

COMMITTEE OF THE WHOLE OCTOBER 22, 2001

**DRAFT PLAN OF CONDOMINIUM
VILLA GIARDINO (MAPLE) HOMES LIMITED
FILE: 19CDM-01V05
RELATED FILES: Z.98.023, DA.98.047**

Recommendation

The Commissioner of Planning recommends:

THAT Draft Plan of Condominium 19CDM-01V05 (Villa Giardino (Maple) Limited), prepared by Vladimir Krcmar Ltd., and dated August 23, 2001, BE DRAFT APPROVED, subject to the conditions of draft approval contained within Attachment No. 1."

Purpose

On August 24, 2001, the Owner submitted an application for draft plan of condominium consisting of a 5 storey building containing 104 dwelling units, guest rooms, a hair salon, a communications centre, an exercise room, and storage units, 51 parking spaces.

Background - Analysis and Options

Location

The site is located on the north side of Rutherford Road, west of Keele Street, in Lot 16, Concession 4, City of Vaughan. The surrounding land uses are:

North - residential (R2 & R4 Residential Zones)
South - future long term care facility; Rutherford Road; employment (EM1 Zone)
East - valley land (OS1 Zone), residential (R2 and R3 Zones)
West - Rutherford District Sports Park (A Zone)

Land Use Status

The site is designated "District Park" by OPA #350 (Maple Community Plan), and zoned RA3 Apartment Residential Zone by By-law 1-88, as amended by By-laws 323-98 and 412-98. The Condominium plan conforms to the Official Plan and complies with the requirements of the By-law.

The application represents the third phase of a senior's condominium development for 262 units in 3 apartment buildings and a long term care facility. On February 14, 2000, Council granted draft plan of condominium approval for the first two phases (Files 19CDM-99V04 and 19CDM-99V05).

Access is from Rutherford Road, by way of a private road serving both the proposed seniors' development and the Rutherford Road Sports Park to the west.

Circulation Comments

i) Building Standards Department

The Building Standards Department has advised that use restrictions are required on Units 1 to 58 of Level A on the Draft Plan of Condominium. A clause will be included in the condominium agreement requiring the Owner to agree that certain areas (i.e. parking spaces, exercise room etc.), which are identified as "units" on the Draft Plan, are used solely for the intended use.

ii) Canada Post

Canada Post has advised that its delivery policy requires the Owner to install and maintain a centralized mail facility at the Owner's expense. This installation is to be co-ordinated with Canada Post as per the Centralized Mail Delivery Guidelines.

iii) City of Vaughan Real Estate Division

The City of Vaughan Real Estate Division has advised that the Owner is required to pay, cash-in-lieu of the dedication of parkland equivalent to 5% of the value of the subject lands, prior to the issuance of a building permit. An approved appraisal submitted by the Owner will form the basis of the cash-in-lieu payment.

iv) Canadian National Railways (CN)

CN Rail has advised that they have no objections to the proposed draft plan of condominium subject to the previous conditions (Phase 1 & 2), and various agreements between CN, the City and the proponent, which are included on Attachment No. 1.

v) Other

City of Vaughan Engineering, Fire and Hydro Departments, the Region of York Planning Department, Ontario Hydro Services Company, the Toronto Region and Conservation Authority, and the York Catholic and Public District School Boards have each advised that they no objections to the application.

Conclusion

The proposed draft plan of condominium is consistent with the Zoning By-law and the approved site plan incorporated as Schedule "A" in the site plan agreement. Staff has no objection to the proposed draft plan of condominium subject to the conditions on Attachment 1 and therefore, recommends approval of the application. Should Council concur, Condominium Plan 19CDM-01VO5 (Villa Giardino (Maple) Homes Ltd.) can be draft approved with the adoption of the "Recommendation" of this report.

Attachments

1. Conditions of Draft Approval
2. Location Map
3. Draft Plan of Condominium 19CDM-01VO5

Report prepared by:

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Respectfully submitted,

MICHAEL DeANGELIS
Commissioner of Planning

JOANNE R. ARBOUR
Director of Community Planning

/LG

ATTACHMENT NO. 1

CONDITIONS OF DRAFT APPROVAL

THE CONDITIONS OF THE COUNCIL OF THE CITY OF VAUGHAN THAT SHALL BE SATISFIED PRIOR TO THE RELEASE FOR REGISTRATION OF PLAN OF CONDOMINIUM (FILES: 19CDM-01V05 - VILLA-GIARDINO (MAPLE) HOMES LTD.), CITY OF VAUGHAN, ARE AS FOLLOWS:

1. Approval shall relate to the draft plan of condominium prepared by Vladimir Krcmar Ltd., dated August 23, 2001.
2. Prior to the execution of the condominium agreement:
 - i) the Owner shall submit a pre-registered plan of condominium to the Vaughan Planning Department; and,
 - ii) the site plan agreement shall be registered on title.
3. The Owner shall enter into a condominium agreement with the City of Vaughan, and shall agree to satisfy any conditions with respect to such matters as landscaping and site development, as well as any matters the City may consider necessary.
4. Prior to the registration of the condominium agreement, the Owner shall satisfy all conditions of the site plan application for the development.
5. The following provisions shall be included in the condominium agreement:
 - i) the Condominium Corporation shall regularly clean and maintain all driveway catch basins and walkways;
 - a. the Condominium Corporation will comply with all Agreements required of the Condominium Corporation as identified in the Site Plan Agreement registered on title for the subject lands;
 - b. the Condominium Corporation shall supply, install and maintain the mail equipment to the satisfaction of Canada Post; and,
 - c. a clause shall be included in the Condominium Agreement that the following units shall be used only for the intended purpose:
 - Units 1 to 51 inclusive for parking units
 - Unit 52 for an exercise room
 - Unit 53 for a guest suite
 - Unit 54 for a Superintendent's Suite
 - Unit 55 for a hair salon, or a commercial use permitted by the zoning by-law
 - Unit 56 for a communications unit
 - Units 57 and 58 for storage units
6. The condominium agreement shall be registered on title against the lands to which it applies (Phase 3 - Building "A"), at the cost of the Owner.
7. Prior to final approval, the Owner shall submit an "as built" survey to the satisfaction of the Vaughan Building Standards Department.

8. Prior to final approval, the Owner shall confirm to the Vaughan Clerk's Department that all required easements and right-of-ways for utility, drainage and construction purposes have been granted to the appropriate authorities.
9. Prior to registration of the condominium plan the Owner shall confirm to the Vaughan Community Planning Department and the Vaughan Clerks Department that they have paid all taxes levied, all additional municipal levies, if applicable, development charges and all financial requirements of this development as may be required by the Vaughan Finance Department. The Owner also certifies acknowledgment of responsibility for the payment of all taxes levied to date, both interim and final, and all taxes levied upon the land after execution of this agreement, if required, until each unit covered under this condominium agreement is separately assessed. Prior to final approval, the Owner shall confirm to the Vaughan Clerk's Department that all outstanding taxes, development charges and levies, as may be required by the Vaughan Finance Department have been paid.
10. Prior to final approval, all outstanding planning application fees shall have been paid.
11. The Owner shall satisfy all requirements of Vaughan Hydro prior to the registration of the condominium agreement.
12. The Owner shall satisfy all requirements of the Toronto and Region Conservation Authority prior to the registration of the condominium agreement.
13. The Owner shall satisfy all requirements of the Vaughan Fire Department prior to the registration of the condominium agreement.
14. The Owner shall pay by way of certified cheque, cash-in-lieu of the dedication of parkland equivalent to 5% of the value of the subject lands, prior to the issuance of a building permit, in accordance with the Planning Act and the City's cash-in-lieu Policy. The Owner shall submit an appraisal of the subject lands, in accordance with Section 42 of the Planning Act, prepared by an accredited appraiser for approval by the Vaughan Legal Department, Real Estate Division, and the approved appraisal shall form the basis of the cash-in-lieu payment.
15. The Applicant shall satisfy the following requirements of CN Rail:
 - a) The Applicant shall enter into a condominium agreement with the City of Vaughan to implement the conditions listed below. The condominium agreement shall require that it be registered on title and will not be cleared from title, to remain on title in perpetuity.
 - b) The Applicant shall agree in the condominium agreement that prior to the registration of any phase of the plan, the applicant shall submit to the City and to CN written confirmation prepared by a professional engineer (who is registered in Ontario, qualified in and specializing in acoustical engineering - the "Acoustical Engineer") that the final plans for the Acoustical Barriers and Berms to be constructed pursuant to Conditions 10 and 11 are in compliance with the requirements of paragraphs m and n taking into account the proposed grade elevations as shown on the detailed grading plans for such phase. This condition will be satisfied by the Applicant entering into a separate Agreement with CN and the City to construct and maintain the berm.
 - c) The Applicant shall agree in the condominium agreement that prior to the issuance of a building permit in respect of any residential building or units proposed to be constructed on lands, written confirmation by an Acoustical Engineer shall be submitted by the applicant to the City and to CN, that the builder's plans for such building shall incorporate mandatory air conditioning as the primary means of ventilation for all units and sealed inoperable windows only in all bedroom windows on the building facades, and such other measures as are recommended and required by either the applicant's and City's acoustical engineer.

- d) The Applicant shall agree in the condominium agreement to include in all offers or agreements of purchase and sale or lease, respecting lands proposed for residential uses within the plan the following warning clause (the "Warning Clause"):

"All persons presently having or who may in the future acquire any interest in the lands which are the subject matter of this [Agreement/document] (the "Project Lands") are hereby notified as follows:

- i) That Canadian National Railway Company ("CN") is the owner of certain lands known as its "MacMillan Rail Yard" (the "CN Lands"), portions of which are located within 300 meters of the Project Lands, and that the CN Lands are now and will continue to be used for the present and future railway facilities and operations of CN on a continuous basis (24 hours of each day in each year) including, without limitation the operation and idling of diesel locomotives with the generation of diesel fumes and odors, artificial lighting of the CN Lands which may illuminate the sky, the loading, unloading and switching of rail cars containing bulk and other commodities including hazardous substances and /or goods containing the same, and the operation of various processes for the maintenance of rail equipment;
 - ii) That the use of such present and future railway facilities and operations may result in the discharge, emission, releasing or venting upon or other effect of the Project Lands at any time during the day or night of or by dust, smoke, fumes, odors and other gaseous and/or particulate matter, noise, vibration and other sounds, light, liquids, solids and other emissions of every nature and kind whatsoever (herein collectively called the "Operational Emissions", any or all of which may be annoying, unpleasant, intrusive or otherwise adversely affect the use and enjoyment of the Project Lands or any part thereof notwithstanding the inclusion of features within the development of the Project Lands which are intended to attenuate, lessen or otherwise minimize or eliminate the impact of the Operation Emissions upon the use and enjoyment of the Project Lands;
 - iii) That CN and its customers will not be responsible for any complaints or claims by or on behalf of the owners and occupants of the Project Lands arising from or out of or in any way in connection with the Operational Emissions and any and all effects thereof upon the use and enjoyment of the Project Lands or any part thereof, and whether arising from the presently existing facilities and operations of CN upon the CN Lands or from any and all future renovations, additions, expansions and other changes to such facilities and/future expansions, extensions, increases, enlargements and other changes to such operations which could include the acquisition of additional lands for the purpose of expanding the facilities and operations of the MacMillan Rail Yard.
 - iv) That CN shall not be required to change any of its facilities or operations upon the CN Lands as a result of or in response to any such complaints or claims;
- e) That owners, tenants, employees, guests and all other occupants, invitees and users of the Project Lands or any part thereof may be required by governmental authorities having jurisdiction to evacuate the Project Lands by reason of a hazardous situation upon or an accidental release of hazardous substances from the CN Lands;
- f) That a permanent easement or right and interest in the nature of a permanent easement has been granted to CN over, under, along and upon the whole of the Project Lands and every part thereof for the purposes of permitting the Operational Emissions; and
- g) That each such person shall be required, by written agreement under seal delivered to CN within seven (7) days after registration of such interest:

- i) to acknowledge that he/she is aware of the Warning and Indemnity Clauses provided to him or her by the vendor or lessor in question, and the Easement, Release and Indemnity Agreement dated May 12, 1999, made between Canadian National Railway Company, Rossbro Developments Inc., Villa Giardino (Maple) Homes Limited and Margaret Helen Emily Danyer, which agreement has been registered against title to and runs with the Project Lands;
 - ii) to fully and forever release and discharge CN from any and all actions, causes of action, proceedings, claims and demands of every nature and kind whatsoever which such person has had, now has or may in the future have against CN at law or in equity and directly or indirectly, and from and against any and all liabilities, costs and expenses (including, without limitation, legal costs on a solicitor and his own client basis) of every nature and kind whatsoever which such person now has or may incur in the future, at law or in equity and directly or indirectly, whether arising from or out of or in any way in connection with the Operational Emissions which are in conformity with federal regulations governing same or certain Operational Emissions which are not in conformity with federal regulations governing the same, as more particularly described in the aforementioned Easement, Release & Indemnity Agreement or both, any and all effects thereof upon the use and enjoyment of the Project Lands or any part thereof; and
 - iii) to jointly and severally with all other such persons indemnify and save CN harmless from and against any and all actions, causes of action, proceedings, claims, demands, liabilities, damages, costs and expenses (including, without limitation, legal costs on a solicitor and his own client basis) of every nature and kind whatsoever which may be made against or incurred by CN and arising at law or in equity and directly or indirectly from or out of or in any way in connection with one or more of the Operational Emissions which are in conformity with federal regulations governing same and certain Operational Emissions which are not in conformity with federal regulations governing the same, as more particularly described in the aforementioned Easement, Release & Indemnity Agreement, and any and all effects of both upon the use and enjoyment of the Project Lands or any part thereof.”
- h) The Applicant shall agree in the condominium agreement to include in all offers of agreement of purchase and sale or lease respecting lands within the plan, provisions requiring the purchaser or tenant to: (i) acknowledge in writing that the purchaser or tenant has read the Warning Clause; (ii) release CN in writing and under seal from any and all liability and indemnify CN in writing and under seal from all losses, costs, expenses and damages resulting from the continued operation of the MacMillan Yard; and (iii) request any purchaser to agree to obtain from any subsequent purchaser or transferee the provisions contained in (i), (ii) and (iii) of this acknowledgment and release.
- i) The Applicant shall agree in the condominium agreement that copies of the written acknowledgment and release required in h) above, shall be provided to CN upon request.
- j) The Applicant shall agree in the condominium agreement that the Warning Clause shall also be included in any residential condominium disclosure statement applicable to the applicant's lands or any portion thereof.
- k) The Applicant shall agree in the condominium agreement that a large area plan shall be displayed in the sales pavilion(s), prominently identifying:
- i) that the units and blocks experience or may experience existing or potential noise, lighting and other environmental problems;

- ii) the type and location of fencing and noise attenuation features incorporated into the design of the units, the development and adjacent public lands; and
 - iii) the location and identification of existing and future industrial sites and industries within 1,500 metres of the lands, including the CN MacMillan Rail Yard (identifying the hump and pull back track operations) including the statement that the industrial sites may be used for a range of industrial purposes including outdoor storage, truck parking, aggregate rock crushing and rail activities.
- l) The Applicant shall agree in the condominium agreement that a minimum distance of 155 metres of separation shall be maintained between the nearest residential building and the CN pull back track property boundary.
 - m) The Applicant shall agree in the condominium agreement(s) that prior to any residential building within the Project Lands receiving final inspection and release for occupancy, Acoustical Barriers/Berms shall be constructed in the locations and to those heights shown on the Noise Mitigation Plan attached as Schedule "B".

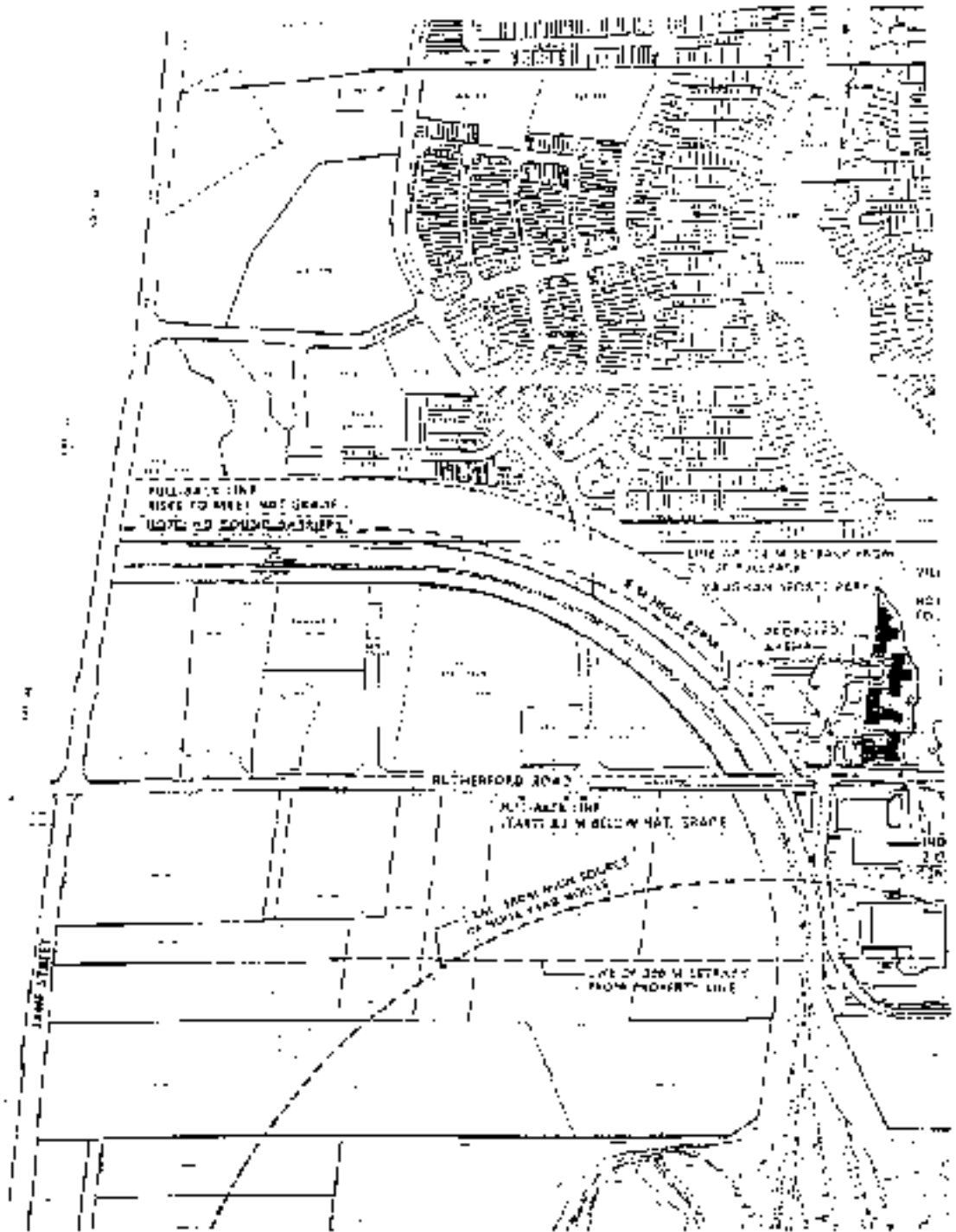
The height of each required Acoustical Barrier as shown on the Noise Mitigation Plan, shall taper downward at each end in accordance with generally accepted structural, grading and municipal engineering practices and in compliance with the details shown on the Noise Mitigation Plan.

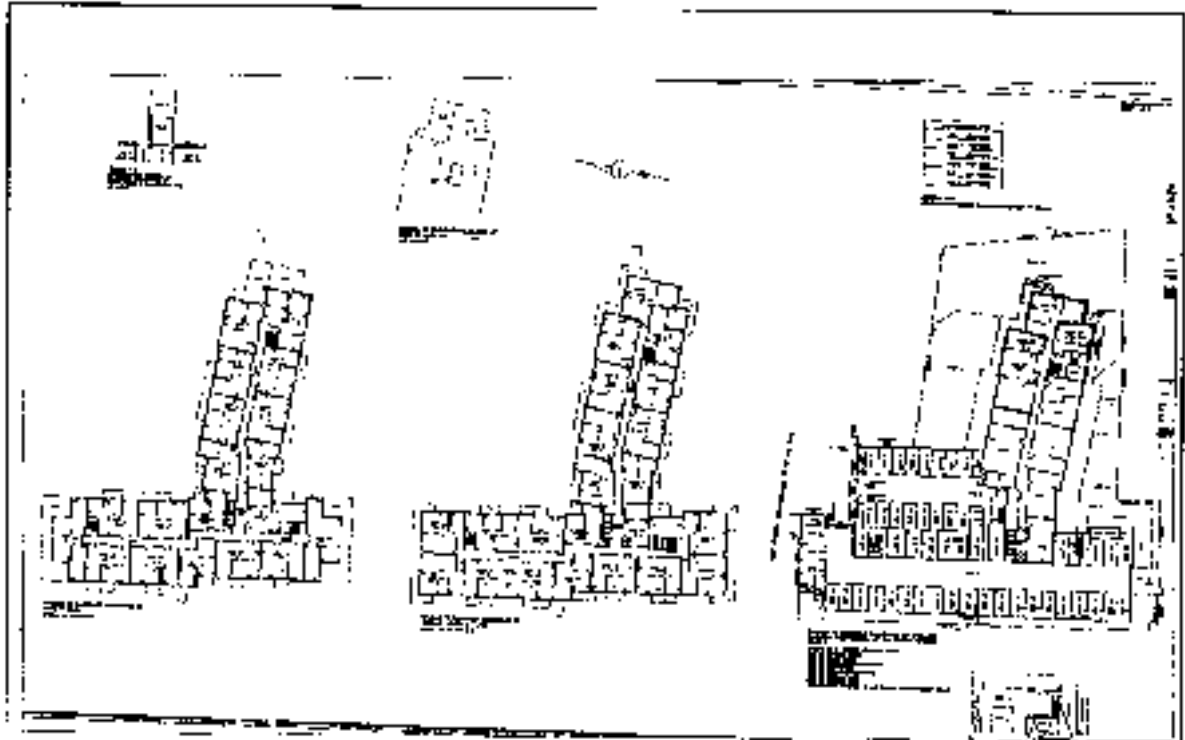
- n) The Applicant shall agree in the condominium agreement that prior to each residential condominium unit on the Lands receiving final inspection and release for occupancy, an Acoustical Engineer shall confirm that the subject unit is in compliance with any conditions or requirements contained in the confirmations with respect to noise, and prior to the first such dwelling receiving final inspection and release for occupancy, an Acoustical Engineer shall confirm that the Acoustical Barriers are constructed in compliance with the final plans confirmed by the Acoustical Engineer. An Ontario Land Surveyor shall confirm the top elevations of the Acoustical Barriers. The applicant shall provide copies of this confirmation of compliance to CN upon request.
- o) The Applicant shall agree in the condominium agreement to include in all the Condominium Declarations created or registered respecting the Project Lands that each owner and/or lessee of a unit with sealed inoperable bedroom windows may not replace the exterior sealed inoperable windows in their unit with windows that may open. Such agreement to maintain shall be secured by way of restrictive covenant between the Condominium Corporation and CN that will run with title to the land and form part of the condominium declaration.
- p) Any mitigation measures required as part of the draft conditions of approval that require the installation and maintenance of noise attenuation features such as berms or noise attenuation walls on property owned by the City of Vaughan shall require an agreement directly between the City of Vaughan and CN Rail securing the City's obligation, to maintain the measures on their lands at their expense and to not alter them.
- q) The Applicant shall agree in the condominium agreement to the inclusion of the following condition: "That prior to signing the final plan by the Commissioner of Planning and Building, or his designate, the Commissioner or the OMB, as the case may be, is to be advised by CN acting reasonably and in a timely fashion that the applicant has executed with the City a Condominium Agreement including these above conditions to CN's satisfaction." 10 days after CN receives an executed copy of the Condominium Agreement, it will respond to a request by the City to clear the above conditions.

Clearances

16. Final approval for registration may be issued in phases provided that:
 - a) phasing is proposed in an orderly progression, and;
 - b) all government agencies agree to registration by phases and provide the required clearances; clearances will be required for each phase proposed for registration by the Owner; furthermore, the required clearances may relate to lands not located within the phase sought to be registered.
17. The City shall advise that Conditions 1 to 15 inclusive, have been satisfied; stating briefly how each condition has been met.

SCHEDULE 18





ATTACHMENT 3
 CONDO PLAN

HILL # _____ REPORT # _____
 LICENSE # _____ PART OF THE COND. # _____

CITY OF VALDIAH
 PLANNING DEPARTMENT

APPLICANT: VILLA DAVENPORT (MAYLE) WINES, INC.
 DATE: 04/08/2007
 SCALE: NOT TO SCALE