CLS # 8984

Recording Requested By:

City of Santa Monica

When Recorded Mail To:

City of Santa Monica
City Planning Division
1685 Main Street, Room 212
Santa Monica, CA 90401
Attention: Senior Land Use Attorney

5-08-278

RECEIVED
South Coast Region
OCT 14 2008
CALIFORNIA
COASTAL COMMISSION

Space Above Line For Recorders Use
No Recording Fee Required
California Government Code Section 27383

RECEIVED
South Coast Region
OCT 14 2008
CALIFORNIA
COASTAL COMMISSION

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF SANTA MONICA

&

RELATED/SANTA MONICA VILLAGE, LLC

FOR

THE VILLAGE AT SANTA MONICA

RECEIVED
South Coast Region
OCT 10 2008
CALIFORNIA
COASTAL COMMISSION

Attachment No. 1
Application Number
5-08-278
Development Agreement
California Coastal Commission

RECITALS 3

Article 1 DEFINITIONS 6
Article 2 THE PROJECT 12
Article 3 DEVELOPMENT OF THE PROJECT 21
Article 4 CONSTRUCTION 25
Article 5 PROJECT FEES, EXACTIONS, MITIGATION MEASURES CONDITIONS AND PUBLIC BENEFITS 26
Article 6 EFFECT OF AGREEMENT ON CITY LAWS AND REGULATIONS 27
Article 7 CITY TECHNICAL PERMITS 30
Article 8 AMENDMENT AND MODIFICATION 31
Article 9 TERM 32
Article 10 REVIEW OF COMPLIANCE 32
Article 11 DEFAULT 33
Article 12 MORTGAGEES 37
Article 13 TRANSFERS AND ASSIGNMENTS 39
Article 14 INDEMNITY TO CITY 39
Article 15 ADDITIONAL AGREEMENTS 40
Article 16 GENERAL PROVISIONS 40

Exhibits

Exhibit "A" Legal Description of Project Land
Exhibit "B" Tentative Tract Maps
Exhibit "C" Conditions of Approval and Environmental Mitigation Measures
Exhibit "D" Mitigation Monitoring Program
Exhibit "E" Construction Permit Fee Schedule
Exhibit "F" Infrastructure Improvements
Exhibit "F-1" Infrastructure Improvement Diagrams
Exhibit "G" Existing Regulations
Exhibit "H" Easements
Exhibit "I" Palisades Garden Walk
Exhibit "J" Assignment and Assumption Agreement
Exhibit "K" Income/Rent Limits for Affordable Dwelling Units on Site B
Exhibit "L" Project Plans

DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**"), dated for reference purposes Oct. 1st, 2008, is entered into by and between Related/Santa Monica Village, LLC, a California limited liability company ("**Developer**"), and the City of Santa Monica, a municipal corporation organized and existing pursuant to the laws of the State of California and the Charter of the City of Santa Monica (the "**City**"), with reference to the following facts (capitalized terms used but not defined in the Recitals shall have the meanings provided in Article 1):

RECITALS

A. In 1993, the City Council (a) amended the Land Use Element of its then-current General Plan to provide that land uses and development intensities in the area bounded by Fourth Street, Pico Boulevard, Ocean Avenue and the Freeway (the "**Civic Center**") were to be determined by policies contained in the Civic Center Specific Plan, and (b) adopted a Civic Center Specific Plan (the "**1993 CCSP**").

B. In April 2000, the Redevelopment Agency of the City of Santa Monica (the "**Redevelopment Agency**") purchased 11.3 acres of land in the Civic Center from The Rand Corporation, a California corporation ("**RAND**"), which includes the land which is the subject of this Agreement and is more particularly described in **Exhibit "A"** attached hereto (the "**Project Land**").

C. In January 2001, the City embarked on a comprehensive update to the 1993 CCSP and, in April 2002, the City Council initiated the update to the 1993 CCSP (**Updated CCSP**"), which included a housing component to be developed on that portion of the Project Land described as "The Village Special Use District."

D. In 2003, the City began preparation of the Environmental Impact Report for the Updated CCSP under the California Environmental Quality Act (California Public Resources Code Sections 21000 *et seq.*, herein referred to as "**CEQA**") and published SCH NO. 2003011074 (the "**Draft EIR**"). The Draft EIR analyzed various potential environmental impacts of the Project and was released for public comment on June 4, 2004. The final version of the EIR (the "**Final EIR**") was issued in October 2004.

E. On April 1, 2004, the Redevelopment Agency issued a Request for Qualifications ("**RFQ**"), to solicit prospective developer-design teams interested in the development of the Project Land. Sixteen responses to the RFQ were received and evaluated by a committee comprised of representatives from the Departments of Planning and Community Development, Finance, Resource Management, Community and Cultural Services, and Environmental and Public Works Management, and the City Manager and City Attorney's offices. The committee ranked three developer-design

teams as the top choices, including the Developer. The three selected teams advanced to the Request for Proposals ("**RFP**") stage of the selection process.

F. On June 28, 2005, the City Council adopted the Updated CCSP (as adopted, the "**2005 CCSP**") and certified the Final EIR (as certified, the "**EIR**"). The 2005 CCSP reserves the Project Land for housing as "an important objective in addressing citywide affordable housing needs, and in transforming the Civic Center from a single-purpose district into a vibrant mixed-use neighborhood with daytime and evening activity."

G. On January 10, 2006, the City Council approved selection of the Developer as the developer for the Village Special Use District component of the 2005 CCSP.

H. Developer has proposed development on the Project Land of a mixed-use project to be known as the "Village at Santa Monica" which, generally, includes the following elements (the "**Project**"), as more particularly shown on the Project Plans attached hereto as **Exhibit "L"** (the "**Project Plans**"), in a manner designed to promote the goals, objectives and policies of the 2005 CCSP and the Redevelopment Plan for the Earthquake Recovery Redevelopment Project adopted by the Redevelopment Agency (the "**Redevelopment Plan**"):

(1) Up to 325 new residential dwelling units, including 160 affordable units and live/work units suitable for artists;

(2) Up to 20,000 square feet of neighborhood and visitor-serving commercial uses, including retail and restaurant uses and up to 3,000 square feet of outdoor seating area for restaurant use; and

(3) Open space as reflected on the Project Plans;

(4) Infrastructure improvements and other public benefits.

I. Pursuant to California Government Code Sections 65864 *et seq.* and Chapter 9.48 of the Santa Monica Municipal Code (collectively, the "**Development Agreement Statutes**"), the City is authorized to enter into binding development agreements with persons or entities having a legal or equitable interest in real property for the development of such real property.

J. At a joint meeting duly held on August 14, 2007, the Redevelopment Agency conceptually approved the design concept plan for the Project, authorized the negotiation of a Disposition and Development Agreement and related documents between the Redevelopment Agency and Developer. The City Council authorized Developer to apply to the City for a Development Agreement and related entitlements and discrete amendments to the 2005 CCSP, and authorized the negotiation of a Development Agreement between the City and Developer for the Project.

K. On December 12 and 21, 2007, respectively, Developer filed the following applications with the City:

(1) An Application for a Development Agreement pursuant to Section 9.48.020 of the Santa Monica Municipal Code pertaining to development of the Project (07DA-008; the "**DA Application**"); and

(2) An application (the "**CCSP Application**") for amendments to the 2005 CCSP (the "**CCSP Amendments**").

L. On December 12, 2007, Developer filed with the City applications for vesting tentative tract maps (the "**Tract Map Applications**") to, among other things, create a subdivision consisting of master lot 1 on Site A and B, an air parcel on Site B, and to merge and resubdivide for condominium and retail purposes on Site C (the "**Tract Maps**"), copies of which are attached as **Exhibit "B"** hereto. The Tract Maps were designated by the City as TM 69828 and TM 69822.

M. Following the filing of the DA Application, the CCSP Application and the Tract Map Application, the City prepared an Addendum to the 2005 CCSP EIR pursuant to CEQA Guidelines §15164, and processed for review amendments to the Land Use and Circulation Element ("LUCE Amendments") and amendments to Part 9.04.08.32 of the Santa Monica Municipal Code for the Civic Center District ("Zoning Amendments").

N. The City's Planning Commission held a duly noticed public hearing on April 16, 2008 with respect to the Project, the CEQA Addendum, the DA Application, the CCSP, LUCE and Zoning Amendments, and the Tract Map Application, and recommended adoption of the Addendum and approval of this Agreement, the CCSP, LUCE and Zoning Amendments and the Tract Map, all based on the requisite findings.

O. On May 13, 2008, the City Council held a duly noticed public hearing relating to the Project. Following completion of the hearing, the City Council took the following steps:

(1) The City Council considered the addendum to the 2005 CCSP EIR pursuant to CEQA Guidelines §15164;

(2) The City Council approved the LUCE, CCSP and Zoning Amendments; adopted Ordinance No. _____ approving this Agreement and authorizing its execution by the City Manager contingent upon and subject to the approval by the Redevelopment Agency of the Disposition and Development Agreement and the execution of the Disposition and Development Agreement by the Executive Director of the Redevelopment Agency and Developer; and approved the Tract Maps. (The 2005 CCSP, as amended by the CCSP Amendments, is referred to herein as the "**CCSP**").

P. The City Council determined that the Project is consistent with the CCSP and will promote certain goals, objectives and policies of the CCSP by, among other things (1) addressing citywide affordable housing needs through the addition of 160 new

affordable rental units; and (2) transforming the Civic Center from a single-purpose district into a vibrant mixed-use neighborhood with daytime and nighttime activity.

Q. The City Council determined that development of the Project through this Agreement is appropriate in order to (1) eliminate uncertainty in planning and secure orderly development by granting vested rights to Developer as permitted under the Development Agreement Statutes, (2) insure the provision of the important public benefits, (3) assure the completion of appropriate and feasible mitigation measures identified in the EIR, all of which are contained in this Agreement, (4) assure installation of necessary improvements, (5) provide for public infrastructure and services appropriate to development of the Project, (6) preserve substantial City discretion in reviewing subsequent development of the Land, and (7) otherwise achieve the goals and purposes for which the Development Agreement Statutes were enacted.

R. The City Council has (1) specifically considered and approved the impacts and benefits of the Project and has concluded that this Agreement is consistent with the public health, safety and welfare needs of the residents of the City and the surrounding region and appropriately promotes the goals, objectives and policies of the General Plan, (2) determined that the City has complied with all procedures required by the Development Agreement Statutes with respect to this Agreement, and (3) duly authorized the City to enter into and perform its obligations under this Agreement.

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions hereinafter set forth, the City and Developer hereby agree as follows:

Article 1 DEFINITIONS

In this Agreement, unless the context otherwise requires:

1.1 "**Affordable Artist Live/Work Unit**" means those Affordable Dwelling Units on the ground floor of the Site B Buildings (as defined below) where residential, studio, gallery, and exhibition space uses are permitted. Artists will be given preference for tenancy for the Affordable Artist Live/Work Units in accordance with the procedures set forth in Section 2.3 herein.

1.2 "**Affordable Dwelling Unit**" means the rental Residential Dwelling Units in the Site B Buildings which are income and rent restricted for 99 years from the date of the certificate of occupancy for Site B in accordance with **Exhibit "K"** hereto.

1.3 "**Agreement**" means this Development Agreement, as amended from time to time in accordance with the provisions hereof and the Development Agreement Statutes.

1.4 "**Applicable Permit Fees**" means all processing and permit fees required by the City in connection with the filing and processing of any Technical Permit Application as of the date when the Technical Permit Application is filed, provided that such fees are uniformly in force and effect throughout the City.

1.5 "**ARB**" means the City's Architectural Review Board, as it may be constituted from time to time, or its successor.

1.6 "**Artist**" means a person who is recognized by critics and peers, and has verifiable training and/or a reputation and credentials and works in one or more of the following areas: 1) a person who works in or is skilled in any of the fine arts, including but not limited to painting, drawing, sculpture, book arts, and print making; 2) a person who creates imaginative works of aesthetic value, including but not limited to literature, poetry, play writing, film, video, digital media works, literature, costume design, photography, architecture, music composition and conceptual art; 3) a person who creates functional art, including but not limited to jewelry, rugs, decorative screens and grates, furniture, pottery, toys and quilts; 4) a performer, including but not limited to singers, musicians, dancers, actors and performance artists. The members of the architectural, engineering, design, or landscaping firms retained for the design and construction of this Project shall not be considered Artists for the purposes of this Agreement.

1.7 "**Assumption Agreement**" means an Assignment and Assumption Agreement in the form attached hereto as **Exhibit "J"**.

1.8 "**Building Height**" means the height measurement for buildings as defined in Section 2.12(b) below.

1.9 "**City** has the meaning given to the term in the Preamble.

1.10 "**CCSP**" means the 2005 CCSP, as defined in Recital F.

1.11 "**CEQA**" has the meaning given to the term in Recital E.

1.12 "**City Council**" means the City Council of the City of Santa Monica, as it may be constituted from time to time or its successor.

1.13 "**City Parties**" means the City, its City Council, boards and commissions, officers, agents, employees, volunteers and other representatives. City Parties does not include the Redevelopment Agency.

1.14 "**Code**" means the Santa Monica Municipal Code as in effect on the Effective Date.

1.15 "**Default**" means the failure by either party to substantially perform any term, covenant or condition in this Agreement which is required on its part to be performed.

1.16 "**Developer**" means Related/Santa Monica Village, LLC, a California limited liability company, and its successors and assigns.

1.17 "**Developer Party**" means any of Developer, its officers, board members, managers, members, agents, employees, volunteers, contractors, subcontractors and other persons acting on Developer's behalf.

1.18 "**Development Agreement Statutes**" has the meaning given to the term in Recital I.

1.19 "**DDA**" or "**Disposition and Development Agreement**" means the Disposition and Development Agreement that is executed by and between the Redevelopment Agency and Developer relating to the ground leasing of the Project Land to Developer, development of the Project Land, and the uses, covenants, and restrictions pertaining to the Affordable Dwelling Units, including the Affordable Artist Live/Work Units. This Development Agreement contains various references to the DDA. In all instances where the DDA is referenced herein, such references are intended to ensure consistency between the DDA and this Development Agreement.

1.20 "**Discretionary Approvals**" are actions which require the exercise of judgment or a discretionary decision, and which contemplate and authorize the imposition of revisions or additional conditions, by any of the City Parties. An application for issuance of a permit or other entitlement which requires any of the City Parties to use fixed standards or objective measurements and merely apply the law to the facts as presented, but no special discretion or judgment, in determining whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval does not involve a Discretionary Approval.

1.21 "**Effective Date**" means the date upon which the City Manager executes this Agreement pursuant to Recital O(2) and the Ordinance approving this Agreement.

1.22 "**EIR**" has the meaning given to the term in Recital F.

1.23 "**EIR Addendum**" means the addendum to the 2005 CCSP EIR prepared pursuant to CEQA Guideline §15164 for this Project.

1.24 "**Estoppel Certificate**" shall have the meaning given that term in Section 16.6 below.

1.25 "**Excusable Delays**" shall have the meaning given that term in Section 16.8 below.

1.26 "**Existing Regulations**" means, collectively, all of the following which are in force and effect as of the Effective Date: (a) the Santa Monica General Plan, including the LUCE Amendments; (b) the CCSP, including the CCSP Amendments; (c) the Code, including the Zoning Ordinance Amendments; (d) the City's Affordable Housing Production Program, and (e) any and all other ordinances, rules, regulations, standards, specifications and official policies of the City governing, regulating or

8

affecting the demolition, grading, design, development, building, construction, occupancy or use of buildings and improvements or any exactions therefor.

1.27 "**Floor Area**" has the meaning given that term in the Zoning Code.

1.28 "**General Plan**" means the General Plan of the City of Santa Monica, as of the Effective Date and all elements thereof.

1.29 "**Ground Leases**" means those three certain Ground Leases by and between the Redevelopment Agency, as Lessor, and Developer, as Lessee, relating to the Project Land. One Ground Lease covers that portion of the Project Land on which the Site A Buildings and underground garage are to be constructed, one Ground Lease covers the air space within which the Site B Buildings are to be constructed, and one Ground Lease covers that portion of the Project Land on which the Site C Buildings are to be constructed.

1.30 "**Hearing Notice**" shall have the meaning given that term by applicable law.

1.31 "**Including**" means including, but not limited to.

1.32 "**LEED Rating System**" means the Green Building Rating System For New Construction & Major Renovations, Version 2.2 dated October 2005 adopted by the U.S. Green Building Council, or a subsequent version adopted by the U.S. Green Building Council if, in the discretion of Developer, Developer determines to proceed under a subsequent version.

1.33 "**Leasehold Estate**" means the leasehold estates in the Project Land created in favor of Developer, as Lessee, under the Ground Leases.

1.34 "**Legal action**" means any action in law or equity.

1.35 "**Live/Work Unit**" means those Residential Dwelling Units on the ground floor of the Site A Buildings and Site C Buildings which will be offered for sale as condominiums and where uses in conformance with Section 2.5(b) are permitted.

1.36 "**Living Street**" has the meaning given that term in Section 2.7(a) below.

1.37 "**Major Modifications**" shall have the meaning given that term in Section 3.2(b) below.

1.38 "**Minor Modifications**" shall have the meaning given that term in Section 3.2(a) below.

1.39 "**Mortgage**" means a mortgage, deed of trust or other security device encumbering the Leasehold Estate, or any portion thereof or any improvement thereon, securing financing with respect to all or a portion of the Property.

1.40 "**Mortgagee**" means the mortgagee or beneficiary under a Mortgage.

1.41 "**Mortgagee's Cure Period**" shall have the meaning given that term in Section 13.2(b) below.

1.42 "**New Technical Requirements**" means revisions to the Technical Codes made after the Effective Date which are necessary to meet new technical requirements related to techniques of building and construction.

1.43 "**Notice of Default**" shall have the meaning given that term in Section 12.1(a) below.

1.44 "**Olympic Drive Extension**" means the extension of Olympic Drive along the north end of the Project between Main Street and Ocean Avenue.

1.45 "**Olympic Plaza**" has the meaning given that term in Section 2.7(b) below.

1.46 "**Palisades Garden Walk**" means the public park to be developed on the site depicted on **Exhibit "I"** to the north of the Project Land across the Olympic Drive Extension.

1.47 "**Periodic Review**" has the meaning given that term in Section 10.1 below.

1.48 "**Planning Commission**" means the Planning Commission of the City of Santa Monica, as it may be constituted from time to time, or its successor.

1.49 "**Planning Director**" means the Director of Planning and Community Development of the City of Santa Monica, or his or her successor or designee.

1.50 "**Project**" has the meaning given that term in Recital H.

1.51 "**Project Land**" has the meaning given that term in Recital B.

1.52 "**Project Plans**" means the plans for the Project attached hereto as **Exhibit "L."**

1.53 "**Property**" means the Developer's Leasehold Estate, all improvements thereon and all easements, rights of way, hereditaments and other real property interests associated therewith.

1.54 "**RAND**" has the meaning given that term in Recital B.

1.55 "**RAND Easement**" has the meaning given that term in Section 2.7(a) below.

1.56 "**Redevelopment Agency**" has the meaning given to that term in Recital B.

1.57 "**Request for Notice**" means a written notice given to the City by a Mortgagee specifying the name and address of such Mortgagee and attaching thereto a true and complete copy of the Mortgage held by such Mortgagee.

1.58 "**Residential Dwelling Units**" means residential dwelling units within the Project, including 160 Affordable Dwelling Units, of which ten (10) shall be Affordable Artist Live/Work Units, and up to 165 market rate condominiums, which may include Live/Work Units.

1.59 "**Site A**" means the portion of Project labeled "Site A" in **Exhibit "L"**.

1.60 "**Site A Buildings**" means the buildings and underground garage constructed on Site A.

1.61 "**Site B**" means the portion of the Project labeled "Site B" in **Exhibit "L"**.

1.62 "**Site B Buildings**" means the buildings constructed on Site B.

1.63 "**Site C**" means the portion of the Project labeled "Site C" in **Exhibit "L"**.

1.64 "**Site C Buildings**" means the buildings and underground garage constructed on Site C.

1.65 "**Subsequent Code Changes**" means, collectively, all of the following which are adopted or approved subsequent to the Effective Date, whether such adoption or approval is by the City Council, any department, division, office, board, commission or other agency of the City, by the people of the City through charter amendment, referendum, initiative or other ballot measure, or by any other method or procedure: (a) any amendments, revisions, additions or deletions to the Existing Regulations, or (b) new codes, ordinances, rules, regulations, standards, specifications and official policies of the City governing or affecting the grading, design, development, construction, occupancy or use of buildings or improvements or any exactions therefor or regulating wages or benefits. "Subsequent Code Changes" includes, without limitation, any amendments, revisions or additions to the Existing Regulations imposing or requiring the payment of any fee, special assessment or tax.

1.66 "**Technical City Permits**" means any ministerial approvals, consents or permits from the City or any office, board, commission, department, division or agency of the City, which are necessary or reasonably desired by Developer for the actual construction of the Project or any portion thereof in accordance with the Project Plans and this Agreement. Technical City Permits include, without limitation (a) building permits, including foundation-only permits, (b) related mechanical, electrical, plumbing

and other technical permits, (c) demolition, excavation, shoring and grading permits, and (d) certificates of occupancy.

1.67 "**Technical Codes**" means the Administrative and Technical Construction Codes of the City (Article VIII of the Code).

1.68 "**Technical Permit Applications**" means any applications required to be filed by Developer for any Technical City Permits.

1.69 "**Term**" shall have the meaning given that term in Section 9.2(a) below.

1.70 "**Tract Maps**" has the meaning given that term in Recital L.

1.71 "**Transferee**" shall have the meaning given that term in Article 13 below.

1.72 "**Vesting Period**" means the period described in Section 3.1(b) below, as it may be extended pursuant to the provisions of this Agreement.

1.73 "**Zoning Code**" means Chapter 9 of the Code as in effect on the Effective Date, a copy of which is attached hereto as part of **Exhibit "G"**.

Article 2 THE PROJECT

2.1 **General Description**. The Project includes all aspects of the proposed development of the Project Land as more particularly described in this Agreement and on the Project Plans. In the event of a conflict or inconsistency between the text of this Agreement and the Project Plans, the Project Plans will prevail.

2.2 **Uses**. The Project primarily consists of the following uses, all of which are hereby approved by the City subject to the other provisions of this Agreement. Developer shall not be obligated to obtain any additional Discretionary Approvals with respect to such uses. In the event of a conflict or inconsistency between the uses allowed by this Agreement and the Zoning Code, this Agreement will prevail.

(a) Up to 325 Residential Dwelling Units which shall include 160 Affordable Dwelling Units to be located in the Site B Buildings, of which ten (10) shall be ground floor Affordable Artist Live/Work Units. The Affordable Dwelling Units shall be income and rent restricted in accordance with **Exhibit "M"** hereto.

(b) Up to 165 market-rate condominium units in the Site A Buildings and the Site C Buildings, which may include Live/Work Units;

(c) Up to 20,000 square feet of Floor Area for neighborhood and visitor-serving retail space and restaurants, and up to an additional 3,000 square feet of outdoor dining area for restaurant use.

(d) Parking design, number of spaces and operation as reflected in the Project Plans as required by Section 2.3(g)(5)(A); and

(e) The Living Street and Olympic Plaza as described in the Project Plans and Sections 2.3(e) and 2.7.

2.3 **Public Benefits**. The Project shall provide the following benefits to the public, all of which are referred to herein as the "**Public Benefits**":

(a) **Affordable Dwelling Units**. By providing 160 Affordable Dwelling Units in the Site B Buildings, Developer is providing substantially more affordable and multiple bedroom units than would currently be required under the Affordable Housing Production Program for apartments.

(b) **LEED-Certified Buildings**. All buildings constructed on the Project Land shall be required to receive a minimum rating of "Silver" under the LEED Rating System.

(c) **Affordable Artist Live/Work Units**. Ten (10) of the Affordable Dwelling Units shall be Affordable Artist Live/Work Units with such Units to be located on the ground floor of the Site B Buildings in order to enhance activity along the Living Street and address the need for affordable housing for artists. Artists shall be given preference for tenancy for the Affordable Artist Live/Work Units within the Project as provided in the DDA in the following order: first to Artists who live or work in the City, second to Artists, and third to persons who live or work in the City.

(d) **Infrastructure Improvements**. As a part of the Project, Developer is required to complete the Olympic Drive Extension, including signalization at the intersections of Olympic Drive with Main Street and with Ocean Avenue, with new sidewalks and landscaping as reflected on the Project Plans. These improvements shall improve public access to the Civic Center Palisades Garden Walk and beachfront and exceed those that would be necessary to mitigate Project traffic, utility and access impacts. These improvements are enumerated in **Exhibit "F"** and described in detail in **Exhibit "F-1"**, attached.

(e) **Open Space**. The Living Street, Olympic Plaza, other pedestrian linkages through the Project and new sidewalks will improve pedestrian access between Ocean Avenue and Main Street and, together with Olympic Plaza, will enhance the pedestrian experience in that part of the Civic Center south of Olympic Drive for the benefit of the public, including local residents, individuals employed in the area and visitors.

(f) **Child Care Fee**. As part of the Project, in addition to a fee of approximately $92,000 required by the City's Child Care Linkage Fee Program for capital facilities, Developer is required to contribute a one-time payment of $500,000 toward design, construction, operation and/or maintenance of a Civic Center Child Care facility before a certificate of occupancy may be issued for any Project structure.

(g) **Sustainable Transportation Measures**. To ensure that the project supports the goals of promoting walking and minimizing vehicle trips the following conditions shall be met:

(1) Transportation Demand Management Program. The failure to achieve the performance targets of this subsection shall not constitute a Default within the meaning of this Agreement. For the requirements of this subsection that exist after completion of construction, compliance shall be evaluated separately for Site A, B and C, and may be satisfied site by site or cumulatively.

(A) *Performance targets and monitoring.* Developer shall seek to ensure that automobile use patterns meet the following performance goals:

(i) For the commercial portions of the project, the number of employees who report to work between 7 am and 10:00 am weekdays shall be twice the number of cars driven to work by those employees, resulting in an average employee vehicle ridership (AVR) of 2 people per car.

(ii) The actual number of peak period auto trips to and from the entire Project, including trips made by people who park on the street within two blocks of the project, shall be less than 65% of the number of trips calculated before discount for location identified in the CCSP EIR Addendum Traffic Analysis. For purposes of performance monitoring, any auto trips to or from parking spaces in the Project that are leased or purchased by the City shall be excluded from the performance target calculation.

The City shall contract with a third party independent consultant to monitor compliance with these targets every two years, and to prepare a report on compliance for the City's Transportation Management Division. In the event that the targets are not reached, the Planning Director, after consultation with Developer, may make Minor Modifications to the transportation demand management conditions to more effectively achieve, through reasonable and feasible measures that will not substantially increase the cost of mitigation, the performance targets herein. To cover the costs of preparing the biannual monitoring reports, Developer shall pay the City a lump sum of $200,000.00 prior to the issuance of the first certificate of occupancy for the project, The following TDM measures shall be implemented for the first two year monitoring period.

(B) *Transit Subsidy in lieu of parking.* All commercial tenants who subsidize employee parking shall be required to offer, in lieu of any parking subsidy, a transit subsidy of equal or greater value.

(C) *Carshare service.* Developer shall make a car sharing service available within the project, if such a service is commercially available from a third party provider, with a minimum of two cars: one for Sites A and B and one for Site C. Required parking spaces may be used for carshare vehicles. Developer shall propose a signage system to notify people of the location and availability of the

carshare vehicles. The City Transportation Manager may authorize the posting of signs within the public right of way to guide pedestrian and vehicular traffic to the carshare parking location. Location of carshare vehicles for Sites A and B shall be determined by the Planning Director, in consultation with Developer, at such time as the car share service provider has been selected. The carshare service vehicle parking for Site C shall be located in the above ground parking lot on Site C

(D) *Concierge Service.* Developer shall provide residents of market rate units with a concierge service that will accept deliveries, and complete certain specified errands in sequential grouped trips. The Developer may choose to make this service available to all Project residents, commercial tenants, and employees

(E) *Transportation Information.* Developer shall provide on-site information for residents, visitors and employees about transit services, bicycle facilities, and shall provide for on-site sales of transit fares. Developer shall provide access to ride-matching services for employees and residents, and shall conduct an ongoing promotion process that ensures that residents, employees and visitors are aware of these programs.

(F) *Unbundling and Lease of Parking Spaces for Sites A and C.* Developer may, but shall not be obligated to, offer options for buyers of the market rate condominium units to purchase parking separately from the Site A or Site C Residential Dwelling Units.

(i) The owner(s) of the 165 market rate condominiums shall be permitted to lease parking spaces they own to third parties subject to approval of the Developer, at its sole discretion. If Developer elects to permit such leasing, any owner electing to do so must first offer any such space or spaces to other condominium owners in the project before offering to lease such space or spaces to any third party. If no other condominium owner in the Project wishes to lease any such space or spaces, such owner shall be entitled to offer such space or spaces to the City or any other third party. (ii) In the event the TDM program reduces demand for parking below the number of spaces constructed, and spaces remain available after other condominium owners have had, and not exercised, the option to lease, if the Developer determines to sell or lease unused parking spaces, the City shall have the first right of refusal to lease or buy unused parking spaces from the Developer.

(G) *Unbundling and Lease of Parking Spaces for Site B, Guest and Commercial Spaces.* In the event the TDM program reduces demand for use of parking spaces for commercial and Site B guest parking spaces below the number of spaces constructed for such uses, and if the Developer determines to sell or lease unused parking spaces, the City shall have the right of first refusal to lease or buy unused parking spaces after the end of the 15 year tax credit compliance period.

(H) *Parking Reconfiguration After Occupancy.* Reconfiguration of the parking spaces and operations in order to facilitate unbundling and/or flexibility of use shall be considered a Minor Modification.

(2) Transit Service Enhancement Fund. Developer shall contribute $450,000, to be paid prior to the issuance of the first certificate of occupancy for either the Site A Buildings or Site B Buildings, and $250,000, to be paid prior to the issuance of the certificate of occupancy for the Site C Buildings, to a transit service development fund for the purposes of supporting and improving public transit to the site and providing improved transit to and from local schools.

(3) Neighborhood serving uses: A minimum of fifty-percent of commercial square footage shall be allocated for uses such as neighborhood market, restaurant, dry cleaning, small scale bank and other convenience services, drug store or other uses that, subject to the approval of the Planning Director, provides the residents or employees of the immediate area with access to convenience goods and services and that cater to the daily needs of nearby residents or employees within walking distance of their home or work.

(4) Provisions for bicycle use:

(A) Developer shall provide secure bicycle parking for the public, including residents, employees and visitors. For the purpose of this section, secure bicycle parking shall mean bicycle lockers, an attended cage, or a secure parking area. Initially, the project shall accommodate a minimum of 100 secure bicycle parking spaces cumulatively for all three Sites A, B and C. In the event that demand exceeds 100 spaces, Developer shall be required to expand secure bicycle parking to accommodate this demand if feasible. The Developer may convert or cause to be converted auto parking spaces into bicycle parking spaces, subject to the approval of Planning Director and the California Coastal Commission.

(B) A minimum of one unisex shower and locker facility adjacent to a commercial use shall be provided for employees of commercial uses on site who bicycle or use another active means, powered by human propulsion, of getting to work or who exercise during the work day.

(C) Convenient bicycle parking. The project shall provide a minimum of thirty individual bike racks designed to accommodate two bicycles, or an alternate design approved by the Planning Director, to be installed in locations within the Project and/ or on the sidewalk or parkway adjacent to commercial and retail uses, subject to the approval of the Planning Director.

(5) Vehicle Parking:

(A) The applicant shall provide parking for the market rate condominium units at the Zoning Code standard of 2 spaces for units with one or more bedrooms and 1 space for studio units; for the affordable housing units commensurate with a demand analysis which shows residential demand at 1.23 spaces per affordable housing unit; and one space for 300 square feet of interior commercial area.

(B) The Project shall be subject to a shared parking program whereby commercial and residential guest parking, which require parking at different times of day, shall utilize the same parking spaces.

(h) **Alternative Energy Facilities**. To support the City's alternative energy policies and provide the public benefit of fossil fuel use reduction, Developer shall:

(1) Design building systems that exceed the energy standards of Title 24, in effect on the Effective Date, by at least 15%, with a target of 30%, the final amount to be determined following schematic design.

(2) Maximize kilowatt production by installing a minimum of 200 kW AC of solar photovoltaics to meet the overall project energy requirements provided, however, that the Planning Director may approve a Minor Modification to reduce this requirement in either of the following two circumstances:

(i) by an amount not to exceed 15% to comply with ARB review or

(ii) if it is determined that installation of 200kW is not financially feasible, reduce to no less than 100 kW and create solar readiness on all sites by providing areas of unobstructed roof through collocation of equipment such as standpipes and HVAC, and placing empty conduit to accommodate unbroken runs from each contiguous roof area to the electric service entrance or meter location.

(3) Install sufficient capacity of solar thermal hot water for 50% of the heating requirements for the swimming pool and spa on Site C.

(i) **Public Art**. The project shall include two public art pieces on site, valued at approximately $920,000 with a minimum value of $460,000 for the art work itself. The on site art work shall satisfy the Private Developer Cultural Arts Ordinance requirements for 230,000 square feet of the residential portion of the project (excluding affordable housing). The Developer also shall provide an in-lieu contribution equal to one percent of the average square foot cost (calculated at $200 per square foot) for the remaining market rate residential and commercial square footage of the Project. This calculation shall be determined on the square footage submitted at plan check, and the in lieu fee shall be payable prior to issuance of the first certificate of occupancy for the project. The public art project shall be subject to the review process required by the Private Developer Cultural Arts Ordinance.

2.4 **Residential Dwelling Units**. The Project is approved for an aggregate of up to 165 market-rate condominium Residential Dwelling Units in the Site A Buildings and the Site C Buildings and 160 Affordable Dwelling Units to be located in the Site B Buildings.

2.5 **Live/Work Units**.

(a) The Project must contain ten (10) Affordable Artist Live/Work Units on the ground floor of the Site B Buildings in which retail sales of works of art produced by the Artist resident are also permitted therein. Any Floor Area contained in any of the Affordable Artist Live/Work Units shall be allowed in addition to the 20,000 square feet of commercial Floor Area and 3,000 square feet of outdoor dining area permitted under Sections 2.2(c) and 2.6 herein.

(b) The Project may contain additional condominium Live/Work Units in the Site A Buildings and/or the Site C Buildings.

(i) Occupants of condominium Live/Work Units shall comply with the provisions of Section 9.04.20.04 of the Zoning Code and Chapter 6.04 of the Municipal Code, and with any additional restrictions on use of the Live/Work Units being governed by covenants, conditions and restrictions applicable to the Site A Buildings and the Site C Buildings.

(ii) Nothing in this Agreement shall require that a Residential Dwelling Unit originally designed as a Live/Work Unit be actually used as a place of work. This subsection does not apply to Artist Affordable Live/Work Units on the ground floor of the Site B Buildings, which are subject to Section 2.3(c).

2.6 **Retail and Restaurant**. The Project is permitted to include up to an aggregate of 20,000 square feet of Floor Area on the ground floors of the Site A Buildings and the Site C Buildings for neighborhood-serving and visitor-serving retail, including qualifying neighborhood-serving uses as required in Section 2.3(g)(3) hereinabove. Restaurants are permitted to include outdoor dining up to a maximum of 3,000 square feet in addition to the 20,000 square feet of commercial floor area.

2.7 **Open Space**.

(a) The Project shall include a pedestrian walkway for public use south of the Olympic Drive Extension connecting Main Street with Ocean Avenue in approximately the location designated on the Project Plans as the "Living Street" (the "**Living Street**"). To the extent that any portion of the Living Street is contemplated to be on land owned by RAND, the City shall reasonably cooperate with Developer and the Redevelopment Agency to obtain an appropriate easement over such land from RAND (the "**RAND Easement**") at the Developer's sole cost and expense. The Rand Easement must be obtained before a building permit for the Project or any portion thereof may be issued.

(b) The Project shall also include an open space area for public use on the south side of the Olympic Drive Extension in approximately the location designated on the Project Plans as "Olympic Plaza" ("**Olympic Plaza**").

(c) It is the intent of Developer and the City that the Living Street and Olympic Plaza shall be accessible to the public between the hours of 6:00 a.m. and 11:00 p.m., and during the operating hours of the retail and restaurant uses, with the public having the right to use such areas for walking, strolling, reading and other similar activity with no obligation to buy any goods or services during such hours, provided, however, that:

(1) paving and/or any barriers be designed to allow emergency vehicle access at all times;

(2) Under the Ground Leases, Developer's Leasehold Estate shall include the area encompassed by the Living Street (except for that portion which is subject to the RAND Easement) and Olympic Plaza with members of the public having the ability to occupy and use such areas in a manner consistent with this Agreement, the Ground Leases, and reasonable rules and regulations established from time to time by the Developer that are consistent with the applicable provisions of this Agreement and the Ground Leases, and approved by the Planning Director. Subject to approval by the Planning Director, which approval will not be unreasonably withheld or delayed, between the hours of 11:00 p.m. and 6:00 a.m., Developer may limit public access to Olympic Plaza and the Living Street, in a manner that is consistent with the emergency access requirements of Section 2.9(b), provided, however, that except as authorized by this Section 2.7, no physical or visual barrier shall be used to limit access at any time.

(3) Activities that may be prohibited in the Living Street and Olympic Plaza pursuant to rules and regulations that may be established by Developer as specified in Section 2.7(c)(2), include, without limitation (i) cooking, dispensing or preparing food, (ii) sleeping or staying overnight, (iii) using sound amplifying equipment, and (iv) engaging in any illegal, dangerous or other activity inconsistent with the other uses in the Project or with the use of such areas by other members of the public for the permitted purposes, such as excessive noise, boisterous activity, and being intoxicated. Should any persons engaging in such activities refuse to leave the Project, they may be deemed by Developer to be trespassing. Subject to Section 2.7(c)(2), Developer may prohibit or regulate skateboarding, rollerblading or bicycling within portions of the Living Street and Olympic Plaza. Developer shall be entitled to establish and post rules and regulations for use of the Living Street and Olympic Plaza consistent with the foregoing.

(d) Site B shall also include open space which is limited to use by residents of the Site B and their guests, including a secure children's play area, all as reflected on the Project Plans.

(e) The City agrees that the open space as set forth in the Project Plans satisfies the City's requirements for both public and private open space. In the event that any inconsistencies exist between the Zoning Code and the open space requirements set forth by this Agreement, the open space requirements established by this Agreement shall prevail.

2.8 **Alcoholic Beverage Permits.**

(a) No alcohol will be sold or otherwise made available in any portion of the Project devoted to neighborhood and visitor-serving commercial uses, including retail and restaurant uses, including bar areas ancillary to restaurant uses, unless one or more Conditional Use Permits have been issued. Upon the application by Developer or the operator or operators of any restaurant or retail store designated as such in the Project Plans, up to a maximum of 17,500 square feet of interior Floor Area and an additional 3,000 square feet of adjacent outdoor dining area, the City agrees to issue Conditional Use Permits for the sale of alcohol therein subject, in all cases, to reasonable terms and conditions. The applications subject to this provision shall include all information typically required by the City for similar operations and shall be processed pursuant to the City's standard procedures for issuing Conditional Use Permits.

(b) Notwithstanding the provisions of Section 2.8(a) above, nothing in this Agreement shall authorize the issuance of a Conditional Use Permit for the sale of alcoholic beverages for a nightclub or other use in the Project not specifically permitted under Section 2.2 above. In the event Developer or any operator or operators should seek a Conditional Use Permit for any such purpose, an application shall be filed under the City's then-current regulations and the City shall approve, deny or condition such application under its standards in effect at that time applicable to similar uses.

2.9 **Access.**

(a) **Vehicular Access.** Vehicular access to the Project shall be through First Court Alley, North Alley and South Alley, as reflected on the Project Plans.

(b) **Emergency Access.** Access for Fire Department purposes shall be provided on Living Street entering from Main Street to the east of the Project and on Olympic Plaza entering from Olympic Drive to the north of the Project. Developer shall be permitted to keep removable barriers, as approved by the ARB and the Fire Department, in those locations on a day to day basis for the enjoyment of the pedestrians and to keep non-emergency vehicles out; provided, however, that such barriers do not unduly impede or restrict emergency access.

2.10 **Parking.** Parking shall be provided in compliance with Section 2.3(g)(5)(A), and as modified pursuant to Minor Modifications to implement revised Transportation Demand Measures that are approved pursuant to Section 3.2(a), if any.

2.11 **Infrastructure Improvements.** Developer shall undertake and construct the infrastructure improvements described in **Exhibit "F-1"**, including but not limited to those relating to the Olympic Drive extension, traffic signal installations, utilities, North Alley, First Court Alley, Main Street and Ocean Avenue.

2.12 **Design.**

(a) **Setbacks**. Developer shall maintain the setbacks for the Project as set forth on the Project Plans. In the event that any inconsistencies exist between the Zoning Code and the setbacks required by this Agreement, the setbacks established by this Agreement shall prevail.

(b) **Building Height**. The height of the buildings on Site A and B will be measured from the existing elevation on Ocean Avenue sidewalk at 54.9 feet. The height of the building on Site C will be measured from the existing elevation on the Ocean Avenue sidewalk, which shall be 50 feet.

(c) **Stepbacks**. Developer shall maintain the stepbacks for the Project as set forth on the Project Plans as required in the CCSP Amendments. In the event that any inconsistencies exist between the Zoning Code and the stepbacks required by this Agreement, the stepbacks established by this Agreement shall prevail.

(d) **Permitted Projections**. Subject to ARB review and approval, (i) parapets on buildings may exceed the Zoning Code standard of 42 inches up to a maximum of 60 inches, and (ii) solar photovoltaic equipment may project above the maximum height provisions of Section 2.12(b) up to eight (8) feet to enable the Project to comply with the provisions of Section 2.3(h)..

2.13 **Infrastructure Financing**. The parties hereto shall cooperate in considering, and if necessary to finance development of the Project, establishing a financing district in accordance with the Mello-Roos Community Financing Act of 1982, or equivalent financing provisions authorized by law, for financing the Developer's obligations to construct public infrastructure improvements in conjunction with the Project.

2.14 **Site B Buildings Inspection Fee**. The City shall waive or reduce the building inspection fees for the Site B buildings in an amount not less than $326,000.

Article 3 DEVELOPMENT OF THE PROJECT

3.1 Vested Rights.

(a) **Approval of Project Plans**. The City hereby approves the Project Plans. The City shall maintain a complete copy of the Project Plans, stamped "Approved" by the City, in the Office of the City Clerk, and Developer shall maintain a complete copy of the Project Plans, stamped "Approved" by the City, in its offices or at the Project site. The Project Plans to be maintained by the City and Developer shall be a half-size set. Further detailed plans for the construction of the Project, including, without limitation, structural plans and working drawings, shall be developed by Developer subsequent to the Effective Date based upon the Project Plans.

(b) **Right to Develop**. Subject to the condition precedent that Developer record the Final Tract Maps and obtain a Leasehold Estate in the Project

Land in accordance with the Ground Leases, Developer shall have the vested right to develop and construct the Project in accordance with this Agreement, the Project Plans, any Minor Modifications thereto which are approved in accordance with Section 3.2(a) below, and any Major Modifications which are approved pursuant to Section 3.2 (b) below; provided, however, that the Right to Develop provided by this Agreement shall automatically terminate if (i) the Ground Leases have been terminated and/or (ii) Developer has not obtained a building permit by the date which is five years after the Effective Date (the "**Vesting Period**"). The Vesting Period may be extended by the Planning Director, in his or her sole discretion, in an amount of time not to exceed one year, for a total maximum Vesting Period of 6 years for Site A and Site B, and 2.5 years, for a total maximum Vesting Period of 7.5 years for Site C.

Except as expressly set forth in this Agreement, the City shall have no further discretion over the elements of the Project which have been delineated in the Project Plans or described in this Agreement and to the extent of any inconsistencies between this Agreement and the Existing Regulations (except for the General Plan and the CCSP), this Agreement shall control. A change to the Existing Regulations after the Effective Date shall not constitute a basis for revoking any approval given or deemed to be given pursuant to this Agreement.

3.2 **Modifications**.

(a) **Minor Modifications to Project**. Developer may make minor changes to the Project or Project Plans without amending this Agreement upon approval of the Planning Director, provided that he or she makes the specific findings that the proposed changes: (1) do not result in significant and adverse changes to any portion of the Project; (2) are consistent with the provisions, purposes and goals of this Agreement; and (3) are not detrimental to the public health, safety, convenience or general welfare ("**Minor Modifications**"). Minor modifications shall include, but not be limited to:

- Revision of Transportation Demand Management measures as provided in Section 2.3(g) above;

- Parking modifications required to comply with the permit parking requirements of the California Coastal Commission, if such requirements do not exceed the number of parking spaces required to satisfy the City's Zoning Ordinance requirements for residential parking and to provide one space for 300 square feet of interior commercial area.

- Changes to the project energy requirements in Section 2.3(h)(2) if necessary to comply with ARB review, or if the Planning Director determines after consultation with the EPWM Director that modifications to the alternative energy requirements are reasonably necessary to maintain the feasibility of the Project.

- Reduction of individual bike racks required by Section 2.3(g)(4)(C) to a minimum of 15 bike racks if necessary to comply with ARB review.

- Reduction in the amount of square footage for Sites A and B occupied by the Living Street and Olympic Plaza, all as reflected on the Project Plans, by an aggregate amount not exceeding 925 square feet.

Field changes caused by site conditions and made pursuant to the City's standard construction revisions procedure are specifically exempted and do not require any City approvals or amendment of this Agreement. Notwithstanding Section 6.2, the Planning Director, after consultation with the EPWM Director, may exempt Developer from subsequent changes in the City's Green Building requirements if he or she determines that subsequent requirements are impractical or would render the Project infeasible.

(b) **Major Modifications**. Any of the following types of modifications to the Project Plans ("**Major Modifications**") shall not constitute a Minor Modification and shall require an amendment of this Agreement:

(1) A reduction in any setback of the Project, as depicted on the Project Plans, if by such reduction the applicable setback would be less than is permitted under the CCSP, as modified by the CCSP Amendments, as in effect on the date such modification is applied for;

(2) Except as provided in Section 3.2(d) below, any increase in the Building Height of the Project above the Building Height permitted pursuant to Section 2.12(b) above, except for increases permitted under the Zoning Code in effect on the date such modification is applied for;

(3) Any change in the uses of the Project, as described in Section 2.3 above, except for permitted uses under the Zoning Code in effect on the date such modification is applied for;

(4) Installation of additional curb cuts or recessed turnouts not depicted in the Project Plans;

(5) Any material change in the location and siting of any building constituting a part of the Project, as depicted on the Project Plans; and

(6) Any material change in the design, massing, and building configurations, as depicted on the Project Plans for Sites A and B, which shall include, among other things, an aggregate reduction of more than 925 square feet in the Living Street and Olympic Plaza or access to public open space.

(c) **Approvals**. The City shall not unreasonably withhold, condition or delay its approval of a request for a Minor Modification. The City may impose fees, exactions, conditions, and mitigation measures in connection with its approval of a Major Modification, subject to Article 6 below provided that all fees, exactions,

conditions and mitigation measures are in accordance with this Agreement and applicable law. Notwithstanding anything to the contrary herein or in the Existing Regulations, if the City approves a Minor Modification or amendment to this Agreement for a Major Modification, as the case may be, Developer shall not be required to obtain any other Discretionary Approvals for such modification.

(d) **Modifications Necessitated by New Technical Requirements**. If the sole means of achieving compliance for the Project with any New Technical Requirements would require an increase in the allowable Building Height established in this Agreement for the Project, then the Planning Director is hereby authorized, subject to completion of all necessary environmental review and findings of consistency with the CCSP, in the case of Building Height, to grant Developer limited relief (up to five (5) feet) from the Building Height otherwise allowable under this Agreement without amending this Agreement. Any such approvals shall be granted only after the Planning Director's receipt of a written request for such relief from Developer. Developer is required to supply the Planning Director with written documentation of the fact that compliance with the New Technical Requirements cannot be achieved by some other method. Any such relief shall only be granted to the extent necessary in the Planning Director's determination for Developer to comply with the New Technical Requirements.

3.3 **No Obligation to Develop**.

(a) Nothing in this Agreement shall be construed to require Developer to proceed with the construction or any other implementation of the Project or any portion thereof, except as may arise pursuant to provisions of the DDA or the Ground Leases;

(b) The decision to proceed or to forbear or delay in proceeding with implementation or construction of the Project or any portion thereof shall be in Developer's sole discretion;

(c) Failure by Developer to proceed with construction or implementation of the Project or any portion thereof shall not give rise to any liability, claim for damages or cause of action against Developer, except as may arise pursuant to provisions of the DDA, the Ground Leases, or a nuisance abatement proceeding under Chapter 8.96 of the Code, or any successor legislation;

(d) Failure by Developer to proceed with construction or implementation of the Project or any portion thereof shall not result in any loss or diminution of development rights, except upon expiration of the Vesting Period; and

(e) If Developer proceeds with the construction or any other implementation of the Project or any portion thereof, Developer must do so consistent with DDA requirement to develop the Project, including but not limited to the manner and order of development of Site A, Site B, and Site C.

3.4 **Damage or Destruction of the Project**. If the Project, or any part thereof, is damaged or destroyed during the Vesting Period, Developer shall continue to be entitled to reconstruct the Project in accordance with this Agreement. If the Project, or any part thereof, is damaged or destroyed after the end of the Vesting Period but to such an extent that reconstruction would not be permitted under the Code, Developer shall be permitted, but not obligated, to reconstruct the Project in a manner consistent with this Agreement and the Project Plans. If the Project, or any part thereof, is damaged or destroyed after the end of the Term, but during the term of the Ground Leases, Developer shall be permitted, but not obligated, to develop up to 365 units on the Project Land provided, however, that except for this unit count, the City shall have complete discretion pursuant to its police power to regulate such development in accordance with the regulations, laws, and ordinances in effect at that time. The preceeding sentence shall survive the Term of this Agreement and shall continue in effect until expiration of the Ground Leases.

Article 4 CONSTRUCTION

4.1 **Construction Mitigation Plan**. During the construction phases of the Project, Developer shall comply with a Construction Mitigation Plan to be prepared by Developer and approved by the City in accordance with the standards of construction set forth in **Exhibit "C"**.

4.2 **Construction Hours**. Developer shall be permitted to perform construction during the hours permitted by the Code as of the Effective Date including, without limitation, the provisions of Section 4.12.110(e) which, under certain circumstances, allow construction activity to take place during other hours upon issuance of a permit to do so by the City.

4.3 **Construction Traffic**. Developer shall prepare and implement, or cause the general contractor for the Project to prepare and implement, a construction traffic mitigation plan which shall be subject to the review and approval of the City.

4.4 **Construction Signage**. The Planning Director may approve additional signage beyond that allowed by the Zoning Code.

4.5 **Completion of Construction**. The time allowed for completion of all work authorized by any building permit shall be determined by applicable provisions of the Code, including, without limitation, those provisions authorizing extensions thereof in Section 8.08.070 of the Code.

Article 5 PROJECT FEES, EXACTIONS, MITIGATION MEASURES CONDITIONS AND PUBLIC BENEFITS

5.1 **Permitted Fees and Exactions**.

(a) Except as expressly set forth in Section 3.2(c) (relating to modifications), and Section 6.2(a) (relating to Subsequent Code Changes) below, the

Project shall be subject to, and the City shall only charge and impose, those fees, exactions, mitigation measures, conditions, and standards of construction set forth in this Agreement, including **Exhibit "C"**, and **Exhibit "E"** attached hereto; the City may not increase or impose additional fees, mitigation measures, conditions, standards or exactions. The mitigation measures shall be implemented in compliance with the Mitigation Monitoring Program attached as **Exhibit "D"** hereto. If any of the mitigation measures or conditions set forth on **Exhibits "C"**, and **"D"**, are satisfied by others, Developer shall be deemed to have satisfied such measures or conditions.

(b) The Project shall comply with the Child Care Linkage Program set forth in Chapter 9.72 of the Zoning Code in the manner set forth in Section 2.3(f) above.

(c) The Project shall comply with the Private Developer's Cultural Arts Requirement set forth in SMMC Sections 9.04.10.20.010, *et seq.* in the manner set forth in Section 2.3(i) above.

(d) The Project shall comply with the Condominium and Cooperative Tax Law in SMMC Section 6.76, the Unit dwelling tax in SMMC Section 6.80, the Transit Service Enhancement Fund required by Section 2.3(g) above, and such other fees identified in attached Exhibits E and G.

5.2 **Conditions on Modifications**. The City may impose reasonable fees, exactions, mitigation measures and conditions in connection with its approval of Minor or Major Modifications, provided that all fees, exactions, mitigations measures and conditions shall otherwise be in accordance with this Agreement and applicable law.

5.3 **Mitigation Measures and Conditions of Approval**. The Developer shall be responsible for implementing the mitigation measures set forth on **Exhibit "C"** hereto, and for adhering to the conditions of approval set forth on **Exhibit "C"** hereto. If Developer proceeds with the construction of the Project, except as otherwise expressly limited therein, the obligations and requirements imposed by the Project description in Section 2, above, as well as the Mitigation Measures and Conditions of Approval attached as Exhibit C, shall survive the Term of this Agreement and shall be binding upon Developer, its successors and assigns, and shall continue in effect until expiration of the Ground Leases or release by the Planning Director.

Article 6 EFFECT OF AGREEMENT ON CITY LAWS AND REGULATIONS

6.1 Development Standards for the Property; Existing Regulations.

(a) Except as provided in this Agreement, development of the buildings and improvements, including without limitation, the development standards for the demolition, grading, design, development, construction, occupancy or use of such buildings and improvements, and any exactions therefor, shall be governed by the Existing Regulations. The City agrees that this Agreement is consistent with the

General Plan and the CCSP as amended, and as more fully described in the Recitals. Any provisions of any of the other Existing Regulations inconsistent with the provisions of this Agreement, to the extent of such inconsistencies and not further, are hereby deemed modified to that extent necessary to effectuate the provisions of this Agreement.

(b) The Project shall be exempt from: (1) all discretionary acts or review by the City or any body or agency thereof, except as provided herein; (2) the application of any subsequent local development, building or permit moratoria, development or building permit rationing systems or other restrictions on development which would adversely affect the rate, timing, or phasing of construction of the Project, and (3) Subsequent Code Changes which are inconsistent with the terms of this Agreement.

6.2 **Permitted Subsequent Code Changes**.

(a) This Agreement shall not prevent the City from applying the following Subsequent Code Changes to the development of the Project:

(1) Processing fees and charges imposed by the City to cover the estimated actual costs to City of processing applications for development approvals, or monitoring compliance, and similar development fees and charges, provided that such fees and charges are uniformly imposed by the City at similar stages of project development on all similar applications and for all similar monitoring approvals. Such fees and charges include, but are not limited to: (i) all application, permit, and processing fees incurred for the processing of this Agreement, any administrative approval of a Minor Modification, or any amendment of this Agreement in connection with a Major Modification; (ii) all building plan check and building inspection fees for work on the Project Land in effect at the time an application for a grading permit or building permit is applied for; (iii) the public works plan check fee and public works inspection fee for public improvements constructed and installed by Developer, and (iv) fees for monitoring compliance with this Agreement, any development approvals, and the EIR mitigation monitoring plan.

(2) General or special taxes, including, but not limited to, property taxes, sales taxes, parcel taxes, transient occupancy taxes, business taxes, which may be applied to the Property or to businesses occupying the Property in accordance with law.

(3) Procedural regulations relating to hearing bodies, petitions, applications, notices, documentation of findings, records, manner in which hearings are conducted, reports, recommendations, initiation of appeals, and any other matters of procedure; provided such regulations are uniformly imposed by the City on all matters, do not result in any unreasonable decision-making delays and do not affect the substantive findings established in this Agreement.

(4) Regulations governing construction standards and specifications which are of general application that establish standards for the construction and installation of structures and associated improvements, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code and Fire Code; provided that such construction standards and specifications are applied on a City-wide basis and do not impair the Project approvals granted in this Agreement.

(5) Any City regulations to which Developer has consented in writing.

(6) Collection of such fees or exactions as are imposed and set by governmental entities not controlled by City but which are required to be collected by City.

(7) Regulations which do not impair the rights and approvals granted to Developer hereunder. For the purposes of this Section 6.2(a)(7) regulations which impair Developer's rights or approvals include, but are not limited to, regulations which (i) materially increase the cost of the Project (except as provided in Section 6.2(a)(1) and Section 6.2(a)(2) above), or (ii) which would materially delay development of the Project.

(b) This Agreement shall not be construed to prevent the City from applying new rules, regulations and policies in which circumstances as are specified in California Government Code Section 65866.

(c) In the event that state or federal laws or regulations enacted after this Agreement is executed prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

6.3 **Common Set of Existing Regulations**. Prior to the Effective Date, City and Developer shall identify and assemble the Existing Regulations so that if it becomes necessary in the future to refer to any of the Existing Regulations, there will be a common set of the Existing Regulations available to all parties. These Existing Regulations shall be attached as **Exhibit "G"** hereto.

6.4 **Conflicting Enactments**. Except as provided in Section 6.2 above, any Subsequent Code Change which would conflict in any way with or be more restrictive than the Existing Regulations shall not be applied by City to any part of the Property. Developer may, in its sole discretion, give City written notice of its election to have any Subsequent Code Change applied to such portion of the Property as it may have an interest in, in which case such Subsequent Code Change shall be deemed to be an Existing Regulation insofar as that portion of the Property is concerned.

6.5 **Timing of Development**. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the intent of Developer and the City to cure that deficiency by expressly acknowledging and providing that no Subsequent Code Change that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property or prevail over this Agreement. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed by City on the amount of square footage that can be built each year on the Property.

6.6 **Tract Map**. Prior to issuance of building permits for the Project, Developer shall have recorded a tract and/or parcel map creating a master lot, airspace lots and/or residential and/or commercial condominium lots for buildings, retail, parking and residential uses.

6.7 **ARB Approval**. As the project is approved in schematic design, ARB review shall address: All building exterior facades, colors and materials and associated typical and significant details; Sun-shading devices, details and operation thereof; Pedestrian orientation, experience, path of travel and associated hardscape; Solar energy system location, installation, operation and associated support structures and details; Landscaping; Play area equipment specifications.

The ARB shall have no authority to disapprove or otherwise adversely affect any features of the Project which have been approved by this Agreement, as set forth in the Project Plans (including height, density, setbacks, stepbacks or any other structural design aspect of any buildings constituting a part of the Project), or which would require, directly or indirectly, a change in the photovoltaics beyond that authorized in Section 2.3(h)(2)(i) . Decisions of the ARB shall be appealable to the Planning Commission in accordance with the Existing Regulations.

6.8 **Streetscape Design.** Final streetscape design shall be subject to review and approval of the Planning Director, after consultation with the Community Maintenance Department Director and the Civil Engineering Division, in accordance with applicable streetscape plans.

Article 7 CITY TECHNICAL PERMITS

7.1 **Diligent Action by City**.

(a) Upon satisfaction of the conditions set forth in Section 7.2(a) below, the City shall accept the Technical Permit Applications filed by Developer with the City and shall diligently proceed to process such Technical Permit Applications to completion.

(b) Upon satisfaction of the conditions set forth in Section 7.2(b) below, the City shall diligently issue the Technical City Permits which are the subject of the Technical Permit Applications.

7.2 **Conditions for Diligent Action By the City**.

(a) The obligation of the City to accept and diligently process the Technical Permit Applications which are filed by Developer in accordance with Section 7.1(a) is subject to satisfaction of the following conditions:

(1) Developer shall have completed and filed all Technical Permit Applications which are required under the administrative procedures and policies of the City which are in effect on the date when the Technical Permit Application is filed, provided that such procedures and policies are uniformly in force and effect throughout the City.

(2) Developer shall have paid all Applicable Permit Fees required to be paid hereunder.

(b) The obligation of the City to issue a Technical City Permit for a proposed building under Section 7.1(b) which is the subject of a Technical Permit Application filed by Developer is subject solely to the satisfaction of the following conditions:

(1) Developer shall have complied with all of its obligations under this Agreement which are required to be performed prior to or concurrent with the issuance of the Technical City Permits for the proposed building.

(2) Developer shall have received any permits or approvals from other governmental agencies which are required by law to be issued prior to or concurrent with the issuance of the Technical City Permits for the proposed building.

(3) The Project shall conform to the Project Plans and any conditions imposed under this Agreement. In the event that the Project is not in conformance, Developer shall have the right to seek any relief from such standards under the procedures then available in the City.

(4) The proposed building shall conform to the Technical Codes in effect on the date that the Technical City Permit is issued.

7.3 **Duration of Technical City Permits**. The duration of Technical City Permits issued by the City in accordance with Section 7.1(b) and any extensions of such Technical City Permits, shall be established in accordance with the Technical Codes in effect at the time that the Technical City Permits are issued; provided, however, that Developer shall have at least six (6) months to begin site work on the Project following issuance of a building permit subject to extension for an additional six (6) months upon the showing of good cause. The lapse or expiration of a Technical City

Permit shall not preclude or impair Developer from subsequently filing another such Technical Permit Application during the Vesting Period of this Agreement which shall be processed by the City in accordance with the provisions of this Article 7. Notwithstanding the foregoing, any grading, site clearance or similar permit issued in connection with the Project shall not expire during the Term of this Agreement.

Article 8 AMENDMENT AND MODIFICATION

8.1 **Amendment and Modification of Development Agreement**. Subject to the notice and hearing requirements of the applicable Development Agreement Statutes, this Agreement may be modified or amended from time to time only with the written consent of Developer and the City or their successors and assigns in accordance with the provisions of the Code and Section 65868 of the California Government Code.

Article 9 TERM

9.1 **Effective Date**. This Agreement shall be dated, and the obligations of the parties hereunder shall be effective as of the Effective Date.

9.2 **Term**.

(a) The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall continue for twenty (20) years unless otherwise terminated pursuant to either Section 3.1(b) above or Section 11.4 below.

(b) Upon termination of this Agreement, the parties hereto shall execute an appropriate certificate of termination in recordable form which shall be recorded in the Official Records of the County of Los Angeles, State of California.

Article 10 REVIEW OF COMPLIANCE

10.1 **City Review**. On or before each anniversary of the Effective Date of this Agreement, the Developer shall provide the Planning and Community Development Department with a compliance report demonstrating compliance with the terms and conditions of the Development Agreement. The City shall review this Agreement once each year in accordance with this Article 10 in order to determine whether or not Developer is out of compliance with any specific term or provision of this Agreement (a "**Periodic Review**").

(a) **Evidence of Compliance**. The City shall rely on Developer's periodic construction status reports as required by Section [305] of the DDA to verify that Developer has been in compliance with this Agreement during the preceding twelve (12) month period. For purposes of this Agreement, the phrase "compliance" shall mean the following: (1) conformance by Developer with the applicable requirements of the Existing Regulations, except as otherwise modified by this Agreement; (2) conformance by Developer with the terms and conditions of this

Agreement; and (3) the existence of any specified Excusable Delays which prevented or delayed the timely performance by Developer of any of its obligations under this Agreement.

(b) **Information to be Provided to Developer**. The City shall deliver to Developer a copy of all staff reports prepared in connection with a Periodic Review, written comments from the public and, to the extent practical, all related exhibits concerning such Periodic Review concurrently with the delivery of a Notice of Default, defined below.

(c) **Notice of Default; Cure Rights**. If the City reasonably concludes on the basis of substantial evidence that Developer has not demonstrated that it is in good faith compliance with this Agreement, then the City may issue and deliver to Developer a written "Notice of Default" pursuant to Section 11.1(a) below, and Developer shall have the opportunity to cure such default pursuant to Section 11.1(b) or (c) below.

(d) **Failure of Periodic Review**. The City's failure to review at least annually compliance by Developer with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a breach by any other Party of this Agreement.

(e) **City Cost Recovery**. Following completion of each Periodic Review, Developer shall reimburse the City for its actual and reasonable costs incurred in connection with such review up to $2,500 for any one Periodic Review.

10.2 **Termination of Development Agreement**. If Developer fails to timely cure any item(s) of non-compliance set forth in a Notice of Default, then the City shall have the right but not the obligation to initiate proceedings for the purpose of terminating this Agreement pursuant to Section 11.4 below.

Article 11 DEFAULT

11.1 Notice and Cure.

(a) **Notice of Default**. In the event of a Default by either party, the non-defaulting party shall have those rights and remedies provided in this Agreement, provided that such non-defaulting party has first sent a written notice of Default, in the manner required by Section 16.1, specifying the precise nature of the alleged Default (including references to pertinent Sections of this Agreement and the Existing Regulations or Subsequent Code Changes alleged to have been breached), and the manner in which the alleged Default may satisfactorily be cured (a "**Notice of Default**"). In the event of a Default by Developer, the Notice of Default shall also be provided to any Mortgagee of Developer which has delivered a Request for Notice to the City in accordance with Section 12.2(a) below.

(b) **Cure of Monetary Defaults**. In the case of a monetary Default by Developer, Developer shall promptly commence to cure the identified Default and shall complete the cure of such Default within twenty (20) business days after receipt by Developer of the Notice of Default or provide evidence of Excusable Delay as defined in Section 16.8 below.

(c) **Cure of Non-Monetary Default**. In the case of a non-monetary Default by either party, the alleged defaulting party shall promptly commence to cure the identified Default and shall complete the cure within thirty (30) days after receipt of the Notice of Default or provide evidence of Excusable Delay. The thirty (30) day cure period for a non-monetary Default shall be extended as is reasonably necessary to allow for the completion of such cure, provided that the alleged defaulting party commences such cure promptly after receiving the Notice of Default and continuously and diligently pursues such cure at all times until such Default is cured.

(d) **Excusable Delay**. Notwithstanding anything to the contrary contained herein, the City's exercise of any of its rights or remedies under this Article 11 shall be subject to the provisions of Section 16.8 below.

11.2 **City Remedies for Monetary Default by Developer**.

(a) In the event of Default by Developer in the performance of any of its monetary obligations under this Agreement which remains uncured (a) twenty (20) business days after receipt by Developer of a written notice of default from the City, and (b) after expiration of Mortgagee's Cure Period under Section 12.2(b) (if a Mortgagee of Developer has delivered a Request for Notice to the City in accordance with Section 12.2(a)), the City shall have available any right or remedy provided in this Agreement, and at law or in equity. All of said remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of said remedies shall not constitute a waiver or election in respect to any other available remedy.

(b) In the event of a monetary default by Developer, the City shall not be required to comply with the procedures set forth in Section 11.4.

11.3 **Remedies for Non-Monetary Default**.

(a) In the event of non-monetary Default by either party hereunder which remains uncured: (1) after expiration of all applicable notice and cure periods, and (2) in the case of a Default by Developer, after the expiration of Mortgagee's Cure Period (if a Mortgagee has delivered a Request for Notice to the City in accordance with Section 12.2(a) below), the non-defaulting party shall have available any right or remedy provided in this Agreement, and at law or in equity except as prohibited by this Agreement. All of said remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of said remedies shall not constitute a waiver or election in respect to any other available remedy.

(b) Due to the size, nature and scope of the Project and due to the fact that it will not be practical or possible to restore the Project Land to its condition as of the date of this Agreement once implementation of this Agreement has begun, Developer may be foreclosed from other choices it may have had for the use of the Project Land or portions of the Project Land. Developer has invested significant time and resources, performed extensive planning and processing of the Project, and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. Consequently, the City and Developer acknowledge that monetary damages and remedies at law generally are inadequate and that specific performance is an appropriate remedy for the enforcement of this Agreement. Therefore, unless otherwise expressly provided herein, the remedy of specific performance shall be available to Developer under this Agreement in the event of a non-monetary Default by the City.

_____ City Initials _____ Developer Initials

(c) The City and Developer hereby stipulate that Developer shall be entitled to obtain relief in the form of a writ of mandate in accordance with Code of Civil Procedure Section 1085 or Section 1094.5, as appropriate, to remedy any non-monetary Default by the City of its obligations and duties under this Agreement. Nothing in this Section 11.3(c), however, is intended to alter the evidentiary standard or the standard of review applicable to any action of, or approval by, the City pursuant to this Agreement or with respect to the Project.

(d) Developer acknowledges that the City would not have entered into this Agreement if the City were to be liable in damages under or with respect to this Agreement or the application thereof. Consequently, and except for the payment of attorneys' fees in accordance with Section 16.11 below and court costs, the City shall not be liable in damages to Developer or to any Transferee, and Developer covenants on behalf of itself and its successors in interest not to sue for or claim any damages:

(1) for any non-monetary Default of, or which arises out of, this Agreement;

(2) for the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto;

(3) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

(e) The City and Developer agree that the provisions of Section 11.3(d) do not apply if the City has unreasonably or maliciously disregarded the terms of this Agreement and further agree that the provisions of Section 11.3.(d) do not limit the liability of the City, if any, for damages which: (1) are not for a non-monetary Default or which do not arise under this Agreement; (2) are not with respect to any right

or interest conveyed or provided hereunder or pursuant hereto; or (3) do not arise out of or which are not connected with any dispute, controversy or issue regarding the application, interpretation, or effect of the provisions of this Agreement.

(f) The City acknowledges that Developer would not have entered into this Agreement if Developer were to be liable in damages in connection with any non-monetary Default hereunder. Consequently, and except for the payment of attorney's fees in accordance with Section 16.11 below and court costs, Developer shall not be liable in damages to the City, and the City covenants not to sue for or claim any damages for:

(1) any non-monetary Default of, or which arises out of, this Agreement; or

(2) arising out of connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement (except in the case of a monetary default).

(g) The City and Developer agree that the provisions of Section 11.3(f) do not limit the liability of Developer, if any, for damages which (1) are not for a non-monetary Default, or which do not arise under this Agreement, (2) are not with respect to any right or interest conveyed or provided hereunder or pursuant hereto, or (3) do not arise out of or which are not connected with any dispute, controversy, or issue regarding the application, interpretation or effect of the provisions of this Agreement. The provisions of this Section 11.3(g) do not limit any liability of Developer for work performed on public property or rights-of-way.

(h) Except as provided herein, the provisions of this Section 11.3 shall not limit any other rights, remedies, or causes of action that either the City or Developer may have at law or equity.

11.4 **Termination of Agreement by City**.

(a) In the event that (1) the City finds and determines pursuant to Section 11.1 above, on the basis of substantial evidence, that Developer has not been in good faith compliance with the terms and conditions of this Agreement, or (2) the City finds and determines that there has been a non-monetary Default by Developer of its obligations under this Agreement and such non-compliance or Default, as applicable has not been cured during the applicable cure period under Section 11.1(b) above and Section 11.1(c) above, the City may commence proceedings to terminate or modify this Agreement pursuant to this Section.

(b) The procedures for termination or modification of this Agreement by the City for the grounds set forth in Section 11.4(a) above are as follows:

(1) The City shall provide a written notice to Developer (and to any Mortgagee of Developer which has delivered a Request for Notice to the City in

accordance with Section 12.2(a) below) of its intention to terminate or modify this Agreement unless Developer (or the Mortgagee) cures or corrects the acts or omissions that constitute the basis of such determinations by the City ("**Hearing Notice**"). The Hearing Notice shall be delivered by the City to Developer in accordance with Section 16.1 below and shall contain the time and place of a public hearing to be held by the City Council on the determination of the City to proceed with termination or modification of this Agreement. The public hearing shall not be held earlier than: (i) thirty-one (31) days after delivery of the Hearing Notice to Developer, or (ii) if a Mortgagee has delivered a Request for Notice in accordance with Section 12.2(a), the day following the expiration of the Mortgagee Cure Period.

(2) If, following the conclusion of the public hearing, the City Council: (i) determines that Developer is in Default of its non-monetary obligations under this Agreement or has not been in good faith compliance with this Agreement pursuant to Section 10.1, as applicable, and (ii) further determines that Developer (or the Mortgagee, if applicable) has not cured the acts or omissions that constitute the basis of the determination under clause (i) above or if those acts or omissions could not be reasonably remedied prior to the public hearing, that Developer (or the Mortgagee) has not in good faith commenced to cure or correct such acts or omissions prior to the public hearing or is not diligently and continuously proceeding therewith to completion, the City Council may terminate or modify this Agreement. The City and Developer mutually acknowledge and agree that the City cannot unilaterally modify the provisions of this Agreement pursuant to this Section 11.4 and that any such modification requires the consent of Developer. In the event that Developer does not consent to a modification submitted by the City pursuant to this Section 11.4, the City Council may elect to terminate this Agreement.

11.5 **Cessation of Rights and Obligations**. If this Agreement is terminated on account of a Default, the rights, duties and obligations of the parties hereunder shall cease as of the date of such termination except as otherwise provided in this Agreement. If the City is the terminating party, then any and all benefits, including money received by the City, shall be retained by the City.

11.6 **Completion of Improvements**. Notwithstanding the provisions of Sections 11.2 through 11.5 above, if prior to termination of this Agreement, Developer has performed substantial work and incurred substantial liabilities in good faith reliance upon a building permit issued by the City, then Developer shall have acquired a vested right to: complete construction of the buildings and improvements in accordance with the terms of the building permit and occupy or use such buildings upon completion for the use(s) permitted for that building as delineated in this Agreement. Any building or improvement completed or occupied pursuant to this Section shall be considered legal non-conforming subject to all City ordinances standards and policies as they then exist governing legal non-conforming buildings and uses unless the building otherwise complies with the property development standards for the district in which it is located and the use is otherwise permitted or conditionally permitted in the district.

Article 12 MORTGAGEES

12.1 **Encumbrances on the Property**. The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from granting a Mortgage. The City acknowledges that the lender(s) providing the financing secured thereby may require certain Agreement interpretations and agrees upon request, from time to time, to meet with Developer and representatives of such lender(s) to negotiate in good faith any such request for interpretation. The City will not unreasonably withhold its consent to any such requested interpretation provided such interpretation is consistent with the intent and purposes of this Agreement. Any Mortgagee shall be entitled to the rights and privileges set forth in this Article 12.

(a) **Mortgage Not Rendered Invalid**. Except as provided in Section 12.1(b) below, neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value.

(b) **Priority of Agreement**. This Agreement shall be superior and senior to the lien of any Mortgage recorded on or after Effective Date. Any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) shall be subject to all of the terms and conditions of this Agreement.

12.2 **Right of Mortgagee to Cure Default**.

(a) A Mortgagee may, at any time, give a Request for Notice to the City. If the Request for Notice shall be given, at the same time the City sends such notice to Developer, the City shall send to such Mortgagee a copy of each Notice of Default or Hearing Notice from the City to Developer which relates to, affects, or potentially may adversely affect, the interest of Developer in the Property or portion thereof which serves as security for the Mortgage. The copy of the Notice of Default or Hearing Notice sent to the Mortgagee pursuant to this Section 12.2(a) shall be addressed to such Mortgagee at its address last furnished to the City. The period within which a Mortgagee may cure a particular Default shall not begin to run until the City has sent to the Mortgagee such copy of a Notice of Default or Hearing Notice.

(b) The Mortgagee, after the copy of such Notice of Default or Hearing Notice has been given, shall thereupon have a period of: (1) ten (10) days in the case of any Default in the payment of money and (2) thirty (30) days in the case of any other Default, beyond the cure period afforded to Developer under this Agreement, for remedying the Default or causing the same to be remedied ("**Mortgagee's Cure Period**"). If Developer shall be in Default hereunder, such Mortgagee shall have the right to cure such Default, or cause the same to be cured prior to the conclusion of the Mortgagee's Cure Period and otherwise as herein provided. The City shall accept performance by any such Mortgagee of any covenant, condition, or agreement on

Developer's part to be performed hereunder with the same force and effect as though performed by Developer.

(c) The period of time given to the Mortgagee to cure any Default by Developer which reasonably requires that said Mortgagee be in possession of the Property to do so, shall be deemed extended to include the period of time reasonably required by said Mortgagee to obtain such possession (by foreclosure, the appointment of a receiver or otherwise) promptly and with due diligence, provided, however, that during such period all other obligations of Developer under this Agreement, including, without limitation, payment of all amounts due, are being duly and promptly performed.

12.3 **Mortgagee Not Obligated Under Agreement**.

(a) No Mortgagee shall have any obligation or duty under this Agreement to perform the obligations of Developer's or the affirmative covenants of Developer's hereunder or to guarantee such performance unless and until such time as a Mortgagee takes possession or becomes the owner of the estate covered by its Mortgage, and then only for obligations arising or accruing during or with respect to the time a Mortgagee is in possession or is the owner under such estate.

(b) Nothing in Section 12.3(a) is intended, nor should be construed or applied, to limit or restrict in any way the City's authority to terminate this Agreement, as against any Mortgagee as well as against Developer if any curable Default hereunder (including, without limitation, any Default in the payment of any amount due) is not completely cured within the time period allowed in this Agreement.

Article 13 TRANSFERS AND ASSIGNMENTS

13.1 **Transfers/Assignments**.

(a) **Not Severable from Ownership Interest in Property**. This Agreement shall not be severable from Developer's interest in the Property and any transfer of the Property or any portion thereof shall automatically operate to transfer the benefits and burdens of this Agreement with respect to the Property or transferred portions, as applicable.

(b) **Transfer Rights**. Developer may, freely sell, transfer, exchange, hypothecate, encumber or otherwise dispose of all or any part of its interest in the Property or any portion thereof, without the consent of the City. Developer shall, however, give written notice to the City, in accordance with Section 16.1, of any transfer hereunder, disclosing in such notice (a) the identity of the transferee of the Property, or such portion, ("**Transferee**") and (b) the address of such Transferee as applicable.

(c) **Multiple Owners.** Developer and the City acknowledge that upon completion of the construction of the Project, it is Developer's intention to transfer the Leasehold Estate as to Site A and the Leasehold Estate as to Site C to separate homeowner's associations in connection with the condominiums being constructed on

35

those Sites and that the Leasehold Estate as to Site B may be retained by Developer or transferred to another party. At such point as construction of Site A and Site B have progressed beyond first floor framing, and the Leasehold Estates of Site A and Site C are held by separate homeowner's associations, the holder of the Leasehold Estate as to any one Site shall not be responsible for any continuing obligations under this Agreement applicable to any other Site and no Default relevant to any Site shall constitute a Default as to any other Site, require curing by any party other than the holder of the Leasehold Estate applicable to that Site or give the City any remedy as to any other Site.

13.2 **Liabilities Upon Transfer**. Upon the delegation of the duties and obligations under this Agreement and the sale, transfer or assignment of Developer's interest in the Property, Developer will be released from its obligations under this Agreement with respect to the Property, arising subsequent to the effective date of such transfer, if (a) Developer has provided to the City prior or subsequent written notice of such transfer and (b) the Transferee has agreed in writing to be subject to all of the provisions hereof applicable to the Property by executing an Assignment and Assumption Agreement in the form of **Exhibit "J"** attached hereto (the "Assumption Agreement"). Provided that Developer complies with the foregoing requirement, upon such transfer of the Developer's interest in the Property, the City agrees to look solely to the transferee for compliance with the provisions of this Agreement. Any such Transferee shall be entitled to the benefits of this Agreement as "Developer" hereunder and shall be subject to the obligations of this Agreement. Failure to deliver a written Assumption Agreement hereunder shall not affect the transfer of the benefits and burdens as provided in Section 13.1, provided, however, that the transferor shall not be released from its obligation hereunder unless and until the executed Assumption Agreement is delivered to the City. Notwithstanding any provision to the contrary in this Agreement, nothing in this Agreement shall be constructed, construed, implied, interpreted, deemed to supersede, or in any way alter, modify, waive, reduce, void, or change the effect, intent, and/or enforceability of any transfer and/or assignment provision in the DDA.

Article 14 INDEMNITY TO CITY

14.1 **Indemnity.** Developer agrees to and shall defend, indemnify and hold harmless the City, its City Council, boards and commissions, officers, agents, employees, volunteers and other representatives (collectively referred to in this Article as "City") from and against any and all loss, liability, damages, cost, expense, claims, demands, suits, attorney's fees and judgments (collectively referred to as "Damages"), including but not limited to claims for damage for personal injury (including death) and claims for property damage arising directly or indirectly from the following: (a) for any act or omission of Developer or those of its officers, board members, agents, employees, volunteers, contractors, subcontractors or other persons acting on its behalf (collectively referred to in this Article as "Developer") which occurs during or relates to this Agreement; (b) for any act or omission related to the operations of Developer, including but not limited to the maintenance and operation of areas on the Property

accessible to the public. Developer's obligation to defend, indemnify and hold harmless applies to all actions and omissions of Developer's as described above caused or alleged to have been caused in connection with the Project or Agreement, except to the extent any Damages are caused by the active negligence or willful misconduct of the City. This Section 14.1 applies to all Damages suffered or alleged to have been suffered regardless of whether or not the City prepared, supplied or approved plans or specifications or both for the Project.

14.2 **City's Right to Defense**. The City shall have the right to approve legal counsel retained by Developer to defend any claim, action or proceeding which Developer is obligated to defend pursuant to Section 14.1, which approval shall not be unreasonably withheld or delayed. In the event that any conflict of interest results during the mutual representation of the City and Developer in defense of any such action, or in the event of the City's reasonable dissatisfaction with counsel retained by Developer, the City shall have the right (a) at Developer's cost and expense, to have the City Attorney undertake and continue with the City's defense, or (b) with Developer's approval, which shall not be unreasonably withheld or delayed, to select separate outside legal counsel to undertake and continue the City's defense..

Article 15 ADDITIONAL AGREEMENTS

15.1 **Other Agreements**. The City acknowledges that certain additional agreements, including but not limited to Sign Agreements, Maintenance Agreements, and Water Agreements, may be necessary to effectuate the intent of this Agreement and facilitate development of the Project. The City shall acknowledge and authorize the preparation, execution and recordation of those additional agreements.

Article 16 GENERAL PROVISIONS

16.1 **Notices**. All notices under this Agreement shall be in writing and shall be deemed delivered when personally received by the addressee, or within three (3) calendar days after deposited in the United States mail by registered or certified mail, postage prepaid, return receipt requested, to the following parties and their counsel at the addresses indicated below, provided, however, if any party to this Agreement delivers a notice or causes a notice to be delivered to any other party to this Agreement, a duplicate of that Notice shall be concurrently delivered to each other party and their respective counsel:

To City:	City of Santa Monica 1685 Main Street, Room 204 Santa Monica, California 90401 Attention: City Manager
With a Copy to:	City of Santa Monica 1685 Main Street, Room 212 Santa Monica, California 90401

Attn: Planning and Community Development Director

To Developer: Related\Santa Monica Village, L.L.C.
c/o The Related Companies of California
18201 Von Karman, Suite 900
Irvine, California 92612
Attn: William A. Witte, President

With a Copy to: Harding Larmore Mullen Jakle Kutcher & Kozal, LLP
1250 Sixth Street, Suite 300
Santa Monica, California 90401
Attention: Christopher M. Harding, Esq.

Notice given in any other manner shall be effective when received by the addressee. The addresses for notices may be changed by notice given in accordance with this provision.

16.2 **Entire Agreement; Conflicts**. This Agreement represents the entire agreement of the parties. The Recitals are incorporated into and form an integral part of this Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in any of the Existing Regulations (other than the General Plan and the CCSP, which the City Council have determined to be consistent with this Agreement), then the provisions of this Agreement shall prevail. Should any of the Conditions of Approval attached hereto as **Exhibit "C"** conflict with any of the Mitigation Measures attached hereto as **Exhibit "C"**, the more stringent or exacting requirement shall control.

16.3 **Binding Effect**. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property during the Term for the benefit thereof and that the burdens and benefits thereof shall bind and inure to the benefit of all successors-in-interest to the parties hereto. Every party who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project during the Term is and shall be conclusively deemed to have consented and agreed to every provision contained herein, to the extent relevant to said right, title or interest, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project.

16.4 **Agreement Not for Benefit of Third Parties**. This Agreement is made and entered into for the sole protection and benefit of Developer and the City and their respective successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

16.5 **No Partnership or Joint Venture**. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the City and Developer or to render either party liable in any manner for the debts or obligations of the other.

16.6 **Estoppel Certificates**. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing (the "**Estoppel Certificate**"): (a) that this Agreement is in full force and effect; (b) that this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; (c) whether or not, to the knowledge of the responding party, the requesting party is in Default or claimed Default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount of any such Default or claimed Default; and (d) whether or not, to the knowledge of the responding party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a Default and, if so, specifying each such event. A party receiving a request hereunder shall execute and return such Certificate within thirty (30) days following the receipt thereof. If the party receiving the request hereunder does not execute and return the certificate in such 30-day period and if circumstances are such that the party requesting the notice requires such notice as a matter of reasonable business necessity, the party requesting the notice may seek a second request which conspicuously states both "FAILURE TO EXECUTE THE REQUESTED ESTOPPEL CERTIFICATE WITHIN FIFTEEN (15) DAYS SHALL BE DEEMED WAIVER PURSUANT TO SECTIONS 16.6 AND 16.13 OF THE DEVELOPMENT AGREEMENT." and which sets forth the business necessity for a timely response to the estoppel request. If the party receiving the request fails to execute the Estoppel Certificate within such 15-day period, it shall be conclusively deemed that the Agreement is in full force and effect and has not been amended or modified orally or in writing, and that there are no uncured defaults under this Agreement or any events which, with passage of time of giving of notice, of both, would constitute a default under the Agreement. The City Manager shall have the right to execute any Estoppel Certificate requested by Developer under this Section 16.6. The City acknowledges that an Estoppel Certificate may be relied upon by any Property Transferee, Mortgagee or other party.

16.7 **Time**. Time is of the essence for each provision of this Agreement of which time is an element.

16.8 **Excusable Delays**.

(a) In addition to any specific provisions of this Agreement, non-performance by Developer or its obligations under this Agreement shall be excused when it has been prevented or delayed by reason of any act, event or condition beyond the reasonable control of Developer (collectively, "**Excusable Delays**") for any of the following reasons:

(1) War, insurrection, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism or similar grounds for excused performances;

(2) Governmental restrictions or moratoria imposed by the City or by other governmental entities or the enactment of conflicting State or Federal laws or regulations;

(3) The imposition of restrictions or moratoria by judicial decisions or by litigation, contesting the validity, or seeking the enforcement or clarification of, this Agreement whether instituted by Developer, the City or any other person or entity, or the filing of a lawsuit by any third party challenging this Agreement or any permit or approval that is necessary for the implementation of the Project, provided that Developer provides the City with substantial evidence that the filing of such litigation actually delays the Project, including by delaying the obtaining of financing;

(4) The institution of a referendum pursuant to California Government Code Section 65867.5 or a similar public action seeking to in any way invalidate, alter, modify or amend the ordinance adopted by the City Council approving and implementing this Agreement;

(5) Inability to secure necessary labor, materials or tools, due to strikes, lockouts, or similar labor disputes;

(6) Failure of the City to timely perform its obligations hereunder; and

(7) Failure of the Redevelopment Agency to timely perform its obligations under the DDA, the Ground Lease or any other agreement between Developer and the Redevelopment Agency.

(b) Under no circumstances (except as provided in Section 16.8(a)(3) above) shall the inability of Developer to secure financing be an Excusable Delay to the obligations of Developer.

(c) In order for an extension of time to be granted for any Excusable Delay identified in this Section 16.8, written notice of the Excusable Delay must be given by Developer within thirty (30) days that Developer becomes aware of the Excusable Delay. The extension of time for an Excusable Delay shall be for the actual period of the delay.

16.9 **Governing Law**. This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of California.

16.10 **Cooperation in Event of Legal Challenge**. In the event of any court action or proceeding challenging the validity of this Agreement, Developer shall indemnify the City as provided in Section 14.1 above. The City shall cooperate with Developer in any such defense as Developer may reasonably request.

16.11 **Attorneys' Fees**. If any party commences any action for the interpretation, enforcement, termination, cancellation or rescission of this Agreement, or for specific performance for the breach hereof, the prevailing party shall be entitled to its reasonable attorneys' fees, litigation expenses and costs. Attorneys' fees under this Section shall include attorneys' fees on any appeal as well as any attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. Such attorneys' fees shall be paid whether or not such action is prosecuted to judgment. In any case where this Agreement provides that the City or Developer is entitled to recover attorneys' fees from the other, the party so entitled to recover an amount equal to the fair market value of services provided by attorneys employed by it as well as any attorneys' fees actually paid by it to third parties. The fair market value of the legal services for public attorneys shall be determined by utilizing the prevailing billing rates of comparable private attorneys.

16.12 **Recordation**. The parties hereto shall cause this Agreement to be recorded in the Official Records of the County of Los Angeles. The cost, if any, of recording this Agreement shall be borne by Developer.

16.13 **No Waiver**. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought and referring expressly to this Section 16.13. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof, except as expressly provided herein. No waiver by either party of any of the covenants or conditions to be performed by the other party shall be construed or deemed a waiver of any succeeding breach or nonperformance of the same or other covenants and conditions hereof of this Agreement.

16.14 **Construction**. The parties agree that each party and its legal counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.

16.15 **Other Governmental Approvals**. Developer may apply for such other permits and approvals as may be required for development of the Project in accordance with this Agreement from other governmental or quasi-governmental agencies having jurisdiction over the Project Land including, without limitation, applying for issuance of a Coastal Development Permit by the California Coastal Commission with respect to this Agreement. The City shall reasonably and expeditiously cooperate with Developer in its endeavors to obtain such permits and approvals. Additionally:

(a) **Further Assurances; Covenant to Sign Documents**. Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Agreement.

(b) **Processing**. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, the City shall, subject to all legal requirements, promptly initiate, diligently process, and complete at the earliest possible time all required steps, and expeditiously act upon any approvals and permits necessary for the development by Developer of the Property in accordance with this Agreement, including, but not limited to, the following:

(1) the processing of applications for and issuing of all Discretionary Approvals requiring the exercise of judgment and deliberation by the City;

(2) the holding of any required public hearings; and

(3) the processing of applications for and issuing of all City Technical Permits pursuant to Article 7 above requiring the determination of conformance with the Existing Regulations.

(c) **No Revocation**. Approval or future approval for the development of the Project or the Property shall not be revoked or subsequently disapproved once issued by the City provided that the development of the Project or the Property is in accordance with such approval. Any disapproval by the City shall state in writing the reasons for such disapproval and the suggested actions to be taken in order for approval to be granted.

(d) **Processing During Third Party Litigation**. In the event of the filing of any third party lawsuit(s) against City or Developer relating to the EIR, this Agreement or other development issues affecting the Project, the City shall not delay or stop the development, processing or construction of the Project, approval of future approvals, or issuance of City Technical Permits, unless the third party obtains a court order preventing the activity. The City shall not stipulate or fail to oppose the issuance of any such order.

(e) **State, Federal or Case Law**. Where any state, federal or case law allows the City to exercise any discretion or take any act with respect to that law, the City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

16.16 **Venue**. Any legal action or proceeding arising out of this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that County, or in the Federal District Court for the Central District of California.

16.17 **Exhibits**. The following exhibits which are part of this Agreement are attached hereto and each of which is incorporated herein by this reference as though set forth in full:

Exhibit "A"	Legal Description of Project Land
Exhibit "B"	Tentative Tract Maps
Exhibit "C"	Conditions of Approval and Environmental Mitigation Measures
Exhibit "D"	Mitigation Monitoring Program
Exhibit "E"	Construction Permit Fee Schedule
Exhibit "F	Infrastructure Improvements
Exhibit F-1"	I Infrastructure Improvement Diagrams
Exhibit "G"	Existing Regulations
Exhibit "H"	Easements Diagrams
Exhibit "I"	Palisades Garden Walk
Exhibit "J"	Assignment and Assumption Agreement
Exhibit "K"	Income/Rent Limits for Affordable Dwelling Units on Site B
Exhibit "L"	Project Plans

"

In the event that any inconsistencies exist between the Exhibits and the text of this Agreement, the text of this Agreement shall prevail.

16.18 **Counterpart Signatures**. The parties may execute this Agreement on separate signature pages which, when attached hereto, shall constitute one complete Agreement.

16.19 **Certificate of Completion**. Upon the City's issuance of temporary certificates of occupancy for the Project, or upon performance of this Agreement or its earlier revocation and termination, City shall provide Developer, upon Developer's request, with a certification evidencing said completion, termination or revocation and the release of Developer from further obligations hereunder. Such certificate shall be signed by the appropriate agents of Developer and City and shall be recorded in the official records of Los Angeles County, California. Such certificate is not a notice of completion as referred to in California Civil Code Section 3093.

16.20 **Operating Memoranda**. The provisions of this Agreement require a close degree of cooperation between the City and Developer. During the Term of this Agreement, clarifications to this Agreement and the Existing Regulations may be appropriate with respect to the details of performance of the City and Developer. If and when, from time to time, during the terms of this Agreement, the City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by the City and Developer, which, after execution, shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by the City and Developer. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement but shall be mere ministerial clarifications, therefore public notices and hearings shall not be required. The City Attorney shall be authorized, upon consultation with, and approval of, Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment hereof which requires compliance with the provisions of Section 8.1 above. The authority to enter into such operating memoranda is hereby delegated to the City Manager and the City Manager is hereby authorized to execute any operating memoranda hereunder without further Council action.

16.21 **Acknowledgments, Agreements and Assurance on the Part of Developer**.

(a) **Developer's Faithful Performance**. The parties acknowledge and agree that Developer's faithful performance in developing the Project on the Property and in constructing and installing certain public improvements pursuant to this Agreement and complying with the Existing Regulations will fulfill substantial public needs. The City acknowledges and agrees that there is good and valuable consideration to the City resulting from Developer's assurances and faithful performance thereof and that same is in balance with the benefits conferred by the City on the Project. The parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable. Developer acknowledges that the consideration is reasonably related to the type and extent of the impacts of their respective projects on the community and the Property, and further acknowledge that the consideration is necessary to mitigate the direct and indirect impacts caused by Developer on the Property.

(b) **Obligations to be Non-Recourse**. As a material element of this Agreement, and as an inducement to Developer to enter into this Agreement, each of the parties understands and agrees that the City's remedies for breach of the obligations of Developer under this Agreement shall be limited as described in Section 11 above.

16.22 **Not a Public Dedication**. Except as otherwise expressly provided herein, nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever.

16.23 **Severability and Termination**. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to any law which becomes effective after the Effective Date, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

[The balance of this page has been intentionally left blank.]

IN WITNESS WHEREOF, this Development Agreement has been entered into as of the Effective Date.

DEVELOPER:

RELATED/SANTA MONICA VILLAGE, LLC,
a California limited liability company

By: The Nichols Company, Inc.,
its Non-Member Manager

By: _____

Name: _____

Title: _____

CITY:

CITY OF SANTA MONICA,
a Municipal Corporation

By: _____
P. Lamont Ewell
City Manager

ATTEST:

By: _____
MARIA M. STEWART
City Clerk

APPROVED AS TO FORM:

By: _____
MARSHA JONES MOUTRIE
City Attorney

ACKNOWLEDGMENT

State of California
County of Orange)

On September 25, 2008 before me, Gail P. Fee, Notary Public
(insert name and title of the officer)

personally appeared William A. Witte,
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.

GAIL P. FEE
Commission # 1710654
Notary Public - California
Orange County
My Comm. Expires Jan 10, 2011

Signature (Seal)

5-08-278

RECEIVED
South Coast Region
OCT 14 2008
CALIFORNIA
COASTAL COMMISSION

RECEIVED
South Coast Region
OCT 10 2008
CALIFORNIA
COASTAL COMMISSION

EXHIBIT "A"

Legal Description of Project Land

(See CDP file # 5-08-278)

EXHIBIT "B"

Tentative Tract Maps

(See CDP File # 5-08-278

EXHIBIT "C"

Conditions of Approval and Environmental Mitigation Measures

Exhibit C

Conditions and Environmental Mitigations

Special Conditions

Design

1. ARB shall pay particular attention to the review of the proposed landscape plans to ensure that the design vision which associated the landscape of the Living Street with Venice and Santa Monica walk streets and the native landscape of the Santa Monica bluffs be implemented.

2. ARB shall review pedestrian orientation and seating options for the Living Street and Olympic plaza to ensure options for social interaction and neighborly atmosphere.

3. ARB shall pay particular attention to the pedestrian orientation and ground floor design of The Living Street façade of Site A so that service access and non-primary entrances do not detract from the pedestrian experience.

4. ARB to evaluate viability of green screen versus decorative metal screen on the north elevation of the west building on Site B.

5. ARB to pay particular attention to the design of the sunshades and sunscreens to ensure maximum solar heat reduction and functionality.

6. The streetscape design for Ocean Avenue shall be subject to ARB review after consultation with City staff including the Community Forester and Public Urban Landscape Manager and CCS staff

7. The ARB shall pay particular attention to parapet height in relation to overall perceived height, allowing for mechanical screening to be up to 60 inches where appropriate.

8. Streetscape and Landscape design shall maximize urban run-off mitigation opportunities and increase permeability.

Operations

9. Future re-evaluation of parking garage operations and or parking garage design shall be possible as a Minor Modification.

10. The Developer shall provide targeted condo sales marketing to Santa Monica Area employees.

Easements

11. Prior to the issuance of a building permit the developer shall acquire the necessary easements from the owners of 1776 Main Street for fire access at the Main Street Entrance to the Living Street, and the necessary easement to widen First Court Alley as noted in Exhibits F and F-1 of the DA shall be recorded.

12. The Developer shall acquire all the necessary easements from the Redevelopment Agency, RAND and Maguire Properties for access and other public use purposes to the alleys north of and south or 1733 Ocean Avenue, 1st Court and the Vicente Terrace.

13. Prior to the issuance of a building permit the developer shall ensure that the Redevelopment Agency reserves an easement from the leasehold estate for purposes of establishing emergency access through the Living Street.

14. The developer shall acquire a subterranean encroachment permit for the 10 foot parking structure encroachment under Olympic Drive prior to the issuance of a building permit.

15. Prior to the issuance of a building permit the applicant shall resolve any conflict between the placement of the driveway to Site C on First Court Alley with the location of the sewer access manhole.

Miscellaneous

16. Prior to the issuance of a building permit the developer shall have recorded a deed restriction for the Affordable Housing component of the project.

17. Prior to the issuance of a building permit the developer shall have recorded a Final Map which included that vacation of a portion of First Court Alley and the identification of the remainder parcel which will become Palisades Garden Walk park.

18. Prior to the issuance of a building permit the applicant shall have an approved maintenance agreement which notes the terms for the developers obligation to maintaining the Alleys north of 1733 Ocean Avenue (termed "North Alley) and the City's obligation to maintain First Court, Olympic Drive, and Vicente Terrace.

Administrative

19. In the event permittee violates or fails to comply with any conditions of approval of this permit, no further permits, licenses, approvals or

certificates of occupancy shall be issued until such violation has been fully remedied.

20. Applicant is advised this project requires Coastal Zone approval of the California Coastal Commission prior to issuance of any building permits by the City of Santa Monica. Applicant is responsible for obtaining any such permits.

Conformance with Approved Plans

21. This approval is for those plans dated May 13, 2007, a copy of which shall be maintained in the files of the City Planning Division. Project development shall be consistent with such plans, except as otherwise specified in this Development Agreement.

22. Minor amendments to the plans shall be subject to approval by the Director of Planning. A Major Modification shall be subject to a Development Agreement Amendment. Construction shall be in conformance with the plans submitted or as modified by the ARB, City Council or Director of Planning.

23. Project plans shall comply with all other provisions of Article IX of the Municipal Code, (Zoning Ordinance) and all other pertinent ordinances and General Plan policies of the City of Santa Monica prior to building permit issuance.

Mitigation Monitoring Program

24. Pursuant to the requirements of Public Resources Code Section 21081.6, the City Planning Division will coordinate a monitoring and reporting program regarding any required changes to the project made in conjunction with project approval and any conditions of approval, including those conditions intended to mitigate or avoid significant effects on the environment. This program shall include, but is not limited to, ensuring that the City Planning Division itself and other City divisions and departments such as the Building and Safety Division, the Department of Environmental and Public Works, the Fire Department, the Police Department, the Planning and Community Development Department and the Finance Department are aware of project requirements which must be satisfied prior to issuance of a Building Permit, Certificate of Occupancy, or other permit, and that other responsible agencies are also informed of conditions relating to their responsibilities. Project owner shall demonstrate compliance with conditions of approval in a written report submitted to the Planning Director and Building Officer prior to issuance of a Building Permit or Certificate of Occupancy, and, as applicable, provide periodic reports regarding compliance with such conditions.

Cultural Resources

25. If any archaeological remains are uncovered during excavation or construction, work in the affected area shall be suspended and a recognized specialist shall be contacted to conduct a survey of the affected area at project's owner's expense. A determination shall then be made by the Director of Planning to determine the significance of the survey findings and appropriate actions and requirements, if any, to address such findings.

Project Operations

26. The operation shall at all times be conducted in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking or other actions.

27. The project shall at all times comply with the provisions of the Noise Ordinance (SMMC Chapter 4.12).

Final Design

28. Plans for final design, landscaping, screening, trash enclosures, and signage shall be subject to review and approval by the Architectural Review Board (ARB).

29. Landscaping plans shall comply with Subchapter 9.04.10.04 (Landscaping Standards) of the Zoning Ordinance including use of water-conserving landscaping materials, landscape maintenance and other standards contained in the Subchapter.

30. Refuse areas, storage areas and mechanical equipment shall be screened in accordance with SMMC Section 9.04.10.02.130, 140, and 150. Refuse areas shall be of a size adequate to meet on-site need, including recycling to satisfaction of EPWM, Solid Waste Management Division. The ARB in its review shall pay particular attention to the screening of such areas and equipment. Any rooftop mechanical equipment shall be minimized in height and area, and shall be located in such a way as to minimize noise and visual impacts to surrounding properties. Unless otherwise approved by the ARB, rooftop mechanical equipment shall be located at least five feet from the edge of the roof. Except for solar hot water heaters, no residential water heaters shall be located on the roof.

31. No gas or electric meters shall be located within the required front or street side yard setback areas. All domestic water service meters larger than 3" in diameter and fire service Double Check Detector Assembly

(DCDA) systems shall be located in private property, above ground and accessible for testing and maintenance. The ARB in its review shall pay particular attention to the location and screening of such meters.

32. Prior to consideration of the project by the Architectural Review board, the applicant shall review disabled access requirements with the Building and Safety Division and make any necessary changes in the project design to achieve compliance with such requirements. The ARB, in its review, shall pay particular attention to the aesthetic, landscaping, and setback impacts of any ramps or other features necessitated by accessibility requirements.

33. As appropriate, the ARB shall require the use of anti-graffiti materials on surfaces likely to attract graffiti.

Construction Plan Requirements

34. Final building plans submitted for approval and issuance of a building permit shall include on the plans a list of all permanent mechanical equipment to be placed indoors which may be heard outdoors.

35. All new restaurants and cooking facilities at the site shall install Gravity Grease Interceptors in order to pre-treat wastewater containing grease. Interceptor sizing must be evaluated using Section 1014.3 of the 2006 Uniform Plumbing Code guidelines.

36. The minimum capacity of the interceptor will be determined by using table 10-3 of the 2006 Uniform Plumbing Code, Section 1014.3. Contributory sources shall include wastewater from kitchen areas including pot sinks, pre-rinse, dishwashers, floor drains, and mop sinks. Table 7-3 of Section 701.0 of the 2006 Uniform Plumbing Code will determine the Drainage Fixture Unit Value (DFU) for each contributory source. All units shall be fitted with a standard final-stage sample box.

37. The 2006 Uniform Plumbing Code guideline in sizing Gravity Grease Interceptors is intended as a minimum requirement and may be increased at the discretion of EPWM, Water Resources Protection Program staff.

Construction Period

38. Immediately after demolition and during construction, a security fence, the height of which shall be the maximum permitted by the Zoning Ordinance, shall be maintained around the perimeter of the lot. The lot shall be kept clear of all trash, weeds, etc.

39. Vehicles hauling dirt or other construction debris from the site shall cover any open load with a tarpaulin or other secure covering to minimize dust

emissions. Immediately after commencing dirt removal from the site, the general contractor shall provide the City of Santa Monica with written certification that all trucks leaving the site are covered in accordance with this condition of approval.

40. Developer shall prepare a notice, subject to the review by the Director of Planning and Community Development, that lists all construction mitigation requirements, permitted hours of construction, and identifies a contact person at City Hall as well as the developer and contractor who will respond to complaints related to the proposed construction. The notice shall be mailed to property owners and residents within a 200-foot radius from the subject site at least five (5) days prior to the start of construction.

41. A sign shall be posted on the property in a manner consistent with the public hearing sign requirements which shall identify the address and phone number of the owner, developer and contractor for the purposes of responding to questions and complaints during the construction period. Said sign shall also indicate the hours of permissible construction work.

42. A copy of these conditions shall be posted in an easily visible and accessible location at all times during construction at the project site. The pages shall be laminated or otherwise protected to ensure durability of the copy.

Standard Conditions

43. No fence, gate, or wall within the required front yard setback, inclusive of any subterranean garage slab and fencing, gate, or railing on top thereof, shall exceed a height of 42" above actual grade of the property.

44. Mechanical equipment shall not be located on the side of any building which is adjacent to a residential building on the adjoining lot, unless otherwise permitted by applicable regulations. Roof locations may be used when the mechanical equipment is installed within a sound-rated parapet enclosure.

45. Final approval of any mechanical equipment installation will require a noise test in compliance with SMMC Section 4.12.040. Equipment for the test shall be provided by the owner or contractor and the test shall be conducted by the owner or contractor. A copy of the noise test results on mechanical equipment shall be submitted to the Community Noise Officer for review to ensure that noise levels do not exceed maximum allowable levels for the applicable noise zone.

46. Final parking lot layout, specifications and ingress and egress plan to shall be subject to the review and approval of the Transportation Management Division.

47. Construction period signage shall be subject to the approval of the ARB.

48. The property owner shall insure any graffiti on the site is promptly removed through compliance with the City's graffiti removal program.

ENVIRONMENTAL PUBLIC WORKS MANAGEMENT (EPWM)

49. Developer shall be responsible for the payment of following EPWM permit fees prior to issuance of a building permit:
    - Water Services
    - Wastewater Capital Facility
    - Water Demand Mitigation
    - Fire Service Connection
    - Tieback Encroachment
    - Encroachment of on-site improvements into public right-of-way

50. Construction and Demolition Waste Management (deposit)

51. Developer shall be responsible for the payment of all Environmental and Public Works Management Fees.

52. Any work or use of the public right-of-way will require a permit from the EPWM – Administrative Services Division.

Drainage

53. Connections to the city owned sewer or storm drains require a sewer permit from the EPWM – Civil Engineering and Architecture Division. Connections to storm drains owned by Los Angeles County require a permit from the LA County Department of Public Works.

54. To mitigate storm water and surface runoff from the project site, an Urban Runoff Mitigation Plan shall be required by the Department of EPWM pursuant to Municipal Code Chapter 7.10. Prior to submittal of landscape plans for Architectural Review Board approval, the applicant shall contact EPWM to determine applicable requirements, such as:

55. The site must comply with SMMC Chapter 7.10 Urban Runoff Pollution Ordinance for the construction phase and post construction activities;

56. Non-stormwater runoff, sediment and construction waste from the

CO

construction site and parking areas is prohibited from leaving the site;

57. Any sediments or materials which are tracked off-site must be removed the same day they are tracked off-site;

58. Excavated soil must be located on the site and soil stockpiles should be covered and otherwise protected so that sediments are not tracked into the street or adjoining properties;

59. No runoff from the construction site shall be allowed to leave the site; and

60. Drainage and erosion control measures shall be required depending on the extent of grading and topography of the site, as per the Storm Water Pollution Prevention Plan (SWPPP) to be prepared by the developer for submittal to the State Water Resources Control Board (SWRCB), and EPWM department.

61. Parking areas and structures and other facilities generating wastewater with potential oil and grease content are required to pretreat the wastewater before discharging to the City sewer or storm drain system. Pretreatment will require that a clarifier or oil/water separator be installed and maintained on site.

62. Prepare and submit water and sewer flow calculations to evaluate the capacity of existing water and sewer mains at the locations of proposed hook-ups for the project. Developer shall be responsible to upgrade the mains if calculations show that the project will cause such mains to receive greater demand than can be accommodated.

63. Developer is required to meet state cross connection and potable water sanitation guidelines. Comply with cross connections guides. (http://www.lapublichealth.org/eh/progs/envirp/ehcross.htm).

64. If the project involves dewatering developer/contractor shall contact the LA Regional Water Quality Control Board (RWQCB) to obtain an NPDES Permit for discharge of groundwater from construction dewatering to surface water. For more information visit: **http://www.waterboards.ca.gov/losangeles/** and search for: **Order # R4-2003-0111.**

Hazardous Materials

65. Prior to the demolition of any existing structure, the applicant shall submit a report from an industrial hygienist to be reviewed and approved as to content and form by the EPWM/Environmental Programs Division. The report shall consist of a hazardous materials survey for the structure

C1

proposed for demolition. The report shall include a section on asbestos and in accordance with the South Coast AQMD Rule 1403, the asbestos survey shall be performed by a state Certified Asbestos Consultant (CAC). The report shall include a section on lead, which shall be perform ed by a state Certified Lead Inspector/Assessor. Additional hazardous materials to be considered by the industrial hygienist shall include: mercury (in thermostats, switches, fluorescent light); polychlorinated biphenyls (PCBs) (including light Ballast), and fuels, pesticides, and batteries.

Streets

66. Unless otherwise approved by the Department of EPWM, all sidewalks shall be kept clear and passable during the grading and construction phase of the project.

67. Sidewalks, curbs, gutters, paving and driveways which need replacing or removal as a result of the project as determined by the Department of EPWM shall be reconstructed to the satisfaction of the Department of EPWM.

68. Street and/or alley lighting shall be provided on public rights-of-way adjacent to the project to the satisfaction of the Department of EPWM.

69. Streetscape for Ocean Avenue frontage, such as AC pavement rehabilitation, replacement of sidewalk, curbs and gutters, installation of street trees, lighting and other appropriate street improvements shall be designed and installed to the satisfaction of the Department of EPWM and Open Space Management Division.

70. Existing AC pavement along and for the full width of First Court frontage shall be reconstructed in PCC to the satisfaction of the Department of EPWM. Survey and plot grades shall be submitted for the entire alley from block intersection to block intersection.

Off-site

71. Plans and specifications for off site improvements shall be prepared by a Registered Civil Engineer licensed in the State of California for approval by the City Engineer prior to issuance of a building permit.

72. Any proposed encroachments of on-site improvements into the public right-of-way must be approved by the EPWM – Administrative Services and require a permit.

73. For temporary excavation and shoring that includes tiebacks into the public right-of-way, a tieback license agreement will be required.

C2

Environmental Mitigation

74. To mitigate solid waste impacts and prior to issuance of a building permit, contact the EPWM – Solid Waste Management Division for requirements of the refuse and recycling enclosure and where feasible install trash compaction devices to reduce the volume of solid waste for disposal. Show compliance with these requirements on the building plans. Prior to issuance of a Certificate of Occupancy submit a recycling plan to the Solid Waste Management Division for its approval. The recycling plan shall include:

    1) List of materials such as white paper, computer paper, metal cans, and glass to be recycled;
    2) Location of recycling bins;
    3) Designated recycling coordinator;
    4) Nature and extent of internal and external pick-up service;
    5) Pick-up schedule; and
    6) Plan to inform tenants/ occupants of service.

75. Ultra-low flow plumbing fixtures are required on all new development and remodeling where plumbing is to be added. (Maximum 1.6 gallon toilets and 1.0 gallon urinals and low flow shower head.)

76. For new pools installation of unglazed solar water heating system is required to heat the pool water.

Construction Period Mitigation

77. A construction period mitigation plan shall be prepared by the applicant for approval by the Department of Environmental and Public Works Management prior to issuance of a building permit. The approved mitigation plan shall be posted on the site for the duration of the project construction and shall be produced upon request. As applicable, this plan shall:

    1) Specify the names, addresses, telephone numbers and business license numbers of all contractors and subcontractors as well as the developer and architect;
    2) Describe how demolition of any existing structures is to be accomplished;
    3) Indicate where any cranes are to be located for erection/construction;
    4) Describe how much of the public street, alleyway, or sidewalk is proposed to be used in conjunction with construction;
    5) Set forth the extent and nature of any pile-driving operations;

6) Describe the length and number of any tiebacks which must extend under the property of other persons;
7) Specify the nature and extent of any dewatering and its effect on any adjacent buildings;
8) Describe anticipated construction-related truck routes, number of truck trips, hours of hauling and parking location;
9) Specify the nature and extent of any helicopter hauling;
10) State whether any construction activity beyond normally permitted hours is proposed;
11) Describe any proposed construction noise mitigation measures, including measures to limit the duration of idling construction trucks;
12) Describe construction-period security measures including any fencing, lighting, and security personnel;
13) Provide a construction-period parking plan which shall minimize use of public streets for parking;
14) List a designated on-site construction manager;
15) Provide a construction materials recycling plan which seeks to maximize the reuse/recycling of construction waste;
16) Provide a plan regarding use of recycled and low-environmental-impact materials in building construction; and
17) Provide a construction period drainage and erosion control plan.

78. Dust generated by the development activities shall be kept to a minimum with a goal of retaining dust on the site through implementation of the following measures recommended by the SCAQMD Rule 43 Handbook:

1) During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, water trucks or sprinkler systems are to be used to the extent necessary to prevent dust from leaving the site and to create a crust after each day's activities cease.

2) During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, streets and sidewalks within 150 feet of the site perimeter shall be swept and cleaned a minimum of twice weekly or as frequently as required by the EPWM Department.

3) During construction, water trucks or sprinkler systems shall be used to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a minimum, this would include wetting down such areas in the later morning and after work is completed for the day and whenever wind exceeds 15 miles per hour.

4) Soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation.

79. Construction equipment used on the site shall meet the following conditions in order to minimize NOx and ROC emissions:

1) Diesel-powered equipment such as booster pumps or generators should be replaced by electric equipment to the extent feasible; and

2) The operation of heavy-duty construction equipment shall be limited to no more than 5 pieces of equipment at one time.

80. All diesel equipment shall be operated with closed engine doors and shall be equipped with factory-recommended mufflers.

81. Electrical power shall be used to run air compressors and similar power tools.

82. For all noise-generating activity on the project site associated with the installation of new facilities, additional noise attenuation techniques shall be employed to reduce noise levels to City of Santa Monica noise standards. Such techniques may include, but are not limited to, the use of sound blankets on noise generating equipment and the construction of temporary sound barriers between construction sites and nearby sensitive receptors.

OPEN SPACE MANAGEMENT

83. Street trees shall be maintained, relocated or provided as required in a manner consistent with the City's Community Forest Management Plan 2000, per the specifications of the Community Forrester. No street trees shall be removed without the approval of the Community Forrester.

FIRE

84. A security gate shall be provided across the opening to the subterranean garage. If any guest parking space is located in the subterranean garage, the security gate shall be equipped with an electronic or other system which will open the gate to provide visitors with vehicular access to the garage without leaving their vehicles. Provide a Knox box and shell. The security gate shall receive approval of the Police and Fire Departments prior to issuance of a building permit.

ENVIRONMENTAL MITIGATIONS

I. AESTHETICS

AES-1(c) All notable trees that must be removed shall be transplanted on-site or to a suitable nearby location, unless approved by the City's Urban Forrester as unsuitable for relocation. Tree transplantation shall be performed by a qualified arborist, landscape architect, or tree expert, as approved by the City's Urban Forrester, and as may be provided for in the DDA All trees that are to be reused on-site shall be boxed in appropriately sized containers and temporarily relocated to protect them from physical injury.

AES-1(d) A landscaping plan shall be prepared, including a street tree plan, by a licensed California landscape architect. All landscape areas shall be maintained in a first-class condition at all times. Any plants that die shall be replaced immediately on a one-to-one basis.

AES-3(a) Shielded Exterior Lighting. The applicant shall design exterior building to ensure that no light projects onto adjacent sites. Such lighting shall incorporate "cut-off" shields as appropriate to prevent an increase in lighting at adjacent and nearby uses.

AES-3(b) Shielded Landscape Illumination. Landscape illumination and exterior sign lighting shall be accomplished with low-level, unobtrusive fixtures. Such lighting shall be creatively shielded to direct light pools away from off-site viewers.

II. AIR QUALITY

AQ-1 TDM Program. The City and developers shall develop a transportation demand management (TDM) program for the project site that includes, but is not limited to:

- Inclusion in final site design ATMs, postal machines, and other similar facilities that would minimize the need to travel off-site for such services;
- Options for on-site employers to make flex time and staggered work hours available to employees when feasible;
- Incentives and educational materials to encourage employees and shoppers to use alternatives to the drive alone automobile for commuting; including walking, bicycling, public transit, and carpooling (incentives may include, but are not limited to, preferred parking spaces for carpoolers, and bicycle lockers for employees);
- Incentives and educational materials to encourage employees and shoppers to use electric vehicle parking spaces required by the Municipal Code

CC

III. CONSTRUCTION EFFECTS

CON-1 Construction Impact Mitigation Plan. The applicant shall prepare and implement a Construction Impact Mitigation Plan to provide for traffic and parking capacity management during construction. This plan shall be subject to review and approval by the City and, at a minimum, shall include the following:

- Phasing of construction activities for each project component to minimize disruption to the roadway network;

- A public information program to advise motorists of impending construction activities (e.g., media coverage, portable message signs, and information signs at the construction site);

- Approval from the City, or Caltrans if required, for any construction detours or construction work requiring encroachment into public rights-of-way, or any other street use activity (e.g., haul routes);

- Timely notification of construction schedules to all affected agencies (e.g., Police Department, Fire Department, Department of Public Works, Department of Planning and Community Development, Los Angeles County Superior Court, Los Angeles County Sheriff's Department, and transit agencies);

- Coordination of construction work with affected agencies five to ten days prior to start of work;

- A traffic control plan for the streets surrounding the work area, which includes specific information regarding the project's construction and activities that will disrupt normal traffic flow;

- Minimizing dirt and demolition material hauling and construction material delivery during the morning and afternoon peak traffic periods and cleaning of streets and equipment as necessary;

- Scheduling and expediting of work to cause the least amount of disruption and interference to the adjacent vehicular and pedestrian traffic flow. Weekday daytime work on City streets shall primarily be performed between the hours of 9:00 AM and 3:00 PM;

- Limiting of queuing of trucks to on-site and prohibition of truck queuing on area roadways;

- Scheduling of preconstruction meetings with affected agencies to properly plan methods of controlling traffic through work areas;

- Designation of off-site construction staging areas;

- Storage of construction material and equipment within the designated work area and limitation of equipment and material visibility to the public;

- Provision of off-street parking for construction workers, which may include the use of a remote location with shuttle transport to the site, if determined necessary by the City of Santa Monica;

- Provision of off-street parking for employees of the Civic Center Specific Plan area, which may include the use of a remote location with shuttle transport to the site, if determined necessary by the City of Santa Monica;

- Construction trucks and equipment shall be staged so that access to Vicente Place is not blocked

- Alleys between Ocean Boulevard and the Promenade/Ocean Front Walk shall not be used by construction vehicles during construction within the Civic Center Specific Plan area; and

- Construction vehicles shall not use Appian Way.

CON-2(a) Dust Minimization. Dust generated by the development activities shall be kept to a minimum with a goal of retaining dust on the site through implementation of the following:

- During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, water trucks or sprinkler systems are to be used to the extent necessary to prevent dust from leaving the site and to create a crust after each day's activities cease.

- During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, streets and sidewalks within 150 feet of the site perimeter shall be swept and cleaned a minimum of twice weekly.

- During construction, water trucks or sprinkler systems shall be used to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a minimum, this would include wetting down such areas in the later morning and after work is completed for the day and whenever wind exceeds 15 miles per hour.

- Soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation.

C8

CON-2(b) Construction Equipment Conditions. Construction equipment used on the site shall meet the following conditions in order to minimize NOx and ROC emissions:

- The number of pieces of equipment operating simultaneously must be minimized through efficient management practices;
- Construction equipment must be maintained in tune per manufacturer's specifications;
- Equipment shall be equipped with 2- to 4-degree engine timing retard or pre-combustion chamber engines;
- Catalytic converters shall be installed, to the extent feasible;
- Diesel powered equipment such as booster pumps or generators should be replaced by electric equipment, to the extent feasible; and
- The operation of heavy-duty construction equipment shall be limited to no more than 5 pieces of equipment at any one time.

CON-2(c) Low-VOC Coatings. Low-VOC architectural coatings shall be used in construction whenever feasible and shall coordinate with the SCAQMD to determine which coatings would reduce VOC emissions to the maximum degree feasible.

CON-3(a) Diesel Equipment Mufflers. All diesel equipment shall be operated with closed engine doors and shall be equipped with factory-recommended mufflers.

CON-3(b) Electrically-Powered Tools. Electrical power shall be used to run air compressors and similar power tools.

CON-3(c) Additional Noise Attenuation Techniques. For all noise generating construction activity on the project site, additional noise attenuation techniques shall be employed to reduce noise levels to City of Santa Monica noise standards. Such techniques may include, but are not limited to, the use of sound blankets on noise generating equipment and the construction of temporary sound barriers between construction sites and nearby sensitive receptors.

CON-3(d) Construction Sign Posting. In accordance with Municipal Code Section 4.12.210, the project applicant shall be required to post a sign informing all workers and subcontractors of the time restrictions for construction activities. The sign shall also include the City telephone

numbers where violations can be reported and complaints associated with construction noise can be submitted.

CON-3(e) Construction Noise Hotline. Project applicants shall provide a telephone number for local residents to call to submit complaints associated with construction noise. The number shall be posted on the project site and shall be easily viewed from adjacent public areas.

CON-4(b) Separation of Recyclable Construction Waste. During construction and demolition activities, the applicant shall separate for recycling all materials that are accepted for recycling in the Los Angeles region, including, but not limited to, metals, woodwaste, and clean fill.

CON-4(c) Removal of Recyclable Materials. The applicant shall schedule the removal of reusable and recyclable materials prior to demolition to maximize recovery rate.

CON-4(d) Bins for Recyclable Construction Waste. The applicant shall provide separate bins for all recyclables on-site. Such bins shall be labeled clearly in several languages or with universal symbols. The applicant shall also provide orientation prior to the start of construction for workers to train them to use the recycle bins provided. If there is insufficient space on-site, the applicant shall contract with a recycling company to receive mixed loads for separation and recycling.

CON-4(e) The applicant shall use pre-engineered or factory cut material. Examples of this type of material include, but are not limited to, factory trusses, laminated and other engineered wood products, sheet metal cladding and roofing, 9-foot gypsum board, pre-cut headers, and pre-assembled joist bridging. The applicant shall also use reusable and recyclable forming materials, such as steel forms or standard wood systems, where feasible.

IV. CULTURAL RESOURCES

CR-10(a) At the commencement of project construction, all workers associated with earth disturbing procedures shall be given an orientation regarding the possibility of exposing unexpected cultural remains by an archaeologist and directed as to what steps are to be taken if such a find is encountered.

CR-10(b) In the event that archaeological resources are unearthed during project construction, all earth disturbing work within the vicinity of the find must be temporarily suspended or redirected until an archaeologist has evaluated the nature and significance of the find. After the find has been appropriately mitigated, work in the area may resume. If human remains are unearthed, State Health and Safety Code Section 7050.5 requires that

no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. If the remains are determined to be of Native American descent, the coroner has 24 hours to notify the Native American Heritage Commission (NAHC). The NAHC will then identify the person(s) thought to be the Most Likely Descendent (MLD) of the deceased Native American, who will then help determine what course of action should be taken in dealing with the remains.

V. GEOLOGY AND SOILS

GEO-1(a) Design and construction of the buildings proposed in the Civic Center Specific Plan shall be engineered to withstand the expected ground acceleration that may occur at this site. The calculated design base ground motion for the site shall take into consideration the soil type, potential for liquefaction, and the most current and applicable seismic attenuation methods that are available. For any buildings considered essential facilities, as defined in the Uniform or California building codes, the buildings shall be designed to withstand the upper bound earthquake ground motion. All on-site structures shall comply with applicable provisions of the 1997 Uniform Building Code and the 1998 California Building Code.

GEO-2 Additional Geotechnical Study. Prior to issuance of a building permit for any new construction in the Civic Center Specific Plan, a geotechnical study shall be completed to adequately assess the liquefaction potential and compaction design of the soils underlying the proposed bottom grade of any structure built within the Civic Center complex. The borings shall be completed up to at least 50 feet below the existing ground surface or up to 50 feet below the lowest proposed finished grade of the structure or 20 feet below the lowest caisson or footing (whichever is deeper). If these soils are confirmed to be prone to seismically-induced liquefaction, appropriate techniques to minimize liquefaction potential shall be prescribed and implemented. All on-site structures, including the proposed truck tunnel, shall comply with applicable methods of the Uniform Building Code and California Building Code. Suitable measures to reduce liquefaction impacts could include specialized design of foundations by a structural engineer, removal or treatment of liquefiable soils to reduce the potential for liquefaction, drainage to lower the groundwater table to below the level of liquefiable soils, in-situ densification of soils, or other alterations to the ground characteristics.

GEO-3(a) All artificial fill material or unsuitable native soil identified in the Geotechnical Report(s) that is located below the footprint of proposed

structures shall be removed and hauled off site or processed into a suitable building material.

GEO-3(b) All fill material used for construction shall be approved by a geotechnical or civil engineer, and all backfill and foundation sub-grade shall be certified by a geotechnical or civil engineer for proper compaction.

GEO-3(c) All fill material used for backfill after abandonment of any below-grade levels within the project area shall be approved by a geotechnical or civil engineer. In addition, the backfill shall be certified by a geotechnical or civil engineer for proper compaction.

GEO-4(a) Appropriate geotechnical investigations, as mandated by the building codes, shall be performed prior to the design of any structure. These geotechnical studies shall be used to design the excavations and shoring to prevent destabilization of the sidewalls. A civil or geotechnical professional shall field test the excavation to determine proper sloping of the excavations. Where proper slopes cannot be used, shoring must be used. This shoring shall be designed to the satisfaction of the project civil engineer and take into account all lateral load parameters and the possible presence of groundwater at the bottom grade of the excavations or the base of the shoring soldier piles (if used). A monitoring system shall be implemented to evaluate the shoring system.

GEO-4(b) All excavations for parking structures, buildings, the tunnel, or the possible future water tank shall comply with all applicable regulations of the California Occupational Safety and Hazard Administration guidelines as they pertain to excavations.

GEO-4(c) Before construction begins, a groundwater study shall be completed to predict the groundwater levels expected during excavation activities. The study shall include the installation of at least one on site groundwater monitoring well and an historical evaluation of groundwater levels in the site area. If it is discovered that the groundwater levels will pose a problem, then appropriate measures shall be taken to de-water the excavation before grading and construction of the parking structure begins. In addition, subterranean structures that have the potential to accumulate groundwater or percolating surface water shall include a mechanism of removing groundwater or percolating surface water, which may collect in the structures. The removal system shall be designed to prevent the structure from flooding.

GEO-4(d) To mitigate impacts associated with the potential presence of contaminated groundwater which may be pumped during construction, the applicant shall obtain the proper discharge permits (such as a National

Pollution Discharge Elimination System - NPDES permit) or sanitary sewer discharge permit from the Regional Water Quality Control Board or the Sanitary District, respectively. Sampling of the discharge shall be performed, as required by the permit conditions.

GEO-4(e) If groundwater or percolating surface water removal is to be continuously performed to maintain the usability of any subterranean structure, then the proper groundwater discharge permits (a NPDES permit is obtained from the Regional Water Quality Control Board for the discharge of groundwater into the storm drain system) shall be obtained by the applicant. The permit conditions generally require periodic monitoring for contaminants and the calculation of discharge volume. If such a system is to be installed at this site, then the appropriate permits must be obtained, the permit conditions followed, and the groundwater removal system shall be maintained in proper order to ensure its proper operation.

GEO-4(f) All walls of subterranean structures shall be waterproofed to protect against corrosive effects of water contact and to minimize the seeping of water into the subterranean structure.

GEO-5 Soil Expansion Analysis. Prior to issuance of a building permit, soil samples of final sub-grade areas and excavation sidewalls shall be collected and analyzed for their expansion index. For areas where the expansion index is found to be greater than 20, the appropriate grading and foundation designs shall be engineered to withstand the existing conditions. The expansion testing may be omitted if the grading and foundations are engineered to withstand the presence of highly expansive soils.

GEO-6(a) Storm Water Pollution Prevention Plan. The applicant shall require the building contractor to prepare and institute a Storm Water Pollution Prevention Plan (SWPPP) during construction. A SWPPP for site construction shall be developed and approved prior to the initiation of grading and implemented for all construction activity on the project site in excess of five acres. The SWPPP shall include specific Best Management Practices (BMPs) to minimize the loss of soil from the site during construction activities. BMP methods may include, but would not be limited to, the use of temporary retention basins, straw bales, sand bagging, mulching, erosion control blankets, soil stabilizers and dust control using the minimum amount of water without adding to runoff. Additional BMPs shall be implemented for any fuel storage or fuel handling that could occur on-site during construction and the temporary storage of all heavy equipment shall be confined to one localized area. The SWPPP must be prepared in accordance with the guidelines adopted

by the State Water Resources Control Board.

GEO-6(b) Covering and Removal of Stockpiles. All stockpiles of excavated material shall be covered with an impervious material during storage and shall be removed from the site within 3 weeks of being excavated or they shall be used for grading or backfill if the material fulfills the requirements of measures GEO-3(b and c) above.

GEO-6(c) Standard erosion control practices shall be implemented per the requirements of the City's Urban Runoff Pollution Control Ordinance.

VI. HAZARDS AND HAZARDOUS MATERIALS

HHS-3(a) To determine the likelihood of contaminated soil a phase I report was prepared following demolition of the RAND building. If contaminated soil or groundwater is suspected to be present within the proposed building's excavation footprint, the applicant shall perform additional soil sampling and analysis to determine lateral extent of contamination and follow the procedures specified in Mitigation Measures HHS-4(c) and HHS-4(d) of this EIR.

HHS-4(a) Prior to project development for which a Phase I environmental assessment has not been completed, Phase I environmental site assessments shall be performed to determine the likelihood of contaminants in areas beyond what has already been assessed. The Phase I ESA shall follow the current ASTM standard (as of this writing, the current ASTM standard is ASTM E 1527-00).

HHS-4(b) If contaminated soil is suspected to be present within any building excavation footprint, or open space area, the applicant shall perform soil sampling and analysis to determine the vertical and lateral extent of contamination.

HHS-4(c) If contaminants are detected in soil at levels that exceed suggested cleanup goals, such as the levels established by the RWQCB (May 1995 Guidebook), US EPA's Preliminary Remediation Goals, one in one million cancer risk, or a health risk index above 1, then the results of the soil sampling shall be forwarded to the local regulatory agency (City of Santa Monica Environmental Program Division, and/or the Los Angeles Regional Water Quality Control Board, and/or the State of California Environmental Protection Agency Department of Toxic Substances Control). The agency(s) shall review the data and either sign off on the property or determine if any additional investigation or remedial activities are deemed necessary.

HHS-4(d) If concentrations of contaminants warrant site remediation, contaminated materials shall be remediated either prior to construction of structures, or other areas where asphalt or concrete will not cover the ground surface, or concurrent with construction. The contaminated materials shall be remediated under supervision of an environmental consultant licensed to oversee such remediation. The remediation program shall also be approved by a regulatory oversight agency, such as the City of Santa Monica Environmental Program Division, Los Angeles Regional Water Quality Control Board, or the State of California Environmental Protection Agency Department of Toxic Substances Control. All proper waste handling and disposal procedures shall be followed. Upon completion of the remediation, the environmental consultant shall prepare a report summarizing the project, the remediation approach implemented, and the analytical results after completion of the remediation, including all waste disposal or treatment manifests.

HHS-5(a) If, during the implementation of mitigation measure HHS-3 or HHS-4, groundwater contamination is suspected, or if soil contamination is detected at depths at or greater than 30 feet below grade, then the applicant shall perform a groundwater sampling assessment. If contaminants are detected in groundwater at levels that exceed maximum contaminant levels for those constituents in drinking water, or if the contaminants exceed health risk standards such as Preliminary Remediation Goals, one in one million cancer risk, or a health risk index above 1, then the results of the groundwater sampling shall be forwarded to the appropriate regulatory agency (City of Santa Monica Environmental Program Division, Los Angeles Regional Water Quality Control Board, or the State of California Environmental Protection Agency Department of Toxic Substances Control). The agency shall review the data and sign off on the property or determine if any additional investigation or remedial activities are deemed necessary.

HHS-5(b) If concentrations of contaminants warrant site remediation, contaminated materials are to be removed or properly mitigated. The contaminated materials are to be removed or mitigated under supervision of an environmental consultant licensed to oversee such remediation. The remediation program shall also be approved by a regulatory oversight agency, such as the City of Santa Monica Environmental Program Division, Los Angeles Regional Water Quality Control Board, or the State of California Environmental Protection Agency Department of Toxic Substances Control. All proper waste handling and disposal procedures shall be followed. Upon completion of the remediation, the environmental consultant shall prepare a report summarizing the project, including all waste disposal or treatment manifests.

HHS-6 All excavation and demolition projects conducted within the Civic Center Specific Plan area shall have a contingency plan to be

implemented in the event that contaminants or structural features that could be associated with contaminants or hazardous materials are suspected or discovered. The contingency plan shall identify appropriate measures to be followed if contaminants are found or suspected. The appropriate measures shall identify personnel to be notified, emergency contacts, and a sampling protocol to be implemented. The excavation and demolition contractors shall be made aware of the possibility of encountering unknown hazardous materials, and shall be provided with appropriate contact and notification information. The contingency plan shall include a provision stating at what point it is safe to continue with the excavation or demolition, and identify the person authorized to make that determination.

VIII. LAND USE AND PLANNING

LU-1 **Live-work/Artisan Units:** A storage area(s) for live-work/artisan unit-related production materials and wastes that cannot be disposed of in residential trash shall be designated in accordance with criteria established by the Santa Monica Fire Department and shall provide 100% containment. The specifications for such storage area(s) shall be provided on the final plans. The developer shall provide an informational permanent sticker on all disposal receptacles at the project site regarding the dumping of hazardous substances, such as paints, solvents, etc. and their effect on the storm drain system and the Santa Monica Bay.

X. NOISE

N-2(a) **Rooftop Ventilation.** Parapets shall be installed around all rooftop ventilation systems.

N-2(b) **Trash Pickup.** All trash pickups shall be restricted to operating hours of 7:00 AM to 9:00 PM Monday through Friday and 8:00 AM to 9:00 PM on weekends.

XIV. TRANSPORTATION/TRAFFIC

Component 1:

T-4(a) **Village Special Use District (SUD) and Santa Monica Place Special Use District (SUD).** Parking for the residential and commercial uses within the Village SUD and Santa Monica Place SUD shall be provided on site and shall be either in accordance with the requirements of the City code at that time, or in accordance with a City-approved parking demand study based upon the actual mix and type of housing units to be constructed.

EXHIBIT "D"

Mitigation Monitoring Program

(see CDP file # 5-08-278)

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Filed:	8/01/08
49th Day:	1/19/08
180th Day:	1/28/09
Staff:	Al Padilla-LB
Staff Report:	8/21/08
Hearing Date:	9/10-12/08
Commission Action:	

W.21a

FILE COPY

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-08-159

APPLICANT: Redevelopment Agency of the City of Santa Monica

PROJECT LOCATION: 1600-1800 E. Ocean Avenue, Santa Monica

PROJECT DESCRIPTION: Construction of a mixed use development consisting of 164 market-rate condominiums; 160 affordable rental units; 20,000 square feet of ground floor retail/restaurant space, with 3,000 square feet of outdoor dining; 619 parking spaces; public access improvements; and landscaping. Maximum height of the structures will be 65 and 96 feet. The project will be designed to achieve certified LEED Silver status and include a photovoltaic system on the roof.

LOCAL APPROVALS RECEIVED: City Council approval, Resolution No. 10056.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval with special conditions on the basis that the project, as conditioned, conforms with the public access and resource protection policies of the Coastal Act. Special Conditions include: 1) submittal of landscape plans; 2) participation in a Transportation Demand Management Program; 3) future parking changes; 4) future development; 5); public parking signage; 6) dewatering requirements; 7) water quality mitigation; 8) archaeological resource recovery plan; and 9) Development Agreement.

Attachment No 2
Application Number
5-08-278
CDP No. 5-08-159
Staff Report
California Coastal Commission

SUBSTANTIVE FILE DOCUMENTS: Vesting Tentative Tract Map No. 69822; Development Agreement between the City of Santa Monica and Related/Santa Monica Village, LLC, for the Village at Santa Monica; *Civic Center Specific Plan Comprehensive Update, Downtown Redevelopment Plan Amendment and Associate Development, Final Environmental Impact Report*, October 2004; City of Santa Monica's certified LUP; Coastal Development Permit Nos. 5-83-560 (Santa Monica Hotel Assn.), 5-99-169 (Maguire Partners), 5-01-196(Rand Corp), 5-03-489 and 5-98-269 (City of Santa Monica).

RECOMMENDATION:

MOTION: ***I move that the Commission approve Coastal Development Permit No.5-08-159 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. Landscape Plan

A. Prior to issuance of the coastal development permit, the applicant shall submit, for review and approval of the Executive Director, a landscaping plan. The plan shall be prepared by a licensed landscape architect. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent areas, all landscaping shall consist of native and/or drought tolerant non-invasive plant species. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council (formerly known as the California Exotic Pest Plant Council), or as may be identified from time to time by the State of California shall be utilized on the property. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. All plants employed on the site shall be drought tolerant (low water use) plants identified by U. C Davis and the Water Resources Board. Ornamental planting with non-indigenous and non-invasive plant species is permitted within the garden areas.

B. The permittee shall undertake development in accordance with the final plans approved by the Executive Director pursuant to this condition. Any proposed changes to the approved plans shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

2. Transportation Demand Management Program

A) The proposed project shall incorporate the City's Transportation Demand Management Program. The program includes, but is not limited to, the following:

(1) The applicant and its successors and assigns shall actively encourage employee participation in a Transportation Ride Sharing program.

(2) A public transit fare reimbursement program shall be implemented by the applicant or its successors and assigns. All commercial tenants shall offer partial or full reimbursement equal to the value of subsidized parking to one hundred percent of the employees of the development for public transit fare to and from work.

(3) The applicant and its successors and assigns shall provide secure bicycle parking, free of charge, on the property for the public, including residents, employees and visitors. Shower facilities shall also be provided for employees of the commercial uses.

(4) The applicant and its successors and assigns shall implement a publicity program, the contents of which is subject to the review and approval of the Executive Director, that indicates how the future occupants of the development will be made aware of the provisions of this special condition. The publicity program shall be implemented during the first month of occupancy of the new development.

(5) Car share service.

(6) Concierge Service for residents (condominiums).

B) For the first six years of occupancy of the development, the applicant shall submit to the Executive Director, the City required bi-annual report for monitoring the proposed measures. Any proposed changes to the measures shall be submitted to the Executive Director to determine if an amendment to the permit is legally required.

3. <u>Future Parking Changes</u>

With the acceptance of this permit, the applicant acknowledges that any change in the parking proposed under this permit, including, but not limited to, the provision of the leasing or selling of parking spaces to third parties, or reserving parking spaces for other uses not approved under this permit, or change in the number of shared parking spaces between residential and commercial uses, shall be submitted to the Executive Director to determine if an amendment to the permit is legally required.

4. <u>Future Development</u>

This permit is only for the development described in coastal development permit No. 5-08-159. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30610, including, but not limited to, a change in the density or intensity of use land, or change from the project description, as proposed by the applicant, shall require an amendment to Permit No. 5-

08-159 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

5. **Public Parking Signage**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a signage plan showing the size, wording and location of signs. The size of the signs shall be at least 14" in height and 18" in length. Alternatively, the applicant may provide plans to incorporate parking availability messages into an electric message board. The signage shall be located in conspicuous locations adjacent to the public parking entrances, informing the public of the public parking.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. **Dewatering of Groundwater**

Prior to issuance of the permit, the applicant shall submit for the review and approval by the Executive Director, an agreement in writing that any required dewatering of the site due to groundwater intrusion, or percolating surface water, during construction or post-construction will require filters to be installed on all dewatering pumps and sump pumps.

7. **Water Quality Standards**

With the acceptance of this permit the applicant agrees to comply with the City's Urban Runoff Pollution Control Ordinance, including incorporation of Best Management Practices, as required under the City's Municipal Code, that are in effect at the time of approval of this permit.

8. **Archaeological Resources**

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director an archeological monitoring plan prepared by a qualified professional, that shall incorporate the following measures and procedures:

1. The monitoring plan shall ensure that any prehistoric or historic archaeological or paleontological cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. To this end, the cultural resources monitoring plan shall require that

archaeological and Native American monitors be present during all grading operations unless the applicant submits evidence, subject to the review and approval of the Executive Director, that a more complete survey of cultural resources adjacent to and within a one-half mile radius of the project site finds no cultural resources. If cultural resources are found adjacent to, or within a one-half mile radius of the project site, the applicant may choose to prepare a subsurface cultural resources testing plan, subject to the review and approval of the Executive Director, in-lieu of proceeding with development with the presence of archaeological and Native American monitors on the site during grading activities. If the subsurface cultural resources testing plan results in the discovery of cultural resources, the applicant shall prepare a mitigation plan, which shall be peer reviewed and reviewed by designated representatives of the appropriate Native American tribe, and shall apply for an amendment to this permit in order to carry out the mitigation plan.

There shall be at least one pre-grading conference with the project manager and grading contractor at the project site in order to discuss the potential for the discovery of archaeological or paleontological resources.

2. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, Native American monitor(s) with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading, if required in the approved cultural resources monitoring plan required above.
3. If required by the above cultural resources monitoring plan to have archeological and Native American monitors present during grading activities, the permittee shall provide sufficient archeological and Native American monitors to assure that all project grading that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;

4. If any archaeological or paleontological, i.e. cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts, all construction shall cease within at least 50 feet of the discovery, and the permittee shall carry out significance testing of said deposits in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix 1). The permittee shall report all significance testing results and analysis to the Executive Director for a determination of whether the findings are significant.

5. If the Executive Director determines that the findings are significant, the permittee shall seek an amendment from the Commission to determine how to respond to the findings and to protect both those and any further, cultural deposits that are encountered. Development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

9. Development Agreement

With the acceptance of this permit, the applicant is placed on notice that although the Development Agreement consists of the City's authorization for the proposed development, it is not effective in the Coastal Zone until the Development Agreement is formally submitted and approved by the Coastal Commission.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description, Location and Background

The City of Santa Monica's Redevelopment Agency proposes to construct a residential/commercial mix use development consisting of 324 residential units, including 160 affordable rental units and 164 market rate condominiums; approximately 20,000 square feet of ground floor commercial space; with 619 on-site parking spaces on a 3.7 acre site. The proposed development consists of seven separate buildings and is divided into three separate sites (see site plan, Exhibit 4):

Site A: Two condominium buildings with ground floor retail on Ocean Avenue, Olympic Drive and Main Street frontages with approximately 66 residences
109,346 gross square feet residential
9,930 gross square feet commercial
Height- 65 feet high as measured from Ocean Avenue sidewalk
180 subterranean parking spaces

Site B: Four affordable apartment buildings, with ground floor live/work space
Approximately 28 one-bedroom, 56 two-bedroom, and 66 three bedroom residences, plus 10 affordable units of live/work space intended for artists
191,549 gross square feet
Height- 60 feet high measures from Ocean Avenue sidewalk
197 parking spaces

Site C: One condominium building with ground floor retail; and approximately 98 one-bedroom and two-bedroom residences (Vesting Tentative Tract Map No. 69822);
159,288 gross square feet residential
7,400 gross square feet commercial.
96 feet high
237 parking spaces

The project will include extension of Olympic Drive from Main Street to Ocean Avenue, providing direct local access to the Interstate 10 Freeway, and providing approximately 16 to 18 on-street additional public parking spaces adjacent to the development. The project

will also incorporate native and non-invasive landscaping, public art, bicycle parking for employees/residents and the public, and public space in the form of a pedestrian street ("Living Street") and plaza ("Olympic Plaza"). The proposed development will be designed to achieve a minimum of LEED silver certification and will include sustainable elements involving building design and materials, onsite energy generation from photovoltaic systems and energy savings from green energy design, energy and water use reduction strategies, and recycling of construction and consumer waste.

The City is also requiring the developer to participate in a Transportation Demand Management program and to contribute a transit service enhancement fee of $700,000 to subsidize the City's bus service, school-based transportation programs, and/or Civic Center shuttle to connect the Civic Center with Downtown and Main Street and a free transit pass program.

The project site is located south of the Santa Monica Freeway and is bounded by Main Street to the east, Ocean Avenue to the west, and Vicente Terrace to the south, in the City of Santa Monica. The surrounding area is developed with the five-story, 72 foot high RAND Corporation building to the east, a 96 foot high hotel (Viceroy) to the southeast, and a 56 foot high office building along the western edge of the development (see Exhibit No. 1 and 2).

In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson way (Beach Overlay District), and the Civic Center/RAND area. On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications. The proposed project is part of the City's Civic Center Specific Plan (CCSP) approved by the City in 1993 and amended in 2005. The CCSP also includes an approximately 4 acre park located adjacent to this proposed mixed use development, playfield, new streets, a recently constructed 700 parking space public parking structure (CDP No. 5-03-489), a 13,300 square foot public safety building (CDP No. 5-98-269), and the recently completed 320,400 square foot RAND Corporation building (CDP No. 5-01-196).

According to the City, the project must have all entitlements including Coastal Commission approval prior to an October 2008 Multifamily Housing Program funding deadline in order to qualify for approximately $10 million dollars of assistance for the affordable housing component.

B. Development

Section 30250 of the Coastal Act states in part that:

> *(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to*

accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30251 of the Coastal Act states in part that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed development consists of seven separate buildings and is divided into three separate sites within the Civic Center Specific Plan (CCSP) area. Site A and B will be constructed above a subterranean parking garage and site C will have a separate subterranean parking garage. The proposed project will be designed to be compatible in height to the surrounding uses. Sites A and B will be a maximum of 65 feet in height, as measured from the adjacent sidewalk on Ocean Avenue. Site C, will range in height from 68 to 96 feet. Building heights are designed to step down towards Ocean Avenue and the buildings are articulated with step backs, balconies and off-set top floors to create volumetric variation and maintain a pedestrian scale at street level (see Exhibit No. 5-9).

Heights of existing surrounding development vary from approximately 30 feet to over 96 feet in height. Buildings within the Civic Center, located east of Main Street, measure two to five stories, while the Civic Auditorium measures approximately 60 feet in height. The new Rand Corporation building [(CDP No. 5-01-196(Rand)] located immediately east of the project is 72 feet in height and the Viceroy Hotel, located to the south is eight stories and 96 feet in height. The existing office building [5-90-928 (Maguire Thomas Partners)] that separates Site C from Sites A &B is a four story, 57 foot high, commercial office/retail building. The Loews and Le Merigot Hotels are each 56 feet in height, as measured from Ocean Avenue.

The proposed project will include retail and restaurant space on the ground floor, with residential above, open space, in the form of a pedestrian street that will extend from Ocean Avenue to Main Street, and a public open area along Ocean Avenue at Site C. The open areas and adjacent streets will be landscaped incorporating native and drought tolerant non-invasive vegetation, and according to the design plans the plant materials for the entire project area will be drawn from the local coastal "vernacular" of bluffs and arroyos to form a visual connection between the nearby Santa Monica bluffs and the project site. Plants include, California Sagebrush, Coyote Bush, California Lilac, Beach Strawberry, and California Sycamore. To ensure that the project will be landscaped with native drought tolerant and non-invasive plants, Special Condition No. 1 is necessary.

The general vicinity is developed with office, hotel, governmental buildings and retail uses. Because of the project's location, the project will be compatible with the surrounding uses, and given the scale and bulk of the surrounding development and location of the development, the proposed development will not have any adverse impacts on public coastal views or coastal resources. The Commission, therefore, finds that the proposed project as conditioned will be compatible with the character and scale of the surrounding uses and with Sections 30240, 30250 and 30251of the Coastal Act.

C. Coastal Access

The Commission has consistently found that a direct relationship exists between the provision of adequate parking and the availability of public access to the coast. Section 30211 of the Coastal Act states that:

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast by providing adequate parking facilities. Section 30252 of the Coastal Act states in part:

> *The location and amount of new development should maintain and enhance public access to the coast by. . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation. . .*

Therefore, in order to conform to the requirements of the Coastal Act, the proposed project must provide adequate support parking and/or public transit opportunities in order not to negatively impact parking for coastal access. The applicant is proposing to provide 619 on-site parking spaces within a multi-level subterranean parking garage and surface lot for the mixed use development consisting of 160 affordable residential units; 164 market rate condominium units, 5,748 square feet of retail; and 11,550 square feet of restaurant (10,425 square feet of serviceable area).

Through past Commission permit action the Commission has established for multi-family residential development a parking ratio of 2 parking spaces per unit, plus 1 guest parking space per every seven units, and in some cases, has reduced the ratio to less than 2 per unit for affordable housing. For retail space the Commission has required 1 space per 225 square feet and 1 space per 50 square feet of serviceable area for restaurant use. Based on these parking ratios, the 324-residential units would require 695 parking spaces, the 5,748 square feet of retail would require 26 spaces, and the 11,550 gross square feet of restaurant or approximately 10,425 square feet of serviceable area (indoor and outdoor) would require 208 spaces for a total of 929 parking spaces. Based on the individual uses (strictly market rate and no shared use) the project is deficient 310 parking spaces.

According to the City, the reduced parking proposed for the project is based on: (1) a parking demand analysis for the affordable rental housing; and (2) a shared parking demand analysis for the ground floor commercial uses. The City's parking study concludes that the project design, mix of uses, and location is conducive to reduced parking demand and shared use, and that parking demand for the commercial uses would be reduced by approximately 50% from the Commission parking requirements.

The proposed project will provide the required 2 parking spaces per residential unit for the 164 market rate units, consistent with Commission parking requirements, plus 1 space per five units for guest parking, for a total of 363 spaces. For the 160 affordable units the project will provide parking at a reduced parking ratio of 1.23 parking spaces per unit. In addition, a total of 56 spaces, or 22% of the 234 Commission required parking, will be provided for the commercial use, for a total of 619 for the entire development.

The Commission, in past permit actions, has found that under certain circumstances, the parking demand generated by residential projects that provide low to very low-income housing (from 60% to less than 80% of average median income) is less than that generated by market-rate units. The Commission has found that with the location of bus stops, service routes, shopping areas, and medical facilities within close proximity to low income and senior housing projects there would be greater use of public transportation and less demand for car ownership for such development.

In past Commission permit actions, the Commission has approved seven housing projects over the past nineteen years in the City of Santa Monica with reduced parking. These past projects included senior citizen housing projects, single-room occupancy housing projects, a housing project for tenants with HIV/Aids, and two low-income family housing projects. The two low-income housing projects approved by the Commission included a 20-unit with 34 parking spaces, with a parking ratio of 1.7 parking spaces per unit, and a 44-unit with 82 parking spaces, with a parking ratio of 1.86 parking spaces per unit [5-96-229 and 5-03-270 (Community Corporation of Santa Monica)].

Based on a parking study prepared by a consultant for the applicant, the two low-income projects previously approved by the Commission have more than adequate parking and have a surplus of parking. The parking analysis (Linscott, Law & Greenspan, dated July 30,

2003, updated in August 2008) surveyed the approved mentioned projects including three other affordable projects in Santa Monica. The survey showed that tenants in similar low income family housing projects, located in or just outside of Santa Monica's coastal zone, are less likely to own cars than higher income persons. The analysis included surveys of the parking lots for each project during the early morning and afternoon hours (weekday between 10:00 p.m. and 12:00 am; 2:00 a.m. and 4:00 a.m.; and weekend between 11:00 a.m. and 3:00 p.m.). Based on the survey, the average parking rate was 1.23 spaces per unit in 2003 and 1.11 spaces per unit in 2008 on the weeknights, and .85 spaces per unit on the weekend (2008). For all five of the low income projects included in the analysis, the actual parking demand was below the number of parking spaces provided at each project (See Parking Analysis, Exhibit No. 12).

In the proposed low-income housing project the applicant will provide residential parking at a total ratio of 1.23 (197 parking spaces). The amount of parking provided for the affordable housing portion of the project is consistent with the average parking ratio for similar projects surveyed in the general area, including the two projects approved by the Commission.

As in the similar affordable housing projects, the proposed project is located near public transportation lines, with bus service along Main Street and Ocean Avenue (see Exhibit Nos. 10 and 11), with a planned line along the proposed new street, Olympic Drive. The project is also within close proximity to the City's downtown commercial area. Therefore, necessary shopping areas, medical facilities and transportation facilities for tenants of this project are within close proximity or within easy access which will help reduce the need of vehicle ownership. Based on the parking studies submitted, the location of the project site, and on past Commission permit action, the proposed 197 parking spaces (160 reserved and 37 unreserved for residents and guest parking) for the 160-unit low-income housing component, will be sufficient parking to support the demand generated by the affordable units.

For the 19,248 square feet of ground floor commercial, a shared parking analysis was prepared utilizing the time of day parking demand indices recommended in the Shared Parking manual (second edition) published by the Urban Land Institute. The shared parking analysis considered many of the captive market and alternative transportation mode factors of the area including:

- The City of Santa Monica's shared parking policies for Civic Center parking resources;
- The City required Transportation Demand Management Program for this project that will substantially reduce Project traffic and parking demand;
- The substantial walk-in business for the Project's retail and restaurants given that:
    - Many customers for these businesses will be residents of the Project, and
    - Others will walk from nearby uses (City Hall, the Courthouse, the office building at 1733 ocean Avenue and several nearby hotels);

- The Project's close proximity to an extensive public transit network; and
- The significant number (i.e., more than 700 of publicly available parking spaces in close proximity to the project.

According to the analysis, due to the mixed-use nature of the project, the close proximity to other high generators of walk-in patrons, and the extensive public transit service provided immediately adjacent to the site, it is anticipated that there will be a substantially reduced parking demand generated by the project.

To help ensure that the parking demand will be reduced, the City requires that a minimum of 50% of the 5,748 square feet of retail space be neighborhood serving to attract residents, employees and hotel guests from the surrounding area. The project is located within close proximity to a number of significant generators of walking trips, including Santa Monica City Hall, Santa Monica courthouse, the Civic Auditorium, the Viceroy Hotel, Le Merigot Hotel, Loews Santa Monica Beach Hotel, the Rand Corporation, and the Maguire Office building. It is anticipated that employees and visitors to these surrounding uses will utilize the commercial uses within the project without needing to drive. Further, the project is part of the Civic Center Specific Plan area where the City has recently constructed an 876 space parking garage to help support uses within the Civic Center area. The parking structure is located approximately 700 feet, or one block east of the project site. The parking structure, with approximately 700 publicly available spaces, is currently underutilized (less than 5% occupied during the afternoon). It is anticipated that some visitors to the Village project will utilize the available parking within the parking garage, including the new on-street parking spaces (approximately 16 -18) that will be created along the proposed new road segment, Olympic Drive, located adjacent to the project. In addition, the project will also share 37 unreserved spaces of the affordable housing guest parking, that are anticipated to be surplus parking, with the commercial uses.

Furthermore, the City has conditioned the project to reduce vehicular trip generation at the site through Sustainable Transportation Measures to minimize vehicle trips to and from the site. Part of these measures include requiring a minimum of 50% of the retail uses on-site to be neighborhood serving and utilize shared parking between commercial and residential guest uses. The development will incorporate a Transportation Demand Management (TDM) program that has a performance target to reduce vehicle trips (approximately 2,521 daily trips) anticipated by the EIR by 35%. The TDM will include such measures as: providing car-pooling parking spaces; an on-site car share program; concierge service to accept deliveries and complete certain specified errands in sequential grouped trips; transit subsidy for employees and low-income residences; provision of transportation information/promotions about transit services, bicycle facilities for employees, residents, and visitors; on-site sales of transit fares; and provision of a minimum of 100 secure bicycle parking spaces, with shower and locker facilities for employees of the commercial use.

The City will contract with an independent third party consultant to monitor compliance with the performance targets on a bi-annual basis to determine if the identified measures are

achieving the goals and, if not, the program will be revised as feasible in an effort to attain compliance.

The City is also requiring the developer to contribute a total of $700,000 to a transit service development fund, to support and improve public transit to the site and provide and improve transit to and from local schools.

The project incorporates features that would help discourage vehicular travel and encourage alternative forms of transportation. These include the mixed-use nature of the project itself, the proposed housing that would complement existing downtown jobs, and the project's location in an area well-served by transit and within walking distance of major uses and destinations. As designed and located, it is anticipated that the demand for parking will be significantly reduced. In the event that the demand is higher than expected, the potential impact to public access will not be significant. Any increase in demand beyond the on-site parking supply will be met by the nearby Civic Center parking structure and the available street parking located around the Civic Center area. Furthermore, the street parking in the surrounding area is not heavily used for beach parking due to its location from the beach and because the street spaces are generally short-term metered. Beach parking is generally closer to the beach and along residential streets, where visitors can park for longer periods of time, and in the beach parking lots where there is an ample supply of public parking. The City has stated in previous Commission permit actions that within the Coastal Zone there are over 10,000 public parking spaces including approximately 5,434 parking spaces within public beach lots and on the Pier; 550 metered street spaces; and 330 metered lot spaces. Of the total parking within the beach lots the peak utilization rate during the summer was 58%, or a total surplus of 3,151 spaces. Within the two main South Beach lots, that provide 2,406 spaces, the occupancy rate during the summer is approximately 67% during the weekend. During the weekday, occupancy rates are even lower with a maximum of approximately 41% (summer 2007). Therefore, the South Beach lots have a surplus of at least 793 parking spaces during the summer, including during summer holiday periods. In addition to the supply of public parking and mass transit service, the City has committed significant resources towards improvements that have made beach access easier and safer throughout the City's coastal zone. New improvements include additional signals, and crosswalks, reconstruction of intersections, and the addition of median islands. Furthermore, the City has previously stated that they have invested over 25.9 million dollars in beach improvements over the last 14 years in order to enhance the beach experience for coastal visitors. These improvements include creation of a beach bike path, improved beach park and play areas, and restoration of the Santa Monica Pier. The City is also currently constructing a public beach facility in the north beach area (CDP No. 5-06-226). The City has also implemented a signage program to improve visitor access to the coast and is developing a marketing program to better inform regular visitors and new visitors of the various beach parking options available along the coast.

Therefore, as proposed, the project will provide adequate parking on-site and will have support parking within the Civic Center parking structure so that the project will not have a

significant impact on the surrounding area and on public beach access. Furthermore, through the TDM program, contribution to transit programs and provision of alternative transportation, the project's parking demand will be reduced. However, to ensure that the development will continue to incorporate the TDM program to reduce parking and traffic so that parking generated by the development will not adversely impact public parking in the surrounding area, Special Condition No. 2, requiring the implementation and monitoring of the City's TDM program, is necessary. However, one of the TDM measures include "unbundling and Lease of Parking Spaces". This measure would allow the condominium units within the development to lease unused residential spaces to third parties. Although this has the potential to tap into a source of underutilized parking spaces for use by others that require additional parking, such as other condominium owners within the project, the City, or other nearby uses, it also has the potential to create on-site parking shortages for the residents of the development in the event that demand by the individual units change over time due to changes in ownership, where the new owners require spaces that were previously not needed and leased to other uses. This may force residents to park off-site and on public streets whereby impacting public parking used for beach parking. According to the City, unbundling and leasing of spaces is an option for the developer and not required by the City. However, the issues created by this measure have not been fully resolved between the City and developer and although this measure may not ever be implemented, it could have an adverse impact on surrounding public parking and beach access if it is implemented in the future. Therefore, this measure should not be part of the TDM until the City/developer has completely analyzed the operational details of this measure and determined the potential impacts to on-site and off-site parking. To ensure that this measure does not adversely impact public beach access and is consistent with the Chapter 3 policies of the Coastal Act, the applicant/developer shall, prior to implementing this measure, submit an amendment to this permit for review and approval by the Commission, with supporting parking studies and a detailed analysis of how this measure would operate. Special Condition No. 3 requires that any change to the parking, including the future provision of leasing of on-site parking, shall require an amendment to this permit.

Furthermore, any change from the proposed low-income rental units to higher income rentals, or to a market rate residential project, would constitute "development", as defined in Section 30106, and may have an impact on the parking demand generated by the project. The City has indicated that the affordable units are required to remain as affordable units for 99-years. In past Commission permit action the Commission has required low-income projects to remain affordable for at least 50 years or the life of the project. As required by the City, the time period exceeds the Commission's requirement and is therefore consistent with past permit actions with regards to preserving affordable housing. However, to ensure that these units remain as low-income rental units as approved by this permit, Special Condition No. 4 requires an amendment to this permit for any change to the project description as proposed by the applicant, such as conversion of these units to a higher income requirement. If the applicant were to submit such an amendment request, it would have to demonstrate that such a change would not adversely impact public parking or that parking impacts on coastal access or recreation are mitigated. Furthermore, to ensure that the general public is aware of the availability of public parking within the subterranean

parking structures and alternative parking is provided at the nearby Civic Center parking garage, Special Condition No. 5 requires the applicant to place signs on the exterior portion of the building or at the entrance of the parking garages, notifying the public of the location and availability of the public parking. The applicant shall submit a signage plan, for the review and approval of the Executive Director, showing the location, size and wording to be used.

The Commission, therefore, finds that only as conditioned will the project not adversely impact coastal access and will be consistent with Section 30211 and 30252 of the Coastal Act and with the applicable policies of the City's certified LUP.

D. Control of Polluted Runoff

Section 30230 states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

The proposed project poses a potential source of pollution due to contaminated runoff from the proposed construction, parking areas and other hardscape. The City, to mitigate potential impacts from development, has adopted an Urban Runoff Ordinance. The ordinance requires projects to incorporate best management practices with extensive recommendations and measures to reduce or prevent contaminants from running off the site. The City requires all new development to achieve twenty- percent reduction of the projected runoff for the site and the use of oil and water separators or clarifiers to remove petroleum-based contaminants and other pollutants. Furthermore, the City has a new state-of-the-art stormwater treatment facility that treats all dry weather storm runoff. Runoff from all new development is directed to existing stormdrains, which direct stormwater to the treatment facility.

Coastal Commission water quality staff has previously reviewed the City of Santa Monica's water quality standards for similar projects and has determined that the City's standards are consistent with standards imposed by the Commission.

However, unlike previous Commission approved projects, this proposed project involves a significant amount of excavation. A potential water quality problem can come from excavation for the underground parking garage. Based on test borings, groundwater was found at depths of 46.5 to 55 feet below grade. The proposed subterranean structure is proposed at a depth of approximately 33 feet below grade. As proposed, the depth of construction will not encounter groundwater. Although the structure will be above the level of the groundwater, future groundwater levels may rise above the base of the structure during construction and require dewatering. In addition, groundwater and/or percolating surface water may collect in the bottom of the parking structure during or after construction and may require pumping.

If groundwater is to be pumped during construction, the EIR states that a National Pollution Discharge Elimination System (NPDES) permit or a sanitary sewer discharge permit will be obtained from the Regional Water Quality Control Board or the Sanitary District. However, to ensure that the dewatering does not adversely impact water quality by introducing sediments or other contaminants into coastal waters, via the storm drain, Special Condition No. 6 is necessary, requiring the applicant to provide the installation of filters on all dewatering pumps and sump pumps. Therefore, only as conditioned will the proposed project be consistent with the Coastal Act and past Commission action with regards to water quality requirements to minimize water quality impacts. To ensure that the development complies with the City requirements, Special Condition No. 7 is necessary to require compliance with the City's water quality requirements. The Commission, therefore, finds that, as conditioned, the development will be consistent with Section 30230 and 30231 of the Coastal Act.

E. Cultural Resources

Section 30244 of the Coastal Act states:

> *Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The proposed site has previously been developed and disturbed in the past. According to the EIR, archaeological records indicate the presence of two prehistoric sites within a one-mile radius of the Civic Center area. The EIR states that the potential for the presence of archaeological resources is small due to past development of the site, however, there is a small possibility of a deeply buried site being uncovered during excavation.

In past permit action, the Commission has required the applicants to monitor all grading and construction activities and has required appropriate recovery and mitigation measures, regarding

excavation, reporting and curation. To ensure that the project is consistent with Past Commission action, special conditions are necessary to ensure consistency with the Coastal Act. To assure that the proposed project remains sensitive to the concerns of the affected Native American groups, a Native American monitor should be present at the site during all excavation activities to monitor the work, and be present in case artifacts or remains are discovered. The monitor should meet the qualifications set forth in the Native American Heritage Commission (NAHC's) guidelines. Therefore, as conditioned, the proposed project is consistent with Section 30244 of the Coastal Act which requires reasonable mitigation measures to be provided to offset impacts to archaeological resources.

Once a site is determined to contain significant cultural resources a Treatment Plan (Mitigation Plan) will be prepared and reviewed by the appropriate Federal and State reviewing agencies. The Treatment Plan will outline actions to be implemented to mitigate impacts to the cultural resources found at the site(s). To determine whether the Treatment Plan is consistent with the proposed permit or if an amendment to this permit is required, the applicant is required by Special Condition No. 8 to submit a copy of the Treatment Plan to the Commission. The Executive Director, after review of the Treatment Plan, will determine if an amendment will be required. The Executive Director will require an amendment if there is significant additional excavation required or there is a significant change in area of disturbance or change in the type of excavation procedures.

In the event that grave goods are found, the Los Angeles County Coroner's Office will be notified in compliance with state law, and they in turn will request the Native American Heritage Commission to determine the cultural affiliation.

The Native American Heritage Commission's Archaeological Guidelines also recommend that the research design include arrangements for curation of collections when appropriate, and dissemination of the research findings. Regarding curation, there must be some assurance that the collection and related field records, catalogs and reports will be properly curated. Without proper curation there is no assurance that the value of information obtained will be retained in perpetuity. A qualified curation facility is one that meets the State Historic Preservation Office (SHPO) guidelines, such as the San Bernardino County Museum. However, there is no guarantee that the facility will be able to accept the collections once the artifacts are ready for curation. Consequently, if another facility is available that meets SHPO's guidelines, it would also be appropriate to allow curation to occur there. In any case, curation of any significant artifacts must be assured in order to find that the proposed project meets Section 30244 of the Coastal Act's requirement for reasonable mitigation. Therefore, as a condition of approval, artifacts of significant cultural value collected as a result of this project at the archaeological sites shall be curated at a qualified curation facility. If no qualified curation facility is available at the time the project is complete, an amendment to this permit shall be required to determine the appropriate curation process. The Commission finds, therefore, that as conditioned, the proposed project is consistent with Section 30244 of the Coastal Act.

F. Local Coastal Program

Section 30604(a) of the Coastal Act states that:

> Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson Way (Beach Overlay District) and the Civic Center. On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications. As discussed above, the Commission found that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

G. Development Agreement

California Government Code Section 65869 stipulates that development agreements shall not be applicable to development in the coastal zone unless, prior to certification of the local coastal program ("LCP") for the jurisdiction in which the development is located, the Commission, through formal action, approves the development agreement.

Since the LCP for the City of Santa Monica has not been certified, the Commission will have to approve the development agreement before the agreement can be effective. The Development Agreement is currently not before the Commission. The City has submitted the Development Agreement as a background document as part of the application for the Coastal Development Permit for the proposed development. Therefore, a special condition is necessary to place the applicant (City) on notice that the development agreement is an agreement between the applicant and the developer, and is not effective in the Coastal Zone until it has been formally submitted and approved by the Commission.

H. California Environmental Quality Act

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives

or feasible mitigation measures available, which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project, as conditioned, is consistent with the applicable polices of the Coastal Act. There are no feasible alternatives or mitigation measures available, which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

APPENDIX 1

CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES

A. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.

1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.

2. If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.

3. Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection D of this condition and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.

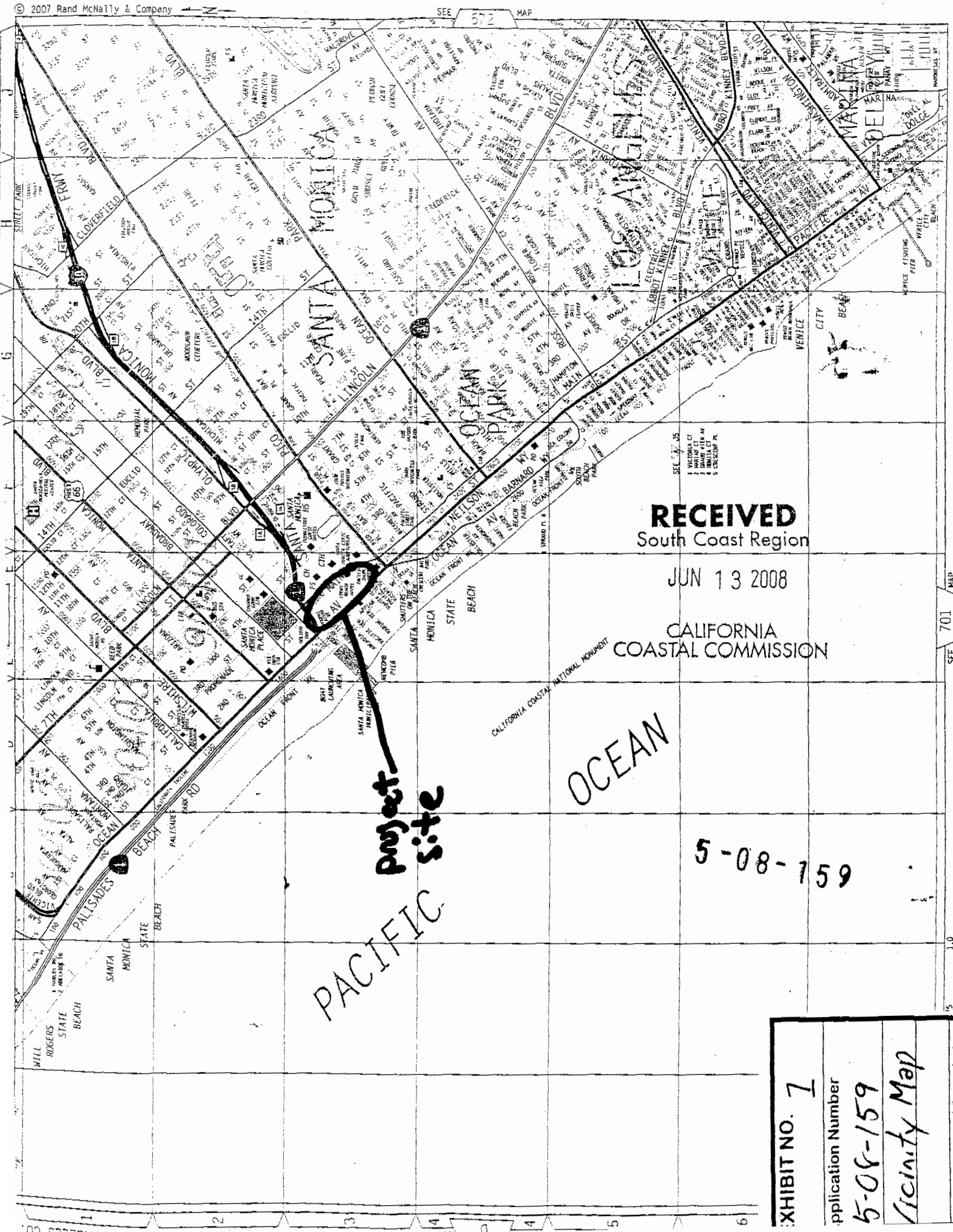
B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archaeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection E of this condition. The supplementary Archeological Plan shall identify proposed investigation

and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.

2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.



RECEIVED
South Coast Region
JUN 13 2008
CALIFORNIA
COASTAL COMMISSION

5-08-159

EXHIBIT NO. 1
Application Number
5-08-159
Vicinity Map
California Coastal Commission

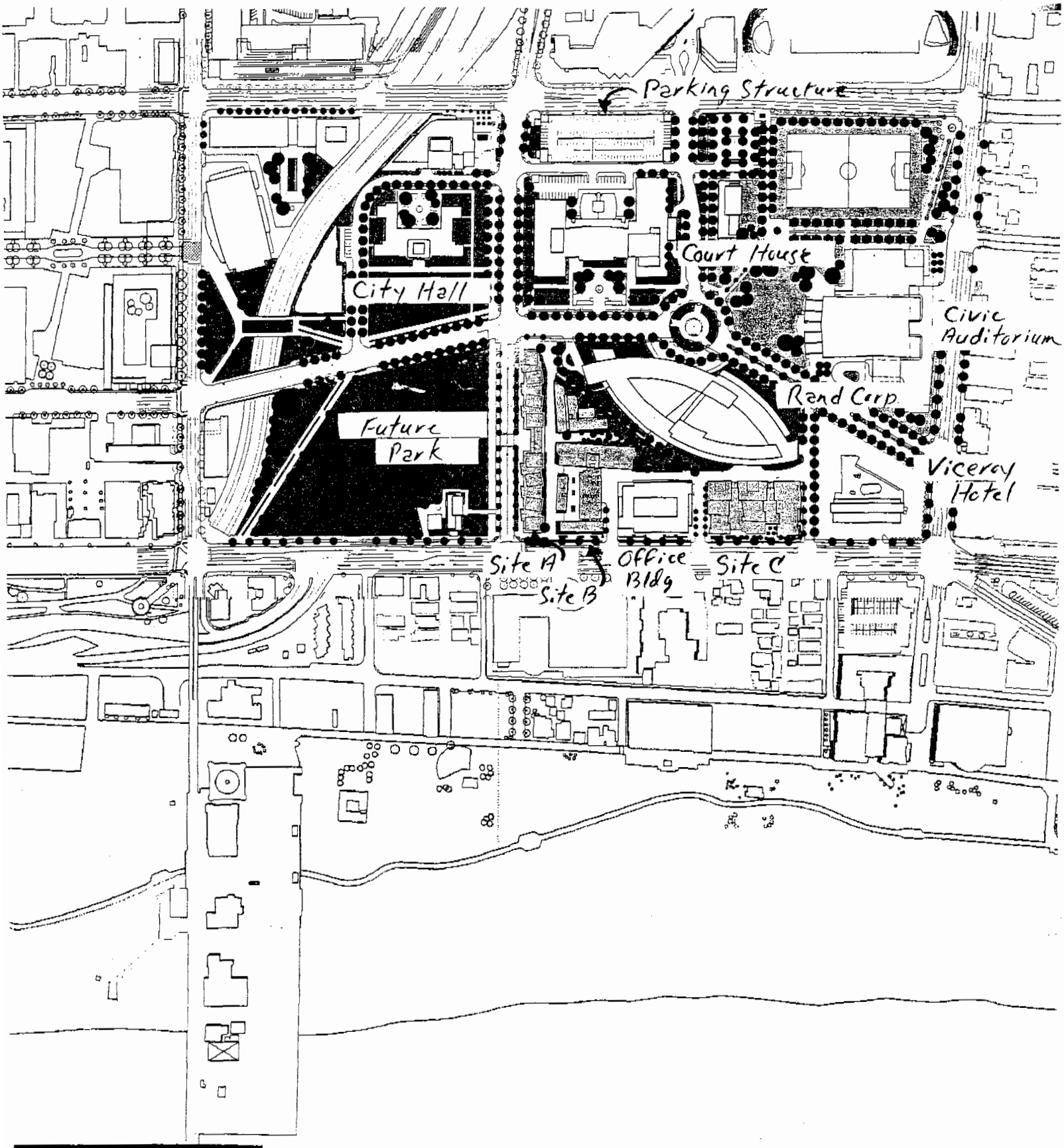
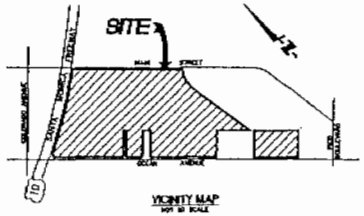


EXHIBIT NO 2
Application Number 5-08-159
Area Map
California Coastal Commission

TA/ACSM LAND TITLE SURVEY



VICINITY MAP
NOT TO SCALE

OTT (CONTINUED):

BASIS OF BEARINGS:

BENCHMARK:

FLOOD ZONE HAZARD:

UTILITY NOTE:

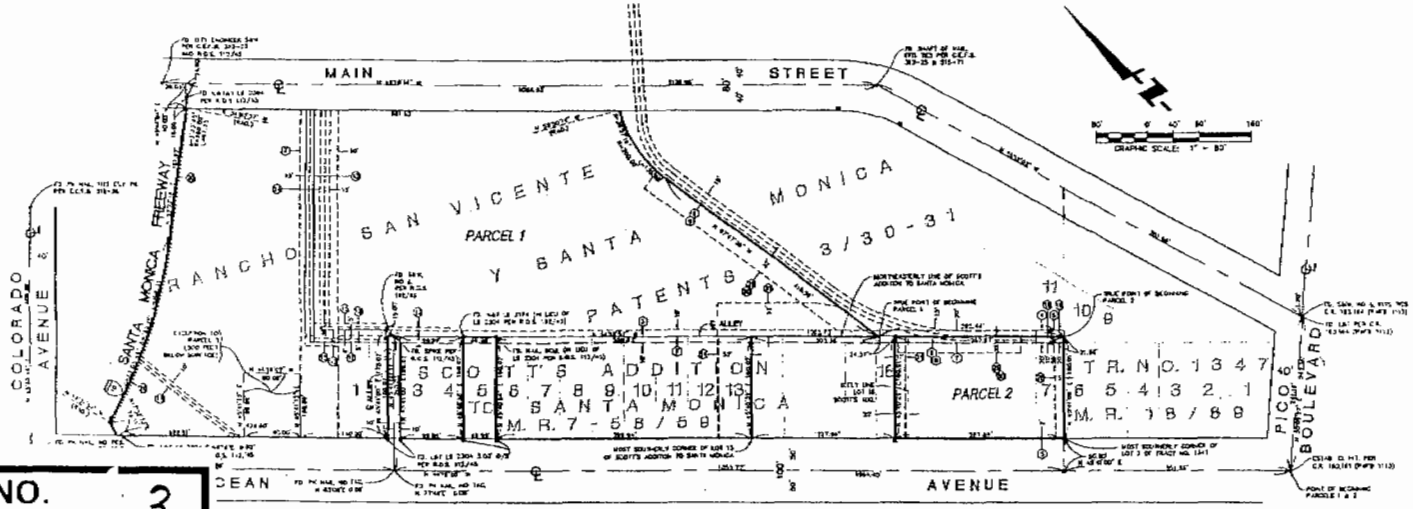
LAND AREA:

TOPOGRAPHY NOTE:

USE ZONE:

LEGEND:

SURVEYOR'S CERTIFICATE



BOUNDARY AND TITLE SHEET

1	11/30/07	UPDATE TITLE REPORT (8/31/07); ITEM 3 HEIGHT, DELETED

ALTA/ACSM LAND TITLE SURVEY

of: "The Village"– 1683, 1703, 1707, 1711, 1719 & 1725 Ocean Avenue & Other Vacant Land in the City of Santa Monica, California

for: The Redevelopment Agency of the City of Santa Monica The Related Companies of California & First American Title Company

FUSCOE ENGINEERING
16795 Von Karman, Suite 100
Irvine, California 92606
Tel 949.474.1960 • Fax 949.474.5525
www.fuscoe.com

DATE: MAY 22, 2007
SCALE: 1" = 80'
FN: 622064LT.dwg
JN: 622.06.01
DRAWN BY: RS/BM
CHECKED BY: JJM
SHEET 1 OF 3

EXHIBIT NO. 3

Application Number

5-08-159

Parcel Map

California Coastal Commission

The Village

SANTA MONICA
CALIFORNIA

03.27.2008

SURVEY

SHEET NO.:

1.0

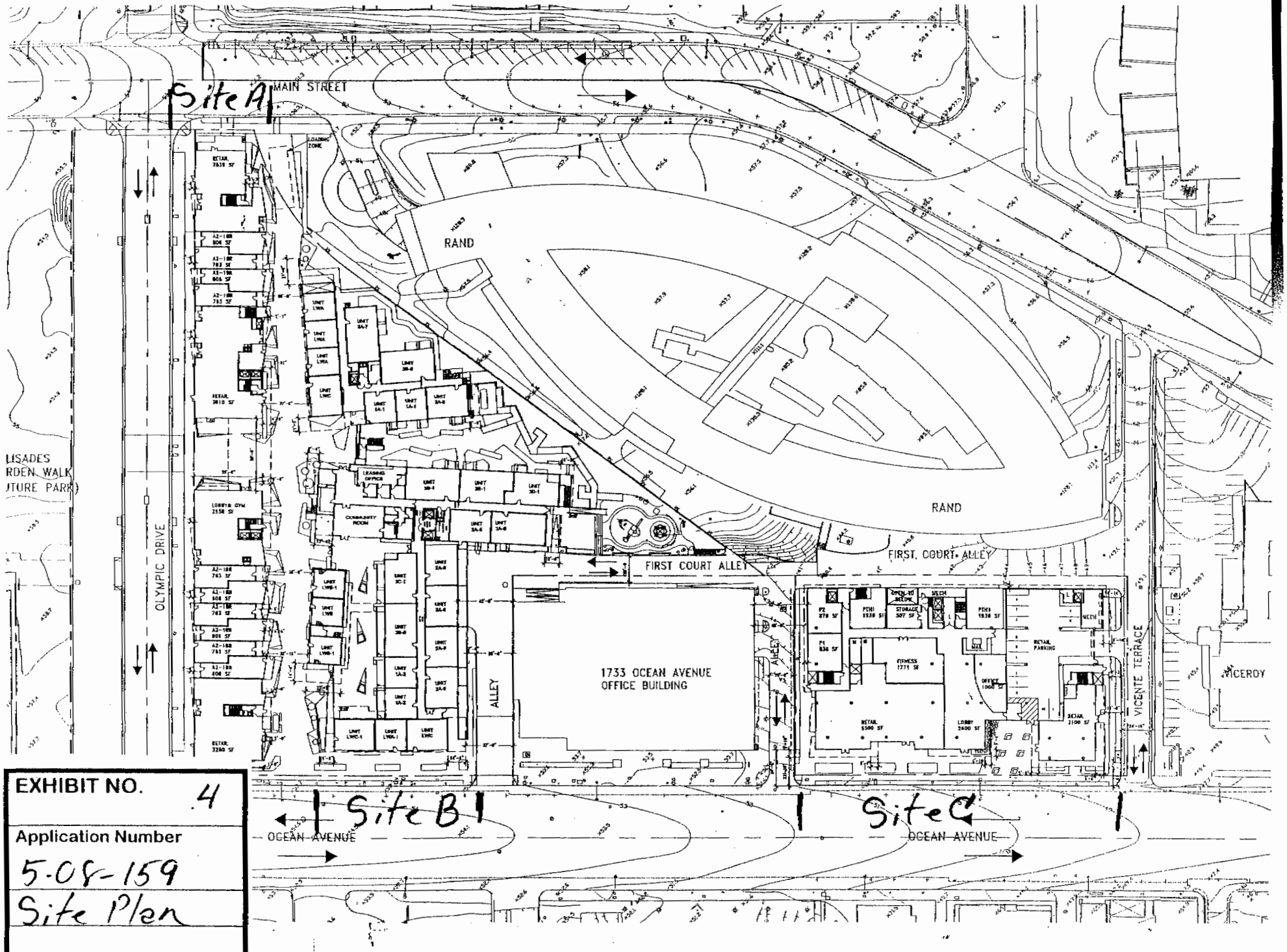


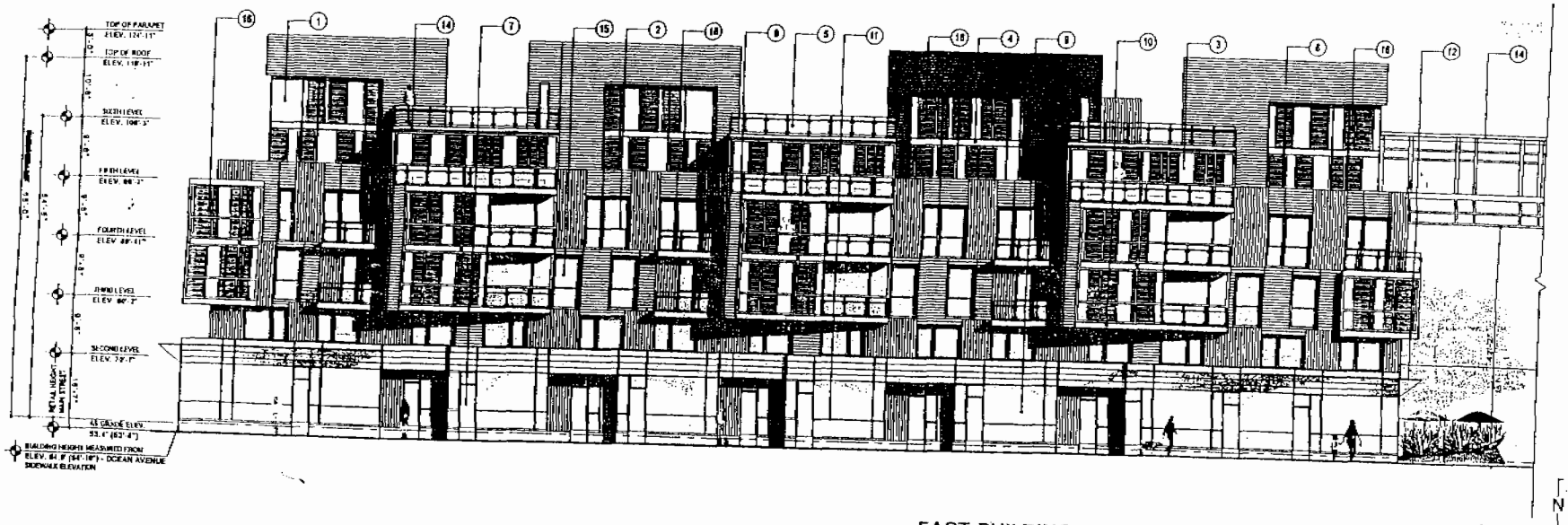
EXHIBIT NO. 4

Application Number

5-08-159

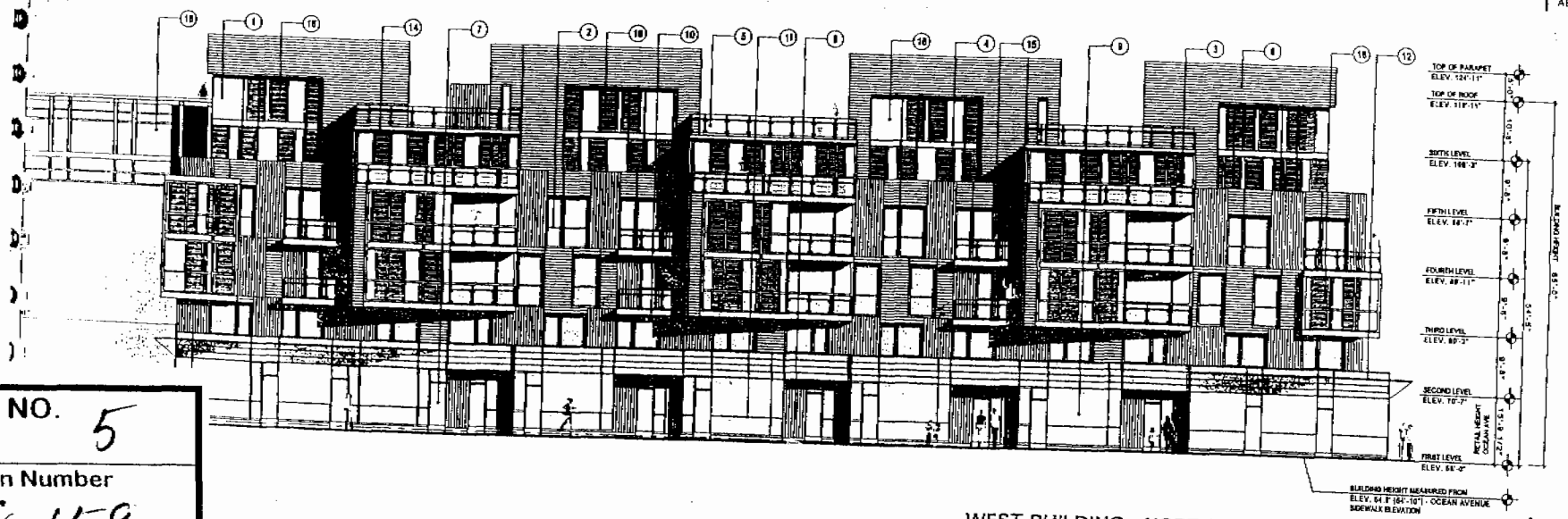
Site Plan

California Coastal Commission



EAST BUILDING - NORTH ELEVATION AT OLYMPIC DRIVE | 2

A8.0



WEST BUILDING - NORTH ELEVATION AT OLYMPIC DRIVE | 1

A8.0

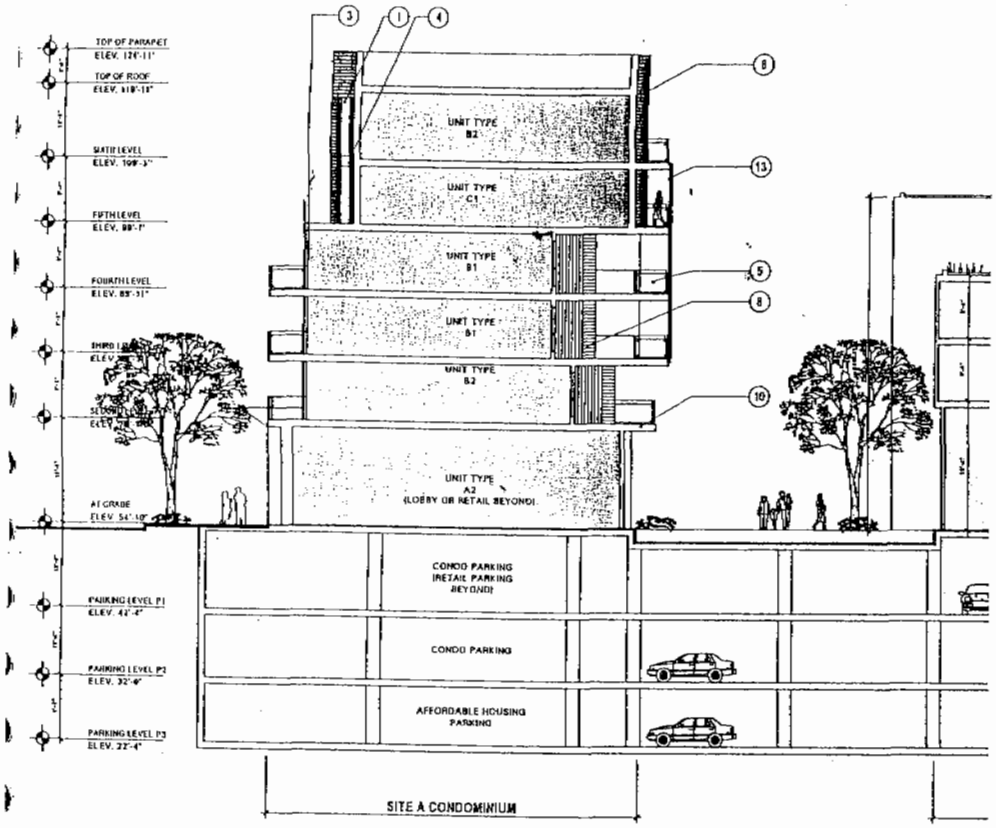
EXHIBIT NO. 5

Application Number

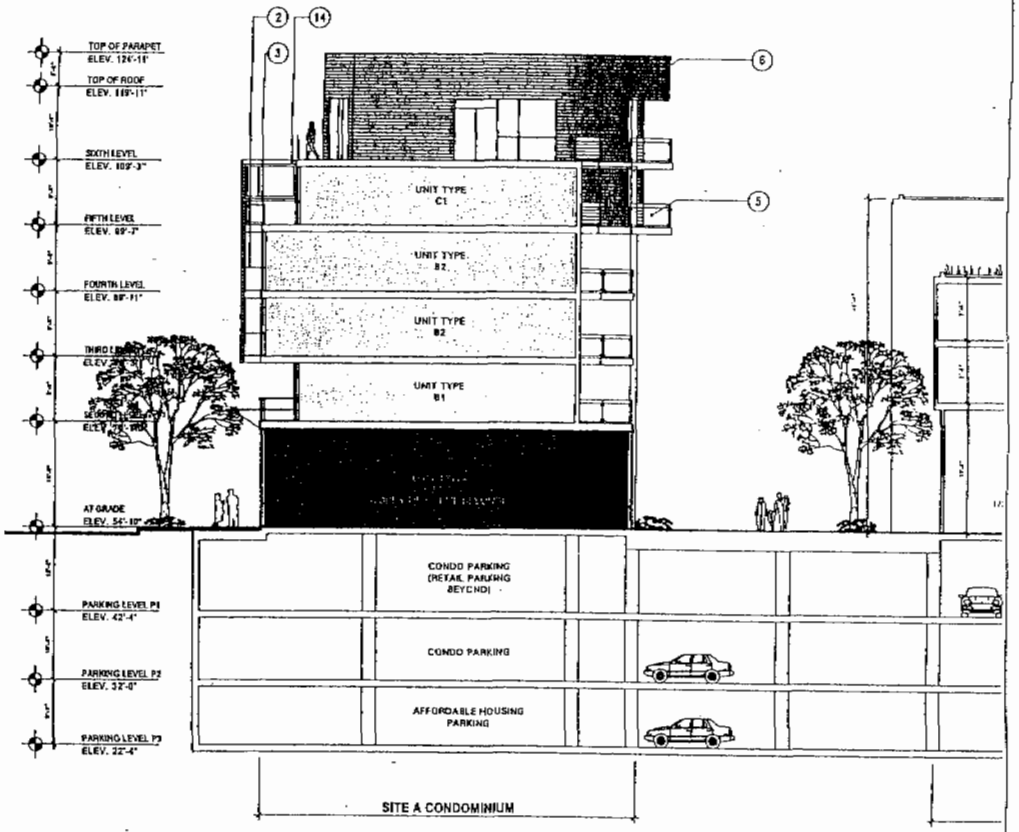
5-08-159

North Elevations

California Coastal Commission

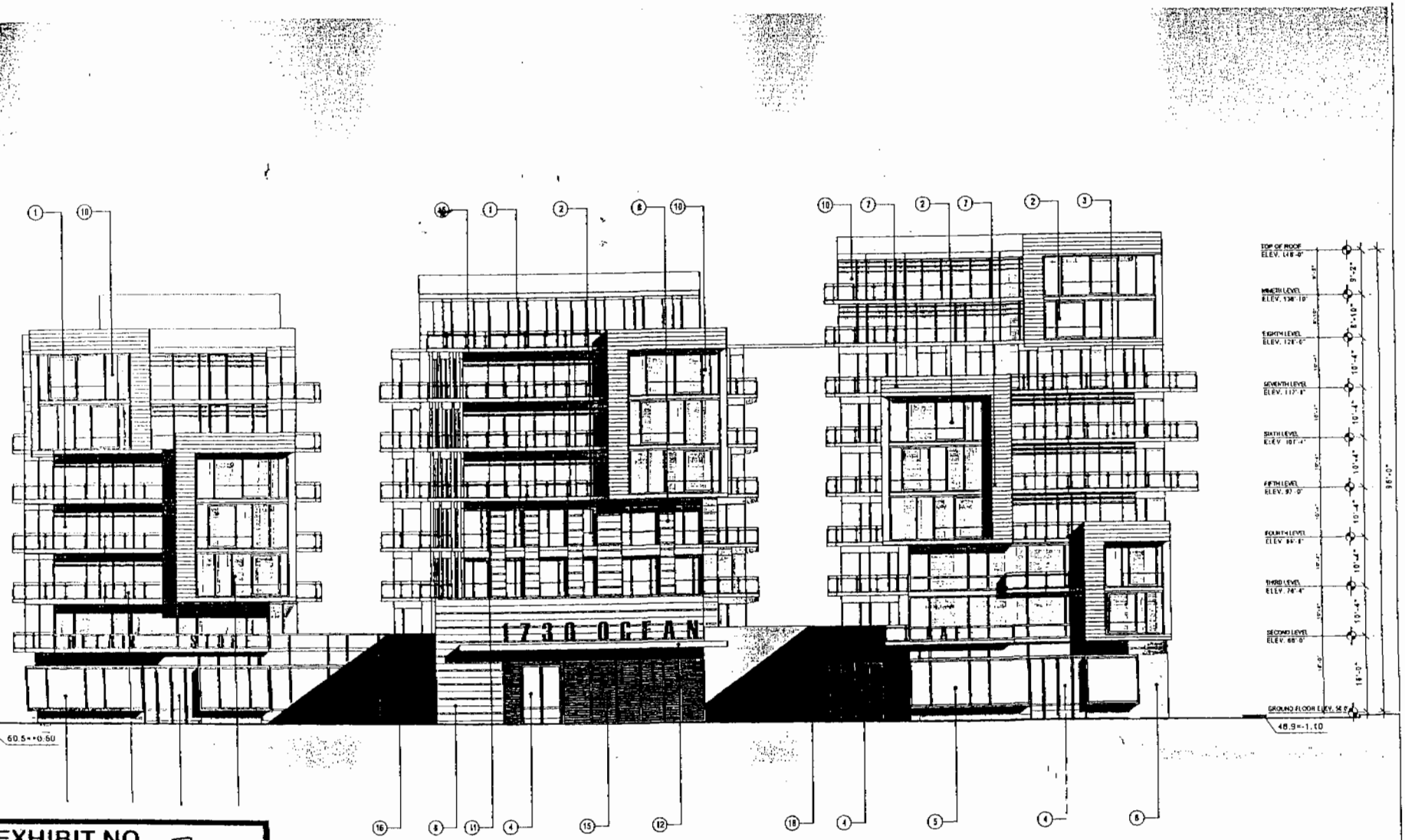


SECTION B | 4
A9.2
B



SECTION A | 3
A9.2
A

EXHIBIT NO. 6
Application Number
5-08-159
Cross-Sections
Site A
California Coastal Commission



WEST ELEVATION 1
C8.0

The Village

SANTA MONICA
CALIFORNIA

MATERIAL LEGEND

1. VISION GLASS; CLEAR INSULATED LOW WITH CLEAR LOW-E
2. POWDER COATED STEEL FRAMED WINDOW
3. FRAMELESS SCREW MOUNT LAMINATED GLASS RAILING WITH TYPE 316 ST. STL. SUPPORT AND HANDRAILS
4. KYNAR FINISH ALUMINUM FRAMED ENTRANCE WITH GLAZED DOOR
5. KYNAR FINISH ALUMINUM FRAMED STORE FRONT
6. LAMINATED COLOR GLASS PANEL
7. ZINC PANEL CLADDING
8. PRECAST FRENCH LIMESTONE STORE PANEL
9. GLAZED WALL FOUNTAIN
10. "EQUIVRETEC" SLIDING SHUTTER DOORS INCORPORATED WITH WEST, SOUTH AND NORTH FACING
11. STAINLESS STEEL SCREW MOUNT LAMINATED GLASS CANOPY
12. ZINC CANOPY
13. ALL EXPOSED STEEL CABLE WITH PROTECTIVE COATING
14. ALL UNDERSIDE OF BALCONIES CLAD WITH ZINC
15. WOOD SCREENS WITH KYNAR FINISH ALUMINUM SUPPORT
16. LIVING WALL GREEN SCREEN
17. ALUMINUM ROLLER SHUTTER

03/27/2008

ELEVATIONS

SHEET NO.:

C8.0

0' 10' 20'

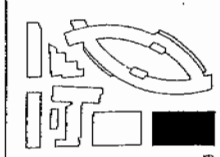


EXHIBIT NO. 7

Application Number

5-08-159

West Elevations

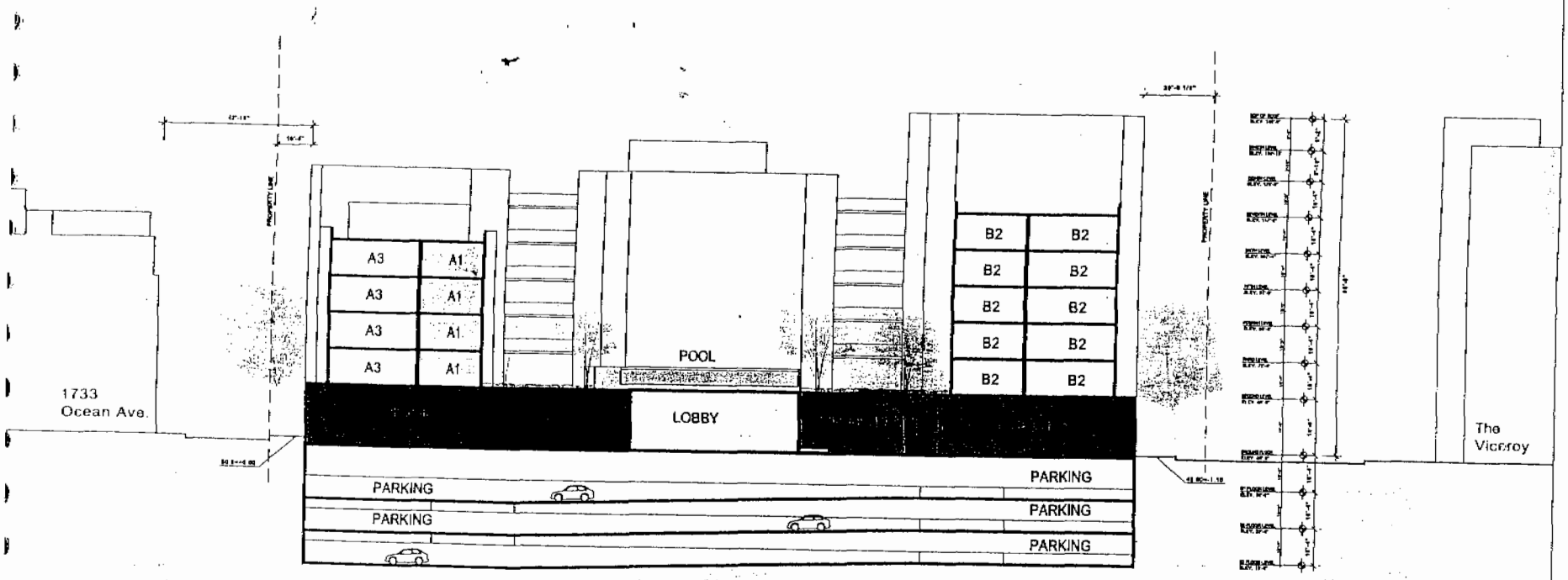
Site C

California Coastal Commission

The Village

SANTA MONICA
CALIFORNIA

MATERIAL LEGEND



SECTION B 1
C9.1

03.27.2008

SECTION

SHEET NO.:

C9.1

0' 15' 30'

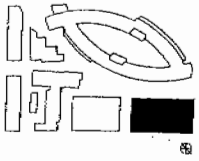
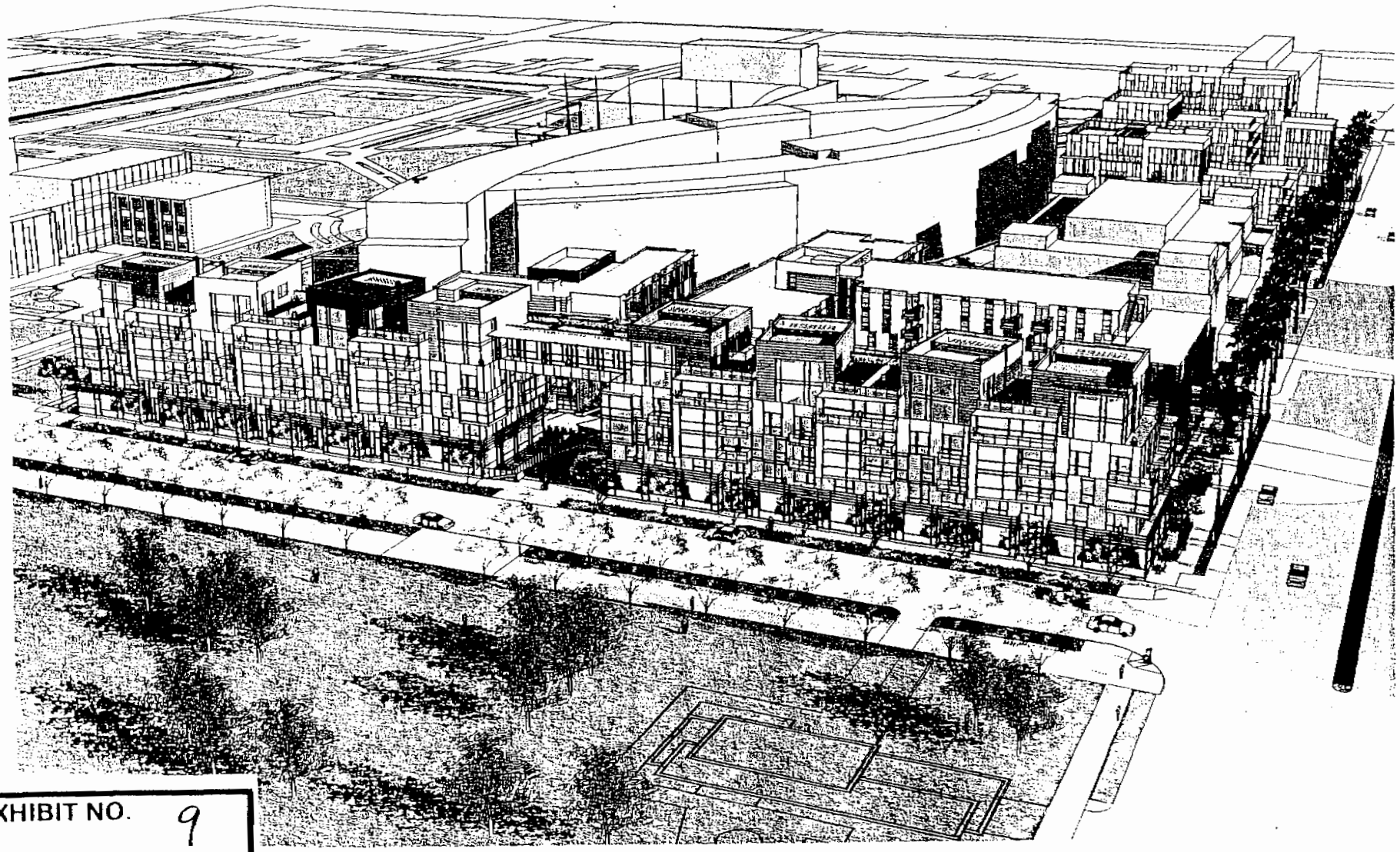


EXHIBIT NO. 8

Application Number
5-08-159

Cross-Section
Site C

California Coastal Commission



VII
SANTA MC
CALIFORN

3.18.2008
SITE A
RENDI

SHEET NO.:
LA

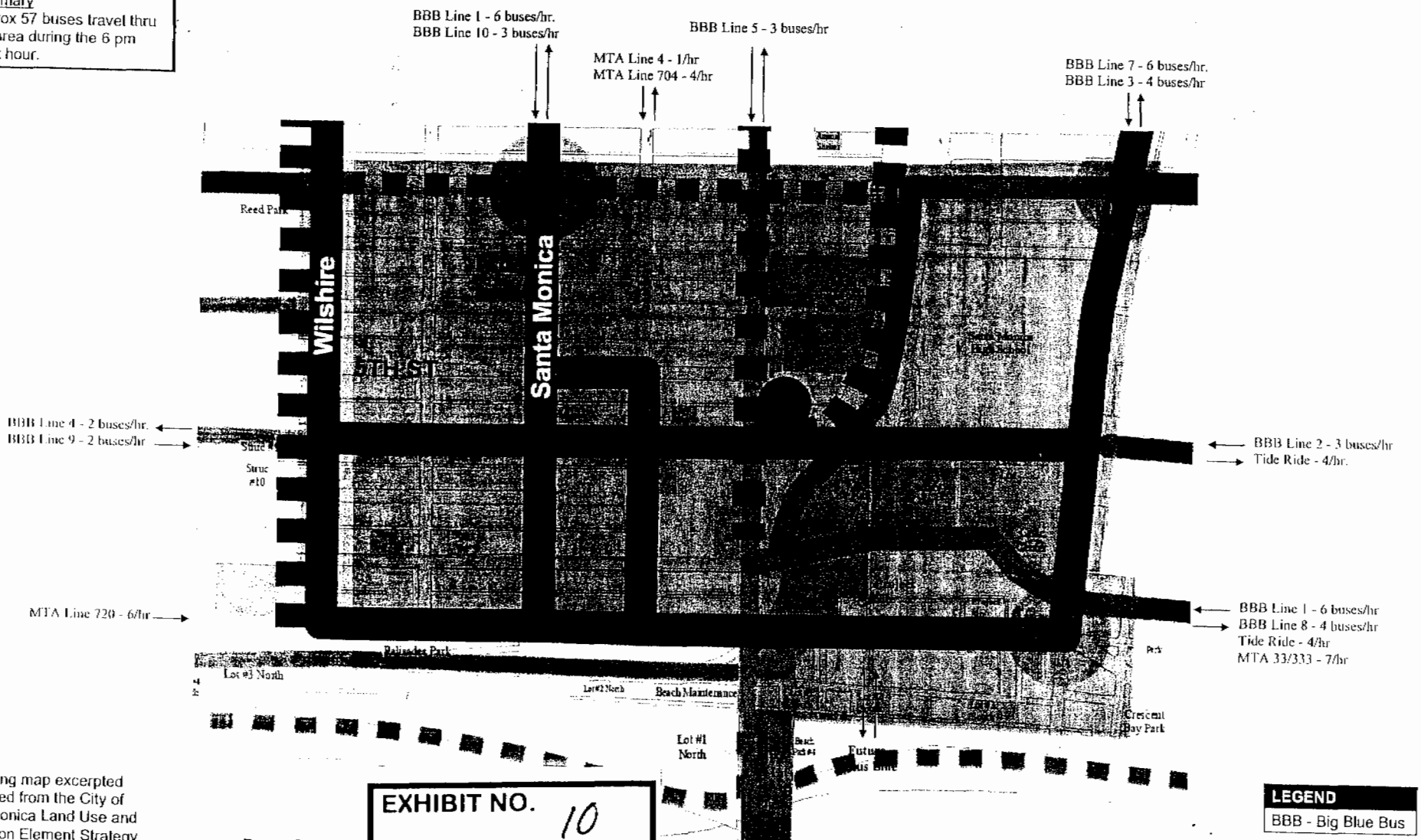
EXHIBIT NO. 9

Application Number
5-08-159
Rendering

California Coastal Commission

THE VILLAGE AT THE SANTA MONICA CIVIC CENTER
TRANSIT NETWORK MAP
6 PM PEAK HOUR

Summary
Approx 57 buses travel thru the area during the 6 pm peak hour.



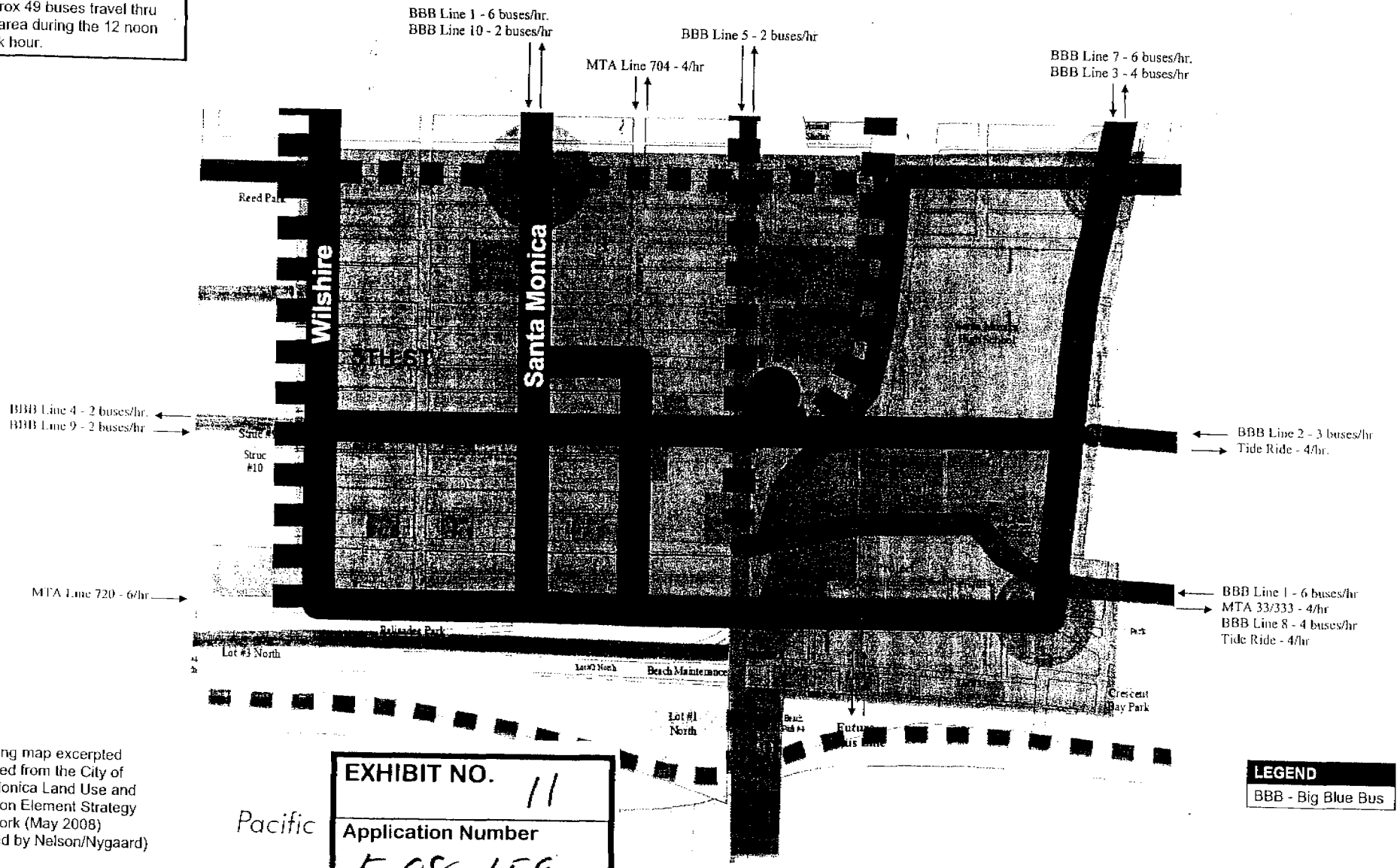
Underlying map excerpted and edited from the City of Santa Monica Land Use and Circulation Element Strategy Framework (May 2008) (prepared by Nelson/Nygaard)

Pacific Oc

EXHIBIT NO. 10
Application Number
5-08-159
Transit Map
6PM
California Coastal Commission

THE VILLAGE AT THE SANTA MONICA CIVIC CENTER
TRANSIT NETWORK MAP
12 NOON PEAK HOUR

Summary
Approx 49 buses travel thru the area during the 12 noon peak hour.



Underlying map excerpted and edited from the City of Santa Monica Land Use and Circulation Element Strategy Framework (May 2008) (prepared by Nelson/Nygaard)

LEGEND
BBB - Big Blue Bus

EXHIBIT NO. 11
Application Number
5-08-159
Transit Map
12 noon
California Coastal Commission

RECEIVED
South Coast Region
AUG 18 2008
CALIFORNIA
COASTAL COMMISSION

LINSCOTT
LAW &
GREENSPAN
engineers

Engineers & Planners
Traffic
Transportation
Parking

Linscott, Law & Greenspan, Engineers
236 N. Chester Avenue
Suite 200
Pasadena, CA 91106
626.796.2322 T
626.792.0941 F
www.llgengineers.com

Pasadena
Costa Mesa
San Diego
Las Vegas

MEMORANDUM

To:	Gino A. Canori Related	Date:	August 15, 2008
From:	David S. Shender, P.E. Linscott, Law & Greenspan, Engineers	LLG Ref:	1-073713-1
Subject:	**Parking Demand Analysis for the Santa Monica Village Project**		

This ***revised*** parking demand analysis has been prepared for the Santa Monica Village Project located in the Civic Center area of the City of Santa Monica. The proposed project will consist of 160 affordable residential units (rental), 164 market-rate condominiums, and 19,248 square feet of ground floor commercial uses. It is noted that of the 19,248 square feet of floor area, approximately 5,748 square feet would be devoted to retail uses and 13,500 square feet would be allocated for restaurant uses (plus an additional 3,000 square feet of outdoor restaurant service area). This revised parking demand supersedes our prior report dated June 12, 2008 based on comments received from Coastal Commission staff.

The project proposes to provide parking on-site based upon: (1) Coastal Commission requirements for the market-rate condominiums; (2) a parking demand analysis for the affordable rental housing; and (3) a shared parking demand analysis for the ground floor commercial uses.

It is concluded that the Village Project provides sufficient off-street parking taking into account:

- the City of Santa Monica's shared parking policies for Civic Center parking resources;
- the City-required Transportation Demand Management Program for this Project that will substantially reduce Project traffic and parking demand;
- the substantial walk-in business for the Project's retail and restaurants given that:
  - many customers for these businesses will be residents of the Project, and
  - others will walk from nearby uses (City Hall, the Courthouse, the office building at 1733 Ocean Avenue and several nearby hotels);
- the Project's close proximity to an extensive public transit network; and
- the significant number (i.e., more than 700) of publicly-available parking spaces in close proximity to the project.

These factors are discussed more fully below.

EXHIBIT NO. 12
Application Number
5-08-159
Parking Demand Analysis
California Coastal Commission

Coastal Commission Parking Guidelines

The Coastal Commission Guidelines contemplate the following as related to parking:

- Residential. Two parking spaces for each multi-family residential unit, plus one guest parking space for every seven units.[1] There is no variation in the Coastal Commission parking rates with respect to the number of bedrooms in each unit, or whether the unit is affordable or market rate. However, it has been the practice of the Coastal Commission to approve a reduced parking requirement for affordable housing projects in Santa Monica.

  Further, the Coastal Commission Guidelines do not specify a rate for live/work units. However, it is reasonable to conclude that such units would not generate a parking rate different than regular units since these residents would be encouraged to work from their residences.

- Retail. For retail uses, the Coastal Commission Guidelines contemplate one parking space for each 225 square feet of building floor area.

- Restaurant. For restaurant uses, the Coastal Commission Guidelines contemplate one parking space for each 50 square feet of service area (indoor and outdoor service areas). There is no parking requirement for non-public uses within restaurants such as kitchen areas, storage, etc.

The relevant Coastal Commission Guidelines applied to the proposed uses within the Santa Monica Village Project are summarized in ***Table 1*** below. It is noted in preparation of the analysis summarized in *Table 1* that for the restaurant floor area, it is assumed based on information provided by the applicant that the service area is approximately 55% of the total 13,500 square feet of indoor restaurant space (i.e., 7,425 square feet of indoor service area). Thus, together with the outdoor service area (3,000 square feet), a total of 10,425 square feet of restaurant service area is considered in the parking analysis.

[1] The Coastal Commission Guidelines contemplate one guest parking space for every four units for residential projects on Ocean Avenue. As much of the Santa Monica Village Project is oriented towards Olympic Drive, the rate of one guest parking space for every seven units has been assumed in this analysis.

LINSCOTT LAW & GREENSPAN
engineers

Table 1

Coastal Commission Guidelines

Village Development Program		Coastal Commission Parking Guidelines	
Use	Size	Rate	No. of Spaces
Site B (Affordable)			
1 BR	28 units	2 per unit	56
2 BR	56 units	2 per unit	112
3 BR	66 units	2 per unit	132
Live/Work	10 units	2 per unit	20
Guest		1 per 7 units	23
Subtotal	160 units		343
Site A			
1 BR	24 units	2 per unit	48
2 BR	42 units	2 per unit	84
Guest		1 per 7 units	10
Retail	2,718 s.f.	1 per 225 s.f.	12
Restaurant service	6,400 s.f.	1 per 50 s.f.	128
Subtotal	66 units		282
Site C			
1 BR	44 units	2 per unit	88
2 BR	54 units	2 per unit	108
Guest		1 per 7 units	14
Retail	3,030 s.f.	1 per 225 s.f.	14
Restaurant service	4,025 s.f.	1 per 50 s.f.	81
Subtotal	98 units		305
Totals			**930**

Factors Contributing to a Reduction in Parking Demand at the Proposed Project

It is concluded that the Coastal Commission Guidelines contemplate substantially more parking than the actual parking demand forecast to be generated by the Santa Monica Village Project. ***Table 2*** below provides a summary of the proposed parking supply.

Table 2

Recommended Parking Supply

Village Development Program		Coastal Commission Parking Requirement		Recommended On-Site Supply	
Use	Size	Rate	No. of Spaces	Rate	No. of Spaces
Site B-Affordable					
Residential	160 units	2 per unit	320		
Guest		1 per 7 units	23		
Subtotal			343	1.23 per unit[2]	197
Site A					
Residential	66 units	2 per unit	132	2 per unit	132
Guest		1 per 7 units	10	1 per 5 units	14
Retail	2,718 s.f.	1 per 225 s.f.	12	commercial	34
Restaurant service	6,400 s.f.	1 per 50 s.f.	128	shared spaces	
Subtotal			282		180
Site C					
Residential	98 units	2 per unit	196	2 per unit	196
Guest		1 per 7 units	14	1 per 5 units	21
Retail	3,030 s.f.	1 per 225 s.f.	14	commercial	25
Restaurant service	4,025 s.f.	1 per 50 s.f.	81	shared spaces	
Subtotal			305		242
Totals			**930**		**619**

[2] Of the 1.23 parking spaces per unit to be provided for the affordable residential, 160 spaces (i.e., one space per unit) will be reserved while the remaining 37 parking spaces will be available for sharing among residents and their guests.

Thus, the parking analysis has been prepared to examine the appropriate parking supply for the Santa Monica Village Project based on the following considerations:

- An empirical study of parking utilization at existing affordable multi-family residential projects located within close proximity to the project site demonstrates that parking demand is substantially less than the Coastal Commission Guidelines.

- The City of Santa Monica has conditioned the Santa Monica Village Project to reduce vehicular trip generation by 35% through implementation and monitoring of a comprehensive Transportation Demand Management (TDM) program. The trip reduction standards are applied to both the residential and commercial components of the project and will certainly result in a substantial reduction in parking demand at the site.

- The mixed-use nature of the project will promote a substantial walk-in patronage of the ground floor commercial uses by residents of the development. In general, it is reasonable to assume that the commercial uses will be developed to service the residents of the project, with a diminished need to rely on patrons arriving via automobile or other travel modes.

- The project site is within close proximity to a number of significant generators of walking trips, including Santa Monica City Hall, Santa Monica courthouse, the Civic Auditorium, the Viceroy Hotel, the Le Merigot Hotel, and the Loews Santa Monica Beach Hotel. It is reasonable to anticipate that employees and visitors to these uses will find the commercial uses proposed at the project to be convenient for shopping and dining purposes.

- The project site is located immediately adjacent to an extensive public transit network operated by the City of Santa Monica (Big Blue Bus) and MTA. There are five transit lines that operate immediately adjacent to the site on Main Street and Ocean Avenue, with additional transit service nearby on Pico Boulevard, 4th Street and Colorado Avenue. Additionally, the Olympic Drive extension between Main Street and Ocean Avenue provided by the project will become a bus route. The readily available public transit service will allow project residents and visitors to travel by means other than the private automobile, thereby substantially reducing parking demand at the site.

- For visitors to the site who drive, in addition to the on-site parking supply, there is substantial on-street parking available on Olympic Drive and Main Street in close proximity to the project. In addition to the existing supply of street parking, we understand that the project will add approximately 14 to 18 curbside parking spaces along the Olympic Drive extension between Ocean Avenue and Main Street, adjacent to the project site.

- In addition, the City has a parking structure that is largely vacant in the evening hours that is in close proximity to the Santa Monica Village Project (across Main Street). The City's Civic Center public parking garage is located at 333 Civic Center Drive and is within close proximity to the project site. This parking structure provides over 700 parking spaces available for use by the general public[3], and is open throughout the day, with substantial available parking noted in the afternoons and evenings when guests of the residential uses of the project, as well as patrons of the restaurant and retail uses, may find it convenient for their use.

- In general, the City of Santa Monica has promoted an area-wide approach to parking in the Civic Center area. This parking strategy limits the need to build unnecessary parking infrastructure, promotes travel by means other than the private automobile, and encourages/enhances the walkability aspect of the Civic Center.

Accordingly, the project proposes to provide parking to accommodate the forecast demand, as well as in consideration of the City's campus approach to parking utilization within the Santa Monica Civic Center area.

Affordable Residential Parking Demand

As shown in *Table 2*, a parking supply of 1.23 parking spaces per residential unit is recommended for the affordable residential component of the project. The recommendation is based on parking utilization observed at four existing affordable multi-family residential projects located in Santa Monica within close proximity to the project site to document the current trends with respect to parking demand. The existing projects were observed on Wednesday, July 23, 2003 between 2:00 AM and 4:00 AM. During this time period, most, if not all of the project residents would be expected to be at their units.

The parking occupancy for the affordable housing residential projects is summarized in ***Table 3*** below. Parking utilization is provided on a per unit basis, as well as on a per bedroom basis:

[3] According to City staff, the Civic Center garage currently offers reduced parking rates during the summer beach season to encourage utilization, yet past experience has shown that the garage remains substantially underutilized during this busy period.

Table 3

Observed Parking Demand at Existing Affordable Multi-Family Residential Projects in Santa Monica – Weeknight July 2003

Project Address	Number of Dwelling Units/ Bedrooms	Parking Utilization	Parking Demand Rate
1144 Fifth Street	32 units/ 98 bedrooms	41 spaces	1.28 spaces/unit 0.42 spaces/bedroom
708 Pico Blvd.	20 units/ 50 bedrooms	24 spaces	1.20 spaces/unit 0.48 spaces/bedroom
815 Ashland Ave.	45 units/ 98 bedrooms	62 spaces	1.38 spaces/unit 0.63 spaces/bedroom
OP-43	43 units/ 86 bedrooms	46 spaces	1.07 spaces/unit 0.53 spaces/bedroom
Total	**140 units/ 332 bedrooms**	**173 spaces**	**1.23 spaces/unit 0.52 spaces/bedroom**

As seen in *Table 3* above, the four affordable residential projects averaged a parking demand of 1.23 parking spaces utilized per unit, or 0.52 parking spaces utilized per bedroom. It is noted that the Santa Monica Village Project proposes to provide 160 spaces (i.e., one space per unit) of reserved parking for the affordable residential units. The remaining 0.23 parking spaces per unit (i.e., 37 parking spaces) will be unreserved, and thus will be available for use by project residents and their guests.

As requested by Coastal Commission staff, updated parking utilization counts were conducted at the affordable housing communities, plus one newer community at 2209 Main Street. The counts were conducted for a Saturday between 11:00 a.m. and 3:00 p.m., as well as on a weeknight between 10:00 p.m. and 12:00 a.m. (midnight). ***Table 4*** below provides a summary of the updated parking utilization counts.

Table 4

Updated Observed Parking Demand at Existing Affordable Multi-Family Residential Projects in Santa Monica – Weeknight and Weekend July 2008

Project Address	Number of Dwelling Units/ Bedrooms	Parking Utilization		
		Weeknight July 2003	Weeknight July 2008	Weekend Day July 2008
1144 Fifth Street	32 units/ 98 bedrooms	41 spaces	37 spaces	29 spaces
708 Pico Blvd.	20 units/ 50 bedrooms	24 spaces	23 spaces	15 spaces
815 Ashland Ave.	45 units/ 98 bedrooms	62 spaces	67 spaces	49 spaces
OP-43	43 units/ 86 bedrooms	46 spaces	36 spaces	30 spaces
2209 Main Street	44 units/ 111 bedrooms	Not built	41 spaces	33 spaces
Total	**184 units/ 443 bedrooms**	**173 spaces (1.23 sp/unit)**	**204 spaces (1.11 sp/unit)**	**156 spaces (0.85 sp/unit)**

As shown in *Table 4*, the updated parking demand observations in 2008 show a reduced parking demand—1.11 spaces per unit on a weeknight and 0.85 spaces per unit on a weekend day—as compared to the parking demand observed in 2003 (1.23 spaces per unit). Therefore, it is appropriately conservative to utilize the 1.23 parking space rate in the parking demand analysis for the affordable residential component of the project.

Shared Parking for Commercial

The Santa Monica Village Project proposes to provide 19,248 square feet of ground floor commercial space (10,178 square feet at Site A and 8,530 square feet at Site C). A portion of the ground floor commercial space may be leased to food-serving uses, including up to 3,000 square feet of outdoor dining space that would be in addition to the 19,248 square feet of retail/restaurant "enclosed" building floor area. For this parking analysis, it is assumed that 4,400 square feet of floor area (plus an additional 2,000 square feet of outdoor space) would be used for food-serving uses on Site A. For Site C, 3,025 square feet of floor area (plus an additional 1,000 square feet of outdoor space) would be used for food-serving uses.

It is recommended that a pool of parking spaces can be shared by the commercial components of the project. Accordingly, a shared parking analysis was prepared utilizing the time of day parking demand indices recommended in the *Shared Parking* manual (second edition) published by the Urban Land Institute (ULI). The *Shared Parking* manual provides hour-by-hour parking demand factors expressed as a percentage of peak demand for a variety of land uses.

The shared parking analysis also considers many of the captive market and alternative transportation mode factors previously discussed that would have the effect of reducing parking demand generated at the site. In addition, the significant available parking supply in the Santa Monica Civic Center area (both on-street and in the City's Civic Center garage) have also been considered.

Specifically, the shared parking analysis incorporates the following factors/assumptions:

- Captive Market/Alternative Transportation Adjustment. It is reasonable to conclude that the mixed-use nature of the project, the close proximity to other high generators of walk-in patrons, and the extensive public transit service provided immediately adjacent to the site will substantially reduce parking demand generated by the project. The project site is within close proximity to a number of significant generators of walking trips, including Santa Monica City Hall, Santa Monica courthouse, the Civic Auditorium, the Viceroy Hotel, the Le Merigot Hotel, and the Loews Santa Monica Beach Hotel. It is reasonable to anticipate that employees and visitors to these uses will find the commercial uses proposed at the project to be convenient for shopping and dining purposes. Further, as previously noted, the City of Santa Monica has conditioned the Santa Monica Village Project to reduce vehicular trip generation at the site (applied to all residential and commercial components of the development) through implementation and monitoring of a Transportation Demand Management (TDM) program. Accordingly, the Coastal Commission Guidelines for parking related to the restaurant uses and the retail uses have been adjusted by 50% to reflect the expected reduced parking demand associated with these uses which will benefit from these characteristics that encourage travel by non-auto modes. Practically, the proportion of patrons who walk to the commercial uses within the site will likely exceed the 50% factor assumed in the parking analysis especially during daytime hours when City Hall, the Courthouse and Rand Corporation are in full operation.

- Shared Parking Pool. A total of 59 on-site parking spaces are proposed to be provided to be shared by vehicles associated with the restaurant uses and the retail uses. For those instances when the on-site parking supply is fully utilized, it is reasonably anticipated that motorists would have other available options for parking, including utilizing the extensive street parking on Main Street and Olympic Drive, or the convenient off-street parking in the City's Civic Center parking garage.

Tables 5 and 6 attached to this letter provide the shared parking analysis prepared for the commercial components of the Santa Monica Village Project for weekday and weekend conditions, respectively. As shown on *Tables 5 and 6*, for many hours of the day, it is expected that the on-site supply of parking will be adequate to accommodate the parking demand generated by these uses. Further, during the typical lunch and dinner time periods, it is expected that some motorists will utilize the available off-site parking provided on Olympic Drive and Main Street and/or in the nearby significantly underutilized Civic Center garage (approximately 24 or fewer spaces in use by project at peak at 12:00 p.m.). Based on the extensive supply of on-street parking and parking within the Civic Center garage, it is not expected that the project will adversely affect the overall availability of parking to non-project users of this parking.

Tables 5 and 6 also show the potential effects if the guest parking allocated to the affordable residential component were available to be used by patrons of the commercial uses, particularly during daytime hours. Per our June 12, 2008 report, of the 11 guest parking spaces assumed to be allocated for the affordable housing, approximately eight (8) of those spaces would be available during daytime hours. Thus, *Tables 5 and 6* show the benefit of allowing sharing of the guest parking spaces as it would lessen the potential use of off-site parking without adversely affecting the on-site parking operations for the commercial uses and affordable residential component.

Please call with any questions or comments regarding the parking demand analysis prepared for the Santa Monica Village Project.

cc: File

Table 5

WEEKDAY SHARED PARKING DEMAND ANALYSIS [1]

Santa Monica Village

Land Use	Restaurant [5]	Retail			
Size	10,425 SF	5,748 SF			
Peak Pkg Rate[2]	1 sp/ 50 SF	1 sp/ 225 SF			
Adjusted Rate [3]	1 sp/ 100 SF	1 sp/ 450 SF			Potential Use of
Gross Spaces	70 Spc.	13 Spc.	Shared		Off-Site Parking
Time of Day [4]	Number of Spaces	Number of Spaces	Parking Demand	Potential Use of Off-Site Parking [6]	With Sharing of Guest Parking [7]
6:00 AM	20	0	20	0	0
7:00 AM	38	1	39	0	0
8:00 AM	45	3	48	0	0
9:00 AM	54	6	60	1	0
10:00 AM	61	10	71	12	4
11:00 AM	64	12	76	17	9
12:00 PM	70	13	83	24	16
1:00 PM	64	13	77	18	10
2:00 PM	40	13	53	0	0
3:00 PM	35	12	47	0	0
4:00 PM	35	12	47	0	0
5:00 PM	55	13	68	9	9
6:00 PM	58	10	68	9	9
7:00 PM	58	7	65	6	6
8:00 PM	58	6	64	5	5
9:00 PM	44	4	48	0	0
10:00 PM	40	3	43	0	0
11:00 PM	37	1	38	0	0
12:00 AM	19	0	19	0	0

Notes:

[1] Source: ULI - Urban Land Institute "Shared Parking," Second Edition, 2005.

[2] Peak parking rates for retail and restaurant based on Coastal Commission Guidelines.

[3] Retail and restaurant rate adjusted by 50% to account for captive market (e.g., walk-in patrons from residential and other nearby uses), as well as transit usage, walking trips, and other non-auto modes of travel.

[4] Time of day indices from "Shared Parking" manual. Retail adjusted after 5:00 p.m. to reflect expected patronage of uses.

[5] A total of 16,500 s.f. of restaurant space is proposed (13,500 s.f indoor and 3,000 s.f. outdoor). Of the total 16,500 s.f., approximately 10,425 s.f. is assumed to be devoted to service area (55% of indoor area plus 3,000 s.f. outdoor area).

[6] Potential use of off-site parking (e.g., on-street parking and parking located in Civic Center garage) based on use of on-site supply of 59 spaces as compared to forecast shared parking demand.

[7] Between 9:00 a.m. and 4:00 p.m., approximately 8 guest parking spaces associated with affordable housing component are assumed to be available to share with commercial uses.

Table 6

WEEKEND SHARED PARKING DEMAND ANALYSIS [1]

Santa Monica Village

Land Use	Restaurant [5]	Retail			
Size	10,425 SF	5,748 SF			
Peak Pkg Rate[2]	1 sp/ 50 SF	1 sp/ 225 SF			
Adjusted Rate [3]	1 sp/ 100 SF	1 sp/ 450 SF			Potential Use of
Gross Spaces	70 Spc.	13 Spc.	Shared		Off-Site Parking
Time of Day [4]	Number of Spaces	Number of Spaces	Parking Demand	Potential Use of Off-Site Parking [6]	With Sharing of Guest Parking [7]
6:00 AM	11	0	11	0	0
7:00 AM	23	1	24	0	0
8:00 AM	36	2	38	0	0
9:00 AM	51	5	56	0	0
10:00 AM	64	8	72	13	5
11:00 AM	64	10	74	15	7
12:00 PM	70	11	81	22	14
1:00 PM	61	12	73	14	6
2:00 PM	49	13	62	3	0
3:00 PM	32	13	45	0	0
4:00 PM	35	13	48	0	0
5:00 PM	46	12	58	0	0
6:00 PM	52	11	63	4	4
7:00 PM	52	7	59	0	0
8:00 PM	49	6	55	0	0
9:00 PM	26	4	30	0	0
10:00 PM	22	3	25	0	0
11:00 PM	16	2	18	0	0
12:00 AM	10	0	10	0	0

Notes:

[1] Source: ULI - Urban Land Institute "Shared Parking," Second Edition, 2005.

[2] Peak parking rates for retail and restaurant based on Coastal Commission Guidelines.

[3] Retail and restaurant rate adjusted by 50% to account for captive market (e.g., walk-in patrons from residential and other nearby uses), as well as transit usage, walking trips, and other non-auto modes of travel.

[4] Time of day indices from "Shared Parking" manual. Retail adjusted after 5:00 p.m. to reflect expected patronage of uses.

[5] A total of 16,500 s.f. of restaurant space is proposed (13,500 s.f indoor and 3,000 s.f. outdoor). Of the total 16,500 s.f., approximately 10,425 s.f. is assumed to be devoted to service area (55% of indoor area plus 3,000 s.f. outdoor area).

[6] Potential use of off-site parking (e.g., on-street parking and parking located in Civic Center garage) based on use of on-site supply of 59 spaces as compared to forecast shared parking demand.

[7] Between 9:00 a.m. and 4:00 p.m., approximately 8 guest parking spaces associated with affordable housing component are assumed to be available to share with commercial uses.