

PAYUMOS' REBUTTAL

TO THE PIEDMONT WALK'S PROPOSED RESOLUTION

PIEDMONT WALK HOMEOWNERS ASSOCIATION

U.S. Mail

Date: July 2, 2020

FROM: Piedmont Walk HOA Board of
Directors c/o: Christopher B. Lewis
Berding & Weil, LLP

TO: Dina F. Payumo
3021 Alemany Blvd.
San Francisco, CA 94112

**NOTICE OF OAKLAND CITY COUNCIL HEARING ON
PIEDMONT WALK HOMEOWNERS ASSOCIATION'S REQUEST FOR
RESOLUTION ON STATEMENT OF NECESSITY**

**Date: Tuesday, July 21, 2020 Time:
1:30 p.m.**

Place: Via Tele-Conference

PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1245.350 PLEASE TAKE

NOTICE: On July 21, 2020, during a regularly noticed meeting, the Oakland City Council will address the Piedmont Walk Homeowners Association's Request for Resolution on the Necessity of the temporary exercise of private eminent domain of the property located at 58 Yosemite Ave. Oakland, CA 94611 for the purpose of completing necessary repairs to the north facing exterior of the building located at 70 Yosemite Ave., Oakland, CA 94611. Enclosed with this notice is the draft city council resolution and accompanying exhibits.

You have the opportunity to attend and be heard on this resolution and may do so by contacting the Oakland City Clerk's office at: (510) 238-3226 or by email at: cityclerk@oaklandnet.com. You may also contact Councilman Dan Kalb's office at (510) 238-3557 or by email at: dmoos@oaklandca.gov.

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER KALB

ADOPTION OF A RESOLUTION OF NECESSITY FOR THE ACQUISITION, BY EMINENT DOMAIN, OF A TEMPORARY RIGHT OF ENTRY TO THE PROPERTY LOCATED AT 58 YOSEMITE AVENUE, OAKLAND, CALIFORNIA, PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1002 AND CODE OF CIVIL PROCEDURE SECTIONS 1245.326 ET SEQ., BY THE PIEDMONT WALK HOMEOWNERS ASSOCIATION OF 70 YOSEMITE AVENUE, OAKLAND, TO COMPLETE NECESSARY REPAIR WORK

WHEREAS, Piedmont Walk Homeowners Association is located at 70 Yosemite Avenue, Oakland, California (the "Association"); and

WHEREAS, The Association is a 23 Unit condominium project ("Association Building") originally constructed in 1982; and

WHEREAS, The Association, pursuant to its recorded Declaration of Covenants, Conditions, and Restrictions ("CC&Rs"), is required to maintain, repair, and replace all elements of the common area of the Association Building, including the exterior siding and framing members; and

WHEREAS, The Association Building has sustained severe water intrusion to the structure which now requires the Association to perform necessary testing and repair work to the north exterior side; and

WHEREAS, Without repairs, the Association Building will continue to experience water intrusion, further damaging the structure and could potentially collapse and endanger the building's residents and those in neighboring properties (the "Repair Work"); and -Payumo Response: The Association has not offered a report signed and stamped by a licensed structural engineer in the State of California to show evidence of this. Also, there is no testing done yet to determine if this is the case.

WHEREAS, To the north of the Association Building is a neighboring building located at 58 Yosemite Avenue, Oakland, California, specifically defined in the Grant Deed attached as Exhibit A, a rental investment property owned by Bethoven and Dina Payumo (the "Payumos" and their property, the "Payumo Property"); and

WHEREAS, In order for the Association to perform the Repair Work to the north exterior of the Association Building, it needs to gain temporary access to the Payumo Property, primarily to the exterior side yard abutting the Association Building, **limited access to the portion** of the exterior rear parking lot nearest to the Association Building, and **potentially limited roof access**, in the area more specifically depicted on Exhibit B attached hereto and made a part hereof (“ROE Area”); and Payumo Response: The Association needs to quantify what “limited access” and “limited roof access” mean. Also, the Association needs to provide detailed description and plan of the use of the roof acquire a licensed civil or structural engineer in the State of CA to determine the structural integrity of the roof structure.

WHEREAS, The Association Building hired Scott Swinton of Unlimited Property Services, Inc., who reported, (see Declaration of Scott Swinton attached hereto as Exhibit C and testimony of Scott Swinton), that based on the condition of the stucco, the Association Building likely has severe deterioration of the wall framing which negatively impacts the structural integrity of the wall and building as a whole; and Payumo Response: The Association is yet to provide test reports and structural calculations performed to prove this?

WHEREAS, Mr. Swinton further reported that testing and repairs to the exterior siding cannot, in fact, be accomplished without placing ladders and scaffolding on the Payumo Property because completing the repair work from inside the Association Building cannot be completed safely or at all, or would be extremely cost prohibitive; and Payumo Response: Please provide detailed description and drawing and layouts why completing the repair work inside cannot be completed safely. Please provide a comparison of cost estimates from within the interior versus the exterior of the building from at least three independent contractors.

WHEREAS, Mr. Swinton further confirmed, that because of the sloped roof on the Association Building and the extension of the soffit from the Payumo Property, the use of swing stage scaffolding suspended from above the Association Building is not an option; and Payumo Response: Also, the Association needs to provide detailed description and plan of the use of the roof acquire a licensed Civil Engineer in the State of CA to determine the structural integrity of the roof structure.

WHEREAS, For nearly five years, the Association has attempted to obtain permission from the Payumos for access to the Payumo Property through a temporary right of entry; and Payumo Response: This is **not true**. Quite the contrary. The Payumos have been very cooperative and supportive from the beginning starting in January 2014.

WHEREAS, The Payumos have persistently refused to execute the requested access agreement as evidenced in the attached Exhibit D; and Payumo Response: This Exhibit demonstrates that the Association the continuous bullying of the Payumos. This Exhibit failed to include the initial Agreement dated June that Berding Weil asking to have the Payumos signed which is dated June 7, 2017 which states that the Payumos does not have and shall not claim any right to damages resulting from the Work. Also, the last agreement received from the Association dated June 21, 2019 from Dennis Eagan, does not provide any description on the testing plan that will be performed from the Payumos property, nor any offer of indemnification for access and work that will occur in the Payumos property.

WHEREAS, Without the Repair Work, the occupants of the Association Building will be negatively impacted through permanent loss of property and adverse health conditions related to severe and persistent water intrusion, which outweigh any hardship to the occupants of the Payumo Property which may include noise disturbances from the Repair Work and **limited restrictions** to

the parking lot located on the Payumo Property; and Payumo Response: Please quantify what limited restrictions would be. Please provide test reports, analysis, and calculations that indicates the negative impact from the Association Building over the hardship to the residents in the Payumo property.

If the Payumo property is used for the repair work, there will be tremendous hardships financially, physically and emotionally, and they are but not limited to:

- -Loss of parking for the residents, especially for the elderly lady that is handicapped. Parking in the area is very difficult.
- Without plan for replacement of parking will hinder the residents to find parking for more than at least 3 to 4 blocks.
- The Resident that resides adjacent to where the Work will occur works from home.

WHEREAS, The entry to the Payumo Property and Repair Work will be conducted in a manner that will provide the least damage to the Payumo Property and the least inconvenience or annoyance to the owners and occupants by limiting entry onto the Payumo Property to only the exterior side yard abutting the Association Building, staging the repair work from the street, and limiting the use of the Payumo Property parking lot to allow for the continued use of the parking lot by the occupants of the Payumo Property; now therefore be it Payumo Response: A detailed construction plan is necessary to determine the extent of use of the property. Just by saying “least damage, least inconvenience, limiting entry, and limiting use” is not sufficient to know exactly how much of the property is used.

RESOLVED: That the City Council has determined that there is a great necessity to complete the Repair Work at the Association Building, because without the Repair Work, the surrounding community is adversely affected through the potential hazard caused by the unrepaired building and the continued degradation of the building contributes to neighborhood blight; and be it Payumo Response: Please provide a detailed analysis on how the surrounding community will be adversely affected, and how it will contribute to neighborhood blight. The area in question is adjacent to the Payumos parking lot.

RESOLVED, That City Council has determined that there is a great necessity to enter upon the Payumo Property to complete the testing and Repair Work, because the testing Repair Work cannot be completed safely or at all without entry onto the ROE Area; and be it Payumo Response: Please provide an analysis including layout plans on why the work cannot be performed safely inside the building.

RESOLVED, That City Council finds that the hardship to the Association Building clearly outweighs any hardship to the owners and occupants of the Payumo Property if the Association is unable to temporarily obtain the right of entry on the ROE Area to conduct the necessary Repair Work; and be it Payumo Response: Please provide an analysis why you believe that the Association Building outweighs any hardship by the Payumos.

RESOLVED, That City Council has determined that the Association has exhausted all other possible remedies to obtain entry to the Payumo property in order to complete the Repair Work; and be it

RESOLVED, That City Council finds that the right of entry on the ROE Area will be exercised by the Association and its contractors in a manner which provides the least damage to the property and the least inconvenience or annoyance to the occupants or owners thereof consistent with satisfactory completion of the repair or reconstruction work; and be it

FURTHER RESOLVED, That City Council finds that the requirements set forth in California Civil Code Section 1002(a) and Code of Civil Procedure Sections 1245.326 et seq. have been met and hereby adopts this Resolution of Necessity for the property interest and purposes set forth herein; and be it Payumo Response: The Payumos do not agree that the Association has not met these codes, and failed to provide necessary documents to prove this.

FURTHER RESOLVED, That City Council directs the Association Building to diligently take all steps necessary to procure the requisite temporary right of entry on the ROE Area and to perform the Repair Work in a manner that provides the least damage to the Payumo Property and creates the least inconvenience or annoyance to the owners and occupants of such property. Payumo Response: The Association still do not provide the necessary information and analysis why this claim.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -

NOES – ABSENT

–

ABSTENTION –

ATTEST:

ASHA REED

City Clerk and Clerk of the Council of
the City of Oakland, California

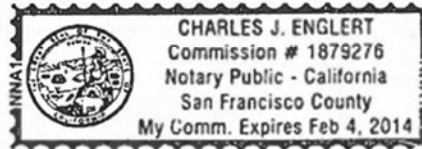
EXHIBIT A

On March 27, 2012 before me, Charles J. Englert, Notary Public
Notary Public, personally appeared Diana F. Payumo, Bethoven S. Payumo and Amador Y. Fajardo 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~~ they executed the same in ~~his~~ their authorized capacity(ies), and that by
~~his~~ 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 _____



(This area for official notarial seal.)

EXHIBIT B

Exhibit B

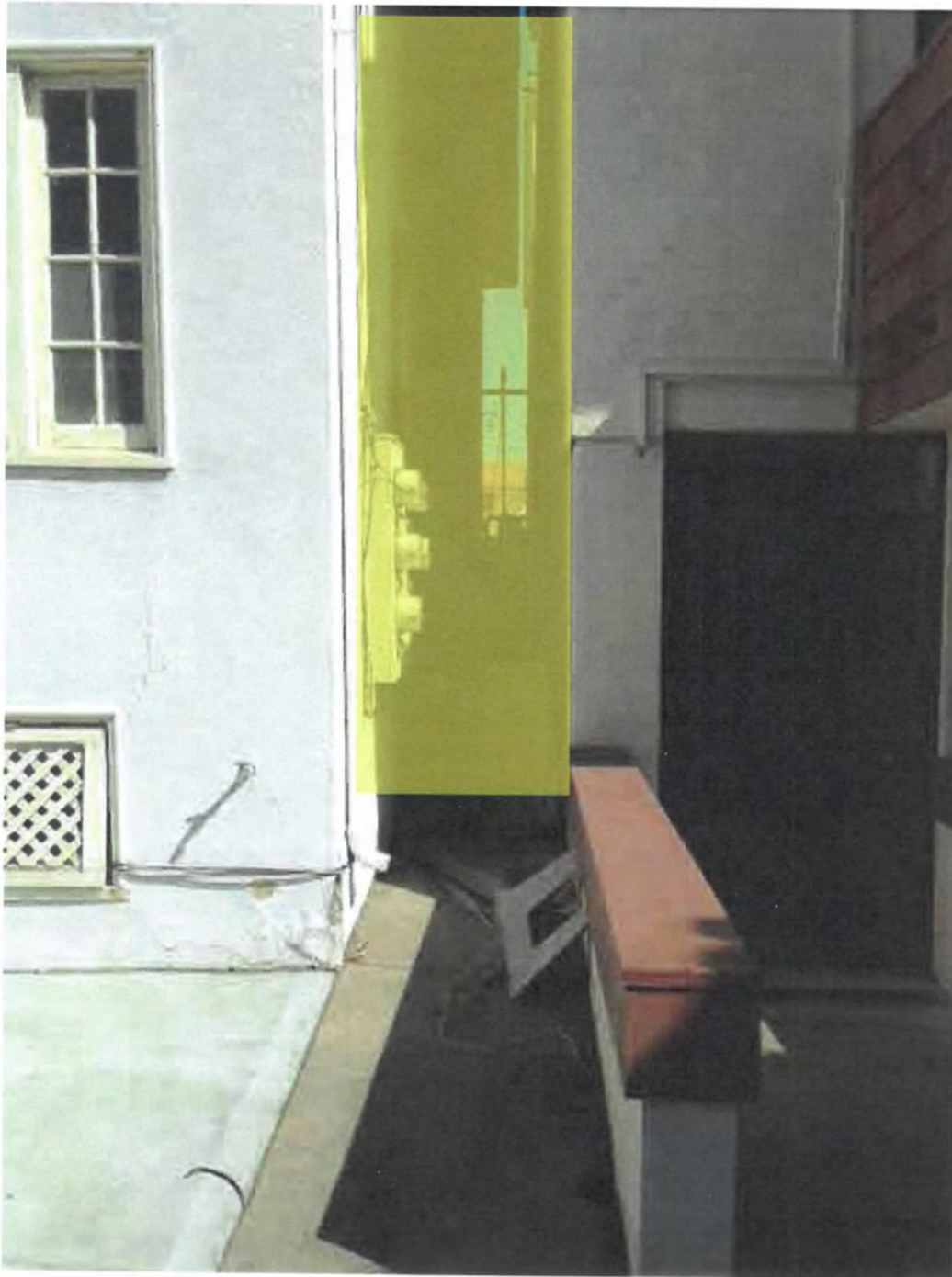


Exhibit B



Exhibit B



Exhibit B

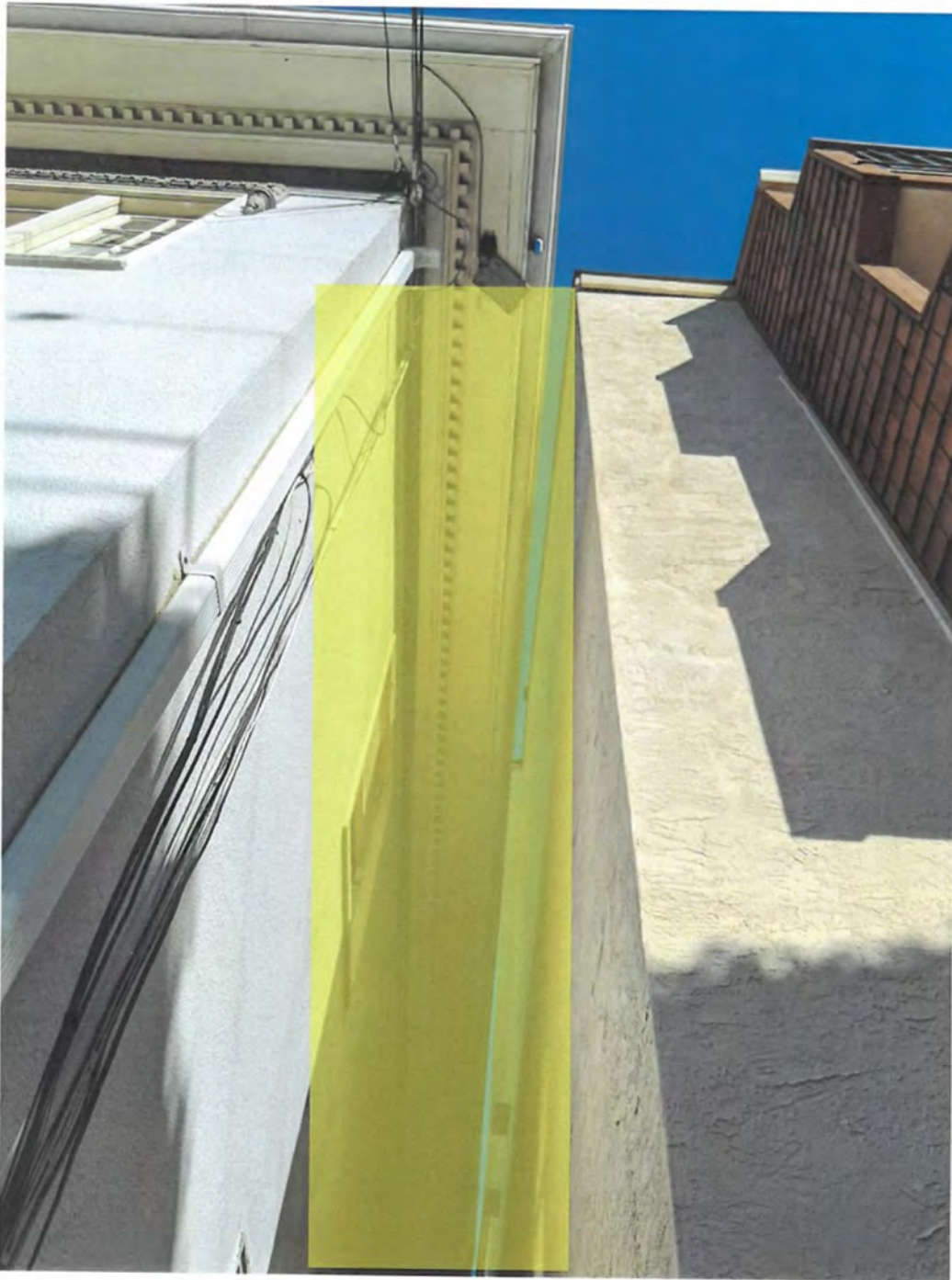


Exhibit B



bing maps

Notes



bing maps

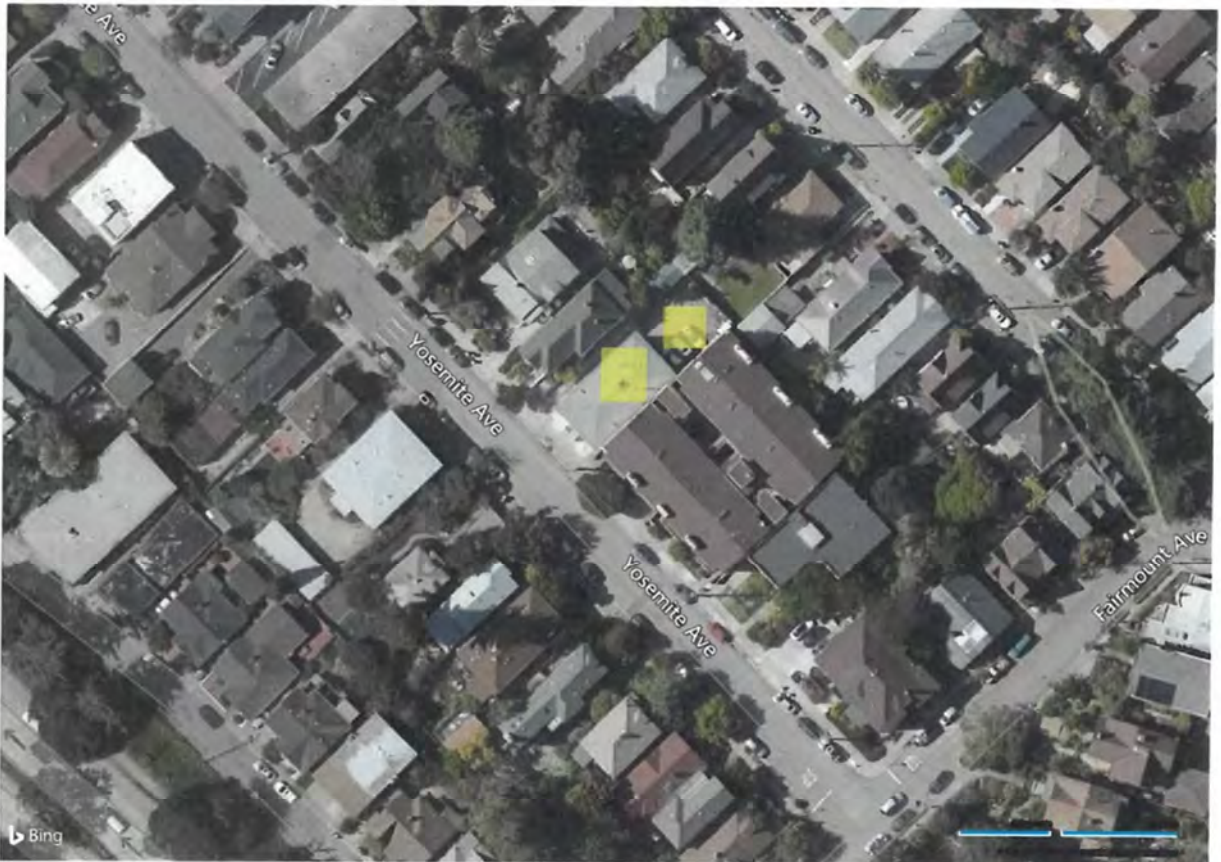
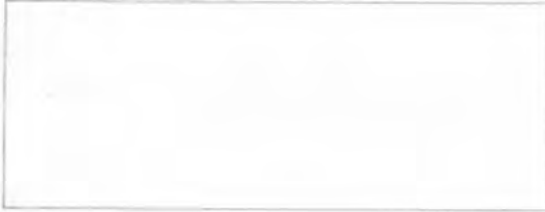


EXHIBIT C

DECLARATION OF SCOTT SWINTON

I, Scott Swinton, declare as follows:

1. I am the principal of Unlimited Property Services, Inc., which is located at 2250 Central St. Suite A, Richmond, CA 94801. I have personally inspected the property located at 70 Yosemite Avenue, Oakland, California and the information provided in this declaration is based on my personal knowledge unless otherwise stated.

2. I hold a Class B contractor's license with the Contractors State License Board for the State of California. (See Exhibit 1.) I have extensive experience performing repair and reconstruction projects. My current curriculum vitae is attached as Exhibit 2.

3. I have been engaged by the Piedmont Walk Homeowners Association to consult on a repair project to the south elevation of the building. From my visual inspection of the building, the south elevation has a stucco exterior that appears to have suffered from extensive water intrusion over the years. The condition of the stucco, plus historical data from other elevations on this building indicate to me that there may be deterioration of the framing at the south elevation of the building. However, in order to evaluate the structural integrity and condition of the framing, we need to perform destructive testing at the south elevation.

4. The HOA building is located at 70 Yosemite Avenue, Oakland, California. On January 6, 2020, I personally inspected the property and determined the necessity of obtaining access to the neighboring property in order to test and conduct the repairs to the building's stucco exterior (See Exhibit 3.) The south elevation of the building immediately abuts the common property line with the neighboring property located at 58 Yosemite Avenue, Oakland, California. The properties are separated by a gap varying between 36" and 38" wide. The entire gap is part of the property located at 58 Yosemite. In order to perform destructive testing, it is necessary to gain access to the neighboring lot located at 58 Yosemite Avenue. To perform destructive testing, we would need access to the neighboring property for three days. We would need to place ladders on the neighboring property and strip portions of the stucco from the building to evaluate the framing members behind the stucco.

5. After completing destructive testing, we can then develop a scope of work for the repair. Depending on the extent of damage, we would need access to the neighboring property for anywhere between a few weeks and several months. The repair work would require the installation of scaffolding on the neighboring property. There should be no damage to the neighboring property or residential structure. No excavation would be required.

6. Because the neighboring structure and the HOA building are in such close proximity to each other, especially at the roof line, it may be necessary for use to stand on the roof of the neighboring residential structure. No damage to the roof would result from this activity.

7. Access to the neighboring property is the only way to perform the required repairs to the south elevation of the HOA building. Accessing the framing members through the HOA

residential units is not feasible given that residents would be displaced and would have to move out of their unit's altogether. Furthermore, it would be impossible to reapply exterior stucco from the interior of the HOA building. Therefore, it is an absolute necessity that we access the south elevation from the neighboring property.

8. In my view, repairs to the south elevation of the HOA building are necessary to ensure continued performance of the building. Without repairs, the building will continue to suffer from water intrusion which would compromise the structural integrity of the building.

9. As the construction manager of the destructive testing and repair project, we will ensure that entry upon the neighboring property will be exercised in a manner that minimizes any possible damage to the property and minimizes inconvenience to the residents.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of January, 2020.



SCOTT SWINTON

EXHIBIT D

Christopher B. Lewis

From: Paul W. Windust
Sent: Wednesday, January 15, 2020 11:39 AM
To: Christopher B. Lewis
Subject: FW: Response to Piedmont Walk - Access Agreement

Follow Up Flag: Follow up
Flag Status: Flagged

Paul W. Windust | Principal
pwindust@berdingweil.com | [Profile](#) | [vCard](#)



WALNUT CREEK	COSTA MESA	SAN DIEGO
2175 N California Blvd. Suite 500 Walnut Creek CA 94596 P 925.838.2090 F 925.820.5592	575 Anton Blvd. Suite 1080 Costa Mesa CA 92626 P 714.429.0600 F 714.429.0699	1660 Hotel Circle North Suite 701 San Diego CA 92108 P 858.625.3900 F 858.625.3901

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From: Dina Payumo <payumo.dina@gene.com>
Sent: Sunday, September 15, 2019 8:59 AM
To: Paul W. Windust <pwindust@berdingweil.com>; dandjeagan@gmail.com; condos4@slpm.com
Cc: jimmypaysbc@gmail.com; Mike Cael <Cael@cael.com>; Tracy Cael <tracycael@comcast.net>
Subject: Response to Piedmont Walk - Access Agreement

Mr. Windust,

As we have repeatedly stated before, for safety and liability reasons, we do not want any construction that you perform to take place on our property.

Thank you,
Dina Payumo

January 8, 2018

Reference: Piedmont Walk HOA Access for Water Damage Repair

Mr. Windust,

This is in response to your letter to us dated December 21, 2017 in which you asked for our response to your request for us to allow access to our property at 58 Yosemite Avenue, Oakland to complete a construction project at your client's adjacent property at 70 Yosemite Avenue. After giving your request considerable thought, and considering the wellbeing of our tenants, we decline your client's request to have access to our property. Allowing your client access to our property will cause undue hardship to our tenants and the potential for injury to them and damage to our property. You have not offered any compensation and indemnification for this.

In the San Francisco Bay Area, there are many single family homes and multi-unit residential buildings that are very close to each other. Many, especially in San Francisco, have exterior walls that actually touch the house next door. If the type of remediation is performed on these buildings, like that your client is proposing to do, this would need to be done from the interior of the building. There are certainly many contractors locally who have experience doing this. We suggest that your client hire one these contractors who can perform the work from the interior of the building so that they do not need to access our property at all.

We like to be good neighbors, but in the leases that we have with our tenants, they are guaranteed quiet enjoyment of the premises. They are also provided with parking spaces. If we allow your client access to our property, the construction noise and the denial of our tenants' parking would cause a breach of contract on our part with our tenants. This may cause some or all of our tenants to vacate the premises and result in a great loss of rental income to us.

We hope that you understand our position on this and that you advise your client to perform the remediation project from the interior of their building and to do this as quietly and safely as possible so as not to disturb or cause harm to our tenants.

Respectfully yours,



Bethoven Payumo
Bethoven Payumo and Dina Payumo
Email: payumo.dina@gene.com
Cell No.: 415-810-3162
3021 Alemany Blvd.
San Francisco, CA 94112

Cc: Mike Cael, Tracy Cael