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10/21/2016 09:16 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 89.00

**RECORDED REQUESTED BY AND
WHEN RECORDED RETURN TO:**

COX, CASTLE & NICHOLSON LLP
50 California Street, Suite 3200
San Francisco, CA 94111
Attn: Anne E. Mudge, Esq.



14 PGS

ALS
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OK

APNs: 014-1226-009-02, 014-1226-014 (Space Above Line for Recorder's Use Only)
014-1226-003-03 (Ptn), 014-1226-004-03
014-1226-005-02 (Ptn), 014-1226-006-02
014-1226-007-02, 014-1226-008, 014-1226-013
014-1226-009-01

RESTRICTIVE COVENANT AND EQUITABLE SERVITUDE AGREEMENT

This RESTRICTIVE COVENANT AND EQUITABLE SERVITUDE AGREEMENT ("Agreement") is made as of September 30, 2016, by and between NGI 5110 TELEGRAPH, LLC, a California limited liability company ("Covenantor"), and ROCKRIDGE COMMUNITY PLANNING COUNCIL, a California corporation ("RCPC" or "Covenantee"); collectively the "Parties" and individually, a "Party."

RECITALS

A. Covenantor is the owner of certain real property located at 5110 Telegraph Avenue in the City of Oakland ("City"), County of Alameda, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Restricted Property").

B. Covenantee is a California non-profit public benefit membership corporation, whose members are the owners/residents of residences within RCPC's boundary area as defined in Section 5.1 of the RCPC Bylaws, as last amended on March 6, 2014, and as depicted at <http://www.rockridge.org/boundaries>. RCPC was founded to address planning and development issues in the Rockridge neighborhood of Oakland and specifically their effects on residential properties owned by its members within the RCPC boundaries, which properties include the residential properties on Clarke Street directly facing the Restricted Property ("Benefited Properties").

C. Covenantor intends to construct a 204 unit residential project on the Restricted Property pursuant to the approvals (which approvals, the vested rights conferred thereby, and the project so constructed shall be termed "Entitlements") set forth in Case File No. PLN15074/ER16006 (the "Project").

D. Covenantor and Covenantee mutually desire to enter into this Agreement to address certain RCPC concerns regarding the impact of development and operation of the Project

on the neighborhood, and more specifically on the Benefited Properties.

E. This Agreement is intended to provide notice to Covenantor and Covenantor's successors-in-interest with respect to the Restricted Property and Covenantor and Covenantor's successors-in-interest with respect to the Benefitted Property of the Parties' rights and obligations reflected herein.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt of which is acknowledged, Covenantor and Covenantor hereby agree as follows:

1. Definitions. The following definitions apply to the terms in this Agreement:

(a) Tenant. Tenant shall refer to any lessee, sublessee, tenant at will, condominium unit owner, or other occupant in privity of contract with Covenantor, or its successor(s) in interest, for any residential portion of the Project.

2. Restrictive Covenant and Equitable Servitude. This Agreement shall be construed and enforceable as a restrictive covenant and equitable servitude, running with the land and burdening the Restricted Property, binding Covenantor and all of Covenantor's successors in interest in the Restricted Property, and inuring to the benefit of Covenantor, acting on behalf of its members, and Covenantor's successors in interest.

3. Covenants. Covenantor hereby covenants and agrees to the following restrictions:

(a) TDM Reporting. Covenantor shall prepare an on-site parking utilization review of the use of the Project's on-site parking spaces by the Project's Tenants once a calendar year ("**Annual Review**"). This Annual Review shall consist of: (i) the number of parking stall leases that the Covenantor has entered into with the Project's Tenants; and (ii) to the extent that Covenantor can obtain such information using commercially reasonable efforts, the number of vehicles owned by Tenants. The first Annual Review shall be prepared upon the date that the Project has received its Certificate of Occupancy and is ninety percent (90%) leased up ("**Commencement Date**"). Covenantor shall provide Covenantor with a copy of the Annual Review within ten (10) days of its preparation.

(b) Project Lease Provisions Regarding Parking. Covenantor shall include the following provision in each Project lease to the Project's Tenants ("**Lease Restriction**"):

"In the event that a Residential Parking Permit program ("**RPP**") is established in the Rockridge boundary area as defined by <http://www.rockridge.org/boundaries> which includes the west side of Clarke Street and the Project's Clarke Street frontage ("**Rockridge RPP**"), Tenant agrees not to apply for a Rockridge RPP during the term of this Lease."

Covenantor shall provide a copy of the Lease Restriction to the City of Oakland's RPP office within fifteen (15) days of Covenantor's receipt of the Project's Certificate of Occupancy. Covenantor will seek to enforce the Lease Restriction by appropriate legal means against any Tenant that it learns, through observing such a permit attached to a Tenant's car or otherwise, has violated the Lease Restriction; provided, however, that it shall not be a breach of this Agreement if any Tenant of the Project has applied for a Rockridge RPP in violation of the Lease Restriction.

(c) Shuttle. During the term of this Agreement, Covenantor agrees to vote in favor of establishing a local assessment district for the purpose of providing an area shuttle bus service which would: (i) serve the Temescal neighborhood; (ii) serve the residents of the Project and; (iii) have on its route both a BART station and a regular stop a 51st Street and Telegraph Avenue.

(d) Neighborhood Concerns. As of the date of this agreement, the City is holding certain Project "Lien Funds" associated with the approval of a previous project at the site. Upon written request of Covenantee, and to the extent any Project "Lien Funds" ("**Funds**") are still being held by the City, Covenantor shall send a written request to the appropriate City representative or other governmental representatives responsible making the decision on the disbursement of the Funds requesting that the City use a portion of the Funds to address any Project impacts Covenantee identifies that that are not addressed in the Project's Conditions of Approval.

(e) Community Meetings. In the event that the City does not hold one or more community meetings for the Project's TDM plan under Condition of Approval No. 45, construction management plan under Condition of Approval No. 13 or construction noise management plan under Condition of Approval No 37a ("**Plans**") prior to the City's approval of the Plans, then, prior to such approval, Covenantor shall hold one or more community meetings to allow the public to present questions and comments on the Plans.

4. Termination. This Agreement will automatically terminate with no further action by the Parties upon the termination of the Project which termination shall include: (i) abandonment, condemnation, demolition or destruction of the building or Restricted Property; (ii) expiration, revocation, invalidation or termination of the Entitlements; or (iii) approval of a new project (in lieu of the Project) for the Restrictive Property. Approval of a condominium map to allow the currently approved residential units to be sold does not constitute approval of a new project. In the event that the Project is so terminated, Covenantee agrees to execute a Notice of Termination of Restrictive Covenant, or such other documentation reasonably requested by Covenantor, to be recorded upon Covenantor's request to verify such termination of this Agreement and to remove this Agreement from the public records. If and when the Project is terminated in accordance with this Agreement, then Covenantor's obligations hereunder shall be deemed satisfied in full, and this Covenant shall be deemed terminated and of no further force or effect.

5. Reserved Rights. Notwithstanding any other provision of this Agreement, Covenantor reserves the right to use the Restricted Property for any purposes not otherwise

expressly restricted pursuant to Section 3 of this Agreement, provided that such uses do not violate applicable federal, state and local laws, regulations, or conditions of approval for the Project.

6. Covenants Run with the Land. This Agreement shall be recorded in the Official Records of Alameda County, California. This Agreement, and each of its covenants, agreements, terms, conditions and provisions, shall be effective as of the date of recording hereof. The covenants, restrictions, conditions, provisions and agreements contained in this Agreement (whether affirmative or negative in nature) shall be deemed restrictions and covenants running with the land pursuant to California Civil Code Section 1468, burdening the Restricted Property, and shall be binding upon the owners of the Restricted Property and their respective heirs, successors and assigns and every person having any fee, leasehold, or other interest in the Restricted Property. The provisions of this Agreement shall be incorporated by reference into any subsequent deed affecting the Restricted Property or any portion thereof, including specifically any condominium deeds and any Covenant of Rights and Responsibilities associated with any condominium homeowners' association for the Restricted Property or similar successor in interest.

7. Integration. This Agreement contains and integrates the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all negotiations and previous agreements, if any, between the Parties with respect thereto. If any term, covenant or condition of this Agreement is held by an arbitrator or a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms, covenants and conditions shall continue in full force and effect. No Party is considered the drafter of this Agreement; any rule (including California Civil Code section 1654) that would require interpretation of ambiguities in this Agreement against a Party is not applicable or is waived.

8. Mediation. The Parties shall endeavor to resolve any claims, disputes, or allegations by mediation which, unless the Parties mutually agree otherwise, shall be administered by an alternative dispute resolution service. A request for mediation shall be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings such as arbitration or legal proceedings, but in such event, mediation shall proceed in advance of any legal proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order. If legal proceedings are stayed pursuant to this Section, the Parties may nonetheless proceed to agree upon a schedule for later proceedings.

9. Governing Law. This Agreement shall be interpreted according to, and governed by, the substantive law of the State of California, without regard for choice of law principles.

10. Interpretation. Covenantor and Covenantee acknowledge that they have had the opportunity to consult with their respective legal counsel before entering into this Agreement and have read, understood, and voluntarily agreed to execute this Agreement with full knowledge that it shall become a binding and enforceable legal contract.

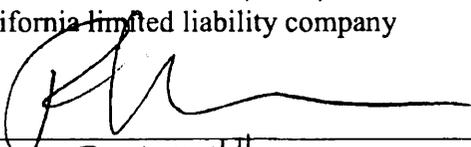
14. Successors In Interest. Prior to any successor in interest succeeding to the interest, or any part thereof, of either Party to this Agreement, the Party being succeeded shall provide the successor in interest with a copy of this Agreement and obtain their signature acknowledging receipt thereof and agreement to be bound thereby. A copy of that signed agreement shall be provided to the other Party to this agreement, along with notice of the succession in interest, pursuant to Section 13 of this Agreement.

15. Captions. The headings, titles, and captioned contained in this Agreement are inserted only for the convenience of the Parties and are for reference only, and in no way define, limit, extend, or describe the scope of this Agreement, or any portion hereof.

16. Enforcement of the Agreement. This Agreement is enforceable by either of the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date set forth herein.

COVENANTOR: NGI 5110 TELEGRAPH, LLC, a California limited liability company By:  Name: <u>Randy Miller</u> Title: <u>Manager</u>	COVENANTEE: ROCKRIDGE COMMUNITY PLANNING COUNCIL, a California corporation By:  Name: <u>Stuart M Flashman</u> Title: <u>Chair, RCPC Board of Directors</u>
---	---

aka: Randy Miller 
AKA: Randall David Miller

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date set forth herein.

COVENANTOR: NGI 5110 TELEGRAPH, LLC, a California limited liability company By: <u>Signed in Counter part.</u> Name: _____ Title: _____	COVENANTEE: ROCKRIDGE COMMUNITY PLANNING COUNCIL, a California corporation By: <u><i>Stuart M. Flashman</i></u> Name: <u>Stuart M. Flashman</u> Title: <u>Chair, RCPC Board of Directors</u>
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AKA: Stuart Flashman

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)

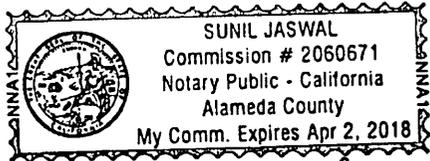
)
) ss:
)

On 10-04-, 2016 before me, SUNIL JASWAL
Notary Public (insert name and title of the officer),

personally appeared RANDALL DAVID MEUER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature: [Handwritten Signature]

[Seal] Sunil Jaswal, Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
) SS:
COUNTY OF Alameda)

On 10/4, 2016 before me, Richard Craig
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: 

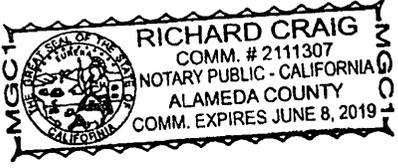
[Seal] 

EXHIBIT A

LEGAL DESCRIPTION OF RESTRICTED PROPERTY

[PLEASE SEE ATTACHED]

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

ALL OF LOT 2 AND A PORTION OF LOTS 1 AND 4, BLOCK A, MAP OF HUMBOLDT PARK, FILED JUNE 4, 1901, MAP BOOK 16, PAGE 20, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERN LINE OF TELEGRAPH AVENUE, DISTANT THEREON 50.26 FEET NORTHERLY FROM THE POINT OF INTERSECTION THEREOF WITH THE NORTHERN LINE OF 51ST STREET, FORMERLY VERNON AVENUE, AS SAID STREETS ARE SHOWN ON THE MAP REFERRED TO; RUNNING THENCE NORTHERLY ALONG SAID LINE OF TELEGRAPH AVENUE, 50.26 FEET; THENCE EASTERLY PARALLEL WITH SAID LINE OF 51ST STREET, 115.45 FEET; THENCE AT RIGHT ANGLES SOUTHERLY, 100 FEET TO THE NORTHERN LINE OF 51ST STREET; THENCE WESTERLY ALONG SAID LAST NAMED LINE, 8.15 FEET; THENCE AT RIGHT ANGLES NORTHERLY, 45 FEET; THENCE AT RIGHT ANGLES WESTERLY, 34 FEET; THENCE AT RIGHT ANGLES NORTHERLY, 5 FEET TO THE SOUTHERN LINE OF LOT 2, AS SHOWN ON SAID MAP; THENCE WESTERLY ALONG THE LAST NAMED LINE, 68.14 FEET MORE OR LESS TO THE EASTERN LINE OF TELEGRAPH AVENUE AND THE POINT OF BEGINNING.

EXCEPTING FROM PARCEL ONE: THAT PORTION THEREOF CONVEYED IN THE DEED TO THE CITY OF OAKLAND, RECORDED MAY 4, 1971, SERIES NO. 71-51966, BOOK 2841, PAGE 898, OFFICIAL RECORDS.

APN: 014-1226-009-02

PARCEL TWO:

PARCEL B, AS SHOWN ON PARCEL MAP NO. 4381, FILED APRIL 22, 1985, BOOK 154 OF PARCEL MAPS, PAGES 3 AND 4, ALAMEDA COUNTY RECORDS.

APN: 014-1226-014

PARCEL THREE:

A PORTION OF LOTS 4, 5, 6, 7, 8 AND 9, BLOCK A, AS SAID LOTS AND BLOCK ARE SHOWN ON THE MAP OF HUMBOLDT PARK, FILED JUNE 4, 1901, BOOK 16 OF MAPS, PAGE 20, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERN LINE OF CLARKE STREET, FORMERLY MAPLE STREET, WITH THE SOUTHERN LINE OF PARCEL B, AS SHOWN ON PARCEL MAP NO. 4381, BOOK 154 OF PARCEL MAPS, PAGE 3, ALAMEDA COUNTY RECORDS; THENCE ALONG SAID SOUTHERN LINE OF PARCEL B THE FOLLOWING THREE COURSES: NORTH 84° 05' 58" WEST, 80.98 FEET; ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 435.00 FEET, THROUGH A CENTRAL ANGLE OF 7° 19' 50", A LENGTH OF 55.65 FEET; AND NORTH 76° 46' 08" WEST, 103.17 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL B; THENCE SOUTH 13° 16' 44" WEST, 15.09 FEET; THENCE SOUTH 76° 46' 08" EAST, 103.32 FEET; THENCE EASTERLY ALONG THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 450.00 FEET, THROUGH A CENTRAL ANGLE OF 7° 19' 50", A LENGTH OF 57.57 FEET; THENCE SOUTH 84° 05' 58" EAST, 78.90 FEET TO THE WESTERN LINE OF SAID CLARKE STREET; THENCE ALONG SAID WESTERN LINE NORTH 13° 16' 53" EAST, 15.23 FEET TO THE POINT OF

BEGINNING.

APN: PORTION OF 014-1226-003-03; PORTION 014-1226-004-03; PORTION 014-1226-005-02; PORTION 014-1226-006-02; PORTION 014-1226-007-02

PARCEL FOUR:

A PORTION OF LOT 1, BLOCK A, MAP OF HUMBOLDT PARK, FILED JUNE 4, 1901, MAP BOOK 16, PAGE 20, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WESTERN LINE OF CLARKE STREET, FORMERLY MAPLE STREET, WITH THE SOUTHERN LINE OF PARCEL B, AS SHOWN ON PARCEL MAP NO. 4381, BOOK 154 OF PARCEL MAPS, PAGE 3, ALAMEDA COUNTY RECORDS; THENCE ALONG SAID SOUTHERLY LINE OF PARCEL B THE FOLLOWING THREE COURSES: NORTH 84° 05' 58" WEST, 80.98 FEET; ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 435.00 FEET, THROUGH A CENTRAL ANGLE OF 7° 19' 50", A LENGTH OF 55.65 FEET; AND NORTH 76° 46' 08" WEST, 103.17 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL B; THENCE SOUTH 13° 16' 44" WEST, 15.09 FEET; THENCE NORTH 76° 46' 08" WEST, 8.15 FEET TO THE ACTUAL POINT OF BEGINNING; THENCE NORTH 13° 16' 44" EAST, 5.53 FEET; THENCE NORTH 76° 43' 16" WEST, 34.00 FEET; THENCE NORTH 13° 16' 44" EAST, 5.00 FEET TO THE NORTHERN LINE OF LOT 1 AS SAID LOT IS SHOWN ON SAID MAP OF HUMBOLDT PARK (16 M 20); THENCE ALONG SAID NORTHERN LINE OF LOT 1 NORTH 76° 43' 16" WEST, 67.94 FEET TO THE EASTERN LINE OF TELEGRAPH AVENUE AS SAID AVENUE IS SHOWN ON SAID MAP; THENCE ALONG SAID EASTERN LINE SOUTH 7° 22' 30" WEST, 10.67 FEET; THENCE SOUTH 76° 46' 08" EAST, 100.84 FEET TO THE ACTUAL POINT OF BEGINNING.

APN: PORTION 014-1226-008

And

Parcel A, as shown on Parcel Map No. 4381, filed April 22, 1985, Book 154 of Parcel Maps, Pages 3 and 4, Alameda County Records.

APN: 014-1226-013-00

And

A PORTION OF LOTS 1 AND 4, IN BLOCK A, AS SAID LOTS AND BLOCK ARE SHOWN UPON THAT CERTAIN MAP ENTITLED "HUMBOLDT PARK OAKLAND, ALAMEDA CO. CALIFORNIA," FILED JUNE 4, 1901 IN MAP BOOK NO. 16, AT PAGE 20, IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY, CALIFORNIA, SAID PORTION BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERN LINE OF 51ST STREET, FORMERLY VERNON AVENUE, DISTANT THEREON SOUTH 76° 46' 07" EAST, 96.99 FEET FROM THE EASTERN LINE OF TELEGRAPH AVENUE, SAID POINT BEING THE SOUTHWESTERN CORNER OF THAT CERTAIN PARCEL OF LAND DESIGNATED AS "PARCEL NUMBER ONE" AND DESCRIBED IN THE DEED FROM ABE BLUMENFELD AND JOSEPH BLUMENFELD TO GAYLE GLAZER HORN, DATED OCTOBER 27, 1965 AND RECORDED NOVEMBER 2, 1965 IN THE OFFICE OF SAID RECORDER UNDER RECORDER'S SERIES NO. AX151613; AND RUNNING THENCE ALONG THE WESTERN BOUNDARY LINE OF SAID "PARCEL NUMBER ONE" NORTH 13° 13' 53" EAST, 40.00 FEET; THENCE, LEAVING SAID WESTERN BOUNDARY LINE, SOUTH 76° 46' 07" EAST, 8.15 FEET TO THE EASTERN BOUNDARY LINE OF THE PARCEL OF LAND DESIGNATED AS "PARCEL NUMBER TWO" IN SAID DEED; THENCE ALONG THE LAST-MENTIONED BOUNDARY LINE SOUTH 13° 13' 53" WEST, 40.00 FEET TO SAID NORTHERN LINE OF 51ST STREET; AND THENCE ALONG THE LAST-NAMED LINE NORTH 76° 46' 07" WEST, 8.15 FEET TO THE POINT OF BEGINNING.

A.P. No. 014-1226-009-01

Request Number: **668368**

Requested By: **NAUTILUS**

Request Type: **Image**

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