1) or more Members of Company as provided in the Articles and the Agreement.

1.8 REQUIRED MAINTENANCE OF REGISTERED OFFICE AND AGENT IN CALIFORNIA

Company shall have an agent for service of process in California who may be either a natural person or a corporation meeting the qualifications of Corporations Code Section 17061(d)(1) and Section 17050(a)(5). Every agent for service of process must have a street address for the receipt of service of process. The street address of the agent for receipt of service of process is the registered office of the limited liability company in California. Within 30 days after changing the location of his office from one address to another in California, an agent for service of process must file a certificate with the Secretary of State setting forth the names of the limited liability companies represented by him, the address at which he, she, or it has maintained the office for each of the limited liability companies, and the new address to which the office is transferred.

1.9 REQUIRED MAINTENANCE OF RECORDS IN CALIFORNIA OFFICE

Company shall continuously maintain an office in the State of California which may but need not be a place of its business in this state or its registered office, at which it shall keep:

- a. A current list of the full name and last known business address of each Member and of each holder of an Economic Interest in alphabetical order together with the Capital Contribution and Percentage Share in net profits and net losses;
- b. A copy of the filed Articles and all amendments thereto, together with any powers of attorney pursuant to which the Articles or any amendments thereto were executed;
- c. Copies of Company's federal, state and local income tax returns or information returns and reports, if any, for the six (6) most recent taxable years;
- d. A copy of the Agreement and any amendments thereto, together with any powers of attorney pursuant to which any written operating agreement or amendments were executed; and
- e. Copies of financial statements of Company for the six (6) most recent taxable years; and

Act §§ 17057, 17058.

The above described records are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours.

1.10 PLACES OF BUSINESS OUTSIDE STATE OF CALIFORNIA

Members may identify other places of business of Company outside the State of California, appoint agents for service of process and make filings as may be required or desirable under the laws of such other places.

1.11 OTHER FORMATION MATTERS

A. Adoption of Company Seal

Members shall adopt a company seal circular in form containing the words XTERRA DEVELOPMENT, L.L.C., together with the date of organization of Company. The Members may also adopt a seal circular in form containing the words XTERRA DEVELOPMENT, L.L.C. , and such other information as shall be appropriate.

B. Maintenance of Company Record Book

Members shall authorize the maintenance of a Company Record Book to include the Articles, the Agreement and any amendments thereto and the minutes of meetings (or consents in lieu of meetings) of Members and other important documents of Company.

C. Establishment of Bank Accounts

Members shall authorize the establishment of one or more depository accounts for the funds of Company and designate persons authorized to draw against such accounts on behalf of Company (more specifically described elsewhere in the Agreement).

D. Reimbursement of Expenses of Organization

Members may authorize Company to pay the expenses of organization and to reimburse any person advancing funds for this purpose.

E. Certificate of Manager of Limited Liability Company

Members may authorize the preparation of a certificate of Manager of Limited Liability Company setting forth the full legal name of Company, date of organization, the laws of organization, term of existence, good standing status as of the date of the certificate, name of manager, general description of authority of manager, taxpayer identification number with attachment of Article III, as it may have been amended to date of this Agreement, setting forth the management and control of the operations of Company.

1.12 DEFINITIONS OF TERMS

The terms used in the Agreement with their initial letters capitalized, shall, unless the context otherwise requires, have the meanings specified in this Paragraph 1.12 or, if not defined in this Paragraph 1.12, elsewhere in the Agreement. When used in the Agreement, the following terms shall have the meanings set forth below:

A. "Act" shall mean the Beverly-Killea Limited Liability Act as amended from time to time.
Act § 17000.

B. "Affiliate" shall mean any individual, partnership, corporation, trust, or other entity or association, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Member, the term "control," as used in the immediately preceding sentence, means, with respect to a corporation the right to exercise, directly or indirectly, more than 50 percent of the voting rights attributable to the controlled corporation, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

C. "Agreement" shall mean this Operating Agreement between all Members of Company regulating the affairs of Company and the conduct of its business, as originally executed and as amended or restated from time to time, and shall refer to the Agreement as a whole, unless the context otherwise requires.

Act § 17001(a)(b).

D. "Articles" shall mean the Articles of Organization for Company originally filed with the Secretary of State of California, including all amendments thereto or restatements thereof and shall mean the Articles as a whole unless the context otherwise requires.

Act § 170001(b).

E. "Bankruptcy" shall mean, (i) the entry of a decree or order for relief by a court of competent jurisdiction in any involuntary case brought against a person under any bankruptcy, insolvency or other similar law (collectively, "Debtor Relief Laws") generally affecting the rights of creditors and relief of debtors now or hereafter in effect; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent under applicable Debtor Relief Laws for a person or for any substantial part of his, her, or its assets or property; (iii) the ordering of the winding up or liquidation of a person's affairs; (iv) the filing of a petition in any such involuntary bankruptcy case, which petition remains not dismissed for a period of 180 days or which is not dismissed or suspended pursuant to Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law); (v) the commencement of a voluntary case under any applicable Debtor Relief Law now or hereafter in effect; (vi) the consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of or the taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent under any applicable Debtor Relief Laws for a person or for any substantial part

of his, her, or its assets or property; or (vii) the making by a person of any general assignment for the benefit of his, her, or its creditors.

F. "Capital Account" shall mean the amount of the capital interest of a Member determined in accordance with Article IV of the Agreement.

Act § 17001(d).

G. "Capital Contribution" shall mean the value of any money, property (including promissory notes or other binding obligation to contribute money or property), obligation to render services to Company as capital in that Member's capacity as a Member, as shown in Exhibit A, as the same may be amended from time to time.

Act § 17001(d).

H. "Code" shall mean the Internal Revenue Code of 1986, as amended. All references herein to sections of the Code shall include any corresponding provision or provisions of succeeding law.

I. "Company" shall mean XTERRA DEVELOPMENT, L.L.C.

J. "Distribution" shall mean a transfer of money or property by Company to its Members without consideration.

Act § 17001(f).

K. "Disassociation Event" for Company shall mean with respect to any Member one or more of the following:

- i. When the period fixed for the duration of the company expires;
- ii. By the unanimous written agreement of all Members; or
- iii. Upon the death, retirement, withdrawal, resignation, expulsion, bankruptcy or dissolution of a Member or occurrence of any other event which terminates his continued membership in the Company, unless the business of the Company is continued by the consent of the remaining Members (if more than one) holding a Majority-In-Interest under a power to do so stated in the Articles.

L. "Economic Interest" shall mean the right to share in the net profits, net losses, deductions, credit or similar items and to receive distributions from Company but such term shall include neither Management and Voting Rights nor Information Rights except as provided in Act Section 17106.

M. "Information Rights" shall mean the right to inspect, copy or obtain information and documents concerning the affairs of Company as provided in Act Section 17106 and in Paragraphs 6.3 and 6.4 of the Agreement.

Act § 17106.

N. "Interest" shall mean singly or collectively as the context indicates any or all of the rights of ownership of a Membership Interest in Company including Economic Interest, Voting and Management Rights and Information Rights.

O. "Majority-In-Interest" shall mean more than fifty percent (50%) of the interest of Members (or class of Members as the case may be) in net profits expected for the period of remaining duration of Company and capital account balance determined under the Agreement as of the date of the relevant event as such terms are defined in Revenue Procedure 94-46, 1994-28 IRB 1 or the most recent successor pronouncement.

Act § 17001(n).

P. "Management and Voting Rights" shall mean those rights of a Member described in Article III of the Agreement as they may be limited in the Agreement, the Articles and the Act.

Q. "Manager" shall mean any Member of Company as authorized by the Articles and the Agreement to manage the affairs of Company.

Act § 17001(w).

R. "Member" shall mean each person (other than any person who has withdrawn, been expelled, died, retired or dissolved) who has been admitted to Company as a Member in accordance with the Articles and the Agreement.

Act § 17001(x).

S. "Membership Interest" in Company shall mean the entire ownership interest of a Member in Company at any particular time, including collectively Economic Rights, Management and Voting Rights and Information Rights of such Member as provided in the Agreement and under the Act, together with the obligations of such Member to comply with all terms and provisions of the Agreement. A Membership Interest constitutes personal property. A Member or assignee of any Economic Interest of a Member has no interest in specific property of Company.

Act § 17001(z).

T. "Officer" shall mean any person, if any, elected or appointed by the Members as an officer of Company pursuant to Paragraph 3.9.

U. "Percentage Interest" shall mean the percentage of a Member set forth opposite the name of such Member under the column "Member's Percentage Interest" in Exhibit A hereto, as such percentage may be adjusted from time to time pursuant to the terms of the Agreement. Percentage Interests shall be determined, unless otherwise provided herein, in accordance with the relative proportions of the Capital Accounts of Members, effective as of the first day of the Company's fiscal year but with all distributions under Paragraph 5.2 hereof to be deemed to have occurred on such day immediately prior to determination of Percentage Interest of a Member.

V. "Person" shall mean individuals, general partnerships, limited partnerships, other limited liability companies, corporations, trusts, estates, real estate investment trusts and any other association.

W. "Regulations" shall mean, unless the context clearly indicates otherwise, the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Internal Revenue Code of 1986, as amended.

X. "Return of Capital" shall mean any distribution to a Member to the extent of the positive balance in the Capital Account of the Member immediately before the distribution. *Act § 17001(a)*.

Y. "Secretary of State" shall mean the Secretary of State of California or his or her duly appointed delegate unless another state is mentioned in the same context.

Z. "Registered Office" shall mean the office maintained at the street address of the agent for service of process of the Company in California.

ARTICLE II

Members, Capital Contributions and Withdrawals, Membership Interests, Admissions, Certificates and Limitations on Liabilities and Responsibilities of Members

2.1 NAMES, ADDRESSES OF INITIAL MEMBERS AND THEIR CAPITAL CONTRIBUTIONS

The initial Members shall be the persons executing the Agreement each of whom is admitted as a Member effective as of the beginning of the term of the Agreement. Members, their respective addresses, their respective aggregate Capital Contributions to Company, and their respective Percentage Interests in Net Profits and Net Losses of Company are set forth on Exhibits A and B, as the exhibits may be amended from time to time.

2.2 FORM OF CAPITAL CONTRIBUTIONS

As provided in the Articles, Members shall make the initial Capital Contributions in the form of money, property (including promissory notes) or services rendered or to be rendered or other obligation to contribute money or property or to render services. Members may make any subsequent Capital Contributions in any type of money, property (including promissory notes) and services rendered or to be rendered as may be agreed upon by all of the Members. No Member shall be required to make any Capital Contributions to Company other than the capital contributions set opposite to the name of Member on Exhibit A, as it may be amended from time to time. In order to obtain additional funds or for other business purposes, a Member may contribute additional capital to Company, but only upon the written consent of all other Members.

Act §17200(b) and §17201(c).

2.3 ADMISSION OF ADDITIONAL MEMBERS

Members may admit to Company any person as an additional Member who will participate in the profits, losses, available cash flow, and ownership of the assets of Company on such terms as are determined by all Members. Admission of any such additional Member shall require the written consent of the then existing Members holding a Majority-In-Interest, or more. Admission of any additional Member may result in a dilution of the Percentage Interests of the then Members for voting purposes, division of Net Profits, and allocation of Net Losses.

Act § 17303(a).

2.4 LIMITATIONS ON WITHDRAWALS OF CAPITAL CONTRIBUTION

Subject to other provisions of the Agreement and the Act, a Member may rightfully demand the return of his, her or its Capital Contributions only upon the dissolution of Company, or, unless otherwise restricted in the Articles or the Agreement, upon the approval of Members holding a Majority-In-Interest. No Member shall receive out of Company property or any part of his, her or its Capital Contribution until (i) all liabilities of Company, except liabilities to Members on account of their Capital Contributions, have been paid or there remains property of Company sufficient to pay them; (ii) the consent of all Members holding a Majority-In-Interest or more is had, unless the return of the Capital Contributions may be rightfully demanded as provided in the Act; (iii) the Articles are canceled or so amended as to allow the withdrawal or reduction. In the absence of a statement in the Articles to the contrary or the consent of Members holding a Majority-In-Interest or more, a Member, irrespective of the nature of its contribution, has no right to demand and receive cash in return for his, her or its Capital Contribution until the dissolution of the Company. The withdrawn Member shall have only the rights of a holder of an economic interest with respect to the withdrawing Member's interest in the Company to which a holder of an economic interest is entitled, and then only with respect to distributions, if made.

Act § 17252.

2.5 PERCENTAGE INTEREST OF MEMBER AND CERTIFICATES

The Membership Interest of Company held by each Member may be divided into a Percentage Interest to represent, respectively, voting power, allocation of Net Profits and allocation of Net Losses as reflected on Exhibit A and Exhibit B, as each exhibit may be amended from time to time. The Membership Interest in Company may be represented by a certificate of membership. The exact contents of a certificate of membership may be determined by action of the Members but shall be issued substantially in conformity with the following requirements:

- a. Each certificate of membership shall be consecutively numbered beginning with Number 1, as it is are issued, shall be signed by the authorized representatives of Company and shall be impressed with Company seal or a facsimile thereof.
- b. Each certificate of membership shall state the name of Company, the laws of the state under which Company is organized, the name of the person to whom issued, the date of issue of the certificate, and the Percentage Interest represented by the certificate.
- c. Each certificate shall contain a statement of the designations, preferences, qualifications, limitations, restrictions, and special or relative rights of the Interests represented thereby set forth in full or summarized on the face or back of the certificates which Company shall issue, or in lieu thereof, the certificates may set forth that the Company shall furnish the statement to any holder of the Interests upon request and without charge.

Act § 17105(a).

2.6 CANCELLATION AND REPLACEMENT OF CERTIFICATES

All certificates of membership surrendered to Company for transfer shall be canceled and no new certificates of membership shall be issued in lieu thereof until the former certificates for a like number of Membership Interests shall have been surrendered and canceled, except as herein provided with respect to lost, stolen, or destroyed certificates. Any Member claiming that his, her or its certificate of membership is lost, stolen, or destroyed may make an affidavit or affirmation of that fact and lodge the same with a Manager of Company, accompanied by a signed application for a new certificate. Thereupon, and upon the giving of a satisfactory bond of indemnity to Company not exceeding an amount double the value of the Membership Interests as represented by such certificate (the necessity for such bond and the amount required to be determined by a Manager of Company), a new certificate may be issued of the same tenor and representing the same Percentage Interests as were represented by the certificate alleged to be lost, stolen, or destroyed.

2.7 LIMITATIONS ON LIABILITY OF MEMBERS FOR DEBTS OF COMPANY

Except as provided in California Corporations Code Section 17254 relating to distributions by Company and Section 17101(b) relating to responsibility of Members for certain unsatisfied debts or obligations of Company, no Member shall be liable under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of Company whether

that liability or obligation arises in contract or tort. No Member shall be required to loan any funds to Company. No Member shall be required to make any contribution to Company by reason of any negative balance in his, her, or its capital account, nor shall any negative balance in a Member's capital account create any liability on the part of the Member to any third party.

Act § 17101.

2.8 LIABILITY OF MEMBERS TO COMPANY

A. Liability of Members to Company

A Member is liable to Company: (i) for the difference between his, her, or its contribution to capital as actually made and that stated in the Articles, the Agreement, subscription for contribution or other document executed by the Member as having been made by the Member; and (ii) for any unpaid contribution to capital which he, she or it agreed in the Articles, the Agreement or other document executed by the Member to make in the future at the time and on the conditions stated in the Articles of Organization, Operating Agreement or other document evidencing such agreement. No Member shall be excused from an obligation to Company to perform any promise to contribute money, property or to perform services because of death, disability, dissolution or any other reason.

Act § 17201.

B. Member as Trustee for Company

A Member holds as trustee for Company (i) specific property stated in the Articles of Organization, Operating Agreement or other document executed by the Member as contributed by such Member, but which was not contributed or which has been wrongfully or erroneously returned; and (ii) money or other property wrongfully paid or conveyed to such Member on account of his, her or its contribution.

C. Waiver of Liability of Member

The liabilities of a Member as set out in this Paragraph 2.8 can be waived or compromised only by the consent of all Members; but a waiver or compromise shall not affect the right of a creditor of Company who extended credit or whose claim arose after the filing and before a cancellation or amendment of the Articles of Organization, to enforce the liabilities.

D. Liability of Member Receiving a Return of Capital

When a Member has rightfully received the return in whole or in part of the capital of his, her or its contribution, the Member is nevertheless liable to Company for a period of six (6) years after return of the capital contribution for any sum, not in excess of the return without interest, necessary to discharge its liability to all creditors of Company who extended credit during the period the capital contribution was held by Company or whose claims arose before the return.

E. No Responsibility for Pre-Formation Commitments

In the event that any Member (or any of such Member's shareholders, or Affiliates) has incurred any indebtedness or obligation prior to the date hereof that related to or otherwise affects Company, neither Company nor any other Member shall have any liability or responsibility for or with respect to such indebtedness or obligation unless such indebtedness or obligation is assumed by Company pursuant to a written instrument signed by all Members. Furthermore, neither Company nor any Member shall be responsible or liable for any indebtedness or obligation that is hereafter incurred by any other Member (or any of such Member's shareholders or Affiliates). In the event that a Member (or any of such Member's shareholders or Affiliates), (collectively, the "liable Member"), whether prior to or after the date hereof, incurs (or has incurred) any debt or obligation that neither Company nor the other Members has any responsibility or liability for, the liable Member shall indemnify and hold harmless Company and the other Members from any liability or obligation they may incur in respect thereof.

2.9 RIGHTS OF JUDGMENT CREDITOR OF MEMBER

On application to a court of competent jurisdiction by a judgment creditor of a Member, the court may charge the Membership Interest with payment of the unsatisfied amount of the judgment with interest. To the extent so charged the judgment creditor has only the rights of an assignee of the Membership Interest. This Paragraph 2.9 does not deprive any Member of the benefit of any exemption from legal process applicable to his interest.

2.10 MEMBER REMUNERATION

No Member is entitled to remuneration for acting on Company business except for reasonable compensation under Act Section 17352(z) for winding up of affairs of Company. *Act § 17004(b).*

2.11 LEGAL REPRESENTATIVE OR SUCCESSOR OF A MEMBER

If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage his, her or its person or property the executor, administrator, guardian, conservator or other legal representative may exercise all rights of the Member in the purpose of settling his or her estate or administering his or her property. *Act § 17304.*

ARTICLE III

Management and Control of Business Including Meetings

3.1 MANAGEMENT OF COMPANY

A. Management of Company by Members

As provided in the Articles, all powers of Company shall be exercised by or under the authority of, and the business and affairs of Company shall be managed under the direction of the Members.

Act §17150, §17151 and §17157(a).

B. Responsibility to Safekeep Funds of Company

The Members as Managers shall have fiduciary responsibility for the safekeeping and use of all funds and assets of Company, whether or not in their immediate possession or control. The funds of Company shall not be commingled with the funds of any other person and the Members as Managers shall not employ, or permit any other person to employ, such funds in any manner except for the benefit of Company. The bank accounts of Company shall be maintained in such banking institutions as are approved by Members and withdrawals shall be made only in the regular course of Company business and as otherwise authorized in the Agreement on such signature or signatures as Members may determine.

C. Obligation to Hire Employee for Record Keeping

Members as Managers shall employ a competent person to be an employee of Company who shall be responsible for: authenticating the records of Company, including keeping correct and complete books of account which show accurately at all times the financial condition of Company, safeguarding all funds, notes, securities, and other valuables which may from time to time come into possession of Company, depositing all funds of Company with such depositories as Managers shall designate. Such employee shall have such other duties as Managers may from time to time prescribe, but under no circumstance shall such employee have any of the rights, powers, responsibilities or duties of a Manager or Member of Company as prescribed herein or by law.

3.2 OTHER ACTIVITIES OF MEMBERS PERMITTED

Members may engage in other business activities and shall be obliged to devote only as much of their time to the business of Company as shall be reasonably required in light of the purposes of Company. A Member shall perform the duties as a Manager in good faith, in a manner he, she, or it reasonably believes to be in the best interests of Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Member who so performs his, her or its duties as Manager shall not have any liability by reason of being or having been a Manager of Company.

3.3 POWERS OF MEMBERS AS MANAGERS

A. Powers of Members as Managers

The Members as Managers shall have all necessary powers to carry out the purposes, business, and objectives of Company, including, but not limited to, the right to enter into and carry out contracts of all kinds; to employ employees, agents, consultants and advisors on behalf of Company; to lend or borrow money and to issue evidences of indebtedness; to bring and defend actions in law or at equity; to buy, own, manage, sell, lease, mortgage, pledge or otherwise acquire or dispose of Company property. Each Member as Manager may deal with any related person, firm or corporation on terms and conditions that would be available from an independent responsible third party that is willing to perform. Each Member as Manager shall have the authority to sign agreements and other documents on behalf of Company without joinder of any other Member provided that if a Member is appointed as an officer the appointee shall act within the customary scope of the authority of the office, unless the appointee obtains the consent of the other Members.

Without limiting the generality of this Subparagraph 3.3.A., each Member as Manager shall have power and authority, to act on behalf of Company and subject to the limitations of the Act and the limitations set forth hereinafter:

(a) To acquire property from any Person as Managers may determine. The fact that a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit a Manager from dealing with that Person or Entity;

(b) To borrow money for Company from banks, other lending institutions, the Members, or Affiliates of the Members or Manager on such terms as they deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of Company to secure repayment of the borrowed sums. Except as otherwise provided in the Act, no debt shall be contracted or liability incurred by or on behalf of Company, except by the Managers;

(c) To purchase liability and other insurance to protect the property and business of Company;

(d) To hold and own any Company real and personal properties in the name of Company;

(e) To invest any funds of Company temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;

(f) To execute on behalf of Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of property of Company; assignments; bills of sale; leases; partnership agreements; and any other instruments or documents necessary, in the opinion of the Manager, to the business of Company;

(g) To employ accountants, legal counsel, managing agents or other experts to perform services for Company and to compensate them from Company funds;

(h) To retain and compensate employees and agents generally, and to define their duties;

(i) To enter into any and all other agreements on behalf of Company, with any other Person or Entity for any purpose necessary or appropriate to the conduct of the business of Company;

(j) To pay reimbursement from Company of all expenses of Company reasonably incurred and paid by the Manager on behalf of Company; and

(k) To do and perform all other acts as may be necessary or appropriate to the conduct of the business of Company;

B. Limitations on Power of Members as Managers

A Member as Manager shall not have the authority to cause Company to engage in any transaction requiring a vote of Members without first obtaining the required affirmative vote or written consent. Further, Member as Manager shall not have authority hereunder to cause Company to engage in extraordinary transactions as set forth in this Subparagraph 3.3.B. Certain extraordinary transactions shall require the affirmative vote of the Members including, but not limited to, the following:

(a) The sale, exchange or other disposition of all, or substantially all, of Company's assets occurring as part of a single transaction or plan shall require the affirmative vote of Members holding at least 50 percent (%) of all Percentage Interests in Company.

(b) The merger of Company with any other limited liability company, limited partnership or corporation shall require the affirmative vote of Members holding at least 50 percent (%) of all Percentage Interests in Company.

(c) The contraction on behalf of Company of any debt or liability of more than \$ 25,000 shall require the affirmative vote of Members holding at least 50 percent (%) of all Percentage Interests in Company.

(d) The change in the amount or character of Capital Contributions, or change in the character of the business of Company shall require the affirmative vote of Members holding at least 50 percent (%) of all Percentage Interests in Company.

C. Members as Agents of Company

Every Member is an agent of Company for the purpose of its business, and for every other Member, for purposes of the execution in name of Company of any instrument for apparently carrying on in the usual way the business of Company and binds Company, unless such act is in contravention of the Articles or the Agreement or unless the Member so acting otherwise lacks the authority to act for Company and the person with whom the Member is dealing has knowledge of the fact that the Member has no such authority.

D. Acts of Member as Conclusive Evidence of Authority

Every contract, deed, mortgage, lease and other instrument executed by any Member shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof (i) Company was in existence, (ii) neither the Agreement nor the Articles had been amended in any manner so as to restrict the delegation of authority among Members, and (iii) the execution and delivery of such instrument was duly authorized by Members.

Any person may always rely on a certificate addressed to him and signed by any Member hereunder:

- (i) as to who are the Members hereunder;
- (ii) as to the existence or non-existence of any fact which constitutes a condition precedent to acts by the Members or in any other manner germane to the affairs of Company;
- (iii) as to who is authorized to execute and deliver any instrument or document of Company;
- (iv) as to the authenticity of any copy of the Articles, the Agreement, amendments thereto and any other document relating to the conduct of the affairs of Company; or
- (v) as to any act or failure to act by Company or as to any other matter whatsoever involving Company or any Member in his, her, or its capacity as a Member or Manager.

3.4 WARRANTED RELIANCE BY MEMBERS ON OTHERS

In performing their duties, Members as Managers shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups unless they have knowledge concerning the matter in question that would cause such reliance to be unwarranted:

- (a) one or more employees or other agents of Company whom the Managers reasonably believe to be reliable and competent in the matters presented;

(b) any attorney, public accountant, or other person as to matters which the Managers reasonably believe to be within such person's professional or expert competence; or

(c) a committee upon which he or she does not serve, duly designated in accordance with a provision of the Articles or the Agreement, as to matters within its designated authority, which committee the Members reasonably believe to merit competence.

3.5 LIMITATIONS ON LIABILITY OF MEMBERS ACTING AS MEMBERS

A Member acting as Manager shall not be liable to Company or the other Members for any loss or damage resulting from any mistake of fact or judgment or any act or failure to act unless the mistake, act or failure to act is the result of fraud, bad faith, gross negligence or willful misconduct. Members acting as Managers shall not be fiduciaries of Company or the other Members.

Act §17153, and §17005(d).

3.6 ANNUAL MEETING OF MEMBERS

The annual meeting of members shall be held for the purposes of the transaction or the consideration of any business that may properly come before the meeting. The annual meeting of members may be held at such date, time and place within or without the State of California as Members holding more than 50 percent of the Percentage Interests may determine from time to time.

Act §17104 and §17101.

3.7 SPECIAL MEETINGS OF MEMBERS

A. Power to Call Special Meeting

Special meetings of members for any purpose or purposes of addressing any matters on which Members may vote unless otherwise proscribed by the Act or by the Articles, may be called by written demand of any Member or Members representing ten percent (10%) or more of the Percentage Interest on any issue proposed to be considered.

Act § 17104(b).

B. Date, Time and Place of Special Meeting

Special meetings of Members for any purpose or addressing any matters on which Members may vote, unless otherwise proscribed by the Act or by the Articles, may be held at such date, time and place within or without the State of California as shall be stated in the notice of the meeting or in a duly executed and delivered waiver of notice, provided notice of the meeting is given not less than ten (10) days nor more than sixty (60) days before the date of the meeting. Act § 17104(c).

3.8 NOTICES, VOTING AND PROCEDURES AT MEETINGS OF MEMBERS

A. Required Notification of Meetings of Members

Members calling a meeting of members shall deliver or mail written notice stating the date, time, and place of any meeting of members and, in the case of a special meeting of members or when otherwise required by law, a description of the purposes for which the meeting is called, to each Member of record entitled to vote at the meeting, at such address as appears in the records of Company, such notice to be mailed at least ten, but not more than sixty, days before the date and time of the meeting. A Member may waive notice of any meeting, before or after the date of the meeting, by delivering a signed waiver to Company for inclusion in the minutes of Company. A Member's attendance at any meeting of members, in person or by proxy (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

Act § 17104(c)(2).

B. Record Date for Eligibility of Members to Vote at Meetings of Members

The record date for the purpose of determining the Members entitled to notice of a meeting of members, for demanding a special meeting of members, for voting, or for taking any other action shall be the tenth (10th) day prior to the date of the meeting or other action.

Act § 17104(k).

C. Voting by Members at Meetings of Members

A Member may appoint a proxy to vote or otherwise act for the Member pursuant to a written appointment form executed by the Member or the Member's duly authorized attorney-in-fact. An appointment of a proxy is effective when received by the Managers of Company. The general proxy of a fiduciary is given the same effect as the general proxy of any other Member. A proxy appointment is valid for eleven months unless otherwise expressly stated in the appointment form.

D. Relative Weight of Votes of Members at Meetings of Members

At any meeting of members, each Member entitled to vote shall have a number of votes equal to the product of (i) his, her or its Percentage Interest as set forth on Exhibit A hereto, as the same may be amended from time to time, times (ii) one hundred (100). At any meeting of members, presence of Members entitled to cast at least 51 percent of the total votes of all Members entitled to vote at such meeting constitutes a quorum. Except for matters relating to the continuation of the business of Company upon the occurrence of an Event of Dissolution action on a matter is approved if it receives approval by at least 51 percent of the total number of votes

entitled to be cast by all Members in Company entitled to vote at such meeting or such greater number as may be required by law, the Articles or the Agreement for the particular matter under consideration. Upon the occurrence of a Disassociation Event (as defined herein), a Former Member shall not be entitled to any vote in determining whether Company shall purchase the interest of such Former Member as permitted in Paragraph 9.2 hereof. Also, any assignee of a Member's Interest shall not be entitled to vote or participate on any matters at any meeting unless such assignee become a substitute Member as contemplated in Paragraph 7.2 hereof.

Act § 17102.

E. Telephonic Participation by Members at Meetings of Members

Any or all Members may participate in any annual or special Members' meeting by, or through the use of, any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting of members.

F. Appointment of Chair and Secretary for Meetings of Members

At any annual or special meeting of members the Managers shall appoint a person to preside as chair at the meeting and a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting which shall be placed in the minute books of Company.

G. Consent by Members in Lieu of Meetings of Members

Subject to the applicable laws of the State of California any action required or permitted to be taken at a Members' meeting may be taken without a meeting if the action is taken by all of the Members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action to be taken, signed by all the Members entitled to vote on the action, and delivered to Company for inclusion in the minutes. The record date for determining Members entitled to take action without a meeting is the first date a Member signs the consent to such action.

Act § 17104(i).

3.9 OFFICERS OF COMPANY

A. Election of Officers at Meetings of Members

Members may elect officers at an annual or special meeting of members. The officers of Company, if deemed necessary by the Members, shall be president, vice president, secretary, and treasurer. Only a Member may be elected president or vice-president. Each officer shall hold office of the term for which he or she is elected until his successor has been elected. Any

individual may hold any number of offices. No officer need be a resident of the State of California or citizen of the United States.

Act § 17154(a), (b).

B. Term, Removal and Filling of Vacancy of Officers

The officers of Company shall hold office until their successors are chosen and qualify. Any officer may be removed at any time by the affirmative vote of Members holding a majority of the Percentage Interests. Any vacancy occurring in any office of Company shall be filled by a resolution of the Members holding a majority of the Percentage Interests provided only a person who is a Member may be elected as president or vice president.

C. Determination of Salaries of Officers

The salaries of all officers and agents of Company shall be fixed by a resolution of the Members at a meeting of members.

D. Duties and Powers of President

The president shall be the chief executive officer of Company, shall preside at all meetings of the Members and Managers, shall have general and active management of the business of Company and shall see that all orders and resolutions of the Members and Managers are carried into effect.

The president shall execute bonds, mortgages and other contracts requiring a seal, under the seal of Company, except where required or permitted by law to be otherwise signed and executed, and except where the signing and execution thereof shall be expressly delegated by the Members to some other officer or agent of Company.

E. Duties and Powers of Vice-President

The vice-president, or if there shall be more than one, the vice-presidents in the order determined by a resolution of the Members, shall, in the absence or disability of the president, perform the duties and exercise the powers of the president and shall perform such other duties and have such other powers as the Members by resolution may from time to time prescribe.

F. Duties and Powers of Secretary

The secretary shall attend all meetings of the Members, and shall record all the proceedings of the meetings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. The secretary shall give, or cause to be given, notice of all meetings of the Members and special meetings of the Members, and shall perform such other duties as may be prescribed by the Members or president, under whose supervision the secretary

shall be. The secretary shall have custody of the seal and the secretary shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his, her or its signature. The Members may give general authority to any other officer to affix the seal of Company and to attest the affixing by his, her or its signature.

G. Duties and Powers of Treasurer

The treasurer shall have the custody of the funds and securities of Company, and shall keep full and accurate accounts of receipts and disbursements in books belonging to Company, and shall deposit all moneys and other valuable effects in the name and to the credit of Company in such depositories as may be designated by the Members.

The treasurer shall disburse the funds of Company as may be ordered by the Managers, taking proper vouchers for such disbursements, and shall render to the president and the Managers, at their regular meetings, or when Members so require, at a meeting of the members an account of all his, her or its transactions as treasurer and of the financial condition of Company.

If required by a resolution of the Members, the treasurer shall give Company a bond in such sum and with such surety or sureties as shall be satisfactory to the Members for the faithful performance of the duties of his office and for the restoration to Company, in case of his, her or its death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his, her or its control, belonging to Company.

ARTICLE IV

Capital Accounts

4.1 CAPITAL ACCOUNT FOR EACH MEMBER

Manager shall maintain a separate Capital Account as defined in simplified form in Paragraph 4.2 below for each member strictly in accordance with the requirements of Code Section 704(b) and applicable regulations promulgated thereunder. The Members intend that the Capital Accounts of the Members be maintained strictly in accordance with the rules of Regulations Section 1.704-1(b)(2)(iv), as amended from time to time. In this connection, to the extent the results determined under a literal application of this Paragraph 4.1 vary from the results that would be obtainable under the rules described in Regulations Section 1.704-1(b)(2)(iv), the rules set forth in Regulations Section 1.704-1(b)(2)(iv) shall be used and govern the maintenance of capital accounts under the Agreement.

4.2 SIMPLIFIED DESCRIPTION OF CAPITAL ACCOUNT DETERMINATION

Subject to the other paragraphs in this Agreement, "Capital Account" generally means:

The amount of money contributed by the Member to Company,

increased (credited) by:

- (i) The fair market value of property other than money contributed by the Member to Company as determined by the contributing Member and Company, and
- (ii) The Net Profits allocated to the Member, and
- (iii) The amount of any liabilities of Company assumed by Member or which are secured by property distributed to Member by Company, and

decreased (debited) by:

- (i) The amount of money distributed to the Member,
- (ii) The fair market value of property distributed to the Member by Company as determined by recipient Member and Company,

- (iii) The Member's share of expenditures of Company described in Code Section 705(a)(2)(B) (including, for this purpose, losses which are nondeductible under Code Section 267(a)(1) or Section 707(b),
- (iv) The Member's share of amounts paid or incurred by Company to organize Company or to promote the sale of (or to sell) an interest in Company (except to the extent properly amortizable for income tax purposes),
- (v) The Net Losses allocated to the Member, and
- (vi) The amount of any liabilities the Member assumed by Company or secured by property contributed by Member of Company.

4.3 CAPITAL ACCOUNT ADJUSTMENTS FOR SPECIAL EVENTS

A. Succession to Capital Account

In the event all or a portion of a Membership Interest is transferred in accordance with the terms of the Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

B. Assumption of Liability

An assumption of unsecured liability by Company shall be treated as a distribution of money to the Member. An assumption of the unsecured liability of Company by a Member shall be treated as a cash contribution to Company. In determining the amount of any liability for this purpose, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

C. Adjustment for Noncash Distribution

In the event that assets of Company other than cash are distributed in kind to a Member, Capital Accounts shall be adjusted for the hypothetical "book" gain or loss that would have been realized by Company if the distributed assets had been sold for their fair market values in a cash sale (in order to reflect unrealized gain or loss).

D. Adjustment to Fair Market Upon Transfer of Interest

Capital Accounts shall be adjusted to reflect fair market value of all properties in the event of acquisition of Membership Interest by an existing or new Member.

E. Adjustment for Constructive Termination of Company

Capital Accounts also shall be adjusted upon the constructive termination of Company as provided under Code Section 708 in accordance with the method set forth in the immediately preceding paragraph (as required by Regulations Section 1.704-1(b)(2)(iv)(b)).

F. Adjustment for Recapture of Certain Credits

Capital Accounts shall be adjusted appropriately on account of investment tax credit and investment tax credit recapture in accordance with the principles of Code Section 48(q).

4.4 POWER TO MODIFY CAPITAL ACCOUNTS TO COMPLY WITH TAX REGULATIONS

The foregoing provisions and the other provisions of the Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Managers determine that it is necessary to modify the manner in which the Capital Accounts are computed in order to comply with such Regulations and to reflect the agreed upon allocation of the distribution of cash, the Members may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any member upon the dissolution of Company. The Members also shall make any appropriate modifications in the event unanticipated events occur that might otherwise cause the Agreement not to comply with Regulations Section 1.704-1(b).

4.5 MAINTENANCE OF INCOME (DRAWING) ACCOUNTS

A separate individual income account shall be maintained for each Member. At the end of each fiscal year, each Member's share of the Net Profits and Net Losses of Company shall be credited or debited to, and his withdrawals during the fiscal year deducted from, his income account. After such amounts have been credited or debited to and deducted from the income account of a Member, any balance or deficit remaining in such account shall be transferred to or charged against the individual capital account of such Member.

4.6 SUCCESSION TO CAPITAL ACCOUNTS BY TRANSFEREE OF INTEREST

In the event any interest in Company is transferred in accordance with the terms of the Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

ARTICLE V
Allocations of Net Profits and Net Losses and Distributions

5.1 ALLOCATION OF NET PROFITS AND NET LOSSES

A. Allocation of Net Profits

Except as otherwise provided elsewhere under the Agreement and after first giving effect to the special allocations in Subparagraphs 5.1.C. through 5.1.L., Net Profits for any fiscal year shall be allocated to each Member in accordance with his, her or its Percentage Interest as set forth in Exhibit B. Subject to any limitations described elsewhere in the Agreement including but not limited to Subparagraphs 5.1.M. and 5.1.N., the above allocation of Net Profits may be modified by subsequent agreement to conform to adjustments made to the Percentage Interest because of loans converted to Capital Contributions, any distributions of cash and any liquidating distribution. If a Member's Percentage Interest is not the same throughout a given fiscal year, the Managers shall determine the allocation of Net Profit by taking into account this varying Percentage Interest during the year but such determination shall be in conformity with the requirements of Code Section 706(d) and the regulations thereunder.

Act § 17202.

"Net Profits" refers to all items of income (including all items of gain and including income exempt from tax) as properly defined for "book purposes". Net Profits shall be determined based on the value of the assets of Company as set forth on the books of Company in accordance with the principles of Regulations Section 1.704-1(b)(2)(iv)(g). Otherwise, income and loss shall be determined strictly in accordance with Federal income tax principles (including rules governing depreciation and amortization), applied hypothetically based on values of Company assets as set forth on the books of Company.

B. Allocation of Net Losses

Except as otherwise provided under the Agreement and after giving effect to the special allocations in Subparagraphs 5.1.C. through 5.1.L., Net Losses for any fiscal year shall be allocated to each Member accordance with his, her or its Percentage Interest set forth in Exhibit B. Subject to any limitations described elsewhere in the Agreement including but not limited to Subparagraphs 5.1.M. and 5.1.N., the above allocation of Net Losses may be modified by subsequent agreement to conform to adjustments made to the Percentage Interest because of loans converted to Capital Contributions, any distributions of cash and any liquidation distributions. If a Member's Percentage Interest is not the same throughout a given fiscal year, the Managers shall determine the allocation of Net Losses to the Member by taking into account his varying Percentage Interest during the year but such determination shall be in conformity with the requirements of Code Section 706(d) and the regulations thereunder.

Act § 17202.

"Net Losses" refers to all items of loss (including deductions) as properly determined for "book purposes". Net Profits and Net Losses shall be determined based on the value of the assets of Company as set forth on the books of Company in accordance with the principles of Regulations Section 1.704-1(b)(2)(iv)(g). Otherwise, income and loss shall be determined strictly in accordance with federal income tax principles (including rules governing depreciation and amortization), applied hypothetically based on values of Company assets as set forth on the books of Company.

C. Allocation of Company Minimum Gain

Notwithstanding any other provision of the Agreement, if there is a net decrease in Company Minimum Gain for a Company taxable year, then each Member shall be allocated items of income and gain for such year (and, if necessary, for subsequent years) in proportion to, and to the extent of, an amount equal to the greater of (a) the portion of such Member's share of the net decrease in Company Minimum Gain during such year that is allocable to the disposition of Company property subject to one or more Nonrecourse Liabilities of Company and (b) the deficit balance in such Member's capital account at the end of such year. Such allocations shall be made before any other allocation of Company items for the year. For the purpose of this Paragraph 5.1, the balance in a Member's capital account at the end of such year shall be determined with the adjustments prescribed by Regulations Section 1.704-1T(b)(4)(iv)(e)(2). Such allocations shall be made in accordance with the provisions of Regulations Section 1.704-1T(b)(4)(iv)(e).

D. Allocation of Member's Share of Minimum Gain

Notwithstanding any other provision of the Agreement, if there is a net decrease during a Company taxable year in the Member's Share of Minimum Gain, then any Member with a share of the Minimum Gain at the beginning of such year shall be allocated items of Company income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to the greater of (a) the portion of such Member's share of the net decrease in the Minimum Gain that is allocable to the disposition of Company property subject to such Member's Nonrecourse Debt, and (b) the deficit balance in such Member's capital account at the end of such year. The items of Company income and gain allocated by this Paragraph 5.1 shall not include any items of income or gain allocated pursuant to the Paragraph above. The allocations under this Paragraph 5.1 shall be made before any other allocation (except any allocations made pursuant to this Paragraph 5.1 above) of Company items for the year. For the purpose of this Paragraph 5.1, the balance in a Member's capital account at the end of such year shall be determined with the adjustments prescribed by, and the allocations hereunder shall be made in accordance with, the provisions of Regulations Section 1.704-1T(b)(4)(iv)(h)(4).

E. Allocation of Net Profits and Gains Under Qualified Income Offset

Items of Net Profits and gain shall be specially allocated to each Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible in the event any Member unexpectedly receives any (i) distributions that, as of the end of such year, reasonably are expected to be made to a Member to the extent they exceed offsetting increases to such Member's capital account that reasonably are expected to occur during (or prior to) Company taxable years in which such distributions reasonably are expected to be made (other than increases pursuant to a minimum gain chargeback of the Agreement) or (ii) adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6). This subparagraph is intended to comply with Regulation Section 1.704-1(b)(2)(ii)(d) and should be so interpreted.

F. Allocation of Nonrecourse Deductions

Member Nonrecourse Deductions shall be allocated to the Member, if any, that bears the economic risk of loss for the Member Nonrecourse Debt to which the Member Nonrecourse Deductions are attributable. If more than one Member bears the economic risk of loss for a Member Nonrecourse Debt, the Nonrecourse Deduction attributable to such Member Nonrecourse Debt shall be allocated among such Members in accordance with the ratios in which the Members share the economic risk of loss for such Nonrecourse Debt. Otherwise, Nonrecourse Deductions shall be allocated in the same manner as, and be subject to the same restrictions imposed upon Net Losses.

G. Allocation of Income, Gains and Losses Related to Contributed Property

In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to Company for federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any Company asset is adjusted subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Managers in any manner that reasonably reflects the purpose and intention of the Agreement. Allocations pursuant to this Subparagraph are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any member's Capital Account or share of Net Profits, Net Losses, or other items or distributions pursuant to any other provision of the Agreement.

H. Allocation of Gain and Loss from Sale or Other Disposition of Property not Revalued

If, in connection with the admission of an additional Member to Company or the liquidation of a Member's Interest in Company, Company property is not revalued pursuant to Regulations Section 1.704-1(b)(2)(iv)(f) and the Members' capital accounts are not adjusted accordingly, then, upon any subsequent sale or other disposition of Company property, gain or loss recognized upon the sale or other disposition shall be allocated among the Members so as to take into account the variation between the adjusted basis of such property and its fair market value as of the date the additional Member was admitted or the date the Member's Interest was liquidated, as the case may be, in the same manner as under Code Section 704(c).

I. Allocation of Gains and Losses Related to Adjustments in Tax Basis

To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

J. Allocation to Avoid Adjusted Capital Account Deficit

Notwithstanding any other provision of this Article, no Member shall receive an allocation of Net Losses, Net Capital Loss, Nonrecourse Deductions, or any other item of loss or deduction that would create or increase an Adjusted Capital Account Deficit of the Member. Any loss, or item thereof, that cannot be allocated to a Member as a result of the foregoing limitation shall be allocated to all Members. Any loss, or item thereof, allocated to all Members pursuant to the preceding sentence shall be taken into account in computing subsequent allocations of Net Profits or Losses or Net Capital Gain or Loss so that the net amount of any items so allocated and the profits, losses and all other items allocated to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each Member if the allocations required by the preceding sentence had not been made.

K. Allocation of Gross Income to Restore Capital Account Deficit

In the event any Member has a distribution in his Capital Account at the end of any fiscal year which is in excess of the sum of (i) the amount the Member is obligated to restore pursuant to any provision of the Agreement, and (ii) the amount the Member is deemed to be obligated to restore pursuant to the penultimate sentences of Section 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, such Member shall be specially allocated items of income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this subparagraph shall be made only if and to the extent that such Member would have a Capital Account with a deficit balance in excess of such sum after all other allocations provided for in this Paragraph 5.1 have been

