CALIFORNIA COASTAL COMMISSION
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W10b

STAFF REPORT: DEVELOPMENT AGREEMENT

DATE June 26, 2014

TO Commissioners and Interested Persons

FROM John Ainsworth, Deputy Director
Teresa Henry, South Coast Area Office District Manager
Matt Stone, Coastal Program Analyst

SUBJECT Public Hearing and Commission Action on a Development Agreement **(CDP # 5-14-0678)** between the City of Santa Monica and Macerich SMP LP located at 315 Colorado Ave, Suite 300, Santa Monica, County of Los Angeles (For Public Hearing and Commission Action at the July 9, 2014 Commission meeting in Ventura)

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission **APPROVE** the Development Agreement as submitted. The proposed Development Agreement is in conformity with the Chapter 3 policies of the Coastal Act and with the Commission's action on Coastal Development Permit (CDP) Amendment No. 5-07-343-A2, concurrently submitted to the Commission for approval.

STAFF NOTE

Concurrent with this Development Agreement, the California Coastal Commission is requested to grant CDP Amendment No. 5-07-343-A2, to Macerich SMP LP for conversion of the approximately 50,000 square feet of retail space on the third level of the Santa Monica Place Bloomingdale's Building into an approximately 50,000 square-foot; 22-28 feet high above existing roof (approximately 78 feet above existing grade for over 50 % of the roof area and 84 feet above existing grade for the other 50% of the roof area); up to 13 screen cinema complex with a seating capacity of up to 1,500 seats.

On April 25, 2014, the applicant simultaneously submitted applications for a CDP Amendment and Development Agreement ("DA") for Commission action.

Although the Development Agreement purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any project that has not yet received Commission authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future subject to the DA will be reviewed pursuant to the Chapter 3 policies of the Coastal Act, the DA is not inconsistent with the Coastal Act.

ADDITIONAL INFORMATION

Questions concerning the subject development agreement should be directed to Matt Stone, South Coast District Office, California Coastal Commission, 200 Oceangate, Suite 1000, Long Beach, CA 90802. (562) 590-5071.

I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL OF FINDINGS

MOTION: *I move that the Commission **approve** Development Agreement 5-14-0678, as submitted.*

STAFF RECOMMENDATION OF APPROVAL

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

APPROVAL OF DEVELOPMENT AGREEMENT

The Commission hereby **APPROVES** the development agreement on the grounds that the development agreement, would be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and recreation policies of Chapter 3, would 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 of the Coastal Act, and would not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Background and Content of Development Agreement

1. Contents of a Development Agreement

California Government Code Sections 65864-65869.5 authorizes any city, county, or city and county, to enter into a development agreement with any person having a legal or equitable interest in real property for the development of property owned by that entity. A development agreement specifies the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. According to Government Code Section 65865.2, the development agreement:

> *…may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time. The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.*

Government Code Section 65866 states further that:

> *[u]nless otherwise provided by the development agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.*

However, pursuant to Section 65869:

> *…[a] development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the*

development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.

Since the City of Santa Monica does not have a certified Local Coastal Program, any DA that pertains to property within the City's coastal zone must be approved by the Commission. Thus, Macerich SMP LP has submitted the subject DA.

2. Location of Area to be Affected by Proposed Development Agreement

The subject DA pertains to an approximately 50,000 square foot retail space on the third level of the Santa Monica Place Bloomindgale's Building within the coastal zone of the City of Santa Monica (see Attachment No. 1 for the development agreement). The project site is located in the Downtown Commercial District of the City of Santa Monica, Los Angeles County. The project site and surrounding Downtown area are zoned for general retail, office, residential, hotel, and visitor-serving uses. Santa Monica Place (SMP) is currently a three-level, open-air downtown shopping center located at the southern end of the Third Street Promenade in an area designated by the City of Santa Monica General Plan 2010 Land Use and Circulation Element as the Downtown Core. Santa Monica Place sits on the superblock bound by Broadway Avenue to the north, 4th street to the east, Colorado Avenue to the south, and 2nd Street to the west; and is one block inland of Palisades Park and the bluffs, and two to three blocks from the beach. The Bloomingdale's Building is located in the SMP's east building quadrant, at the intersection of Colorado Avenue and 4th Street (see attached Exhibits #2 and #3 and #4 from the Staff Report for CDP Amendment No. 5-07-343-A2).

3. Recently Submitted Amendment to Coastal Development Permit

Along with the DA, the applicant submitted an application for an Amendment to CDP 5-07-343 for the proposed development. The CDP Amendment for the proposed development is also scheduled for the July 2014 hearing and staff is recommending approval with Special Conditions. The permit will approve the Conversion of the approximately 50,000 square feet of retail space on the third level of the Santa Monica Place Bloomingdale's Building into an approximately 50,000 square-foot; 22-28 feet high above existing roof (approximately 78 feet above existing grade for over 50 % of the roof area and 84 feet above existing grade for the other 50% of the roof area); up to 13 screen cinema complex with a seating capacity of up to 1,500 seats.

In addition to the project that is proposed in CDP Amendment No. 5-07-343-A2, the development agreement requires the developer to, among other things: 1) contribute $20,820 to reimburse the City for Developer's share of design costs for improvements to the Esplanade that extend beyond the City's right of way on Colorado Avenue onto the property; 2) contribute $120,000 to the City for improvements to the Esplanade in the City's right of way on Colorado Avenue; 3) contribute $100,000 to the City for its Downtown Wayfinding Metro Grant project; 4) install wayfinding signs in Santa Monica Place; 5) cause the Theater Operator to make up to three (3) movie screens available to the American Film Market during the annual film festival; 6) provide information regarding movie theater tickets on the ground level of Santa Monica Place to promote pedestrian circulation; 7) implement a local hiring program; 8) adopt and implement a Transportation Demand Management program; 9) install solar panels on the roof; and 10) allow community use of theaters during off-peak day s and hours as reasonably determined by the Theater Operator.

B. Public 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.

Coastal Act Section 30210 states:

> *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30211 states:

> *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.*

Coastal Act Section 30252 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. . ."*

In order to conform to the requirements of the Coastal Act, the proposed project must provide adequate parking and/or public transit opportunities so as to avoid contributing to or otherwise causing adverse impacts to public parking for coastal access.

The proposed project would not modify the existing parking supply of approximately 1,853 parking spaces located on-site in Parking Structures 7 and 8, and 482 off-site parking spaces located in the Santa Monica Civic Center Parking Structure and the Santa Monica surface parking lot, both approximately two blocks south of the SMP along 4th street. Of SMP's total on-site and off-site supply of 2,335 parking spaces, 354 off-site parking spaces are located in the Civic Center Parking Structure with the remaining 100 (128 with valet stacking) located in the Civic Center Parking Lot.

The Civic Center Parking Structure provides a total of 882 parking spaces and is used for Civic Center employee permit parking, and for public parking. The Civic Center Parking Lot provides 975 parking spaces and is only available for employee permit parking.

Santa Monica Place has accumulated 482 off-site parking spaces over a number of years, of which 378 parking spaces (approximately 406 parking spaces with the use of valet stacking) were approved by means of a couple of separate Commission permit actions. Santa Monica Place was originally granted 278 off-site parking spaces pursuant to CDP A-69-76. On November 14, 2008, the Commission approved CDP 5-08-233 for improvements to parking structures 7 and 8, resulting in the loss of 76 on-site parking spaces to SMP. On July 30, 2010, the Commission approved an Exemption to provide public valet parking service for Santa Monica Place shopping center within parking structure No.8 located at Santa Monica Place, and

the Civic Center parking lot, which allowed the use of 100 spaces within the Civic Center Parking lot. The Civic Center parking (lot and structure) are currently used by SMP for employee permit parking. The parking permits are distributed by the City. The Civic Center parking structure is also available during the day and night for general public parking.

Public transit options to SMP include bus lines operated by Metro and Santa Monica's Big Blue Bus system. The Metro 720 bus line maintains a bus stop at the intersection of Colorado Avenue and 4th Street. Santa Monica's Big Blue Bus maintains a bus stop across Colorado Avenue from the SMP that serves bus line nos. 2, 3, 4, 5, 9, and 20. The Metro 720 bus line also utilizes this bus stop. In addition, the Downtown Santa Monica station for the Expo LRT is currently under construction across the intersection of Colorado Avenue and 4th Street from the Bloomingdale's Building. And, the proposed project would be operated in accordance with the City approved SMP Transportation Demand Management Program.

Construction is expected to take place over a 14-month period, starting in summer 2014 with completion expected by Fall 2015. Construction staging for equipment storage and material stockpiling would occur within the exterior walls, at other interior areas of the SMP, and along Colorado Avenue and 4th Street. It is Commission staff's understanding that the Construction Impact Mitigation Plan required pursuant to mitigation measure TRAF-1 will ensure that impacts to public access are minimized through various measures including, but not limited to, the requirement for maintenance of two unobstructed lanes of traffic in both directions along 4th Street during construction; a requirement that no work encroaches into the existing bus stop on southbound 4th Street; coordination with other nearby construction projects; and directional and guide signage to assist pedestrian and vehicular access. Any cumulative impacts to public access resulting from construction of this project, the Expo Line, Colorado Esplanade, and the 5th and Colorado Hotel projects would mitigated through TRAF-1 as well.

As originally approved by the City and the Commission, the mall's parking supply was based on the City's Redevelopment Agency parking standard of 4 parking spaces per 1,000 square feet. Based on this standard, the proposed theater would require 200 parking spaces, however, based on the City's current Municipal Code requirements – which is now more restrictive than it was when the mall was first approved – the theater would be required to provide 375 parking spaces.

Despite having less than the required amount of parking, according to the *Shared Parking Analysis for the Proposed Cinema at Santa Monica Place*, prepared by Gibson Transportation Consulting, Inc. (December 2013), SMP's current supply is sufficient to meet the peak parking demands even without the reduced parking demands resulting from the opening of the Exposition Line station in Downtown Santa Monica (projected opening is approximately early 2016). Shared parking is an established concept whereby parking spaces (usually in central business districts, suburban commercial districts, and other areas where land uses are combined) are used to serve two or more individual land uses, and has been an accepted practice by the Commission in determining adequate parking for proposed developments.

The parking analysis takes into account both the hourly variations in parking demand among the various land uses and the synergy created among the land uses within a mixed-use development. Sufficient parking is available to meet the demand and support the development of the Cinemas, even if the opening of the Expo LRT were delayed. In fact, the shared parking analysis indicates that the peak month demand would occur in July and August, and peak demand would not exceed 2,015 spaces on either a weekday or weekend as weekday peak demand is projected to be 1,948 spaces and weekend peak demand is projected

to be 2,175 spaces. And, even if the opening of the Expo Line were to be delayed until June 2016, the peak weekday and weekend parking demand is projected to be 2,132 spaces, which still results in a projected overall supply of 203 spaces. The parking analysis notes a second peak month in December, likely due to the holiday season, but again the peak demand for December is not expected to exceed the available parking supply both before and after the opening of the Expo Line.

Accordingly, the shared parking analysis indicates that the total parking supply at SMP can satisfy the project peak parking demand on a weekday and weekend during the peak month of the year for the Project, which is in July, August, and December. In addition, monthly parking occupancy surveys of Santa Monica's parking structures indicate that while the Civic Center Parking Structure is highly utilized during the weekday with peak usage from approximately 10AM to 3PM, demand subsides over the weekend. Aside from the summer months, demand for beach parking is generally considered to be greatest during the middle of the day on the weekends, when the Civic Center Structure experiences lower demand. As for Parking Structures 7 and 8, parking surveys show that demand during the day remains steady with a sufficient supply to meet that demand. The parking surveys also indicate that demand for Structures 7 and 8 increases over the weekend. Still the supply remains adequate to meet the demand. And it should be noted that in such a mixed-use environment, a cinema is considered a complementary land use to retail with little overlap in their hourly demand patterns as retail parking is more intensive during the daytime and cinema demand increases during the evening when parking for beach access declines. Therefore, future demand for parking is not projected to increase significantly over current demand.

To ensure that adequate parking remains available to the public, Special Condition 2 to CDP Amendment No. 5-07-343-A2 requires an amendment to 5-07-343-A2 or a coastal development permit for any change to the quantity or location of the current 1,853 on-site parking spaces and 482 off-site parking spaces – as described in CDP Amendment No. 5-07-343-A2 – allocated for use by Santa Monica Place.

Based on the shared parking analysis and parking surveys, SMP's current supply of on-site parking in Parking Structures 7 and 8, and off-site parking in the Civic Center Parking Structure and Civic Center Parking Lot is sufficient to meet current and projected future demand. Again, should any unanticipated parking shortages arise in the Civic Center Parking Structure or Civic Center Parking Lot, the City has the authority to reallocate SMP's off-site parking with Commission review and approval. As a result, the Commission believes that the Civic Center Parking Structure and Civic Center Parking Lot can be used to satisfy SMP's off-site parking requirement without adverse impacts to public access. This analysis also takes into account the demand for parking within the Civic Center Structure from current and foreseeable future projects in the immediate area.

Although the DA purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any

way interfere with the Commission's ability to deny or modify any project to assure consistency with the Sections 30210, 30211, and 30252 of the Coastal Act. Therefore, the Commission finds that the DA would be consistent with the aforementioned Public Access Sections of the Coastal Act.

C. Visual Resources

Section 30251 of the Coastal Act states:

> *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 alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Due to the highly developed nature and flat topography of the area, views of the Santa Monica Mountains, the Pacific Ocean, the coastline, Palisades Park, and Santa Monica Pier entrance sign are channelized along streets. Public views of the Pacific Ocean, and Santa Monica Pier entrance sign are visible to motorists and pedestrians traveling west on Colorado Avenue. Public views of the Santa Monica Mountains are visible to pedestrians and motorists traveling north on 4th Street.

Nearby developments include the seven-story Wyndham Hotel building across Colorado Avenue at approximately 77 feet high; the six-story LUXE@1539 mixed-use building across 4th street at approximately 65 feet high; the six-story condominium building on 5th street east of SMP at approximately 70 feet high; and the seven-story mixed-use building at the south end of the Third Street Promenade, across Broadway Avenue from the SMP at approximately 70 feet high.

To accommodate proposed stadium seating, the existing roofline of the Bloomingdale's Building will be raised approximately 22 to 28 feet, from a current height of 56 feet above existing grade to a height of 78 feet above grade for 50% of the roof area and up to 84 feet above existing grade for the other 50% of the roof area. The walls of the proposed project are stepped back approximately 8 to 10 feet from the existing parapet walls to maintain the integrity of the existing building design and to reduce the perceived mass of the extended building height.

No public views or private views to the ocean or other valued visual or scenic resources would be obstructed due to the increased building height. There are no public views from the south of SMP from elevated vantage points that would be obstructed by the increased building height, because existing development already obstructs views of the Santa Monica Mountains from these vantage points. Ground-level public views along Colorado Avenue would remain unobstructed for motorists and pedestrians, because the development would occur within existing footprint of the Bloomingdale's Building**.**

While the City of Santa Monica requires approval of a Development Agreement for this project because the project exceeds the currently rezoned 32 foot height limit within the Downtown Core,

the City of Santa Monica certified Land Use Plan (LUP) allows heights to 4 stories (56 feet), and 6 stories (84 feet) with site review. The proposed project will not exceed 84 feet above existing grade, therefore, it is consistent with the City's certified LUP. In addition, as previously stated, the height of the structure is not expected to adversely impact visual resources because it will be placed within the footprint of an existing structure, which is located within a densely development with limited channelized views in all directions in the vicinity of the project location. Finally, the temporary barriers used to screen construction areas from public view will include fencing, delineators, and k-rail which will also not affect public views. Therefore, the proposed project is consistent with Section 30251 of the Coastal Act, and the City's certified Coastal Land Use Plan.

Although the DA purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any projects that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with the Sections 30251 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Sections 30251 of the Coastal Act.

D. New Development

Section 30231 of the Coastal Act 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.*

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.*

Section 30250 of the Coastal Act states in part:

> *(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....*

The proposed project is a conversion of existing vacant retail space into a visitor-serving multi-screen cinema within SMP in the downtown commercial area of Santa Monica. As previously stated, the proposed project is located one block east of Palisades Park and bluffs, and two to three blocks from the beach. The Commission, in prior actions on coastal permits, has indicated that downtown Santa Monica is a location in which new commercial development should be concentrated. Furthermore, policy #70 of the City's certified LUP states that:

> *Allowable uses shall include retail, pedestrian oriented, visitor-serving commercial, public parking uses and other complementary uses (such as hotels, offices, cultural facilities, restaurants, social services, and housing).*

Surrounding uses include low and high rise office and mixed use buildings, surface parking lots, parking structures, restaurants and other commercial establishments. In addition, the proposed project will continue the commercial use of the mall and will be consistent with existing uses in the downtown area, as well as with the character of the area.

The Commission is requested to simultaneously approved the development contemplated by the DA under CDP No. 5-14-0678 and CDP Amendment No. 5-07-343-A2. The building heights considered under CDP Amendment No. 5-07-343-A2 are consistent with the heights contemplated by the DA and the City approved project plans. Furthermore, due to the project's location and existing development between the project site and the ocean, the proposed project would not have any adverse impacts on public coastal views.

Although the DA purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any projects that have not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Sections 30231, 30240, and 30250 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Sections 30231, 30240, and 30250 of the Coastal Act.

E. Water Quality

Section 30230 of the Coastal Act 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 of the Coastal Act 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 waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30232 of the Coastal Act states:

> *Protection against spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

The development contemplated in the DA poses a potential source of pollution due to contaminated runoff from the proposed construction activity, 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.

Here, the proposed project will not require excavation or ground-disturbing activities, and will be built entirely within the footprint of the existing development with no increase in the amount of hardscape. Accordingly, runoff during the operational phase of the project is not expected to increase. Project construction, however, would require the use of construction-related hazardous materials, including petroleum products, paints and solvents, and detergents. The use of such materials would be in accordance with applicable regulations, including the City of Santa Monica Urban Runoff Pollution Ordinance. Best Management Practices (BMPs), pollutant control

measures, and good housekeeping practices are to be employed during both the construction and operational phases of the project to reduce the discharge of polluted runoff from the Bloomingdale's Building. And Special Condition 3 and 4 to CDP Amendment No. 5-07-343-A2 ensures that the proposed project adheres to the City's water quality requirements, as well as follows additional Best Management Practices.

Although the DA purports to vest certain planning documents, those vested components pertain to local planning only and do not serve for local coastal planning (LCP) purposes under the Coastal Act, nor do they restrict what may or may not be approved under any subsequent coastal development permit. Thus, for any project that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects. Since the DA imposes no restrictions on the applicable Coastal Act analysis, and any projects proposed in the future will be assessed pursuant to the dictates of the Coastal Act, the DA is not inconsistent with the Coastal Act. Accordingly, the DA would not in any way interfere with the Commission's ability to deny or modify any project to assure consistency with Sections 30230, 30231, and 30232 of the Coastal Act. Therefore, the Commission finds that the DA would not be inconsistent with Section 30230, 30231, and 30232 of the Coastal Act.

Attachment #1

Development Agreement

ERRATA SHEET FOR AGENDA ITEM 7-A
(MACERICH DEVELOPMENT AGREEMENT)

1. Section 2.7.5 will be deleted in its entirety and replaced with the following text:

Developer shall require Theater Operator to enter into an agreement with the American Film Market ("AFM") that provides AFM with access to all of Theater Operator's auditoriums at the Project during AFM's annual film market in Santa Monica ("Film Market"), upon terms and conditions generally consistent with (but no less favorable to Theater Operator than) those currently in place with all other movie theater exhibitors in Santa Monica, CA (collectively, "Exhibitors") as of April 22, 2014. Any such agreement may be subject to other commercially reasonable terms and conditions, to be negotiated in good faith, but such terms will not prevent AFM from utilizing the auditoriums in a manner similar to its use at other Exhibitors to the extent feasible and taking into consideration the differences between such other Exhibitors and the Project. If, in any year, another Exhibitor in Santa Monica retains any of its auditoriums for its own use during the annual Film Market (i.e., such auditoriums are not made available for use by AFM), Theater Operator may also retain (and not make available for use by AFM) a similar percentage of its auditoriums at the Project for its own use.

2. Section 3.7 will be amended by adding the following text:

Notwithstanding anything to the contrary herein, Developer acknowledges and agrees that the placement and/or use of Developer's or its contractor(s)' construction equipment and materials in the public right of way on Colorado Avenues in connection with construction of the Project , including, without limitation, a crane (collectively, "Developer's Construction Materials"), after the City has issued a notice to proceed to its contractor to construct the Esplanade in the public right of way adjacent to the Santa Monica Place mall, will unreasonably interfere with the City's installation of the Esplanade on Colorado Avenue due to anticipated delays and/or re-sequencing of the City's work on the Esplanade while Developer's Construction Materials are in the public right of way after the City has issued a notice to proceed. (The City acknowledges, however, that Developers' placement of Developer's Construction Materials in such public right of way will not cause such unreasonable interference, provided that Developer removes the Developer's Construction Materials from such right of way before the City issues such notice to proceed.) Consequently, Developer shall deposit with the City a cashier's check, or equivalent liquid security reasonably acceptable to the City, in the amount of $300,000 as a condition precedent to obtaining a building permit for the Project ("Cost Recovery Deposit"). The Cost Recovery Deposit will not earn interest and shall only be used to pay the cost of the City' alternate bid item from its contractor to construct the Esplanade while Developer's Construction Materials are situated in the public right of way on Colorado Avenue. as well as reimburse the City for any actual out-of-pocket costs and/or compensable damages assessed against the City by the City's contractor in accordance with the City's construction contract that are attributable to the placement of the Developer's Construction Materials in the public right of way. The City

shall notify Developer of the amount of the alternate bid item within five (5) days after award of the bid for such alternate bid item, and notify the Developer of any claims made by the City's contractor in accordance with the City's contract documents if such claim is to be paid from the Cost Recovery Deposit. The City shall promptly release any unused or unobligated portions of the Cost Recovery Deposit remaining within forty-five (45) days after Developer has removed the last of Developer's Construction Materials from the Colorado Avenue public right of way. t. Developer understands, acknowledges and agrees that nothing herein, including the Developer's payment of the Cost Recovery Deposit, shall be deemed as a limitation on damages that may be recovered from Developer in accordance with Section 14.1 as a result of any claims filed against the City due to Developer's construction of the Project, whether filed by the City's contractor or any other party, it being understood and agreed that the Cost Recovery Deposit is merely intended to insure that a minimum amount of liquid funds are immediately available to pay for City's anticipated costs and/or compensable damages; provided, however, that notwithstanding anything to the contrary contained in this section or Section 14.1, Developer's shall not be required to indemnify the City to the extent such claims are cause by the negligence or willful misconduct of the City's contractor or subcontractor or their respective agents or employees.

3. Section 11.3.6 will be modified by adding the following subparagraph (c).

(c) Damages that arise under Section 14.1.

Recording Requested By:

City of Santa Monica

When Recorded Mail To:

City of Santa Monica
Santa Monica City Attorney's Office
1685 Main Street, Third Floor
Santa Monica, CA 90401
Attention: Senior Land Use Attorney

Space Above Line For Recorder's Use
No Recording Fee Required
California Government Code Section 27383

DEVELOPMENT AGREEMENT

BETWEEN

CITY OF SANTA MONICA

AND

MACERICH SMP LP

FOR THE SANTA MONICA PLACE THEATER PROJECT

_____, 2014

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DEVELOPMENT AGREEMENT

This Development Agreement ("**Agreement**"), dated _____, 2014 ("**Effective Date**"), is entered into by and between MACERICH SMP LP, a Delaware limited partnership ("**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:

RECITALS

A. Pursuant to California Government Code Section 65864 et seq., Chapter 9.48 of the Santa Monica Municipal Code, and Santa Monica Interim Ordinance No. 2356, as extended and modified, (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.

B. Developer is the owner of approximately 10 acres of land located in the City of Santa Monica, State of California developed with shopping center with approximately 586,453 square feet of retail uses, commonly known as Santa Monica Place, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Property**").

C. The City has included the Property within the Downtown Core land use designation under the City's Land Use and Circulation Element of its General Plan (the "**LUCE**"). The Property is located within the C3C District under the City's Zoning Ordinance. To aid in the redevelopment of the Property, the City and Developer desire to allow Developer to convert approximately 50,000 square feet of entitled but vacant retail space on the 3rd Level of the Bloomingdale's Building within Santa Monica Place into a multi-screen cinema complex with up to 13 movie theaters and a seating capacity of up to 1,500 seats, as more fully described in this Agreement (the "**Project**").

D. On October 15, 2013, Developer filed an application for a Development Agreement, pursuant to Santa Monica Municipal Code ("**SMMC**") Section 9.48.020 (the "**Development Application**"). The Development Application was designated by the City as Application No. DEV 13-010. The Development Application is for the Project, as more fully described in this Agreement.

E. On April 26, 2011, the City Council adopted Interim Ordinance No. 2356 ("**IZO**"). The City Council extended and/or modified the IZO on several occasions thereafter. The IZO prohibits the issuance of permits for development projects that would constitute a Tier 2 or Tier 3 project, as established pursuant to LUCE Chapter 2.1, or that would exceed 32 feet in height in the Downtown Core, as delineated in the Land Use Designation Map approved by the City Council on July 6, 2010, unless developed pursuant to a development agreement adopted in accordance with SMMC Chapter 9.48. Adoption of this Agreement will allow for the issuance of permits for the Project.

F. Developer has paid all necessary costs and fees associated with the City's processing of the Development Application and this Agreement.

G. Following filing of the Development Application, the City prepared and made available public review and comment a mitigated negative declaration (the "**MND**") pursuant to the California Environmental Quality Act ("**CEQA**").

H. The primary purpose of the Project is to allow for the conversion of existing vacant retail space in Santa Monica Place into a high quality modern movie theater with features that are competitive in the regional marketplace, such as 3-D technology and stadium-style seating, to help the City to compete better for movie goers. The Parties desire to enter into this Agreement in conformance with the Development Agreement Statutes in order to achieve the development of the Project on the Property.

I. The City Council has determined that a development agreement is appropriate for the proposed development of the Property. This Agreement will (1) eliminate uncertainty in planning for the Project and result in the orderly development of the Project, (2) assure installation of necessary improvements on the Property, (3) provide for public infrastructure and services appropriate to development of the Project, (4) preserve substantial City discretion in reviewing subsequent development of the Property, (5) secure for the City improvements that benefit the public, (6) ensure the provisions of community benefits as envisioned in the LUCE, and (7) otherwise achieve the goals and purposes for which the Development Agreement Statutes were enacted.

J. This Agreement is consistent with the public health, safety, and welfare needs of the residents of the City and the surrounding region. The City has specifically considered and approved the impact and benefits of the development of the Project on the Property in accordance with this Agreement upon the welfare of the region. The Project will provide a number of public benefits, including without limitation the following:

- Consistent with LUCE Policy D.11 and Goal LU6, contribute to Downtown Santa Monica's role as a dynamic and vibrant activity center by providing modern high quality entertainment uses.

- Consistent with LUCE Policy D1.2, develop a new modern high quality movie theater with 3-D technology and stadium-style seating that will ensure that entertainment venues in Downtown Santa Monica are competitive in the regional marketplace.

- Reduce vehicle trips by developing a movie theater in Downtown Santa Monica in close proximity to the future Exposition Light Rail station and within walking/biking distance of local residents and visitor-serving uses such as hotels.

- Reduce vehicle miles traveled by locating a modern high quality movie theater in a convenient location for local residents so that they do not have to drive to comparable destinations outside the City.

- Provide a destination entertainment venue adjacent to the Third Street Promenade that will attract movie patrons who will also eat and shop on in the area.

- Generating additional direct and indirect sales tax revenues for the City.

- Generating new jobs during construction and operation.

K. The City Council has found that the provisions of this Development Agreement are consistent with the relevant provisions of the City's General Plan, including the LUCE.

L. On _____, 2014, the City's Planning Commission held a duly noticed public hearing on the Development Application, this Agreement and the MND, and at such hearing, the Planning Commission recommended adoption of the MND. The Commission recommended [**DETAIL RECOMMENDATIONS**]

M. On _____, 2014, the City Council held a duly noticed public hearing on the Development Application, this Agreement and at such hearing the City adopted the MND and introduced Ordinance No. _____ for first reading, approving this Agreement.

O. On _____, 2014, the City Council adopted Ordinance No. _____, approving this Agreement.

NOW THEREFORE, in consideration for the covenants and conditions hereinafter set forth, the Parties hereto do hereby agree as follows:

ARTICLE 1

DEFINITIONS

The terms defined below have the meanings in this Agreement as set forth below unless the Agreement expressly requires otherwise:

1.1 "**Agreement**" means this Development Agreement entered into between the City and Developer as of the Effective Date.

1.2 "**ARB**" means the City's Architectural Review Board.

1.3 "**Building Height**" has the meaning as defined in Zoning Ordinance Section 9.04.10.02.030.

1.4 "**Assumption Agreement**" has the meaning set forth in Section 13.2, below.

1.5 "**Breach**" has the same meaning set forth under Section 11.1.1, below.

1.6 "**CEQA**" means the California Environmental Quality Act.

1.7 "**City**" means the City of Santa Monica.

1.8 "**City Council"** means the City Council of the City of Santa Monica, or its designee.

1.9 "**City General Plan**" or "**General Plan**" means the General Plan of the City of Santa Monica, and all elements thereof including the LUCE, as of the Effective Date unless otherwise indicated in this Agreement.

1.10 "**City Indemnified Parties**" has the meaning set forth in Section 14.1, below.

1.11 "**City Parties**" means the City, its City Council, boards and commissions, departments, officers, agents, employees, volunteers and other representatives.

1.12 "**Commissioning Authority**" has the meaning set forth in Section 2.7.8(b)(ii), below.

1.13 "**Damages**" has the meaning set forth in Section 14.1, below.

1.14 **"Developer"** means Macerich SMP LP, a Delaware limited partnership.

1.15 "**Developer Parties**" has the meaning set forth in Section 14.1, below.

1.16 "**Development Agreement Statutes"** has the meaning set forth in Recital A.

1.17 "**Development Application**" has the meaning set forth in Recital D.

1.18 "**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 the City, including any board, commission, or department of the City and any officer or employee of the City. Discretionary Approvals do not include Ministerial Approvals.

1.19 "**Effective Date**" has the meaning set forth in Section 9.1, below.

1.20 "**Estoppel Certificate**" has the meaning set forth in Section 15.6, below.

1.21 "**Event of Monetary Default**" has the meaning set forth in Section 11.2, below.

1.22 "**Event of Non-Monetary Default**" has the meaning set forth in Section 11.3.1, below.

1.23 "**Excusable Delays**" has the meaning set forth in Section 15.8.1, below.

1.24 "**Existing Regulations**" has the meaning set forth in Section 5.1.1(a), below.

1.25 "**Extension Notice Date**" has the meaning set forth in Section 3.3, below.

1.26 "**Floor Area**" has the meaning set forth in Section 2.8(a), below.

1.27 "**Floor Area Ratio**" and **FAR**" means floor area ratio as defined in Section 9.04.02.030.320 of the Zoning Ordinance.

1.28 "**Hearing Notice**" has the meaning set forth in Section 11.4.2(a), below.

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

1.30 "**LEED® Rating System**" means the Leadership in Energy and Environmental Design (LEED®) for Commercial Interiors Rating System adopted by the U.S. Green Building Council and implemented by the Green Building Certification Institute in effect at the time of ARB submittal. In the event no such system exists at the time Developer submits for ARB approval, an alternative green building rating system may be selected by the Developer subject to approval by the City.

1.31 "**Legal Action**" means any action in law or equity.

1.31 "**Lounge Area"** has the meaning set forth in Section 2.2, below.

1.32 "**Major Modification**" has the meaning set forth in Section 2.5.3, below.

1.33 "**Ministerial Approvals**" mean any action which merely requires the City (including any board, commission, or department of the City and any officer or employee of the City), in the process of approving or disapproving a permit or other entitlement, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval.

1.34 "**Minor Modifications**" has the meaning set forth in Section 2.5.2, below.

1.35 "**MND**" has the meaning set forth in Recital G.

1.36 "**Mortgage**" has the meaning set forth in Section 12.1, below.

1.37 "**Notice of Breach**" has the meaning set forth in Section 11.1.1.

1.38 **"Other Public Presentations"** has the meaning set forth the meaning set forth in Section 2.6.1, below.

1.39 "**Outside Project Permit Issuance Date**" has the meaning set forth in Section 3.3, below.

1.40 "**Parking Garage No. 8**" means the parking structure located at the northeast corner of 2nd St. and Colorado Avenue.

1.41 "**Parties"** mean both the City and Developer and "**Party"** means either the City or Developer, as applicable.

1.42 "**Periodic Review**" has the meaning set forth is Section 10.1, below.

1.43 "**Planning Director**" means the Planning Director of the City of Santa Monica, or his or her designee.

1.44 "**Project**" means the development project described herein and reflected on the Project Plans.

1.45 "**Project Plans**" mean the plans for the Project that are attached to this Agreement as Exhibit "B."

1.46 "**Property**" has the meaning set forth in Recital B.

1.47 "**Property Transferee**" has the meaning set forth in Section 13.1.2 below.

1.48 "**Request for Notice**" has the meaning set forth in Section 12.1.3(a) below.

1.49 "**Secured Lender**" has the meaning set forth in Section 12.1, below.

1.50 "**Secured Lender's Cure Period**" has the meaning set forth in Section 12.1.3(b), below.

1.51 "**SMMC**" means the Santa Monica Municipal Code.

1.52 "**Subsequent Code Changes**" has the meaning set forth in Section 5.2.1, below.

1.53 "**Technical City Permits**" has the meaning set forth in Section 7.1.1, below.

1.54 "**Technical Codes"** has the meaning set forth in Section 7.3.2(d), below.

1.55 "**Technical Permit Applications**" has the meaning set forth in Section 7.1.2, below.

1.56 "**Term**" has the meaning set forth in Section 9.2.1.

1.57 "**Termination Certificate**" has the meaning set forth in Section 9.2.2, below.

1.58 "**Theater**" has the meaning set forth in Section 2.2, below.

1.59 "**Theater Operator**" means the operator of the Theater.

1.60 "**Vested Rights**" has the meaning set forth in Section 2.5.5, below.

1.61 "**Zoning Ordinance**" means the City of Santa Monica Comprehensive Land Use and Zoning Ordinance (Chapter 9.04 of the SMMC), and any applicable Interim Zoning Ordinance, as the same are in effect on the Effective Date, is set forth in its entirety as part of Exhibit "E" (Planning and Zoning).

ARTICLE 2

DESCRIPTION OF THE PROJECT

2.1 General Description. The Project includes all aspects of the proposed development of the Property as more particularly described in this Agreement and on the Project Plans. If there is a conflict or inconsistency between the text of this Agreement and the Project Plans, the Project Plans shall prevail; provided, however, that omissions from the Project Plans shall not constitute a conflict or inconsistency with the text of this Agreement.

2.2 Principal Components of the Project. The Project consists of the following principal components, as well as the other components delineated in the Project Plans, all of which are hereby approved by the City subject to the other provisions of this Agreement: The conversion of approximately 50,000 square feet of existing entitled but vacant retail space on the 3rd level of the Bloomingdale's building located on the Property into a multi-screen movie theater complex with up to thirteen (13) screens, up to 1500 seats (including stadium style seating), related ticketing, lobby and concession space (collectively, the "**Theater**"). No additional floor area will be added. The Project may also include bar/café/retail space and/or a lounge area ("**Lounge Area**"), each with food and beverage service, including alcoholic beverages. Figure 11B of the Project Plans illustrates the conceptual layout of the Project with the Lounge Area. Alternatively, the Lounge Area could be used for additional Theater space or Theater concession areas, depending upon the needs of the Theater Operator. Figure 11A of the Project Plans illustrates the conceptual layout of the Project without the Lounge Area. To accommodate the Theater, the existing roof of the Bloomingdale's building will be raised by up to approximately 36 feet, from a current height of 48 feet, to up to approximately 84 feet above existing grade. Subject to certain conditions set forth in Section B of Exhibit "D", the Project may include two (2) rooftop satellite dish antennas, which may both receive (i.e., downlink) and transmit (i.e., uplink) and which may exceed the height of the roof by an additional six (6) feet.

2.3 No Change to Gross Leasable Floor Area of Santa Monica Place. The Project will maintain the total gross leasable Floor Area and Floor Area Ratio entitled for Santa Monica Place in accordance with Administrative Approval 07-AA-005, dated September 26, 2007.

2.4 No Obligation to Develop.

2.4.1 Except as specifically provided herein:

(a) Nothing in this Agreement shall be construed to require Developer to proceed with the construction of the Project or any portion thereof.

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

(c) Failure by Developer to proceed with construction 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 a nuisance abatement proceeding under SMMC Chapter 8.96, or any successor legislation.

2.4.2 Failure by Developer to proceed with construction of the Project or any portion thereof shall not result in any loss or diminution of development rights, except upon expiration or termination of this Agreement.

2.4.3 Notwithstanding any provision of Section 2.4 to the contrary, Developer shall be required to implement all mitigation measures and conditions of approval required under this Agreement in accordance with Exhibit "D". If Developer has proceeded with the construction of the Project, the mitigation measures and conditions of approval in Exhibit "D" shall survive termination of this Agreement (except as otherwise expressly limited in this Agreement), and notice of the mitigation measures and conditions shall be recorded separately from and concurrently with this Agreement.

2.5 Vested Rights.

2.5.1 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 in a half-size set. Further detailed plans for the construction of the Project and improvements, including, without limitation, structural plans and working drawings shall be prepared by Developer subsequent to the Effective Date based upon the Project Plans.

2.5.2 Minor Modifications to Project. Developer, with the approval of the Planning Director, may make minor changes to the Project or Project Plans ("**Minor Modifications**") without amending this Agreement; provided that the Planning Director makes the following specific findings that the Minor Modifications: (i) are consistent with the Project's approvals as approved by the City Council; (ii) are consistent with the provisions, purposes and goals of this Agreement; (iii) are not detrimental to the public health, safety, convenience or general welfare; and (iv) will not significantly and adversely affect the public benefits associated with the Project. The Planning Director shall notify the Planning Commission in writing of any Minor Modifications approved pursuant to this Section 2.5.2. City agrees that the installation on the roof of any antennas (including satellite dish antennas), which may receive (i.e., downlink) and/or transmit (i.e., uplink), any equipment, or any other theater-related items, that the Planning Director determines in the exercise of reasonable discretion: (a) are reasonably necessary for the operation of the Theater, (b) reasonably must extend more than 84 feet above existing grade and to their proposed height, and (c) are not otherwise allowed as exceptions to, or exceed the height exceptions of, Building Height pursuant to Zoning Ordinance Section 9.04.10.02.030, may be processed as Minor Modifications. Any proposed change which the Planning Director denies as not qualifying for a Minor Modification based on the above findings must be processed as a Major Modification.

2.5.3 Modifications Requiring Amendment to this Agreement. Developer shall not make any "Major Modifications" (defined below) to the Project without first amending this Agreement to permit such Major Modifications. A "**Major Modification**" means the following:

(a) Any change in use not consistent with the permitted uses defined in Section 2.6, below;

(b) Any increase in the number of Theater seats above 1500 or any decrease in the number of Theater seats below 800;

(c) Any change in the number of Theater auditoriums below ten (10) or above thirteen (13).

(d) Any variation in the design, massing or building configuration, including but not limited to, Floor Area and the Project's Building Height (except as permitted as a Minor Modification pursuant to Section 2.5.2), that renders such aspects out of substantial compliance with the Project Plans after ARB approval; and

(e) Any change that would substantially reduce or alter the community benefits as set forth in Section 2.7.

If a proposed modification does not exceed the Major Modification thresholds established above, then the proposed modification may be reviewed in accordance with Section 2.5.2.

2.5.4 City Consent to Modification. The Planning Director shall not unreasonably withhold, condition, or delay his or her approval of a request for such Minor Modification. The City may impose fees, exactions, conditions, and mitigation measures in connection with its approval of a Minor or Major Modification, subject to any applicable law. Notwithstanding anything to the contrary herein or in the Existing Regulations, if the Planning Director approves a Minor Modification or if the City approves a Major Modification (and the corresponding amendment to this Agreement for such Major Modification), as the case may be, Developer shall not be required to obtain any other Discretionary Approvals for such modification, except for ARB approval, in the case of certain Major Modifications. Notwithstanding anything to the contrary contained herein, the Developer's election to construct the Theater with the Lounge Area as depicted in Figure 11B of the Project Plans or construct the Theater without the Lounge Area in accordance with Figure A of the Project shall not require City's consent or approval, other than ARB approval (if required) and the City's normal ministerial building permit requirements.

2.5.5 Right to Develop. Subject to the provisions of Section 3.3, below, during the Term (as defined in Section 9.2, below) of this Development Agreement, Developer shall have the vested rights (the "**Vested Rights**") to (a) develop and construct the Project in accordance with the following: (i) the Project Plans (as the same may be modified from time to time in accordance with this Agreement); (ii) any Minor Modifications approved in accordance with Section 2.5.2; (iii) any Major Modifications which are approved pursuant to Section 2.5.3; and (iv) the requirements and obligations of Developer related to the improvements which are specifically set forth in this Agreement, and (b) use and occupy the Project for the permitted uses set forth in Section 2.6. Except for any required approvals from the ARB pursuant to Section 6.1 of this Agreement, the City shall have no further discretion over the elements of the Project which have been delineated in the Project Plans (as the same may be modified from time to time in accordance with this Agreement).

2.6 Permitted Uses.

2.6.1 Permitted Uses. The City approves the following permitted uses for the Project: (a) a movie theater and entertainment center with stadium seating for the presentation of movies and films, live and pre-recorded telecasts, closed circuit, satellite or other televised or syndicated broadcasts (whether live or via delayed feed or other technological means), and other audio-visual presentations (such as, but not limited to, sports, music, concerts, opera and comedy), that, in all cases, may be in large screen and/or 3D format and such other formats as may evolve in the industry; (b) in-theater dining and/or beverage service (including, subject to compliance with all laws, the sale of alcoholic beverages); (c) the conducting of meetings and Other Public Presentations, as defined below (d) on-screen recreational interactive gaming; (e) various other forms of retail, restaurant, service and entertainment purposes supportive of the movie theater and entertainment center concepts (as all of the foregoing, including the movie theater and entertainment center concepts, may expand, change and/or evolve over time through technology or otherwise with the evolution of the entertainment industry); (f) ancillary uses, including (1) the retail sale of food, beverages and refreshments, including, subject

to compliance with all laws, alcoholic beverages, (2) the sale or rental (or both) of DVDs or other entertainment content delivery formats (or the technological evolution of the foregoing) relating to the movie and/or entertainment industry, (3) the sale of compact discs or other entertainment content delivery formats (or the technological evolution of the foregoing) relating to the movie and/or entertainment industry, books, magazines, toys and novelties related to the movie and/or entertainment industry, (4) the sale of other goods, wares, merchandise, services and amenities ancillary to the primary uses, (5) the delivery of ancillary services customarily found in first class movie theater facilities, including, but not limited to, the selling of tickets and other admissions, debit cards or memberships, the lending of silent pagers, assistive listening devices, closed captioning devices or other devices intended to heighten the enjoyment of patrons, and other similar concierge-type services, whether complimentary or for a fee; and (6) the operation of not more than seven (7) games and other amusement devices (electronic or otherwise) typically found in theaters comparable to the theaters. Developer will not show pornographic movies (i.e., those in violation of laws) or those movies typically shown in a so-called "adult movie theater," as such term is commonly understood as of the Effective Date; and (g) the logical evolution (whether technological or otherwise) of any of the foregoing uses. As used herein, the term "**Other Public Presentations**" means the following types of public presentations and entertainment: (i) stage performances for sporting, industry, corporate and/or community events; (ii) rentals of auditoriums to third parties for meetings, political fund raisers, church services, birthday parties and other such activities; (iii) the presentation of film-related and non-film-related subject matter, including electronic, live, physical, and interactive audio and video exhibits, displays and devices; and (iv) conducting of movie-themed promotions.

2.6.2 Alcoholic Beverage Permits.

(a) In the event that the Developer or the Theater Operator desires to dispense for sale or other consideration, alcoholic beverages, including beer, wine, malt beverages, and distilled spirits for on-site consumption in the Theater or Lounge Area, a conditional use permit shall be required pursuant to SMMC Section 9.04.10.18, unless the Developer or Theater Operator complies with the terms and conditions in Section 2.6.2(b), below. Notwithstanding the foregoing, the Developer or the Theater Operator may apply for a conditional use permit pursuant to SMMC Section 9.04.10.18 in order to sell alcoholic beverages for on-site consumption on terms other than those set forth in Section 2.6.2 (b), below.

(b) The sale of alcoholic beverages including beer, wine, malt beverages, and distilled spirits incidental to the operation of the Theater, including within the Theater and associated Lounge Area, shall be exempt from the provisions of SMMC Section 9.04.10.18 if the operator thereof submits a written agreement to the Planning Director agreeing to comply with the terms and conditions set forth in Exhibit "J ", and the Developer shall cause the applicable lease to contain a clause that requires the tenant to comply with such terms and conditions. Notice of these conditions shall be recorded separately from and concurrently with this Agreement.

(c) A conditional use permit pursuant to SMMC Section 9.04.10.18 shall be required for any proposed use in the Project that (1) includes the service or sale of alcoholic beverages, and (2) does not comply with the conditions set forth in Exhibit "J". Notwithstanding the foregoing, no conditional use permit shall be required for catered events for which permits then required for such events are obtained. This Section 2.6.2 shall survive the expiration of the Term of this Agreement and shall remain binding on Developer, its successors and assigns, and shall continue in effect for the life of the Project.

2.7 Project and Community Benefits. The Project will provide the following project and community benefits:

2.7.1 Concurrently with the execution of this Agreement, Developer shall make a $20,820 contribution to reimburse the City for Developer's share of design costs for improvements to the Esplanade that extend beyond the City's right of way on Colorado Avenue onto the Property.

2.7.2 Developer shall install the portion of the Esplanade that extends onto the Property ("Work"). Developer shall complete the Work in accordance with Exhibit "G-1" and Exhibit "G-2" and the City's approved final plans (to be provided to Developer when complete). Developer shall coordinate the Work with the City contractor's work in the right of way to meet the City's overall schedule for completion of the Esplanade in the right of way and have the Work completed before the opening of the Expo Light Rail Project. Developer shall construct the Work so that there is a seamless transition to the City's work in the right of way. For example, where a paver or decking board straddles the property line between the right of way and the Property, Developer shall completely replace the board or paver spanning onto the City's right of way. If necessary, Developer shall provide temporary transitions to the Property if the grades of the Esplanade work in the right of way do not meet the grades of existing improvements on the Property. Prior to commencing any Work in the right of way, Developer shall obtain a right of entry permit to enter upon and complete the Work in the right-of-way.

2.7.3 Concurrently with execution of this Agreement, the Developer shall make a $120,000 contribution to the City for improvements to the Esplanade in the City's right of way on Colorado Avenue.

2.7.4 On or before the issuance of a building permit for the Project, the Developer shall make a $100,000 contribution to the City for its Downtown Wayfinding Metro Grant project that will coordinate wayfinding design between Santa Monica Place, Metro, Big Blue Bus and Downtown Santa Monica, Inc. Developer shall also install wayfinding signs in Santa Monica Place to direct members of the public to areas outside Santa Monica Place, including Santa Monica Pier and the 3rd Street Promenade, at a cost not to exceed $50,000 and within thirty (30) days of City's issuance of a temporary certificate of occupancy for the Project. 2.7.5 The Developer shall cause the Theater Operator to make up to three (3) movie screens available to the

American Film Market ("AFM") during AFM's annual film festival to screen movies featured in this festival, subject to Theater Operator's customary terms and conditions for such use, including payment and executing a license agreement satisfactory to Theater Operator.

2.7.6 To promote pedestrian circulation in Santa Monica Place, the Developer shall provide information regarding, and/or a kiosk for, the sale of movie theaters tickets on the ground level of Santa Monica Place.

2.7.7 Local Hiring. A local hiring program shall be implemented within the Project in accordance with **Exhibits "F-1" and "F-2"**. In connection with the local hiring program, Developer shall conduct at least one on-site job fair targeted towards recruitment of local resident candidates for employment providing services to the Theater, including the Lounge Area, if any, at least fourteen (14) days before recruitment is opened up to general circulation for the initial hiring by the Theater Operator. This on-site job fair shall be promoted locally in the same manner as is specified in Exhibit F-2. Furthermore, at least sixty (60) days before recruitment is opened up to general circulation for the initial hiring by the Theater Operator, Developer shall prepare and submit to the City's Planning Director for review and approval a written local hiring program consistent with the obligations under this Agreement. The approved local hiring plan may be amended from time to time thereafter, subject to the Planning Director's review and approval. The satisfactory completion of any local hiring obligations under this Section 2.7.6 by the Theater Operator shall be deemed to satisfy the Developer's obligations under this Section 2.7.6, as if performed by Developer.

2.7.8 Transportation Demand Management. Developer shall adopt and implement the following Transportation Demand Management Plan ("**TDM Plan**") for the Project:

(a) AVR Standards. Developer shall achieve an average vehicle ridership ("AVR") of 2.0 for the Project, commencing from one year after the earlier of City's issuance of a temporary certificate of occupancy for the Project or opening of the Theater to the public; provided, however, that if the Exposition Light Rail Line is not then fully operational, then the AVR target shall be 1.75 until the Fourth Street Station for the Exposition Light Rail Line is fully operational. SMMC Chapter 9.16 shall govern how the AVR is calculated, except that notwithstanding SMMC Section 9.16.070(d)(4)((B), a Zero Emission Vehicle ("**ZEV**") shall be counted as a vehicle for purposes of calculating the AVR. Developer will determine its AVR through employee surveys over five consecutive days each calendar year beginning the first year the Theater opens for business. Developer shall submit such baseline survey to the City at the time of submittal of its annual compliance report for this Agreement. The City shall monitor the TDM Plan performance as part of the City's Periodic Review for the Project. If during any annual evaluation of the Project's employee trip reduction plan, the AVR requirement has not been achieved for the Project, then Developer shall propose modifications to the TDM Plan that Developer considers likely to achieve the AVR requirement by the date of the next annual evaluation of the Project's employee trip reduction plan. In addition, the City's Planning Director may recommend feasible

modifications to the TDM Plan, including, without limitation, that Developer shall make available to all employees providing on-site services to the Theater, including the Lounge Area on a continuing basis a Metro EZ public transit pass (or equivalent multi-agency monthly transit pass) at a subsidized rate of no less than 50% of the cost of the transit pass. Failure to achieve the AVR standards as provided in this Section will not constitute a Default within the meaning of the Agreement, so long as Developer is in compliance with the TDM Plan. The satisfactory completion of any TDM obligations under this subparagraph (a) by the Theater Operator shall be deemed to satisfy the Developer's obligations as if performed by Developer.

For purposes of determining AVR, the survey must be conducted and AVR calculated in accordance with SMMC 9.16.070(d)(2)(1), except to the extent modified by this Agreement below:

> The survey must be taken over five consecutive days during which the majority of employees are scheduled to arrive at or leave the worksite. The days chosen cannot contain a holiday and cannot occur during 'Rideshare Week' or other 'event' weeks (i.e., Bicycle Week, Walk to Work Week, Transit Week, etc.). This survey must have a minimum response rate of seventy-five percent of employees who report to or leave work between six a.m. and ten a.m., inclusive, and seventy-five percent of employees who report to or leave work between three p.m. and seven p.m., inclusive. Employers that achieve a ninety percent or better survey response rate for the a.m. or p.m. window may count the 'no-survey responses' as 'other' when calculating their AVR . . .
>
> * * *
>
> The procedure for calculating AVR at a worksite shall be as follows:
>
> (A) The AVR calculation shall be based on data obtained from an employee survey as defined in SMMC Section 9.16.070(d)(2).
>
> (B) AVR shall be calculated by dividing the number of employees who report to or leave the worksite by the number of vehicles arriving at or leaving the worksite during the peak periods. All employees who report to or leave the worksite that are not accounted for by the employee survey shall be calculated as one employee per vehicle arriving at or leaving the worksite. Employees walking, bicycling, telecommuting, using public transit, or on their day off under a recognized compressed work week

schedule shall be counted as employees arriving at or leaving the worksite without vehicles. Motorcycles shall be counted as vehicles.

(C) A child or student may be calculated in the AVR as an additional passenger in the carpool/vanpool if the child or student travels in the car/van to a worksite or school/childcare facility for the majority (at least fifty-one percent) of the total commute.

(D) If two or more employees from different employers commute in the same vehicle, each employer must account for a proportional share of the vehicle consistent with the number of employees that employer has in the vehicle.

(E) Any employee dropped off at a worksite shall count as arriving in a carpool only if the driver of the carpool is continuing on to his/her worksite.

(F) Any employee telecommuting at home, off-site, or at a telecommuting center for a full work day, eliminating the trip to work or reducing the total travel distance by at least fifty-one percent shall be calculated as if the employee arrived at the worksite in no vehicle.

Furthermore, the definition of AVR contained in SMMC Section 9.16.030, as written on the Effective Date, shall govern how AVR is calculated. That definition reads, as follows:

"The total number of employees who report to or leave the worksite or another job-related activity during the peak periods, divided by the number of vehicles driven by these employees over that five-day period. The AVR calculation requires that the five-day period must represent the five days during which the majority of employees are scheduled to arrive at the worksite. The hours and days chosen must be consecutive. The averaging period cannot contain a holiday and shall represent a normal situation so that a projection of the average vehicle ridership during the year is obtained."

(b) TDM Plan Program Elements. The specific program elements of the TDM program for the Project are as follows:

(i) Transportation Demand Management Association. Developer shall be required to participate in the establishment of a geographic-based Transportation Demand Management Association (TMA) that may be defined by the City. TMAs provide employees, businesses and visitors of an area with resources to increase the amount of trips taken by transit, walking, bicycling, and ridesharing. If the City adopts a requirement that a TMA be formed for this geographic area, Developer shall attend organizational meetings and provide traffic demand data to

the TMA. Developer shall require the Theater Operator to participate as members in the TMA and ensure that all leases and operating agreements for the Project contain this same provision. The Developer and Theater Operator shall actively participate in the on-going activities of any such TMA. Developer may elect to provide some or all of the services required by this subparagraph (i) through the TMA, in consultation with the City's Transportation Demand Program manager

(ii) Employee Transportation Coordinator. An Employee Transportation Coordinator (ETC) shall be designated for this Project by Developer. The ETC may be an employee of Theater Operator. The ETC shall manage all aspects of this TDM program and participate in the local TMA that may be established by the City, City-sponsored workshops and information roundtables. The ETC shall be responsible for actively encouraging and making available informational materials on options for alternative transportation modes and opportunities. The ETC shall contact each employee at the point of hire and at least once per year thereafter with an offer of personalized commute assistance, including, but not limited to: (a) making available to each new employee a Metro EZ public transit pass (or equivalent multi-agency monthly transit pass) valid every day for the first three months of the new employee's employment (offered during the first three months of employment only) to establish on-going ridership habits (see subsection 2.7.7.1(b)(vi) below), (b) providing guidance on routes to use, (c) providing information concerning light rail transit, (d) providing information about carpool and vanpool formation, (e) providing information concerning bus routes, and (f) facilitating a discussion of any other transit-related benefits that may be available. The ETC shall also promote non-drive-alone options to employees by providing onsite information, including a newsletter, at least two events per year (e.g., Rideshare Week and Bike Week) and occasional marketing activities such as contests and raffles. The ETC shall coordinate with nearby employers to facilitate more effective carpool/vanpool matching, events and promotions. In addition, transit fare media will be made available for purchase through the ETC to employees during typical business hours. Employee Transportation Coordinator services may be provided through the TMA contemplated in subsection 2.7.7(b)(i), above. The ETC shall be available to assist Project employees by (a) providing guidance on routes to use, (b) providing information related to light rail transit, (c) providing information related to bus routes, and (d) facilitating a discussion of any other transit-related benefits that may be available.

(iii) Transportation Information Center. Developer shall ensure that information is available on-site for on-site employees of Theater Operator about local public transit services (including bus lines, light rail lines, bus fare programs, ride share programs and shuttles) and bicycle facilities (including routes, rental and sales locations, on-site bicycle racks and showers.) Developer shall further ensure that the Theater Operator also makes information available to Theater patrons about transit and light rail opportunities, carshare, rideshare, shopping locally, and bike and walking routes, by posting a link to a City-maintained website containing such information on the Theater Operator's website. Developer shall further ensure the Theater Operator also makes walking and biking maps (produced and provided by the City or City's designee at no cost to Developer or Theater Operator) available for

employees, which shall include but not be limited to information about convenient public transit stops, local services, and restaurants within walking distance of the Project.

(iv) Rideshare Matching Service. Developer shall provide information to all Project employees regarding a rideshare matching service at least once per year to assist employees in finding carpool/vanpool opportunities (i.e., through a service such as RideMatch (www.ridematch.info)) and/or require the Theater Operator and Project tenants to participate in Metro's CommuteSmart.info website. Rideshare matching services may be provided through the TMA contemplated in subsection 2.7.7(b)(i), above.

(vi) *Transit Subsidies for Project Employees*. Developer shall cause Theater Operator to provide, on an on-going basis, a twenty-five percent (25%) reimbursement of the cost of one monthly public transit pass, up to a maximum of twenty-five percent (25%) of the cost of a monthly Metro EZ public transit pass, to each Project employee of Theater Operator who provides proof of purchase of such pass, but only for so long as the employee remains employed by Theater Operator at the Project; provided, however, that Theater Operator may opt out of this requirement if the AVR standards in Section 2.7.8(a) above are being met.

(vii) Changes to TDM Program. Subject to approval by the City's Planning Director, the Developer may modify this TDM program provided the TDM program, as modified, can be demonstrated as equal or superior in its effectiveness at mitigating the traffic-generating effects of this Project. Any of the modifications to the TDM program proposed by Developer (or proposed by the Planning Director and agreed to by the Developer) to help the Project achieve the applicable AVR standard shall be subject to the reasonable approval by the City's Planning Director as a Minor Modification.

(c) Annual Report. As part of the annual compliance review described in Article 10, below, Developer shall report to the City on the status of the TDM program implementation, usage and results.

(d) New TDM Ordinance. If the City adopts a new ordinance of general application that updates or replaces Chapter 9.16 of the SMMC and that applies to the geographic area in which the Property is located ("**New TDM Ordinance**"), then, subject to the Planning Director's approval in his or her sole and absolute discretion, Developer may elect to comply with the New TDM Ordinance in lieu of complying with the TDM Plan outlined in this Agreement.

2.7.9 Sustainable Design Features. Developer shall design the Project so that, at a minimum, the Project shall achieve LEED® "Gold" certification by the Green Building Certification Institute under the LEED® Rating System (the "**Sustainable Design Status**"). Developer shall confirm to the City that the design for the Project has achieved the Sustainable Design Status in accordance with the following requirements:

(a) Prior to the submission of plans and documents to the City for Architectural Review Board review for the Project, the Developer shall submit for review by the City a preliminary checklist of anticipated LEED® credits along with a narrative describing the project's sustainable features to demonstrate that the Project is likely to achieve the Sustainable Design Status.

(b) Prior to submittal of the plan check application for the Project, Developer shall:

(i) Submit for review by the City an updated checklist of anticipated LEED® credits along with a narrative describing the project's sustainable features to demonstrate that the Project is likely to achieve the Sustainable Design Status.

(ii) Retain the services of a third party, independent individual designated to organize, lead, and review the completion of the process of verifying and documenting that a building and all of its systems and assemblies are planned, designed, installed, and tested to meet the Project's requirements (the "**Commissioning Authority**").

(iii) Submit a Commissioning Plan which includes the elements specified in California Code of Regulations Title 24, Part 11, Section 5.410.2.3.

(c) Prior to issuance of a final Certificate of Occupancy for the Project (but not a prerequisite to issuance of a temporary Certificate of Occupancy to allow the Project to open for business), the City shall verify (which verification shall not be unreasonably withheld, conditioned or delayed) that the Developer has submitted an application to the Green Building Certification Institute for LEED® "Gold" certification. Provided such application has been received by the Green Building Certification Institute and is being processed, the Final Certificate of Occupancy for the Project shall not be withheld or delayed based on the failure to receive certification of the Sustainable Design Status.

(d) After the City's issuance of a final Certificate of Occupancy for the Project and after Developer has opened the Project or any portions thereof to the public, Developer shall be obligated to diligently pursue a determination from the Green Building Certification Institute on such application.

(e) If the Project is ultimately denied certification for the Sustainable Design Status by the Green Building Certification Institute and the Developer has exhausted all administrative remedies and appeals of that denial, then the Developer shall be subject to a fine in the amount of two dollars ($2.00) per square foot of Floor Area. This fine may be waived if the City at its sole discretion determines that the Developer made a good faith effort to achieve and meet the intent of the Sustainable Design Status. Alternatively, the fine may be waived if the Developer commits to pursuing all necessary steps for the Project to achieve certification to the "Gold" level

under the LEED ® Existing Projects Operations and Maintenance (LEED EBOM) rating system no later than 3 years after the Certificate of Occupancy was issued for the Project. If the Developer fails to obtain this certification within this time period, the fine shall be reimposed and immediately payable to City.

2.7.10 Renewable Energy. In order to maximize renewable energy opportunities for this Project, Developer shall install photovoltaic panels on the Project's roof in accordance with the roof solar plan included in the Project Plans; provided however, the City's Office of Sustainability and the Environment shall verify that, to the extent technically feasible, the maximum area of the roof is utilized for such panels. Developer shall add additional photovoltaic panels beyond those shown on the roof solar plan if the City's Office of Sustainability and the Environment determines that such additional panels are technically feasible, taking into account such factors as shading, spacing, and the need to locate other equipment on the rooftop. Areas of the roof available and appropriate for solar systems placement shall exclude any areas (a) necessary or required for rooftop equipment, (b) any roof areas reasonably necessary for building or equipment maintenance, Fire Department access, and/or other applicable code, legally-mandated or otherwise reasonably necessary access and/or clearances, or (c) in which solar installations would interfere with Theater Operator's use or operation of any satellite dishes (or any transmission or reception operations thereof) or impair Theater Operator's use or quiet enjoyment of the Project for the permitted uses set forth herein. Such panels shall not be counted in the determination of the maximum height of the Project.

2.7.11 SMURF Connection. On or before the issuance of a certificate of occupancy for the Project, Developer shall install a water connection on the Property to enable the City's use of SMURF water for pressure washers on the Esplanade.

2.7.12 Close Captioning. Each theater shall have close captioning capability.

2.7.13 Community Use of Theaters. Developer shall cause Theater Operator to make theater auditoriums available to community groups during off-peak days and hours (as reasonably determined by Theater Operator), at commercially reasonable rental rates, and subject to reasonable use terms, rules and restrictions, all as determined and established by Theater Operator in its sole discretion.

2.8 Design.

(a) Floor Area. "**Floor Area**" shall have the meaning set forth in Section 9.04.02.030.315 of the Zoning Ordinance, which is in effect on the Effective Date.

(b) Project Building Height. The maximum Building Height of the Bloomingdale's building on the Property shall be as set forth on the Project Plans, and in no event in excess of 78 feet Building Height for 50% of the roof area and 84 feet

Building Height for 50% of the roof area, exclusive of the permitted projections set forth in the next paragraph.

(c) Permitted Projections. Projections, including the photovoltaic panels, satellite dish antennas, and rooftop equipment, shall be permitted as reflected on the Project Plans, subject to any conditions set forth in Section B of Exhibit "D".

(d) Signage. All signs on the Property shall be subject to Chapter 9.52 of the SMMC (Santa Monica Sign Code) in effect as of the Effective Date, a copy of which is set forth in its entirety in Exhibit "E"; provided, however, the Project may maintain exterior signage at the third level. Directional signs for vehicles shall be located at approaches to driveways as required by the City's Strategic Transportation Planning Division. The location, size, materials, and color of any signage shall be reviewed by the ARB (or the Planning Commission on appeal) in accordance with the procedures set forth in Section 6.1 of this Agreement.

(e) Parking. As the Project is located in an existing shopping center with adequate parking, no additional parking is required for the Project.

ARTICLE 3

CONSTRUCTION

3.1 Construction Mitigation Plan. During the construction phase of the Project, Developer shall comply with the Construction Mitigation Plan attached as Exhibit "H" hereto.

3.2 Construction Hours. Developer shall be permitted to perform construction between the hours of 7:00 a.m. to 12:00 a.m., subject to the conditions set forth in Exhibit "D". Monday through Friday, and 9:00 a.m. to 5:00 p.m. Saturday; provided that interior construction work which does not generate noise of more than thirty (30) decibels beyond the Property line may also be performed between the hours of 7:00 a.m. to 8:00 a.m. and 6:00 p.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to 9:00 a.m. and 5:00 p.m. to 6:00 p.m. Saturday. Notwithstanding the foregoing, pursuant to SMMC Section 4.12.110(e), Developer has the right to seek a permit from the City authorizing construction activity during the times otherwise prohibited by this Section.

3.3 Outside Project Permit Issuance Date. If Developer has not been issued a building permit for the Project by the "Outside Project Permit Issuance Date" (defined below), then on the day after the Outside Project Permit Issuance Date, without any further action by either Party, this Agreement shall automatically terminate and be of no further force or effect. For purposes of clarity, if Developer has not been issued a building permit for the Project by the Outside Project Permit Issuance Date, the City shall not be required to pursue its remedies under Section 11.4 of this Agreement, and this Agreement shall, instead, automatically terminate. "**Outside Project Permit Issuance Date**" means the date that is the last day of the sixtieth (60^{th}) full calendar month after the

Effective Date; provided that the Outside Project Permit Issuance Date may be extended by applicable Excusable Delays and otherwise in accordance with the remainder of this paragraph. If the approval by the ARB of the Project design does not occur within four (4) months of the submittal by Developer to the ARB of the Project design, then the Outside Project Permit Issuance Date shall be extended one month for each additional month greater than four that the final ARB approval is delayed. At any time after the last day of the fifty-seventh (57th) full calendar month after the Effective Date (the "**Extension Notice Date**"), Developer may deliver written notice to the Planning Director, requesting an extension of the Outside Project Permit Issuance Date for an additional twelve (12) months. The Outside Project Permit Issuance Date may be administratively extended not more than two (2) times for an additional twelve (12) months per extension. The Planning Director shall grant such extension if Developer can demonstrate substantial progress has been made towards obtaining a building permit and show reasonable cause why Developer will not be able to obtain the building permit for the Project by the initial Outside Project Permit Issuance Date and can demonstrate that: (a) the condition of the Property will not adversely affect public health or safety; and (b) the continued delay will not create any unreasonable visual or physical detriment to the neighborhood.

Notwithstanding anything to the contrary in this Agreement, if Developer obtains building permits for the Project and, at any time after the Outside Project Permit Issuance Date, such building permits expire or are revoked pursuant to the applicable terms of the SMMC (as the same may be amended from time to time), then Developer may not subsequently apply for new building permits for the Project without first obtaining the prior written consent of the Planning Director, which may be granted or withheld in the Planning Director's sole discretion.

3.4 Construction Period. Construction of the Project shall be subject to the provisions of SMMC Section 8.08.070.

3.5 Damage or Destruction. If the Project, or any part thereof, is damaged or destroyed during the term of this Agreement, Developer shall be entitled to reconstruct the Project in accordance with this Agreement if: (a) Developer obtains a building permit for this reconstruction prior to the expiration of this Agreement; and (b) the Project is found to be consistent with the City's General Plan and any applicable Specific Plan in effect at the time of obtaining the building permit provided, however, that nothing in this Section 3.5 shall be deemed to impair such Developer's rights under the City's Zoning Ordinance, as it exists at the time, to reconstruct non-conforming buildings.

3.6 Construction Staging. Developer may use the upper level of Parking Garage No. 8 for construction staging; provided, however, that all construction staging areas shall be restored for public parking use prior to the opening of the Theater to the public.

3.7 . Use of Public Right-of-Way and Liquidated Damages Deposit. Developer shall coordinate with City to use the public rights of way adjacent to Santa Monica Place on Colorado Avenue and 4th Street during construction of the Project in a manner that

does not unreasonably interfere with the City's installation of the Esplanade on Colorado Avenue.

Notwithstanding anything to the contrary herein, Developer acknowledges and agrees that the placement and/or use of Developer's or its contractor(s)' construction equipment and materials in the public right of way (collectively, "Developer's Construction Materials"), including, without limitation, a crane, after the City has issued a notice to proceed to its contractor to construct the Esplanade in the public right of way adjacent to the Santa Monica Place mall, will unreasonably interfere with the City's installation of the Esplanade on Colorado Avenue. Consequently, Developer shall deposit with the City a cashier's check, or equivalent liquid security acceptable to the City, in the amount of [$300,000] as a condition precedent to obtaining a building permit for the Project ("Cost Recovery Deposit"). The Cost Recovery Deposit will not earn interest and is intended to be used for the reimbursement of any delay and/or other compensable damages assessed against the City by the City's contractor due to the placement of the Developer's Construction Materials in the public right of way. Unused or unobligated portions of the Cost Recovery Deposit remaining at the time of completion of the City's Esplanade installation, if any, will be reimbursed to Developer upon completion of the City's project.

ARTICLE 4

PROJECT FEES, EXACTIONS, MITIGATION MEASURES AND CONDITIONS

4.1 Fees, Exactions, Mitigation Measures and Conditions. Except as expressly set forth in Section 2.7 (relating to Community Benefits), Section 4.2 (relating to modifications), and Section 5.2 (relating to Subsequent Code Changes) below, the City shall charge and impose only those fees, exactions, mitigation measures, conditions, and standards of construction set forth in this Agreement, including Exhibits "C", "D" and "I" attached hereto, and no others. If any of the mitigation measures or conditions set forth on Exhibit "D" is satisfied by others, Developer shall be deemed to have satisfied such measures or conditions. The City acknowledges and agrees that because the Project involves only the conversion of existing entitled retail space and not the construction of new Floor Area, the Project is not subject to the Childcare Linkage Program (SMMC Chapter 9.72), the Transportation Impact Fee (SMMC Chapter 9.73), or developer school fee (Government Code Section 65995) requirements. Notwithstanding anything in the Existing Regulations to the contrary, the Project's cultural arts in lieu contribution (SMMC Section SMMC Section 9.04.10.20.120) shall be due and payable upon issuance of a building permit for the tenant improvements for the Theater Operator and not the building permit for the Project's shell and core, electrical, mechanical, or plumbing.

4.2 Conditions on Modifications. The City may impose fees, exactions, mitigation measures and conditions in connection with its approval of Minor or Major Modifications, provided that all fees, exactions, mitigation measures and conditions shall be in accordance with any applicable law.

4.3 Implementation of Mitigation Measures and Conditions of Approval.

4.3.1 Compliance with Mitigation Measures and Conditions of Approval. Developer shall be responsible for implementing the mitigation measures set forth in Section A of Exhibit "D" attached hereto, and Developer shall be responsible to adhere to the conditions of approval set forth in Section B of Exhibit "D" in accordance with the timelines established in Exhibit "D".

4.3.2 Survival of Mitigation Measures and Conditions of Approval. If Developer proceeds with the construction of the Project, except as otherwise expressly limited in this Agreement, the obligations and requirements imposed by the mitigation measures and conditions of approval set forth in the attached Exhibit "D" shall survive the expiration of the Term of this Agreement and shall remain binding on Developer, its successors and assigns, and shall continue in effect for the life of the Project. Notice of the mitigation measures and conditions of approval shall be recorded by the City separately and concurrently with this Agreement.

ARTICLE 5

EFFECT OF AGREEMENT ON CITY LAWS AND REGULATIONS

5.1 Development Standards for the Property; Existing Regulations. The following development standards and restrictions set forth in this Section 5.1 govern the use and development of the Project and shall constitute the Existing Regulations, except as otherwise expressly required by this Agreement.

5.1.1 Defined Terms. The following terms shall have the meanings set forth below:

(a) "**Existing Regulations**" collectively means all of the following which are in force and effect as of the Effective Date: (i) the General Plan (including, without limitation, the LUCE); (ii) the Zoning Ordinance except as modified herein; (iii) the IZO; (iv) any and all ordinances, rules, regulations, standards, specifications and official policies of the City governing, regulating or affecting the demolition, grading, design, development, building, construction, occupancy or use of buildings and improvements or any exactions therefore, except as amended by this Agreement; and (v) the development standards and procedures in Article 2 of this Agreement.

(b) "**Subsequent Code Changes**" collectively means 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: (i) any amendments, revisions, additions or deletions to the Existing Regulations; or (ii) 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. "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.

5.1.2 Existing Regulations Govern the Project. Except as provided in Section 5.2, development of the Projects and improvements that will comprise the Project, including without limitation, the development standards for the demolition, grading, design, development, construction, occupancy or use of such Projects 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, including the LUCE, as more fully described in the Recitals. Any provisions of the 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. The Project shall be exempt from: (a) all Discretionary Approvals or review by the City or any agency or body thereof, other than the matters of architectural review by the ARB as specified in Section 6.1 and review of modifications to the Project as expressly set forth in Sections 2.5.2 and 2.5.3; (b) the application of any subsequent local development or building moratoria, development or building rationing systems or other restrictions on development which would adversely affect the rate, timing, or phasing of construction of the Project, whether adopted by the City Council or through the initiative process or otherwise; and (c) Subsequent Code Changes which are inconsistent with this Agreement.

5.2 Permitted Subsequent Code Changes.

5.2.1 Applicable Subsequent Code Changes. Notwithstanding the terms of Section 5.1, this Agreement shall not prevent the City from applying to the Project the following Subsequent Code Changes set forth below in this Section 5.2.1.

(a) Processing fees and charges imposed by the City to cover the estimated actual costs to City of processing applications for development approvals including: (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 Property in effect at the time an application for a grading permit or building permit is applied for; and (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 any development approvals, or any environmental impact mitigation measures; 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.

(b) 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; provided that (i)

the tax is of general applicability City-wide and does not burden the Property disproportionately to other similar developments within the City; and (ii) the tax is not a levy, assessment, fee or tax imposed for the purpose of funding public or private improvements on other property located within the Downtown Core District (as defined in the City's LUCE as of the Effective Date).

(c) 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 by the City in approving this Agreement or as otherwise established in this Agreement.

(d) [Intentionally omitted.]

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

(f) 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.

(g) Regulations which do not impair the rights and approvals granted to Developer under this Agreement. For the purposes of this Section 5.2.1(g), 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 5.2.1(a) and (b) above), (ii) materially delay development of the Project or cause a material change in the uses of the Project as provided in this Agreement; or (iii) materially impair the development, operation, or use of the Theater.

5.2.2 New Rules and Regulations. This Agreement shall not be construed to prevent the City from applying new rules, regulations and policies in those circumstances specified in Government Code Section 65866.

5.2.3 State or Federal Laws. In the event that state or federal laws or regulations, enacted after the Effective Date, 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 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.

5.3 Common Set of Existing Regulations. Prior to the Effective Date, the City and Developer shall use reasonable efforts to identify, assemble and copy three identical sets of the Existing Regulations, to be retained by the City and Developer, 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.

5.4 Conflicting Enactments. Except as provided in Section 5.2 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 the City to any part of the Property. Developer may, in its sole discretion, give the 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. If there is any conflict or inconsistency between the terms and conditions of this Agreement and the Existing Regulations, the terms and conditions of this Agreement shall control.

5.5 Timing of Development. The California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties in that case 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 any Subsequent Code Change that purports to limit over time the rate or timing of development or to alter the sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall not apply to the Property or the Project and shall not prevail over this Agreement. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed by the City on the amount of total square feet or the number of buildings, structures, residential units that can be built each year on the Property except as expressly provided in this Agreement.

ARTICLE 6

ARCHITECTURAL REVIEW BOARD/COASTAL DEVELOPMENT PERMIT

6.1 Architectural Review Board Approval. The Project shall be subject to review and approval or conditional approval by the ARB in accordance with design review procedures in effect under the Existing Regulations. Consistent with Existing Regulations, the ARB cannot require modifications to the building design which negates the fundamental development standards established by this Agreement. For example, the ARB cannot require reduction in the overall height of the Project, reduction in the number of stories in the Project, or reduction in Floor Area from the Project. Decisions of the ARB are appealable to the Planning Commission in accordance with the Existing Regulations.

6.2 Coastal Development Permit. City acknowledges and agrees that Developer may apply to the California Coastal Commission for a coastal development permit prior to obtaining ARB approval; provided, however, that ARB approval must be received prior to any action taken by the California Coastal Commission.

ARTICLE 7

CITY TECHNICAL PERMITS

7.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

7.1.1 "**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 for the actual construction of the Project or any portion thereof in accordance with the Project Site Plan and this Agreement. Technical City Permits include, without limitation (a) building permits, (b) related mechanical, electrical, plumbing and other technical permits, (c) demolition, excavation and grading permits, (d) encroachment permits, and (e) temporary and final certificates of occupancy.

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

7.2 Diligent Action by City.

7.2.1 Upon satisfaction of the conditions set forth in Section 7.3, 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.

7.2.2 Upon satisfaction of the conditions set forth in Section 7.3, the City shall diligently issue the Technical City Permits which are the subject of the Technical Permit Applications.

7.3 Conditions for Diligent Action by the City.

7.3.1 Acceptance and Processing of Technical Permit Applications. The obligation of the City to accept and diligently process the Technical Permit Applications which are filed by Developer, and then issue the Technical City Permits, is subject to the satisfaction of the following conditions:

(a) 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;

(b) Developer shall have paid all processing and permit fees established by the City in connection with the filing and processing of any Technical Permit Application which are in effect on the date when the Technical Permit Application is filed; provided that such fees are uniformly in force and effect throughout the City; and

(c) If required for the particular Technical Permit Application, Developer shall have obtained the approval of the ARB referred to in Section 6.1 above.

7.3.2 Issuance of a Technical City Permit. The obligation of the City to issue a Technical City Permit which is the subject of a Technical Permit Application filed by Developer is subject to the satisfaction of the following conditions (and only such conditions and no others):

(a) 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 Project;

(b) 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 Project;

(c) The Project conforms to the development standards established in this Agreement. In the event that the Project is not in conformance with the development standards, Developer shall have the right to seek any relief from such standards under the procedures then available in the City; and

(d) The proposed Projects conform to the applicable Administrative and Technical Construction Codes of the City (Article VIII, Chapter 1 of the Santa Monica Municipal Code) (the "**Technical Codes**").

7.4 Duration of Technical City Permits. The duration of Technical City Permits issued by the City, and any extensions of the time period during which such Technical City Permits remain valid, shall be established in accordance with the Technical Codes in effect at the time that the Technical City Permits are issued. Subject to Section 3.3, the lapse or expiration of a Technical City Permit shall not preclude or impair Developer from subsequently filing another Technical Permit Application for the same matter during the Term of this Agreement, which shall be processed by the City in accordance with the provisions of this ARTICLE 7.

7.5 Applicable Building Code. The City acknowledges and agrees that (a) Developer has submitted shell and core plans for the Project that are being checked under the 2010 California Building Code and any applicable local amendments; therefore, the Project Plans and Technical City Permits are only subject to and shall be processed under such Code and local amendments, and (b) the Project is not a High-Rise.

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 SMMC 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 date upon which the ordinance approving this Agreement becomes effective (the "**Effective Date**"). The Parties shall execute this Agreement within ten (10) working days of the Effective Date.

9.2 Term.

9.2.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue for twenty (20) years thereafter (the "**Term**"), unless the Term is otherwise terminated pursuant to Section 11.4, after the satisfaction of all applicable public hearing and related procedural requirements or pursuant to Section 3.3.

9.2.2 Termination Certificate. Upon termination of this Agreement, the Parties hereto shall execute an appropriate certificate of termination in recordable form (a "**Termination Certificate**"), which shall be recorded in the official records of Los Angeles County.

9.2.3 Effect of Termination. Except as expressly provided herein (e.g., Section 4.3.2), none of the parties' respective rights and obligations under this Agreement shall survive the Term.

ARTICLE 10

PERIODIC REVIEW OF COMPLIANCE

10.1 City Review. The City shall review compliance with this Development Agreement once each year, on or before March 31st (each, a "**Periodic Review**"), 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.

10.2 Evidence of Good Faith Compliance. On or before October 1st of each year, Developer shall deliver to the City a written report demonstrating that Developer has been in good faith compliance with this Agreement during the twelve (12) month period prior to the anniversary of the Effective Date. The written report shall be provided in the form established by the City. For purposes of this Agreement, the phrase "good faith compliance" shall mean the following: (a) compliance by Developer with the requirements of the Existing Regulations, except as otherwise modified by this Agreement; and (b) compliance by Developer with the terms and conditions of this Agreement, subject to the existence of any specified Excusable Delays (as defined in

Section 15.8, below) which prevented or delayed the timely performance by Developer of any of its obligations under this Agreement.

10.3 Information to be Provided to Developer. Prior to any public hearing concerning the Periodic Review of this Agreement, 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. If the City delivers to Developer a Notice of Breach pursuant to Section 11.1.1, below, the City shall concurrently deliver to Developer a copy of all staff reports prepared in connection with such Notice of Breach, all written comments from the public and all related exhibits concerning such Notice of Breach.

10.4 Notice of Breach; Cure Rights. If during any Periodic Review, 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 Breach pursuant to Section 11.1.1, below, and Developer shall have the opportunity to cure the default identified in the Notice of Breach during the cure periods and in the manner provided by Section 11.2 and Section 11.3, as applicable.

10.5 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.

10.6 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.

10.7 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.

ARTICLE 11

DEFAULT

11.1 Notice and Cure.

11.1.1 Breach. If either Party fails to substantially perform any term, covenant or condition of this Agreement which is required on its part to be performed (a "**Breach**"), 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 Breach (a "**Notice of Breach**"), in the manner required by Section 15.1, specifying the precise nature of the alleged Breach (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 Breach may satisfactorily be cured. If the City alleges a Breach by Developer, the City shall also deliver a copy of the Notice of Breach to Theater Operator and any Secured Lender of Developer which has delivered a Request for Notice to the City in accordance with Article 12.

11.1.2 Monetary Breach. In the case of a monetary Breach by Developer, Developer shall promptly commence to cure the identified Breach and shall complete the cure of such Breach within thirty (30) business days after receipt by Developer of the Notice of Breach; provided that if such monetary Breach is the result of an Excusable Delay or the cure of the same is delayed as a result of an Excusable Delay, Developer shall deliver to the City reasonable evidence of the Excusable Delay.

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

11.1.4 Excusable Delay. Notwithstanding anything to the contrary contained in this Agreement, the City's exercise of any of its rights or remedies under this Article 11 shall be subject to the provisions regarding Excusable Delay in Section 15.8, below.

11.2 Remedies for Monetary Default. If there is a Breach by Developer in the performance of any of its monetary obligations under this Agreement which remains uncured (a) thirty (30) business days after receipt by Developer of a Notice of Breach from the City and (b) after expiration of Secured Lender's Cure Period under Section 12.1.3(b) (if a Secured Lender of Developer has delivered a Request for Notice to the City in accordance with Section 12.1.3(a)), then an "**Event of Monetary Default**" shall

have occurred by Developer and the City shall have available any right or remedy provided in this Agreement, 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.

11.3 Remedies for Non-Monetary Default.

11.3.1 Remedies of Parties. If any Party receives a Notice of Breach from the other Party regarding a non-monetary Breach, and the non-monetary Breach remains uncured: (a) after expiration of all applicable notice and cure periods; and (b) in the case of a Breach by Developer, after the expiration of Secured Lender's Cure Period under Section 12.1.3(b) (if a Secured Lender of Developer has delivered a Request for Notice to the City in accordance with Section 12.1.3(a)), then an "**Event of Non-Monetary Default**" shall have occurred and the non-defaulting Party shall have available any right or remedy provided in this Agreement, or provided 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.

11.3.2 Specific Performance. 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 the non-defaulting party if the other Party causes an Event of Non-Monetary Default to occur.

11.3.3 Writ of Mandate. 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 Event of Non-Monetary Default by the City of its obligations and duties under this Agreement. Nothing in this Section 11.3.3, 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.

11.3.4 No Damages Relief Against City. It is acknowledged by Developer 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 and court costs, the City shall not be liable in damages to Developer and Developer covenants on behalf of itself and its successors in interest not to sue for or claim any damages:

(a) for any default under this Agreement;

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

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

The City and Developer agree that the provisions of this Section 11.3.4 do not apply for damages which:

(a) do not arise under this Agreement;

(b) are not with respect to any right or interest conveyed or provided under this Agreement or pursuant to this Agreement; or

(c) do not arise out of or which are not connected to any dispute, controversy, or issue regarding the application, interpretation, or effect of the provisions of this Agreement or the application of any City rules, regulations, or official policies.

11.3.5 Enforcement by the City. The City, at its discretion, shall be entitled to apply the remedies set forth in Chapters 1.09 and 1.10 of the SMMC as the same may be amended from time to time and shall follow the notice procedures of Chapter 1.09 and 1.10 respectively in lieu of Section 11.1 of this Agreement if these remedies are applied.

11.3.6 No Damages Against Developer. It is acknowledged by the City 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 attorneys' fees and court costs, Developer shall not be liable in damages to the City for any nonmonetary default and the City covenants on behalf of itself not to sue for or claim any damages:

(a) for any non-monetary default hereunder or;

(b) arising out of or connected with any dispute, controversy or issue regarding;

(c) the application or interpretation or effect of the provisions of this Agreement.

The City and Developer agree that the provisions of this Section 11.3.6 do not apply for damages which:

(a) are for a monetary default; or

(b) 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 to or the application of, any City rules, regulations, or official policies.

11.3.7 No Other Limitations. Except as expressly set forth in this Section 11.3, the provisions of this Section 11.3 shall not otherwise limit any other rights, remedies, or causes of action that either the City or Developer may have at law or equity after the occurrence of any Event of Non-Monetary Default.

11.4 Modification or Termination of Agreement by City.

11.4.1 Default by Developer. If Developer causes either an Event of Monetary Default or an Event of Non-Monetary Default, then the City may commence proceedings to modify or terminate this Agreement pursuant to this Section 11.4.

11.4.2 Procedure for Modification or Termination. The procedures for modification or termination of this Agreement by the City for the grounds set forth in Section 11.4.1 are as follows:

(a) The City shall provide a written notice to Developer (and to any Secured Lender of Developer which has delivered a Request for Notice to the City in accordance of Section 12.1.3(a)) of its intention to modify or terminate this Agreement unless Developer (or the Secured Lender) cures or corrects the acts or omissions that constitute the basis of such determinations by the City (a "**Hearing Notice**"). The Hearing Notice shall be delivered by the City to Developer in accordance with Section 15.1 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 modification or termination 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 Secured Lender has delivered a Request for Notice in accordance with Section 12.1.3(a), the day following the expiration of the "Secured Lender Cure Period" (as defined in Section 12.1.3(b)).

(b) If, following the conclusion of the public hearing, the City Council: (i) determines that an Event of Non-Monetary Default has occurred and (ii) further determines that Developer (or the Secured Lender, if applicable) has not cured (within the applicable cure periods) 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 Secured Lender) 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, then upon making such conclusions, the City Council may modify or terminate this Agreement. The City cannot unilaterally modify the provisions of this Agreement pursuant to this Section 11.4.2. Any such modification requires the written consent of Developer. If the City Council does not terminate this Agreement, but proposes a modification to this Agreement as a result of the public hearing and Developer does not (within five (5) days of receipt) execute and deliver to the City the form of modification of this Agreement submitted to Developer by the City, then the City Council may elect to terminate this Agreement at any time after the sixth day after Developer's receipt of such proposed modification.

11.5 Cessation of Rights and Obligations. If this Agreement is terminated by the City pursuant to and in accordance with Section 11.4, the rights, duties and obligations of the Parties under this Agreement shall cease as of the date of such termination, except only for those rights and obligations that expressly survive the termination of this Agreement. In such event, any and all benefits, including money received by the City prior to the date of termination, shall be retained by the City.

11.6 Completion of Improvements. Notwithstanding the provisions of Sections 11.2, 11.3, 11.4, and 11.5, 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 Projects in accordance with the terms of the building permit and occupy or use each such Project upon completion for the uses permitted for that Project as provided in this Agreement. Any Project completed or occupied pursuant to this Section 11.6 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 Project 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/THEATER OPERATOR

12.1 Encumbrances on the Property. This Agreement shall not prevent or limit Developer (in its sole discretion), from encumbering the Property (in any manner) or any portion thereof or any improvement thereon by any mortgage, deed of trust, assignment of rents or other security device securing financing with respect to the Property (a "**Mortgage**"). Each mortgagee of a mortgage or a beneficiary of a deed of trust (each, a "**Secured Lender**") on the Property shall be entitled to the rights and privileges set forth in this ARTICLE 12. Any Secured Lender may require from the City certain interpretations of this Agreement. The City shall from time to time, upon request made by Developer, meet with Developer and representatives of each of its Secured Lenders to negotiate in good faith any Secured Lender's request for interpretation of any part of this Agreement. The City will not unreasonably withhold, condition or delay the delivery to a Secured Lender of the City's written response to any such requested interpretation.

12.1.1 Mortgage Not Rendered Invalid. Except as provided in Section 12.1.2, neither entering into this Agreement nor a Breach of this Agreement, nor any Event of Monetary Default nor any Event of Non-Monetary Default shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value.

12.1.2 Priority of Agreement. This Agreement shall be superior and senior to the lien of any Mortgage. Any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Secured Lender or its successor in interest (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.

12.1.3 Right of Secured Lender to Cure Default.

(a) A Secured Lender may give notice to the City, specifying the name and address of such Secured Lender and attaching thereto a true and complete copy of the Mortgage held by such Secured Lender, specifying the portion of the Property that is encumbered by the Secured Lender's lien (a "**Request for Notice**"). If the Request for Notice has been given, at the same time the City sends to Developer any Notice of Breach or Hearing Notice under this Agreement, then if such Notice of Breach or Hearing Notice affects the portion of the Property encumbered by the Secured Lender's lien, the City shall send to such Secured Lender a copy of each such Notice of Breach and each such Hearing Notice from the City to Developer. The copy of the Notice of Breach or the Hearing Notice sent to the Secured Lender pursuant to this Section 12.1.3(a) shall be addressed to such Secured Lender at its address last furnished to the City. The period within which a Secured Lender may cure a particular Event of Monetary Default or Event of Non-Monetary Default shall not commence until the City has sent to the Secured Lender such copy of the applicable Notice of Breach or Hearing Notice.

(b) After a Secured Lender has received a copy of such Notice of Default or Hearing Notice, such Secured Lender shall thereafter have a period of time (in addition to any notice and/or cure period afforded to Developer under this Agreement) equal to: (a) ten (10) business days in the case of any Event of Monetary Default and (b) thirty (30) days in the case of any Event of Non-Monetary Default, during which period the Secured Lender may provide a remedy or cure of the applicable Event of Monetary Default or may provide a remedy or cure of the applicable Event of Non-Monetary Default; provided that if the cure of the Event of Non-Monetary Default cannot reasonably be completed within thirty days, Secured Lender may, within such 30-day period, commence to cure the same and thereafter diligently prosecute such cure to completion (a "**Secured Lender's Cure Period**"). If Developer has caused an Event of Monetary Default or an Event of Non-Monetary Default, then each Secured Lender shall have the right to remedy such Event of Monetary Default or an Event of Non-Monetary Default, as applicable, or to cause the same to be remedied prior to the conclusion of the Secured Lender's Cure Period and otherwise as herein provided. The City shall accept performance by any Secured Lender 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 Secured Lender to cure any Event of Monetary Default or an Event of Non-Monetary Default by Developer which reasonably requires that said Secured Lender be in possession of the Property to do so, shall be deemed extended to include the period of time reasonably required by said Secured Lender to obtain such possession (by foreclosure, the appointment of a receiver or otherwise) promptly and with due diligence; provided 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.

12.1.4 Secured Lender Not Obligated Under this Agreement.

(a) No Secured Lender 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 Secured Lender takes possession or becomes the owner of the estate covered by its Mortgage. If the Secured Lender takes possession or becomes the owner of any portion of the Property, then from and after that date, the Secured Lender shall be obligated to comply with all provisions of this Agreement; provided that the Secured Lender shall not be responsible to the City for any unpaid monetary obligations of Developer that accrued prior to the date the Secured Lender became the fee owner of the Property.

(b) Nothing in Section 12.1.4(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 Secured Lender as well as against Developer if any curable Event of Monetary Default or an Event of Non-Monetary Default is not completely cured within the Secured Lender's Cure Period.

12.2 Theater Operator's Notice and Cure Rights.

(a) Provided that the Theater Operator has provided written notice of the name and address of the Theater Operator to City, at the same time the City sends to Developer any Notice of Breach or Hearing Notice under this Agreement, the City shall send to Theater Operator a copy of each such Notice of Breach and each such Hearing Notice from the City to Developer. The copy of the Notice of Breach or the Hearing Notice sent to the Theater Operator pursuant to this Section 12.2 shall be addressed to Theater Operator at the address of the Theater Project. The period within which Theater Operator may cure a particular Event of Monetary Default or Event of Non-Monetary Default shall not commence until the City has sent to the Theater Operator such copy of the applicable Notice of Breach or Hearing Notice.

(b) After Theater Operator has received a copy of such Notice of Breach or Hearing Notice, Theater Operator shall thereafter have a period of time (in addition to any notice and/or cure period afforded to Developer under this Agreement) equal to: (a) ten (10) business days in the case of any Event of Monetary Default and (b) thirty (30) days in the case of any Event of Non-Monetary Default, during which period Theater Operator may provide a remedy or cure of the applicable Event of Monetary Default or may provide a remedy or cure of the applicable Event of Non-Monetary Default; provided that if the cure of the Event of Non-Monetary Default cannot reasonably be completed within thirty days, Theater Operator may, within such 30-day period, commence to cure the same and thereafter diligently prosecute such cure to completion (a "**Theater Operator's Cure Period**"). If Developer has caused an Event of Monetary Default or an Event of Non-Monetary Default, then Theater Operator shall have the right, but not the obligation, to remedy such Event of Monetary Default or an Event of Non-Monetary Default, as applicable, or to cause the same to be remedied prior to the conclusion of the Theater Operator's Cure Period and otherwise as herein provided. The City shall accept performance by Theater Operator 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) Notwithstanding anything to the contrary in this Agreement, and regardless of whether City provides to Theater Operator any Notice of Breach or Hearing Notice, Theater Operator has no obligation to commence or complete any remedy or cure of any Event of Monetary Default or an Event of Non-Monetary Default, by Developer

ARTICLE 13

TRANSFERS AND ASSIGNMENTS

13.1 Transfers and Assignments.

13.1.4 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 transferred Property or transferred portions, as applicable.

13.1.5 Transfer Rights. Developer may freely sell, transfer, exchange, hypothecate, encumber or otherwise dispose of its interest in the Property, without the consent of the City. Developer shall, however, give written notice to the City, in accordance with Section 15.1, of any transfer of the Property, disclosing in such notice (a) the identity of the transferee of the Property (the "**Property Transferee**") and (b) the address of the Property Transferee as applicable.

13.2 Release Upon Transfer. Upon the sale, transfer, exchange or hypothecation of the rights and interests of Developer to the Property, Developer shall be released from its obligations under this Agreement to the extent of such sale, transfer or exchange with respect to the Property if: (a) Developer has provided written notice of such transfer to City; and (b) the Property Transferee executes and delivers to City a written agreement in which the Property Transferee expressly and unconditionally assumes all of the obligations of Developer under this Agreement with respect to the Property in the form of Exhibit "I" attached hereto (the "**Assumption Agreement**"). Upon such transfer of the Property and the express assumption of Developer's obligations under this Agreement by the transferee, 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 that the transferor shall not be released from its obligations hereunder unless and until the executed Assumption Agreement is delivered to the City.

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 as "**City Indemnified Parties**") 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: (1) for any act or omission of Developer, Theater Operator, and their respective officers, board members, agents, employees, volunteers, contractors, subcontractors (collectively referred to as the "**Developer Parties**"), which occurs during the Term and relates to this Agreement; (2) for any act or omission related to the operations of Developer Parties, 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 Parties 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 any City Indemnified Parties. This Section 14.1 applies to all Damages suffered or alleged to have been suffered by the City Indemnified Parties 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, conditioned or delayed. If any conflict of interest results during the mutual representation of the City and Developer in defense of any such action, or if the City is reasonably dissatisfied with legal counsel retained by Developer, the City shall have the right (a) at Developer's costs and expense, to have the City Attorney undertake and continue the City's defense, or (b) with Developer's approval, which shall not be reasonably withheld or delayed, to select separate outside legal counsel to undertake and continue the City's defense.

ARTICLE 15

GENERAL PROVISIONS

15.1 Notices. Formal notices, demands and communications between the Parties shall be deemed sufficiently given if delivered to the principal offices of the City or Developer, as applicable, by (i) personal service, or (ii) express mail, Federal Express, or other similar overnight mail or courier service, regularly providing proof of delivery, or (iii) registered or certified mail, postage prepaid, return receipt requested, or (iv) facsimile (provided that any notice delivered by facsimile is followed by a separate notice sent within twenty-four (24) hours after the transmission by facsimile delivered in one of the other manners specified above). Such notice shall be addressed as follows:

To City:
City of Santa Monica
1685 Main Street, Room 204
Santa Monica, CA 90401
Attention: City Manager
Fax: (310) 917-6640

With a Copy to:
City of Santa Monica
1685 Main Street, Room 212
Santa Monica, CA 90401
Attn: Planning and Community Development Director
Fax: (310) 458-3380

To Developer:
Macerich SMP LP
401 Wilshire Boulevard, Suite 700
Santa Monica, CA 90401
Attn: Randy Brant
Fax: (310) 395-2791

With a Copy to:
Macerich SMP LP
401 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
Attn: Chief Legal Officer
Fax: (310) 395-2791

With a Copy to:
Armbruster Goldsmith & Delvac LLP
11611 San Vicente Blvd., Suite 900
Los Angeles, CA 90049
Attn: Dale Goldsmith
Fax: (310) 209-8801

Notice given in any other manner shall be effective when received by the addressee. Any Party may change the addresses for delivery of notices to such Party by delivering notice to the other Party in accordance with this provision.

15.2 Entire Agreement; Conflicts. This Agreement represents the entire agreement of the Parties. 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 the Existing Regulations, then the provisions of this Agreement shall prevail. Should any of the Conditions of Approval set forth in Section B of Exhibit "D" attached hereto conflict

with any of the Mitigation Measures set forth in Section A of Exhibit "D" attached hereto, the more stringent or exacting requirement shall control.

15.3 Binding Effect. The Parties intend 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.

15.4 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. Except for the rights given to Secured Lenders under Article 12 above, no o other person shall have any right of action based upon any provision of this Agreement.

15.5 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.

15.6 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 (each, an "**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 Breach or claimed Breach in the performance of its obligations under this Agreement, and, if so, describing the nature and amount of any such Breach or claimed Breach, 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 an Event of Monetary Default or an Event of Non-Monetary Default and, if so, specifying each such event. A Party receiving a request for an Estoppel Certificate shall execute and return such Certificate within thirty (30) days following the receipt of the request therefor. 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 "FAILURE TO EXECUTE THE REQUESTED ESTOPPEL CERTIFICATE WITHIN FIFTEEN (15) DAYS SHALL BE DEEMED WAIVER PURSUANT TO SECTIONS 15.6 AND 15.13 OF THE DEVELOPMENT AGREEMENT" and which sets forth the business necessity for a timely response to the estoppel request. If the Party receiving the second 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. Theater Operator may also request an Estoppel Certificate from the City, and the City shall issue such Estoppel Certificate, in accordance with the foregoing provisions. The City Manager shall have the right to execute any Estoppel Certificate requested by Developer or Theater Operator under this Agreement. The City acknowledges that an Estoppel Certificate may be relied upon by Theater Operator, any Property Transferee, Secured Lender or other party.

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

15.8 Excusable Delays.

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

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

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

(c) 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 Party arising out of this Agreement or any permit or approval Developer deems necessary or desirable for the implementation of the Project;

(d) The institution of a referendum pursuant to 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;

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

(f) Failure of the City to timely perform its obligations hereunder, including its obligations under Section 7.2 above

15.8.2 Under no circumstances shall the inability of Developer to secure financing be an Excusable Delay to the obligations of Developer.

15.8.3 In order for an extension of time to be granted for any Excusable Delay, Developer must deliver to the City written notice of the commencement of the Excusable Delay within sixty (60) days after the date on which Developer becomes aware of the existence of the Excusable Delay. The extension of time for an Excusable Delay shall be for the actual period of the delay.

15.8.4 Nothing contained in this Section 15.8 is intended to modify the terms of either Section 5.1.2 or Section 5.5 of this Agreement.

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

15.10 Cooperation in Event of Legal Challenge to Agreement. If there is any court action or other proceeding commenced that includes any challenge to the validity, enforceability or any term or provision of this Agreement, then Developer shall indemnify, hold harmless, pay all costs actually incurred, and provide defense in said action or proceeding, with counsel reasonably satisfactory to both the City and Developer. The City shall cooperate with Developer in any such defense as Developer may reasonably request.

15.11 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 of this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees, litigation expenses and costs. Attorneys' fees 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 shall be entitled to 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.

15.12 Recordation. The Parties shall cause this Agreement and any notice of covenants required herein to be recorded against title to the Property in the Official Records of the County of Los Angeles. The cost, if any, of recording these documents shall be borne by Developer.

15.13 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 15.13. 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.

15.14 Construction of this Agreement. 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.

15.15 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 Property. The City shall reasonably cooperate with Developer in its endeavors to obtain such permits and approvals.

15.15.1 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, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

15.15.2 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 Project in accordance with this Agreement, including, but not limited to, the following:

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

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

(c) the processing of applications for and issuing of all City Technical Permits requiring the determination of conformance with the Existing Regulations.

15.15.3 No Revocation. The City shall not revoke or subsequently disapprove any approval or future approval for the development of the Project or the Property 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.

15.15.4 Processing During Third Party Litigation. If any third party lawsuit is filed against the City or Developer relating to this Agreement or to other development issues affecting the Property, the City shall not delay or stop the development, processing or construction of the Property, or issuance of the City Technical Permits, unless the third party obtains a court order preventing the activity. Notwithstanding the foregoing and without prejudice to the provisions of Section 15.8(c),

after service on the City or Developer of the initial petition or complaint challenging this Agreement or the Project, the Developer may apply to the Planning Director for a tolling of the applicable deadlines for Developer to otherwise comply with this Agreement. Within 40 days after receiving such an application, the Planning Director shall either toll the time period for up to five years during the pendency of the litigation or deny the requested tolling.

15.15.5 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, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

15.16 Venue. Any legal action or proceeding among the Parties 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 in the Central District of California.

15.17 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 the Property
Exhibit “B”	Project Plans
Exhibit “C”	Permitted Fees and Exactions
Exhibit “D”	Mitigation Measures and Conditions
Exhibit “E”	SMMC Article 9 (Planning and Zoning)
Exhibit “F-1”	Local Hiring Program for Construction
Exhibit “F-2”	Local Hiring Program for Permanent Employment
Exhibit “G-1”	Map of Work Area
Exhibit "G-2"	Construction Drawings for Work
Exhibit “H”	Construction Mitigation Plan
Exhibit “I”	Assignment and Assumption Agreement
Exhibit “J”	Conditions for Sale of Alcoholic Beverages

Except as to the Project Plans (attached hereto as Exhibit B) which shall be treated in accordance with Section 2.1 above, the text of this Agreement shall prevail in the event that any inconsistencies exist between the Exhibits and the text of this Agreement.

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

15.19 Certificate of Performance. Upon the completion of the Project, or any phase thereof, or upon performance of this Agreement or its earlier revocation and termination, the City shall provide Developer, upon Developer's request, with a statement ("**Certificate of Performance**") evidencing said completion, termination or revocation and the release of Developer from further obligations hereunder, except for any further obligations which survive such completion, termination or revocation. The Certificate of Performance shall be signed by the appropriate agents of Developer and the City and shall be recorded against title to the Property in the official records of Los Angeles County, California. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 3093.

15.20 Interests of Developer. Developer represents to the City that, as of the Effective Date, it is the owner of the entire Property, subject to encumbrances, easements, covenants, conditions, restrictions, and other matters of record.

15.21 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 term 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 mere ministerial clarifications, therefore public notices and hearings shall not be required for any operating memorandum. The City Attorney shall be authorized, upon consultation with, and approval of, Developer, to determine whether a requested clarification may be effectuated pursuant to the execution and delivery of an operating memorandum or whether the requested clarification is of such character to constitute an amendment of this Agreement 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 action by the City Council.

15.22 Acknowledgments, Agreements and Assurance on the Part of Developer.

15.22.5 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 the Project on the community and the Property, and further acknowledges that the consideration is necessary to mitigate the direct and indirect impacts caused by Developer on the Property.

15.22.6 Obligations to be Non-Recourse. As a material element of this Agreement, and in partial consideration for Developer's execution of this Agreement, the Parties each understand and agree that the City's remedies for breach of the obligations of Developer under this Agreement shall be limited as described in Sections 11.2 through 11.4 above.

15.23 Not a Public Dedication. Nothing in this Agreement 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, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Project as private property. Developer shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the development of the Project, including without limitation to prevent any person or entity from obtaining or accruing any prescriptive or other right to use the Property or the Project.

15.24 Other Agreements. The City acknowledges that certain additional agreements may be necessary to effectuate the intent of this Agreement and facilitate development of the Project. The City Manager or his/her designee is hereby authorized to prepare, execute, and record those additional agreements.

15.25 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.

This Agreement is executed by the Parties on the date first set forth above and is made effective on and as of the Effective Date.

DEVELOPER:

MACERICH SMP LP,
a Delaware limited partnership

By: MACERICH SMP GP LLC,
a Delaware limited liability company,
its general partner

By: _____
Name: _____
Title: _____

CITY:

CITY OF SANTA MONICA
a municipal corporation

ATTEST:

_____
SARAH P. GORMAN
City Clerk

By: _____
ROD GOULD
City Manager

APPROVED AS TO FORM:

_____
MARSHA JONES MOUTRIE
City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
PROJECT PLANS

EXHIBIT C
PERMITTED FEES AND EXACTIONS

1. Developer shall pay the following fees and charges that are within the City's jurisdiction and at the rate in effect at the time payments are made:

   (a) Upon submittal for Architectural Review Board (ARB) review, Developer shall pay City fees for processing of ARB applications;

   (b) Upon submittal for plan check, Developer shall pay City plan check fees;

   (c) Prior to issuance of construction permits, Developer shall pay the following City fees and all other standard fees imposed on similar development projects:

   - Building, Plumbing, Mechanical, Electrical, Grading, Seismic Mapping, Excavation and Shoring Permit fees (collected by Building & Safety)
   - Shoring Tieback fee (collected by EPWM)
   - Construction and Demolition (C&D) Waste Management fee (SMMC Section 7.60.020) (collected by EPWM) (collected by EPWM)
   - Wastewater Capital Facilities Fee (SMMC Section 7.04.460) (collected by EPWM)
   - Water Capital Facilities Fee & Water Meter Instillation fee (Water Meter Permit fee) (SMMC Section 7.12.090) (collected by EPWM)
   - Fireline Meter fee (SMMC Section 7.12.090) (collected by EPWM)

   (d) Upon inspection of the Project during the course of construction, City inspection fees.

   These fees shall be reimbursed to Developer in accordance with the City's standard practice should Developer not proceed with development of the Project.

2. Prior to issuance of permits for any construction work in the public right-of-way, or use of public property, Developer shall pay the following City fees:

   - Use of Public Property Permit fees (SMMC 7.04.670) (EPWM)

- Utility Excavation Permit fee (SMMC 7.04.010) (EPWM)
- Street Permit fee (SMMC 7.04.790) (EPWM)

3. The Developer shall reimburse the City for its actual costs to monitor environmental mitigation measures. The City shall bill the Developer for staff time and any material used pursuant to the hourly fees in effect at the time monitoring is performed. Developer shall submit payment to the City within 30 days.

4. Developer shall reimburse the City for its ongoing actual costs to monitor the project's compliance with this Development Agreement. The City shall bill Developer for staff time and any material used pursuant to the hourly fees in effect at the time monitoring is performed. Developer shall submit payment to the City within 30 days.

EXHIBIT D
MITIGATION MEASURERS AND CONDITIONS OF APPROVAL

SECTION A - MITIGATION MEASURES

Mitigation Measure

TRAF-1: Construction Impact Mitigation Plan. The Applicant shall prepare, implement, and maintain a Construction Impact Mitigation Plan which shall be designed to:

- Minimize traffic impacts on the surrounding roadway network.
- Maintain two lanes of traffic, unobstructed, in both the northbound and southbound direction on 4th Street for the duration of the project.
- Ensure no work encroaches into existing bus stop on southbound 4th Street.
- Minimize parking impacts both to public parking and access to private parking.
- Ensure safety for both those constructing the project and the surrounding community.
- Prevent truck traffic through residential neighborhoods by establishing truck routes that utilize non-residential streets.
- Ensure coordination with the Exposition Light Rail line (Expo LRT) Downtown Santa Monica station, Gas Company, Southern California Edison, Colorado Esplanade, and other nearby construction projects such as the approved 5th and Colorado Hotel projects. The Construction Impact Mitigation Plan shall be subject to review and approval by the following City departments: Public Works Department, Santa Monica Fire Department, Planning and Community Development (Transportation Engineering and Management Division), and Santa Monica Police Department to ensure that the Plan has been designed in accordance with this mitigation measure. This review shall occur prior to building permit issuance for the Project. It shall at a minimum, include the following:

    - A detailed traffic control plan for work zones shall be implemented which includes, at a minimum temporary parking and travel lane configurations; warning, regulatory, guide and directional signage; and area sidewalks, bicycle lanes and parking lanes (i.e. Temporary Traffic Control Plans). The plan shall include specific information regarding the Project's construction activities that may disrupt normal pedestrian and traffic flow, temporary close lanes, and the measures to address these disruptions. Such plans must be submitted to, reviewed and

approved by the Public Works Department and the Transportation Engineering and Management Division prior to building permit issuance and implemented in accordance with this approval, as a part of standard permitting processes for work occurring within the public right-of-way (i.e. Use of Public Property Permit process). Note that the process for submittal, review, and approval of Temporary Traffic Control Plans is separate from the Use of Public Property Permit process and has specific requirements.

- Work within the public right-of-way shall be performed between 9:00 AM and 4:00 PM, including demolition material hauling and construction material delivery. Any requests for work before or after normal construction hours within the public right-of-way shall be subject to review and approval through the After Hours Permit process administered by the Building and Safety Division.
- Streets and equipment should be cleaned in accordance with Santa Monica's established Environmental and Public Works Management ("EPWM") requirements.
- Trucks shall only travel on a City approved construction route.
- Materials and equipment should be minimally visible to the public; the preferred location for materials is to be on-site, with a minimum amount of materials within a work area in the public right-of-way, subject to a current Use of Public Property permit.

Project Coordination Elements that shall be implemented prior to commencement of construction:

- The Applicant will coordinate with the City's Public Works Department and the Transportation Engineering and Management Division to ensure that temporary lane restrictions associated with the Expo LRT, Colorado Esplanade, and 5th and Colorado Hotel projects do not occur in manner that significantly obstructs traffic flow on Colorado Avenue or 4th Street.

- The Applicant shall advise the traveling public of impending construction activities (e.g., information signs, portable message signs, media listing/notification).

- The Applicant shall specify a direct contact person (name, cell phone, and email) who can represent the contractor(s) for all construction-related activities that will occur within the public right-of-way. The contact person shall provide weekly updates to Transportation Engineering and Management Division staff on planned construction activities and associated work within the public right-of-way for the

forthcoming weeks. The Applicant shall notify Transportation Engineering and Management Division staff of any changes to the designated contact person in writing at least seven (7) days prior to making and personnel changes.

- The Applicant shall obtain a Use of Public Property Permit for any construction work requiring lane closures, encroachment into public rights-of-way, detours or any other work within the public right-of-way.

- The Applicant shall provide timely notification of construction schedules to all affected agencies (e.g., Big Blue Bus, Police Department, Fire Department, Public Works Department, and Planning and Community Development Department) and to all owners and residential and commercial tenants of property within a radius of 500 feet of the construction site.

SECTION B

Project Specific Conditions

1. The project shall provide the Significant Project Features and LUCE Community Benefits as established in Section 2.7 of this Agreement.

2. Developer shall submit to the City a written consent to the height of the Project, as proposed in this Agreement, or, alternatively, a written waiver of the height limitation in the Amendment to and Restatement of Construction, Operation and Reciprocal Easement Agreement, dated July 28, 2010, by and among Macerich Santa Monica LLC, a Delaware limited liability company, Bloomingdale's, Inc., an Ohio corporation, and the Redevelopment Agency of the City of Santa Monica.

3. The following conditions shall apply to rooftop satellite antennas that have transmit capability (but shall not apply to receive only satellite antennas):

   (a) After transmitter and antenna system optimization, but prior to unattended operations of this project, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC regulations (47 C.F.R. § 1.1307 *et seq*) and FCC OET Bulletin 65 RF emissions safety rules for General Population/Uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating in continuous wave mode at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the Uncontrolled/General Population limit.

   (b) The Permittee (i.e., the Theater Operator) shall place and maintain permanent physical barriers (e.g. chains affixed to permanently anchored poles about 5 feet tall) placed at the point just beyond the 100% uncontrolled/general population

limit as determined in C Special Condition 1 bracketing the entirety of the controlled zone in front of the antennas.

(c) If members of the General Population are required to be in the controlled zone in front the antennas within the physical barrier described in Special Condition 2, other than to transit the controlled zone area (i.e., to perform maintenance or repairs on the air conditioning units or roof area, etc. within the controlled zone), the permittee shall coordinate signal transmissions from this antenna site during the entire work period to ensure compliance with the FCC rules.

(d) The Permittee shall place and maintain permanent RF Caution sign in English and Spanish on the access ladder security gate. The signage must be a minimum of 8" wide by 12" high, compliant with the FCC OET Bulletin 65 or ANSI C95.2 for color, symbol and content conventions; and be visible to anyone prior to accessing the roof. The signage required by this condition shall at all times provide a working local or toll-free telephone number to the antenna control point to reach a live person who can exert transmitter power-down control over the site as required by the FCC. The location of the signs must be visible immediately prior entering the physical barrier described in Special Condition 2.

(e) Installation and Periodic Safety Monitoring. After installation of the facility, but prior to final inspection approval, and annually thereafter, the Permittee shall submit to the Zoning Administrator a certification attested to by a qualified professional engineer licensed in the State of California or other technical expert approved by the City, that the facility is and will be operated within the applicable FCC standards for radio frequency ("RF") emissions (47 C.F.R. § 1.1307 *et seq*) taking into account other existing and new RF emitters, and other relevant data required by the City. All technical analysis used to determine FCC compliance shall be provided with the certification. Such periodic reports shall be on a form and format acceptable to the City. The City may request, and the Permittee shall promptly provide, further information or clarification in connection with such periodic reports.

(f) Community Liaison Officer. Within 10 days of the effective date of this authorization, the Permittee shall appoint a Community Liaison Officer to resolve issues of concern to neighbors and residents relating to the construction and operation of the facility. Upon appointment, the Permittee shall report in writing the name, address and telephone number of this officer to the Zoning Administrator. The Community Liaison Officer shall report to the Zoning Administrator the issues, if any, that are of concern to the community and how they have been resolved by the Permittee, and those issues have not been resolved by the Permittee. This report shall be submitting in writing upon receiving a request for information or complaint.

(g) Emissions Compliance. Full initial and ongoing compliance with all FCC RF safety rules (47 C.F.R. § 1.1307 *et seq*) and in FCC OET Bulletin 65 as either

may be amended or superseded or replaced is a continuing material requirement and condition of this permit.

(h) Out of Service. If operation of the antenna structure is abandoned for a continuous period of six months or more, all components of the facility shall be removed. Portions of the building damaged or discolored by removal of the equipment shall be repaired in a manner that restores the building to its prior condition, subject to approval by the Director of Planning and Community Development. Re-installation of a new antenna structure shall necessitate the filing of a new Use Permit application.

(i) Implementation and Monitoring Costs. The Permittee or its successors shall be responsible for the prompt reimbursement to the City of all reasonable costs associate with the monitoring of the conditions of approval contained in this determination, including costs incurred by the City. The Department of Planning and Community Development shall collect such costs on behalf of the City. The Permittee shall be responsible for the payment of all fees associated with the installation and removal of the subject facility.

(j) The testing in Condition 3(a) above must be coordinated with and may be observed by the City or its representative. The test measurement observations shall be recorded in a written report prepared by the permittee or its contractor and shall specify the location of the measurement, the peak measured signal strength in units of mW/cm^2, and shall be correlated to the plan view of the project plans at page A-1. The report shall also provide full measurement equipment identification, current calibration certificate(s) for all equipment, and the qualifications of the person(s) conducting the tests.

(k) The permittee shall tender its written report documenting the testing and observations as in Condition 3(a) to the City for review prior to unattended operations of its project. The City shall within ten (10) business days notify the permittee by writing whether the testing demonstrates compliance with FCC OET Bulletin 65 RF emissions safety standards under the General Population/Uncontrolled standard, and such notification shall not be unreasonably withheld. Upon the City's notification, the permittee may commence unattended operation of its project.

(l) The permittee shall promptly reimburse the City for all of the City's actual costs in observing the testing and reviewing the report for compliance with the FCC OET Bulletin 65 RF safety requirements, and if necessary for verifying any subsequent remedial measures required to secure areas on the roof as required in these conditions.

(m) Once each calendar year at 12 month intervals, commencing between twelve and thirteen months after the date of testing required in Condition 1, an authorized officer of the permittee shall certify in writing to the City under penalty of perjury

that the facility's emissions continue in full compliance with the FCC OET Bulletin 65 RF safety requirements and all of the conditions in this permit, and all physical barriers and signage are in place and in good condition.

4. The following conditions shall apply to all rooftop satellite antennas:

(a) Architectural Review. The Architectural Review Board shall review the equipment cabinets and antenna structures to determine whether screening is necessary. If determined to be necessary, the final design and screening shall be subject to review and approval by the Architectural Review Board, prior to issuance of a Building Permit; provided, however, that such screening shall not be required to the extent it obstructs or interferes with transmission or reception. Whether or not screening is required by the Architectural Review Board, the facility, including all antennas, associated electrical and mechanical equipment, and cable trays, shall be painted to match the color of the existing building or structure upon which it is located.

(b) The display of any sign or any other graphics on an antenna is prohibited except for public safety warnings.

5. The Architectural Review Board shall pay attention to the placement of the roof parapet to minimize visibility from Fourth Street and Colorado Avenue.

CITY PLANNING

Administrative Conditions

6. In the event Developer 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.

Conformance with Approved Plans

7. This approval is for those plans dated XXX, 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 these conditions of approval.

8. Minor amendments to the plans shall be subject to approval by the Director of Planning. A significant change in the approved concept shall be subject to review as provided in the Development Agreement. Construction shall be in conformance with the plans submitted or as modified in accordance with the Development Agreement.

9. Except as otherwise provided by the Development Agreement, project plans shall be subject to complete Code Compliance review when the building plans are submitted for plan check and shall comply with all applicable provisions of Article IX of the Municipal Code and all other pertinent ordinances and General Plan policies of the City of Santa Monica prior to building permit issuance.

[Conditions 10 to 20 intentionally omitted.]

Fees

21. No building permit shall be issued for the project until the developer complies with the requirements of Part 9.04.10.20 of the Santa Monica Municipal Code, Private Developer Cultural Arts Requirement. If the developer elects to comply with these requirements by providing on-site public art work or cultural facilities, no final City approval shall be granted until such time as the Director of the Community and Cultural Services Department issues a notice of compliance in accordance with Part 9.04.10.20.

Project Operations

22. 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.

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

Final Design

24. Plans for final design, landscaping, screening, trash enclosures, and signage shall be subject to review and approval by the Architectural Review Board pursuant to Article 6 above.

25. 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. The Architectural Review Board 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 Architectural Review Board, 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.

26. No gas or electric meters shall be located within the required front or street side yard setback areas. The Architectural Review Board in its review shall pay particular attention to the location and screening of such meters.

27. 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 Architectural Review Board, in its review, shall pay particular attention to the aesthetic, landscaping, and setback impacts of any ramps or other features necessitated by accessibility requirements.

28. As appropriate, the Architectural Review Board shall require the use of anti-graffiti materials on surfaces likely to attract graffiti.

Construction Plan Requirements

29. Final building plans submitted for approval 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.

Construction Period

30. Any construction related activity in the public right-of-way will be required to acquire the approvals by the City of Santa Monica, including but not limited to: Use of Public Property Permits, Sewer Permits, Excavation Permits, Alley Closure Permits, Street Closure Permits, and Temporary Traffic Control Plans.

31. 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.

32. During demolition, excavation, and construction, this project shall comply with SCAQMD Rule 403 to minimize fugitive dust and associated particulate emission, as applicable, including but not limited to the following:

    (a) All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least three times daily with complete coverage, preferably at the start of the day, in the late morning, and after work is done for the day.

    (b) All grading, earth moving, or excavation activities shall cease during periods of high winds (i.e., greater than 20 mph measured as instantaneous wind gusts) so as to prevent excessive amounts of dust.

    (c) Soils stockpiles shall be covered.

    (d) Onsite vehicle speeds shall be limited to 15 mph.

(e) Wheel washers shall be installed where vehicles enter and exit the construction site onto paved roads or wash off trucks and any equipment leaving the site each trip.

(f) An appointed construction relations officer shall act as a community liaison concerning onsite construction activity including resolution of issues related to PM10 generation.

(g) Streets shall be swept at the end of the day using SCAQMD Rule 1186 certified street sweepers or roadway washing trucks if visible soil is carried onto adjacent public paved roads (recommend water sweepers with reclaimed water).

(h) All active portions the construction site shall be sufficiently watered three times a day to prevent excessive amounts of dust.

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 who will respond to complaints related to the proposed construction. The notice shall be mailed to property owners and residents of the neighborhood within 1000' of the Project at least five (5) days prior to the start of construction.

33. 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 and/or applicant for the purposes of responding to questions and complaints during the construction period. Said sign shall also indicate the hours of permissible construction work.

34. Developer shall coordinate meetings with the management of neighboring residential buildings such as the Salvation Army facility at 1533 4th Street and the mixed use residential building at 1541 4th Street to seek solutions to minimize noise impacts. Additionally, neighboring residents shall be notified of the construction schedule and upcoming high level noise events.

35. 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.

36. No construction-related vehicles may be parked on the street at any time or on the subject site during periods of peak parking demand. All construction-related vehicles must be parked for storage purposes at on offsite location on a private lot for the duration of demolition and construction. The offsite location shall be approved as part of the Department of Public Works review of the construction period mitigation plan and by the Department of City Planning if a Temporary Use Permit is required.

37. Construction period signage shall be subject to the approval of the Architectural Review Board.

Standard Conditions

38. 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.

39. 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.

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

Condition Monitoring

41. The applicant authorizes reasonable City inspections of the property to ensure compliance with the conditions of approval imposed by the City in approving this project and will bear the reasonable cost of these inspections.

BIG BLUE BUS

42. Developer shall notify the Theater Operator in writing as part of their lease or rental agreement that the City envisions a network of transit services in the Downtown area that may result in public transit services operating on any street in the Downtown area, both on streets currently used by transit or through expansion of service to streets not currently utilized by transit. In addition, new bus stops or bus layover zones may be established on these streets for regular use by either the Big Blue Bus or other fixed route or specialized transit operators. On-street parking may be removed at any time to create a bus zone in an appropriate location for safe vehicular movement and passenger safety regardless of business or residential adjacency.

OFFICE OF SUSTAINABILITY AND THE ENVIRONMENT

43. Developer shall enroll the property in the Savings By Design incentive program where available through Southern California Edison prior to submittal of plans for Architectural Review. Developer shall execute an incentive agreement with Southern California Edison prior to the issuance of a building permit.

44. The project shall comply with requirements in section 8.106 of the Santa Monica Municipal code, which adopts by reference the California Green Building

Standards Code and which adds local amendments to that Code. In addition, the project shall meet the landscape water conservation and construction and demolition waste diversion requirements specified in Section 8.108 of the Santa Monica Municipal Code.

PUBLIC WORKS

General Conditions

45. Developer shall be responsible for the payment of the following Public Works Department (PWD) permit fees prior to issuance of a building permit:

    a. Water Services

    b. Wastewater Capital Facility

    c. Water Demand Mitigation

    d. Fire Service Connection

    e. Tieback Encroachment

    f. Encroachment of on-site improvements into public right-of-way

    g. Construction and Demolition Waste Management – If the valuation of a project is at least $50,000 or if the total square feet of the project is equal to or greater than 1000 square feet, then the owner or contractor is required to complete and submit a Waste Management Plan. All demolition projects are required to submit a Waste Management Plan. A performance deposit is collected for all Waste Management Plans equal to 3% of the project value, not to exceed $30,000. All demolition only permits require a $1,000 deposit or $1.00 per square foot, whichever is the greater of the two.

    Some of these fees shall be reimbursed to developer in accordance with the City's standard practice should Developer not proceed with development of the Project. In order to receive a refund of the Construction and Demolition performance deposit, the owner or contractor must provide receipts of recycling 70% of all materials listed on the Waste Management Plan.

46. Any work or use of the public right-of-way including any proposed encroachments of on-site improvements into the public right-of-way will require a permit from the Public Works Department (PWD) - Administrative Services Division.

47. Plans and specifications for all offsite 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.

48. 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.

49. 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.

50. 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 Building & Safety Division. The report shall consist of a hazardous materials survey for the structure 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 performed 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.

Water Resources

51. Connections to the sewer or storm drains require a sewer permit from the PWD - Civil Engineering Division. Connections to storm drains owned by Los Angeles County require a permit from the L.A. County Department of Public Works.

52. 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 storm drain or sewer system. Pretreatment will require that a clarifier or oil/water separator be installed and maintained on site.

53. 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 refer to: http://www.waterboards.ca.gov/losangeles/ and search for Order # R4-2003-0111.

54. Developer shall not directly connect to a public storm drain pipe or direct site drainage to the public alley.

55. All existing sanitary sewer “house connections” to be abandoned, shall be removed and capped at the “Y” connections.

56. The fire services and domestic services 3-inches or greater must be above ground, on the applicant’s site, readily accessible for testing. Commercial or residential units are required to either have an individual water meter or a master meter with sub-meters.

57. Developer is required to meet state cross-connection and potable water sanitation guidelines. Refer to requirements and comply with the cross-connections guidelines available at: http://www.lapublichealth.org/eh/progs/envirp/ehcross.htm. Prior to issuance of a Certificate of Occupancy, a cross-connection inspection shall be completed.

58. All new restaurants and cooking facilities at the site are required to install Gravity Grease Interceptors to pretreat wastewater containing grease. The minimum capacity of the interceptor shall be determined by using table 10-3 of the 2007 Uniform Plumbing Code, Section 1014.3. All units shall be fitted with a standard final-stage sample box. The 2007 Uniform Plumbing Code guideline in sizing Gravity Grease Interceptors is intended as a minimum requirement and may be increased at the discretion of PWD, Water Resources Protection Program.

59. Plumbing fixtures that meet the standards for 20% water use reduction specified in the California Green Building Standards Code are required on all new development and remodeling where plumbing is to be added.

Urban Water Runoff Mitigation

Public Streets & Right-of-Way

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

Resource Recovery and Recycling

61. Development plans must show the refuse and recycling (RR) area dimensions to demonstrate adequate and easily accessible area. If the RR area is completely enclosed, then lighting, ventilation and floor drain connected to sewer will be required. Section 9.04.10.02.151 of the SMMC has dimensional requirements for various sizes and types of projects. Developments that place the RR area in subterranean garages must also provide a bin staging area on their property for the bins to be placed for collection.

62. Contact Resource Recovery and Recycling RRR division to obtain dimensions of the refuse recycling enclosure.

63. Prior to issuance of a building permit, submit a Waste Management Plan, a map of the enclosure and staging area with dimensions and a recycling plan to the RRR Division for its approval. The State of California AB 341 requires any multi-family building housing 5 units or more to have a recycling program in place for its tenants. All commercial businesses generating 4 cubic yards of trash per week must also have a recycling program in place for its employees and

clients/customers. Show compliance with these requirements on the building plans. Visit the Resource Recovery and Recycling (RRR) website or contact the RRR Division for requirements of the Waste Management Plan and to obtain the minimum dimensions of the refuse recycling enclosure. The recycling plan shall include:

h. List of materials such as white paper, computer paper, metal cans, and glass to be recycled;

i. Location of recycling bins;

j. Designated recycling coordinator;

k. Nature and extent of internal and external pick-up service;

l. Pick-up schedule; and

m. Plan to inform tenants/ occupants of service.

Construction Period Mitigation

64. A construction period mitigation plan shall be prepared by the applicant for approval by the PWD 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:

n. Specify the names, addresses, telephone numbers and business license numbers of all contractors and subcontractors as well as the developer and architect;

o. Describe how demolition of any existing structures is to be accomplished;

p. Indicate where any cranes are to be located for erection/construction;

q. Describe how much of the public street, alleyway, or sidewalk is proposed to be used in conjunction with construction;

r. Set forth the extent and nature of any pile-driving operations;

s. Describe the length and number of any tiebacks which must extend under the public right-of-way and other private properties;

t. Specify the nature and extent of any dewatering and its effect on any adjacent buildings;

u. Describe anticipated construction-related truck routes, number of truck trips, hours of hauling and parking location;

v. Specify the nature and extent of any helicopter hauling;

w. State whether any construction activity beyond normally permitted hours is proposed;

x. Describe any proposed construction noise mitigation measures, including measures to limit the duration of idling construction trucks;

y. Describe construction-period security measures including any fencing, lighting, and security personnel;

z. Provide a grading and drainage plan;

aa. Provide a construction-period parking plan which shall minimize use of public streets for parking;

bb. List a designated on-site construction manager;

cc. Provide a construction materials recycling plan which seeks to maximize the reuse/recycling of construction waste;

dd. Provide a plan regarding use of recycled and low-environmental-impact materials in building construction; and

ee. Provide a construction period urban runoff control plan.

Air Quality

65. 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 403 Handbook, as applicable:

- 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.

- 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 with written certification that all trucks leaving the site are covered in accordance with this condition of approval.

- 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 PWD.

- 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.

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

- 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 one time.

Noise Attenuation

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

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

FIRE

General Requirements
The following comments are to be included on plans, if applicable.

Requirements are based on the California Fire Code (CFC), the Santa Monica Municipal Code (SMMC) and the California Building Code (CBC).

California Fire Code/ Santa Monica Fire Department Requirements

69. A fire apparatus access road shall be provided to within 150 feet of all exterior walls of the first floor of the building. The route of the fire apparatus access road shall be approved by the fire department. The 150 feet is measured by means of an unobstructed route around the exterior of the building.

70. Apparatus access roads shall have a minimum unobstructed width of 20 feet. A minimum vertical clearance of 13 feet 6 inches shall be provided for the apparatus access roads.

71. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved means for turning around the apparatus.

72. A “Knox” key storage box shall be provided for ALL new construction. For buildings, other than high-rise, a minimum of 3 complete sets of keys shall be provided. Keys shall be provided for all exterior entry doors, fire protection equipment control equipment rooms, mechanical and electrical rooms, elevator

controls and equipment spaces, etc. For high-rise buildings, 6 complete sets are required.

73. Santa Monica Municipal Code Chapter 8 section 8.44.050 requires an approved automatic fire sprinkler system in ALL new construction and certain remodels or additions. Any building that does not have a designated occupant and use at the time fire sprinkler plans are submitted for approval, the system shall be designed and installed to deliver a minimum density of not less than that required for ordinary hazard, Group 2, with a minimum design area of not less than three thousand square feet. Plans and specifications for fire sprinkler systems shall be submitted and approved prior to system installation.

74. Buildings four or more stories in height shall be provided with not less than one standpipe during construction.

75. The standpipe(s) shall be installed before the progress of construction is more than 35- feet above grade. Two-and-one-half-inch valve hose connections shall be provided at approved, accessible locations adjacent to useable stairs. Temporary standpipes shall be capable of delivering a minimum demand of 500 gpm at 100-psi residual pressure. Pumping equipment shall be capable of providing the required pressure and volume.

76. Provide Multipurpose Dry Chemical type fire extinguishers with a minimum rating of 2A-10B:C. Extinguishers shall be located on every floor or level. Maximum travel distance from any point in space or building shall not exceed 75 feet. Extinguishers shall be mounted on wall or installed in cabinet no higher than 4 ft. above finished floor and plainly visible and readily accessible or signage shall be provided.

77. An automatic fire extinguishing system complying with UL 300 shall be provided to protect commercial-type cooking or heating equipment that produces grease-laden vapors. A separate plan submittal is required for the installation of the system and shall be in accordance with UFC Article 10, NFPA 17A and NFPA 96. Provide a Class “K” type portable fire extinguisher within 30 feet the kitchen appliances emitting grease-laden vapors.

78. Every building and/or business suite is required to post address numbers that are visible from the street and alley. Address numbers shall be a minimum of six (6) inches in height and contrast with their background. Suite or room numbers shall be a minimum of four (4) inches in height and contrast with their background. Santa Monica Municipal Code Chapter 8 Section 8.48.130 (l) (1)

79. When more than one exit is required they shall be arranged so that it is possible to go in either direction to a separate exit, except deadends not exceeding 20 feet, and 50 feet in fully sprinklered buildings.

80. Exit and directional signs shall be installed at every required exit doorway, intersection of corridors, exit stairways and at other such locations and intervals

as necessary to clearly indicate the direction of egress. This occupancy/use requires the installation of approved floor level exit pathway marking. Exit doors shall be openable from the inside without the use of a key, special effort or knowledge.

81. Show ALL door hardware intended for installation on Exit doors.

82. In buildings two stories or more in height an approved floor plan providing emergency procedure information shall be posted at the entrance to each stairway, in every elevator lobby, and immediately inside all entrances to the building. The information shall be posted so that it describes the represented floor and can be easily seen upon entering the floor level or the building. Required information shall meet the minimum standards established in the Santa Monica Fire Department, Fire Prevention Division, information sheet entitled "Evacuation Floor Plan Signs." (California Code of Regulations Title 19 Section 3.09)

83. Stairway Identification shall be in compliance with CBC 1022.8

84. In buildings two stories in height at least one elevator shall conform to the California Building Code Chapter 30 section 3003.5a for General Stretcher Requirements for medical emergency use.

    ff. The elevator entrance shall not be less than 42 inches wide by 72 inches high.

    gg. The elevator car shall have a minimum clear distance between walls excluding return panels of not less than 80 inches by 54 inches.

    hh. Medical emergency elevators shall be identified by the international symbol (star of life) for emergency elevator use. The symbol shall be not less than 3-inches in size.

85. Storage, dispensing or use of any flammable or combustible liquids, flammable compressed gases or other hazardous materials shall comply with the Uniform Fire Code. The Santa Monica Fire Department prior to any materials being stored or used on site shall approve the storage and use of any hazardous materials. Complete and submit a "Consolidated Permit Application Package." Copies may be obtained by calling (310) 458-8915.

86. Alarm-initiating devices, alarm-notification devices and other fire alarm system components shall be designed and installed in accordance with the appropriate standards of Chapter 35 of the Building Code, and the National Fire Alarm Code NFPA 72. The fire alarm system shall include visual notification appliances for warning the hearing impaired. Approved visual appliances shall be installed in ALL rooms except private (individual) offices, closets, etc.

87. An approved fire alarm system shall be installed as follows:

88. Group A Occupancies with an occupant load of 1,000 or more shall be provided with a manual fire alarm system and an approved prerecorded message announcement using an approved voice communication system. Emergency power shall be provided for the voice communication system.

89. Group E Occupancies having occupant loads of 50 or more shall be provided with an approved manual fire alarm system.

90. Group R-1, R-2 Apartment houses containing 16 or more dwelling units, in building three or more stories in height R-2.1 and R-4 Occupancies shall be provided with a manual alarm system. Smoke detectors shall be provided in all common areas and interior corridors of required exits. Recreational, laundry, furnace rooms and similar areas shall be provided with heat detectors.

91. Plans and specifications for fire alarm systems shall be submitted and approved prior to system installation

Santa Monica Fire Department - Fire Prevention Policy Number 5-1

Subject: Fire Apparatus Access Road Requirements

Scope: This policy identifies the minimum standards for apparatus access roads required by California Fire Code, Section 503, if applicable.

Application

92. Fire apparatus access roads shall comply with the following minimum standards:

    ii. The minimum clear width shall be not less than 20 feet. No parking, stopping or standing of vehicles is permitted in this clear width.

    jj. When fire hydrants or fire department connections to fire sprinkler systems are located on fire apparatus access roads the minimum width shall be 26 feet. This additional width shall extend for 20 feet on each side of the centerline of the fire hydrant or fire department connection.

    kk. The minimum vertical clearance shall be 13 feet, 6 inches.

    ll. The minimum turn radius for all access road turns shall be not less than 39 feet for the inside radius and 45 feet for the outside radius.

    mm. Dead-end access roads in excess of 150 feet in length shall be provided with either a 96 feet diameter “cul-de-sac,” 60 foot “Y” or 120-foot “hammerhead” to allow the apparatus to turn.

    nn. The surface shall be designed and maintained to support the imposed loads of at least 75,000-pound and shall be “all-weather.” An “all-weather” surface is asphalt, concrete or other approved driving surface capable of supporting the load.

93. Gates installed on fire apparatus access roads shall comply with the following:

oo. The width of any gate installed on a fire apparatus access road shall be a minimum of 20 feet.

pp. Gates may be of the swinging or sliding type.

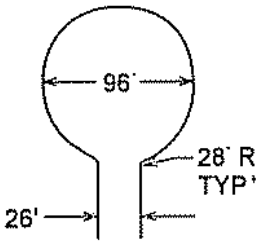
qq. Gates shall be constructed of materials that will allow for manual operation by one person.

rr. All gate components shall be maintained in an operative condition at all times and shall be repaired or replaced when defective.

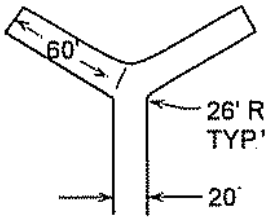
ss. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. The Fire Prevention Division shall approve emergency opening devices.

tt. Manual opening gates may be locked with a padlock, as long it is accessible to be opened by means of forcible entry tools.

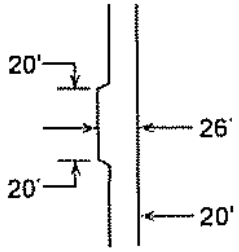
uu. The Fire Prevention Division shall approve locking device specification.



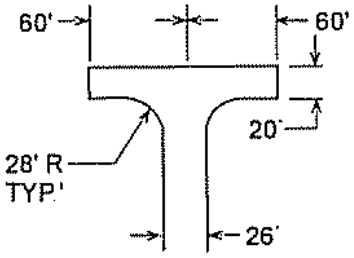
96' DIAMETER
CUL-DE-SAC



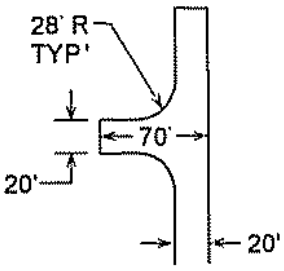
60' "Y"



MINIMUM CLEARANCE
AROUND A FIRE
HYDRANT



120' HAMMERHEAD



ACCEPTABLE ALTERNATIVE
TO 120' HAMMERHEAD

94. Fire apparatus access roads shall be marked with permanent NO PARKING – FIRE LANE CVC SECTION 22500.1. Signs shall have a minimum dimension of 12 inches wide and 18 inches high having red letters on a white reflective background.

vv. Fire apparatus access roads signs and placement shall comply with the following:

i. Fire Apparatus access roads 20 to 26 feet wide must be posted on both sides as a fire lane.

ii. Fire Apparatus access roads 26 to 32 feet wide must be posted on one side as a fire lane.

95. Buildings or facilities exceeding 30 feet in height or more than 3 stories in height shall have at least 2 fire apparatus access roads for each structure.

96. Fire apparatus access roads for commercial and industrial development shall comply with the following:

iii. Buildings or facilities exceeding 30 feet in height or more than 3 stories in height shall have at least 2 means of fire apparatus access for each structure.

iv. Buildings or facilities having a gross floor area of more than 62,000 square feet shall be provided with 2 fire apparatus access roads.

v. When two access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the property or area to be accessed measured in a straight line between access.

97. Aerial apparatus access roads shall comply with the following:

vi. Buildings or portions of buildings or facilities exceeding 30 feet in height from the lowest point of Fire Department access shall be provided shall be provided with approved apparatus access roads capable of accommodating aerial apparatus.

vii. Apparatus access roads shall have a minimum width of 26 feet in the immediate vicinity of any building or portion of a building more than 30 feet in height.

viii. At least one of the required access roads meeting this condition shall be located within a minimum of 15 feet and maximum of 30 feet from the building and shall be a positioned parallel to one entire side of the building.

California Building Code / Santa Monica Fire Department Requirements

Occupancy Classification and Division

- If a change in occupancy or use, identify the existing and all proposed new occupancy classifications and uses

- Assembly (A-1, A-2, A-3), Business (B), Mercantile (M), Residential (R), etc.
- Include all accessory uses

Building Height

- Height in feet
- Number of stories
- Detail increase in allowable height
- Type I (II-FR.) buildings housing Group B office or Group R, Division 1 Occupancies each having floors used for human occupancy located more than 55 feet above the lowest level of fire department vehicle access shall comply with CBC Section 403.

a. Automatic sprinkler system.

b. Smoke-detection systems.

c. Smoke control system conforming to Chapter 9 section 909.

d. Fire alarm and communication systems.

1. Emergency voice alarm signaling system.

2. Fire department communication system.

e. Central control station. (96 square feet minimum with a minimum dimension of 8' ft)

f. {omitted}

g. Elevators.

h. Standby power and light and emergency systems.

i. Exits.

j. Seismic consideration.

Total Floor Area of Building or Project

- Basic Allowable Floor Area
- Floor Area for each room or area
- Detail allowable area increase calculations

Corridor Construction

- Type of Construction
- Detail any and all code exceptions being used

Occupant Load Calculations

- Occupancy Classification for each room or area.
- Occupant Load Calculation for each room or area based on use or occupancy
- Total Proposed Occupant Load

Means of Egress

- Exit width calculations
- Exit path of travel
- Exit Signage and Pathway Illumination (low level exit signage)

Atria - Atria shall comply with CBC Section 404 as follows:

- Atria shall not be permitted in buildings containing Group H Occupancies.
- The entire building shall be sprinklered.
- A mechanically operated smoke-control system meeting the requirements of Section 909 and 909.9 shall be installed.
- Smoke detectors shall be installed in accordance with the Fire Code.
- Except for open exit balconies within the atrium, the atrium shall be separated from adjacent spaces by one-hour fire-resistive construction. See exceptions to Section 404.6.
- When a required exit enters the atrium space, the travel distance from the doorway of the tenant space to an enclosed stairway, horizontal exit, exterior door or exit passageway shall not exceed 200 feet.
- In other than jails, prisons and reformatories, sleeping rooms of Group I Occupancies shall not have required exits through the atrium.
- Standby power shall be provided for the atrium and tenant space smoke-control system. Sections 404.7 and 909.11.
- The interior finish for walls and ceilings of the atrium and all unseparated tenant spaces shall be Class I. Section 404.8.

Atriums of a height greater than 20 feet, measured from the ceiling sprinklers, shall only contain furnishings and decorative materials with potential heat of combustion less than 9,000 Btu's per pound. All furnishings to comply with California Bureau of Home Furnishings, Technical Bulletin 133, "Flammability Test for Seating Furniture in Public Occupancies."

All furnishings in public areas shall comply with California Bureau of Home Furnishings, Technical Bulletin 133, "Flammability Test for Seating Furniture in Public Occupancies."

Los Angeles County Fire

Fire Flow Requirements

I. INTRODUCTION

A. Purpose: To provide Department standards for fire flow, hydrant spacing and specifications.

B. Scope: Informational to the general public and instructional to all individuals, companies, or corporations involved in the subdivision of land, construction of buildings, or alterations and/or installation of fire protection water systems and hydrants.

C. Author: The Deputy Chief of the Prevention Services Bureau through the Assistant Fire Chief (Fire Marshal) of the Fire Prevention Division is responsible for the origin and maintenance of this regulation.

D. Definitions:

1. GPM – gallons per minute
2. psi – pounds per square inch
3. Detached condominiums – single detached dwelling units on land owned in common
4. Multiple family dwellings – three or more dwelling units attached

II. RESPONSIBILITY

A. Land Development Unit

1. The Department's Land Development Unit shall review all subdivisions of land and apply fire flow and hydrant spacing requirements in accordance with this regulation and the present zoning of the subdivision or allowed land use as approved by the County's Regional Planning Commission or city planning department.

B. Fire Prevention Engineering Section

1. The Department's Fire Prevention Engineering Section shall review building plans and apply fire flow and hydrant spacing requirements in accordance with this regulation.

III. POLICY

A. The procedures, standards, and policies contained herein are provided to ensure the adequacy of, and access to, fire protection water and shall be enforced by all Department personnel.

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IV. PROCEDURES

A. Land development: fire flow, duration of flow, and hydrant spacing

The following requirements apply to land development issues such as: tract and parcel maps, conditional use permits, zone changes, lot line adjustments, planned unit developments, etc.

1. Residential
   Fire Zones 3
   Very High Fire Hazard Severity Zone (VHFHSZ)

		Fire Flow	Duration of Flow	Public Hydrant Spacing
a.	Single family dwelling and detached condominiums (1 – 4 Units) (Under 5,000 square feet)	1,250 GPM	2 hrs.	600 ft.
b.	Detached condominium (5 or more units) (Under 5,000 square feet)	1,500 GPM	2 hrs.	300 ft.
c.	Two family dwellings (Duplexes)	1,500 GPM	2 hrs.	600 ft.

NOTE: FOR SINGLE FAMILY DWELLINGS OVER 5,000 SQUARE FEET. SEE, TABLE 1 FOR FIRE FLOW REQUIREMENTS PER BUILDING SIZE.

2. Multiple family dwellings, hotels, high rise, commercial, industrial, etc.

   a. Due to the undetermined building designs for new land development projects ***(undeveloped land)***, the required fire flow shall be: 5,000 GPM 5 hrs. 300 ft.

      NOTE: REDUCTION IN FIRE FLOW IN ACCORDANCE WITH TABLE 1.

   b. Land development projects consisting of lots having existing structures shall be in compliance with Table 1 (fire flow per building size). This standard applies to multiple family dwellings, hotels, high rise, commercial, industrial, etc.
      NOTE: FIRE FLOWS PRECEDING ARE MEASURED AT

20 POUNDS PER SQUARE INCH RESIDUAL PRESSURE.

B. Building plans

The Department's Fire Prevention Engineering Section shall review building plans and apply fire flow requirements and hydrant spacing in accordance with the following:

1. Residential

Building Occupancy Classification

a. Single family dwellings - Fire Zone 3 (Less than 5,000 square feet)

	Fire Flow	**Duration of Flow**	**Public Hydrant Spacing**
On a lot of one acre or more	750 GPM	2 hrs.	600 ft.
On a lot less than one acre	1,250 GPM	2 hrs	600 ft.

b. Single family dwellings – VHFHSZ (Less than 5,000 square feet)

On a lot of one acre or more	1,000 GPM	2 hrs.	600 ft.
On a lot less than one acre	1,250 GPM	2 hrs	600 ft.

NOTE: FOR SINGLE FAMILY DWELLINGS GREATER THAN 5,000 SQUARE FEET IN AREA SEE TABLE

	Fire Flow	**Duration of Flow**	**Public Hydrant Spacing**

c. Two family dwellings – VHFHSZ (Less than 5,000 square feet)

Duplexes	1,500 GPM	2 hrs	600 ft.

. Mobile Home Park

a. Recreation Buildings	Refer to Table 1 for fire flow according to building size.		
b. Mobile Home Park	1,250 GPM	2 hrs	600 ft.

3. Multiple residential, apartments, single family residences (greater than 5,000 square feet), private schools, hotels, high rise, commercial, industrial, etc. (R-1, E, B, A, I, H, F, M, S) (see Table 1).

C. Public fire hydrant requirements

1. Fire hydrants shall be required at intersections and along access ways as spacing requirements dictate

2. Spacing

a. Cul-de-sac

When cul-de-sac depth exceeds 450' (residential) or 200' (commercial), hydrants shall be required at mid-block. Additional hydrants will be required if hydrant spacing exceeds specified distances.

b. Single family dwellings

Fire hydrant spacing of 600 feet

NOTE: The following guidelines shall be used in meeting single family dwellings hydrant spacing requirements:

(1) Urban properties (more than one unit per acre):
No portion of lot frontage should be more than 450' via vehicular access from a public hydrant.

(2) Non-Urban Properties (less than one unit per acre):
No portion of a structure should be placed on a lot where it exceeds 750' via vehicular access from a properly spaced public hydrant that meets the required fire flow.

c. All occupancies

Other than single family dwellings, such as commercial, industrial, multi-family dwellings, private schools, institutions, detached condominiums (five or more units), etc.

Fire hydrant spacing shall be 300 feet.

NOTE:The following guidelines shall be used in meeting the hydrant spacing requirements.

(1) No portion of lot frontage shall be more than 200 feet via vehicular access from a public hydrant.

(2) No portion of a building should exceed 400 feet via vehicular access from a properly spaced public hydrant.

d. Supplemental fire protection

When a structure cannot meet the required public hydrant spacing distances, supplemental fire protection shall be required.

NOTE: Supplemental fire protection is not limited to the installation of on-site fire hydrants; it may include automatic extinguishing systems.

3. Hydrant location requirements - both sides of a street

Hydrants shall be required on both sides of the street whenever:

a. Streets having raised median center dividers that make access to hydrants difficult, causes time delay, and/or creates undue hazard.

b. For situations other than those listed in "a" above, the Department's inspector's judgment shall be used. The following items shall be considered when determining hydrant locations:

(1) Excessive traffic loads, major arterial route, in which traffic would be difficult to detour.

(2) Lack of adjacent parallel public streets in which traffic could be redirected (e.g., Pacific Coast Highway).

(3) Past practices in the area.

(4) Possibility of future development in the area.

(5) Type of development (i.e., flag-lot units, large apartment or condo complex, etc.).

(6) Accessibility to existing hydrants

(7) Possibility of the existing street having a raised median center divider in the near future.

D. <u>On-Site Hydrant Requirements</u>

1. When any portion of a proposed structure exceeds (via vehicular access) the allowable distances from a public hydrant and on-site hydrants are required, the following spacing requirements shall be met:

a. Spacing distance between on-site hydrants shall be 300 to 600 feet.

(1) Design features shall assist in allowing distance modifications.

b. Factors considered when allowing distance modifications.

(1) Only sprinklered buildings qualify for the maximum spacing of 600 feet.

(2) For non-sprinklered buildings, consideration should be given to fire protection, access doors, outside storage, etc. Distance between hydrants should not exceed 400 feet.

2. Fire flow

a. All on-site fire hydrants shall flow a minimum of 1,250 gallons per minute at 20 psi for a duration of two hours. If more than one on-site fire hydrant is required, the on-site fire flow shall be at least

2,500 gallons per minute at 20 psi, flowing from two hydrants simultaneously. On site flow may be greater depending upon the size of the structure and the distance from public hydrants.

NOTE: ONE OF THE TWO HYDRANTS TESTED SHALL BE THE FARTHEST FROM THE PUBLIC WATER SOURCE.

3. Distance from structures
   All on-site hydrants shall be installed a minimum of 25 feet from a structure or protected by a two-hour firewall.

4. Shut-off valves
   All on-site hydrants shall be equipped with a shut-off (gate) valve, which shall be located as follows:
   a. Minimum distance to the hydrant 10 feet.
   b. Maximum distance from the hydrant 25 feet

5. Inspection of new installations
   All new on-site hydrants and underground installations are subject to inspection of the following items by a representative of the Department:
   a. Piping materials and the bracing and support thereof.
   b. A hydrostatic test of 200 psi for two hours.
   c. Adequate flushing of the installation.
   d. Flow test to satisfy required fire flow.
      (1) Hydrants shall be painted with two coats of red primer and one coat of red paint, with the exception of the stem and threads, prior to flow test and acceptance of the system.

6. Maintenance
   It shall be the responsibility of the property management company, the homeowners association, or the property owner to maintain on-site hydrants.
   a. Hydrants shall be painted with two coats of red primer and one coat of red, with the exception of the stem and threads, prior to flow test and acceptance of the system.
   b. No barricades, walls, fences, landscaping, etc., shall be installed or planted within three feet of a fire hydrant.

E. Public Hydrant Flow Procedure

The minimum acceptable flow from any existing public hydrant shall be 1,000 GPM unless the required fire flow is less. Hydrants used to satisfy fire flow requirements will be determined by the following items:

1. Only hydrants that meet spacing requirements are acceptable for meeting fire flow requirements.
2. In order to meet the required fire flow:
   a. Flow closest hydrant and calculate to determine flow at 20 pounds per square inch residual pressure. If the calculated flow does not meet the fire flow requirement, the next closest

hydrant shall be flowed simultaneously with the first hydrant, providing it meets the spacing requirement, etc.

b. If more than one hydrant is to be flowed in order to meet the required fire flow, the number of hydrants shall be flowed as follows:

One hydrant	1,250 GPM and below
Two hydrants	1,251– 3,500 GPM flowing simultaneously
Three hydrants	3,501– 5,000 GPM flowing simultaneously

F. Hydrant Upgrade Policy

1. Existing single outlet 2 1/2" inch hydrants shall be upgraded to a double outlet 6" x 4" x 2 1/2" hydrant when the required fire flow exceeds 1,250 GPM.
2. An upgrade of the fire hydrant will not be required if the required fire flow is between the minimum requirement of 750 gallons per minute, up to and including 1,250 gallons per minute, and the existing public water system will provide the required fire flow through an existing wharf fire hydrant.
3. All new required fire hydrant installations shall be approved 6" x 4" x 2 1/2" fire hydrants.
4. When water main improvements are required to meet GPM flow, and the existing water main has single outlet 2 1/2" fire hydrant(s), then a hydrant(s) upgrade will be required. This upgrade shall apply regardless of flow requirements.
5. The owner-developer shall be responsible for making the necessary arrangements with the local water purveyor for the installation of all public facilities.
6. Approved fire hydrant barricades shall be installed if curbs are not provided (see Figures 1, 2, and 3 following on pages 11 and 12).

G. Hydrant Specifications

All required public and on-site fire hydrants shall be installed to the following specifications prior to flow test and acceptance of the system.

1. Hydrants shall be:
   a. Installed so that the center line of the lowest outlet is between 14 and 24 inches above finished grade
   b. Installed so that the front of the riser is between 12 and 24 inches behind the curb face
   c. Installed with outlets facing the curb at a 45-degree angle to the curb line if there are double outlet hydrants
   d. Similar to the type of construction which conforms to current A.W.W.A. Standards
   e. Provided with three-foot unobstructed clearance on all sides.
   f. Provided with approved plastic caps
   g. Painted with two coats of red primer and one coat of traffic signal yellow for public hydrants and one coat of red for on-site hydrants, with the exception of the stems and threads
2. Underground shut-off valves are to be located:

a. A minimum distance of 10 feet from the hydrant
b. A maximum distance of 25 feet from the hydrant

Exception: Location can be less than 10 feet when the water main is already installed and the 10-foot minimum distance cannot be satisfied.

3. All new water mains, laterals, gate valves, buries, and riser shall be a minimum of six inches inside diameter.
4. When sidewalks are contiguous with a curb and are five feet wide or less, fire hydrants shall be placed immediately behind the sidewalk. Under no circumstances shall hydrants be more than six feet from a curb line.
5. The owner-developer shall be responsible for making the necessary arrangements with the local water purveyor for the installation of all public facilities.
6. Approved fire hydrant barricades shall be installed if curbs are not provided (see Figures 1, 2, and 3 following on pages 11 and 12).

Barricade/Clearance Details

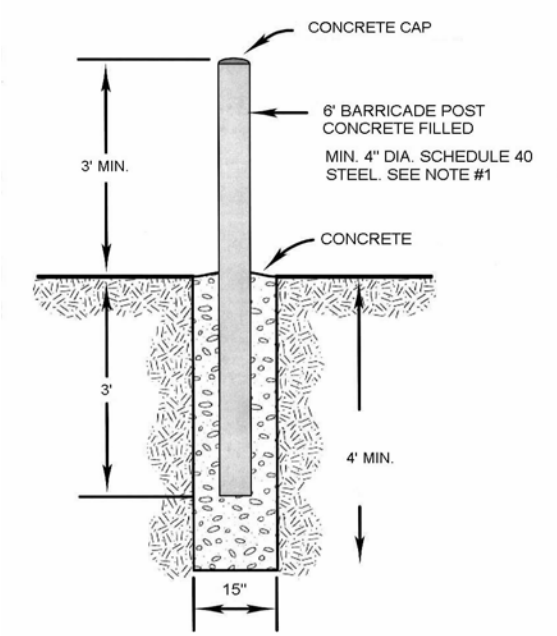


Figure 1

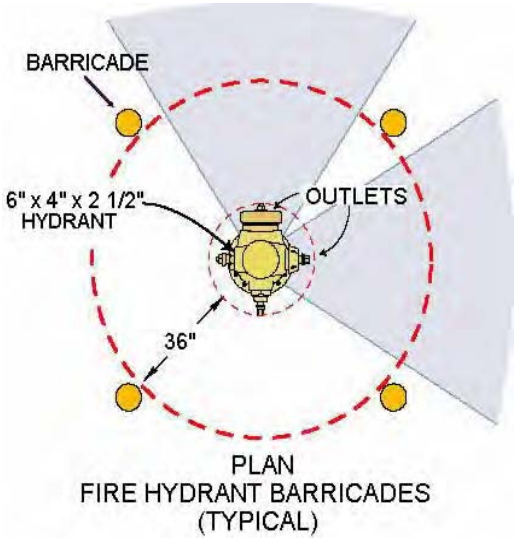


Figure 2

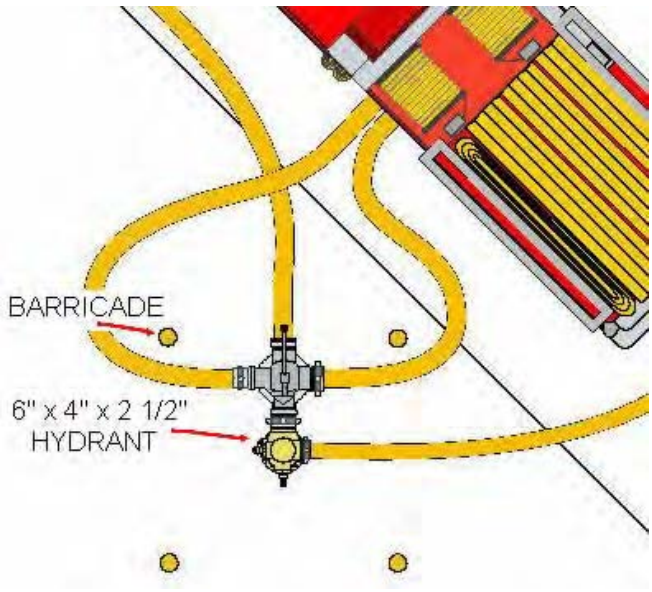


Figure 3

Notes:

1. Constructed of steel not less than four inches in diameter, six inches if heavy truck traffic is anticipated, schedule 40 steel and concrete filled.
2. Posts shall be set not less than three feet deep in a concrete footing of not less than 15 inches in diameter, with the top of the posts not less than three feet above ground and not less than three feet from the hydrant
3. Posts, fences, vehicles, growth, trash storage and other materials or things shall not be placed or kept near fire hydrants in a manner that would prevent fire hydrants from being immediately discernable.
4. If hydrant is to be barricaded, no barricade shall be constructed in front of the hydrant outlets (Figure 2, shaded area).
5. The exact location of barricades may be changed by the field inspector during a field inspection.
6. The steel pipe above ground shall be painted a minimum of two field coats of primer.
7. Two finish coats of “traffic signal yellow” shall be used for fire hydrant barricades.
8. Figure 3 shows hydrant hook up during fireground operations. Notice apparatus (hydra-assist-valve) connected to hydrant and the required area. Figure 3 shows the importance of not constructing barricades or other obstructions in front of hydrant outlets.

I. Blue reflective hydrant markers replacement policy

1. Purpose: To provide information regarding the replacement of blue reflective hydrant markers, following street construction or repair work.
   a. Fire station personnel shall inform Department of Public Works Road Construction Inspectors of the importance of the blue reflective hydrant markers, and encourage them to enforce their Department permit requirement, that streets and roads be returned to their original condition, following construction or repair work.
   b. When street construction or repair work occurs within this Department's jurisdiction, the nearest Department of Public Works Permit Office shall be contacted. The location can be found by searching for the jurisdiction office in the "County of Los Angeles Telephone Directory" under "Department of Public Works Road Maintenance Division." The importance of the blue reflective hydrant markers should be explained, and the requirement encouraged that the street be returned to its original condition, by replacing the hydrant markers.

TABLE 1 *

BUILDING SIZE (First floor area)		Fire Flow* (1) (2)	Duration	Hydrant Spacing
Under 3,000	sq. ft.	1,000 GPM	2 hrs	300 ft
3,000 to 4,999	sq. ft.	1,250 GPM	2 hrs	300 ft
5,000 to 7,999	sq. ft.	1,500 GPM	2 hrs	300 ft
8,000 to 9,999	sq. ft.	2,000 GPM	2 hrs	300 ft
10,000 to 14,999	sq. ft.	2,500 GPM	2 hrs	300 ft
15,000 to 19,999	sq. ft.	3,000 GPM	3 hrs	300 ft
20,000 to 24,999	sq. ft.	3,500 GPM	3 hrs	300 ft
25,000 to 29,999	sq. ft.	4,000 GPM	4 hrs	300 ft
30,000 to 34,999	sq. ft.	4,500 GPM	4 hrs	300 ft
35,000 or more	sq. ft.	5,000 GPM	5 hrs	300 ft

***** See applicable footnotes below:

(FIRE FLOWS MEASURED AT 20 POUNDS PER SQUARE INCH RESIDUAL PRESSURE)

(1) Conditions requiring additional fire flow.
   a. Each story above ground level - add 500 GPM per story.
   b. Any exposure within 50 feet - add a total of 500 GPM.

c. Any high-rise building (as determined by the jurisdictional building code) the fire flow shall be a minimum of 3,500 GPM for 3 hours at 20 psi.

d. Any flow may be increased up to 1,000 GPM for a hazardous occupancy.

(2) Reductions in fire flow shall be cumulative for type of construction and a fully sprinklered building. The following allowances and/or additions may be made to standard fire flow requirements:

a. A 25% reduction shall be granted for the following types of construction: Type I-F.R, Type II-F.R., Type II one-hour, Type II-N, Type III one-hour, Type III-N, Type IV, Type IV one hour, and Type V one-hour. This reduction shall be automatic and credited on all projects using these types of construction. Credit will not be given for Type V-N structures (to a minimum of 2,000 GPM available fire flow).

b. A 25% reduction shall be granted for fully sprinklered buildings (to a minimum of 2,000 GPM available fire flow).

c. When determining required fire flows for structures that total 70,000 square feet or greater, such flows shall not be reduced below 3,500 GPM at 20 psi for three hours.

EXHIBIT E
SMMC ARTICLE 9 (PLANNING AND ZONING)

On file with the City Clerk

EXHIBIT F-1

LOCAL HIRING PROGRAM FOR CONSTRUCTION

Local Hiring Policy For Construction. Developer shall implement a local hiring policy (the "**Local Hiring Policy**") for construction of the Project, consistent with the following guidelines:

1. Purpose. The purpose of the Local Hiring Policy is to facilitate the employment by Developer and its contractors at the Project of residents of the City of Santa Monica (the "**Targeted Job Applicants**"), and in particular, those residents who are "Low-Income Individuals" (defined below). This policy applies to job openings (not jobs that are already filled) provided, however, that it does not apply to jobs filled by the rehiring of former employees or the transfer of an existing employee from another location to the Project site.

2. Findings.

   a. Approximately 73,000-74,000 individuals work in the City. The City has a resident labor force of approximately 56,800. However, only about one-third (32.2 percent) of the City's resident labor force works at jobs located in the City, with the balance working outside of the City. Consequently, a significant portion of the City's resident and non-resident work force is required to commute long distances to find work, causing increased traffic on state highways, increased pollution, increased use of gas and other fuels and other serious environmental impacts.

   b. Due to their employment outside of the City, many residents of the City are forced to leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the hours between school and the parent return from work outside the area.

   c. Absentee parents and unsupervised youth can result in increased problems for families, communities and the City as a whole, including, but not limited to, increased crime, more frequent and serious injuries, poor homework accomplishments, failing grades and increased high school dropout rates.

   d. Of the approximately 45,000 households in the City, thirty percent are defined as low-income households or lower, with eleven percent of these households defined as extremely low income and eight percent very low income. Approximately 10.5% of the City's residents are unemployed.

e. By ensuring that Targeted Job Applicants are aware of and have a fair opportunity to compete for Project jobs, this local hiring policy will facilitate job opportunities to City residents which would expand the City's employment base and reduce the impacts on the environment caused by long commuting times to jobs outside the area.

3. Definitions.

a. "**Contract**" means a contract or other agreement for the providing of any combination of labor, materials, supplies, and equipment to the construction of the Project that will result in On-Site Jobs, directly or indirectly, either pursuant to the terms of such contract or other agreement or through one or more subcontracts.

b. "**Contractor**" means a prime contractor, a sub-contractor, or any other entity that enters into a Contract with Developer for any portion or component of the work necessary to construct the Project (excluding architectural, design and other "soft" components of the construction of the Project).

c. "**Low Income Individual**" means a resident of the City of Santa Monica whose household income is no greater than 80% of the Median Income.

d. "**Median Income**" means the median income for the Los Angeles-Long Beach Primary Metropolitan Statistical Area, as published from time to time by the City in connection with its Affordable Housing Production Program pursuant to SMMC Section 9.56.

e. "**On-Site Jobs**" means all jobs by a Contractor under a Contract for which at least fifty percent (50%) of the work hours for such job requires the employee to be at the Project site, regardless of whether such job is in the nature of an employee or an independent contractor. On-Site Jobs shall not include jobs at the Project site which will be performed by the Contractor's (including Theater Operator's FF&E contractors' and subcontractors') established work crew who have not been hired specifically to work at the Project site.

4. Priority for Targeted Job Applicants. Subject to Section **Error! Reference source not found.** below in this Exhibit "F-1," the Local Hiring Policy provides that the Targeted Job Applicants shall be considered for each On-Site Job in the following order of priority:

a. First Priority: Any resident of a household with no greater than 80% Median Income that resides within the Low and Moderate Income Areas indicated on the map attached to this Exhibit F-1;

b. Second Priority: Any resident of a household with no greater than 80% Median Income that resides within the City; and

c. Third Priority: Any resident of a household with no greater than 80% Median Income that resides within a five (5) mile radius of the project site.

5. Coverage. The Local Hiring Policy shall apply to all hiring for On-Site Jobs related to the construction of the Project, by Developer and its Contractors.

6. Outreach. So that Targeted Job Applicants are made aware of the availability of On-Site Jobs, Developer or its Contractors shall advertise available On-Site Jobs in the *Santa Monica Daily Press* or similar local newspaper, or similar local media and electronically on a City-sponsored website, if such a resource exists. In addition, Developer shall consult with and provide written notice to at least two first source hiring organizations, which may include but are not limited to the following:

(i) Local first source hiring programs

(ii) Trade unions

(iii) Apprenticeship programs at local colleges

(iv) Santa Monica educational institutions

(v) Other non-profit organizations involved in referring eligible applicants for job opportunities

7. Hiring. Developer and its prime contractor shall consider in good faith all applications submitted by Targeted Job Applicants for On-Site Jobs, in accordance with their respective normal hiring practices. The City acknowledges that the Contractors shall determine in their respective subjective business judgment whether any particular Targeted Job Applicant is qualified to perform the On-Site Job for which such Targeted Job Applicant has applied.

8. Term. The Local Hiring Policy shall continue to apply to the construction of the Project until the earlier of the issuance of a temporary or final certificate of occupancy for the Project by the City.

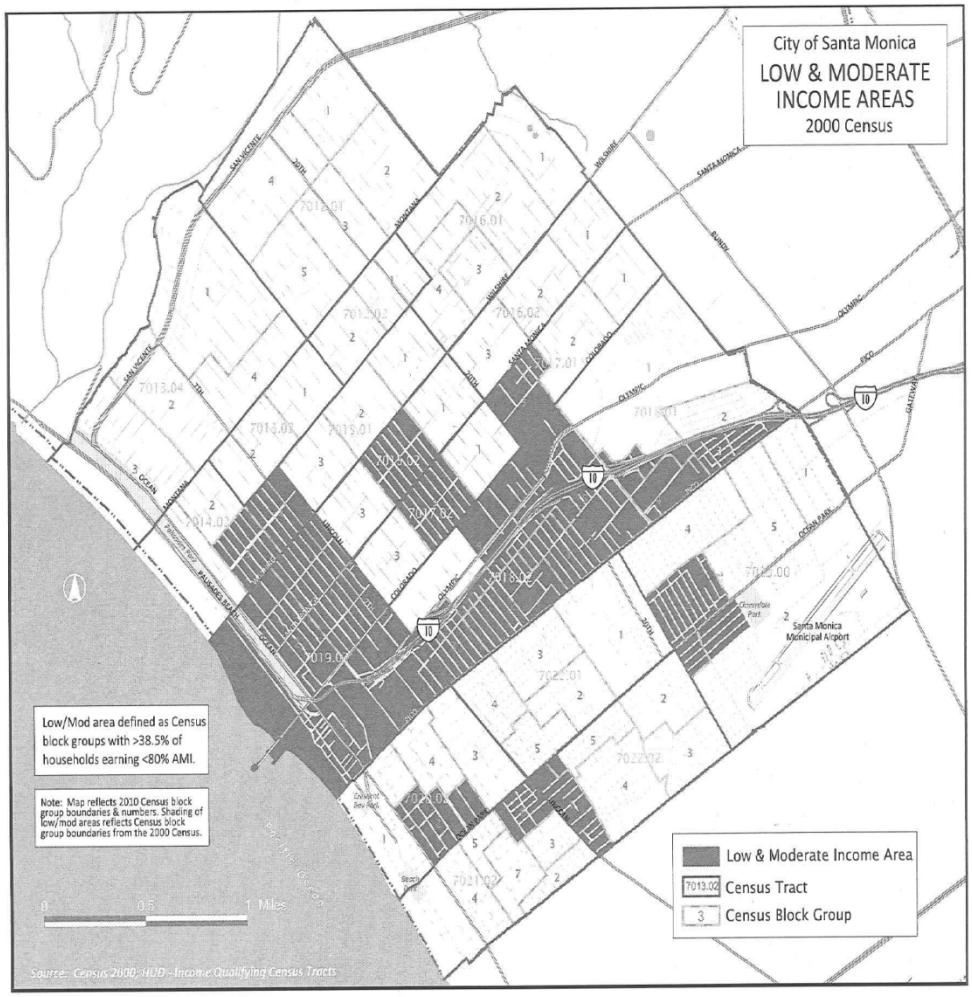


Figure 3-12
Low/Moderate-Income Areas

EXHIBIT F-2

LOCAL HIRING PROGRAM FOR PERMANENT EMPLOYMENT

Local Hiring Policy For Permanent Employment. The Theater Operator shall implement a local hiring policy (the "**Local Hiring Policy**"), consistent with the following guidelines:

1. Purpose. The purpose of the Local Hiring Policy is to facilitate the employment by the commercial tenants of the Project of residents of the City of Santa Monica (the "**Targeted Job Applicants**"), and in particular, those residents who are "Low-Income Individuals" (defined below) by ensuring Targeted Job Applicants are aware of Project employment opportunities and have a fair opportunity to apply and compete for such jobs. The goal of this policy is local hiring. This policy applies to job openings (not jobs that are already filled) provided, however, that it does not apply to jobs filled by the rehiring of former employees or the transfer of an existing employee from another location to the Project site.

2. Findings.

   a. Approximately 73,000-74,000 individuals work in the City. The City has a resident labor force of approximately 56,800. However, only about one-third (32.2 percent) of the City's resident labor force works at jobs located in the City, with the balance working outside of the City. Consequently, a significant portion of the City's resident and non-resident work force is required to commute long distances to find work, causing increased traffic on state highways, increased pollution, increased use of gas and other fuels and other serious environmental impacts.

   b. Due to their employment outside of the City, many residents of the City are forced to leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the hours between school and the parent return from work outside the area.

   c. Absentee parents and unsupervised youth can result in increased problems for families, communities and the City as a whole, including, but not limited to, increased crime, more frequent and serious injuries, poor homework accomplishments, failing grades and increased high school dropout rates.

   d. Of the approximately 45,000 households in the City, thirty percent are defined as low-income households or lower, with eleven percent of these households defined as extremely low income and eight percent very low income. Approximately 10.5% of the City's residents are unemployed.

e. By ensuring that Targeted Job Applicants are aware of and have a fair opportunity to compete for Project jobs, this local hiring policy will facilitate job opportunities to City residents which would expand the City's employment base and reduce the impacts on the environment caused by long commuting times to jobs outside the area.

3. Definitions.

a. **Low Income Individual**" means a resident of the City of Santa Monica whose household income is no greater than 80% of the Median Income.

b. "**Median Income**" means the median income for the Los Angeles-Long Beach Primary Metropolitan Statistical Area, as published from time to time by the City in connection with its Affordable Housing Production Program pursuant to SMMC Section 9.56.

c. "**On-Site Jobs**" means all jobs hired by the Theater Operator for which at least 50 percent of the work hours occur on the Project site within the non-residential uses of greater than 1,500 gross square feet, regardless of whether such job is in the nature of an employee or an independent contractor.

d. "**Project Site**" means the theater premises only and no other portions of Santa Monica Place.

4. Priority for Targeted Job Applicants. Subject to Section **Error! Reference source not found.** below in this Exhibit "F-2," the Local Hiring Policy provides that the Targeted Job Applicants shall be considered for each On-Site Job in the following order of priority:

a. First Priority: Any resident of a household with no greater than 80% Median Income that resides within the Low and Moderate Income Areas indicated on the map attached to this Exhibit F-2;

b. Second Priority: Any resident of a household with no greater than 80% Median Income that resides within the City; and

c. Third Priority: Any resident of a household with no greater than 80% Median Income that resides within a five (5) mile radius of the project site.

For purposes of this Local Hiring Policy, the employer is authorized to rely on the most recent year's income tax records (W-2) and proof of residency (e.g. driver's license, utility bill, voter registration) if voluntarily submitted by a prospective job applicant for purposes of assessing a Targeted Job Applicant's place of residence and income.

5. Coverage. The Local Hiring Policy shall apply to all hiring for On-Site Jobs. Notwithstanding the foregoing, the Local Hiring Policy shall not apply to

temporary employees utilized while a permanent employee is temporarily absent or while a replacement is being actively sought for a recently-departed permanent employee. Furthermore, the Local Hiring Policy shall not preclude the re-hiring of a prior employee or the transfer of an existing employee from another location.

6. Recruitment.

a. Local Hiring Goal - The Developer has established a local hiring goal for Theater Operator of 40% of the total full and part-time jobs in the Project being held by Santa Monica residents. There shall be no penalties to the Developer, nor shall the Developer be deemed to be in default under the Development Agreement, if such goal is not achieved. The Developer shall report Theater Operator's actual local hiring results to the City as part of its annual report as mandated by Section 10.2 of the Development Agreement.

b. Advanced Local Recruitment - Initial Hiring for New Business. So that Targeted Job Applicants are made aware of the availability of On-Site Jobs, at least 30 days before recruitment ("**Advanced Recruitment Period**") is opened up to general circulation for the initial hiring by a new business, Theater Operator shall advertise available On-Site Jobs in the *Santa Monica Daily Press*, or Santa Monica Police Activity League or similar organization, or similar local media and electronically on a City-sponsored website, if such a resource exists. In addition, Theater Operator shall consult with and provide written notice to at least two first source hiring organizations, which may include but are not limited to the following:

(i) Local first source hiring programs

(ii) Trade unions

(iii) Apprenticeship programs at local colleges

(iv) Santa Monica educational institutions

(v) Other non-profit organizations involved in referring eligible applicants for job opportunities

c. Advanced Local Recruitment - Subsequent Hiring. For subsequent employment opportunities, the Advanced Recruitment Period for Targeted Job Applicants can be reduced to at least 7 days before recruitment is opened up to general circulation. Alternatively, the Theater Operator may also use an established list of potential Targeted Job Applicants of not more than one year old.

d. Obligations After Completion of Advanced Recruitment Period. Once these advanced local recruitment obligations have been met, Theater

Operator is not precluded from advertising regionally or nationally for employees.

7. Hiring. The Theater Operator shall consider in good faith all applications submitted by Targeted Job Applicants for On-Site Jobs in accordance with their normal practice to hire the most qualified candidate for each position and shall be make good faith efforts to hire Targeted Job Applicants when such Applicants are most qualified or equally qualified as other applicants. The City acknowledges that the Theater Operator shall determine in its subjective business judgment whether any particular Targeted Job Applicant is qualified to perform the On-Site Job for which such Targeted Job Applicant has applied.

8. Proactive Outreach. Theater Operator shall designate a "**First-Source Hiring Coordinator**" (FHC) that shall manage all aspects of the Local Hiring Policy. The FHC, who may be an employee of Theater Operator, shall be responsible for actively seeking partnerships with local first-source hiring organizations prior to employment opportunities being available. The FHC shall also be responsible for encouraging and making available information on first-source hiring for the Project. The FHC shall inform Theater Operator of the available resources on first-source hiring. In addition to implementation of the Local Hiring Policy, the FHC can have other work duties unrelated to the Local Hiring Policy.

9. Term. The Local Hiring Policy shall apply for the life of the Project.

10. Condition of Lease. Developer shall include the requirements of this program into any leases executed with the Theater Operator. The FHC shall remind Theater Operator not less than once each calendar quarter of the programs and policies. Theater Operator shall have ultimate responsibility for adherence to the program guidelines. Failure of the Theater Operator to comply with the requirements of this program shall not constitute a Breach or default by Developer under this Agreement so long as the Theater Operator lease requires such compliance, and Developer is actively pursuing all necessary enforcement actions to bring the Theater Operator into compliance with this lease provision.

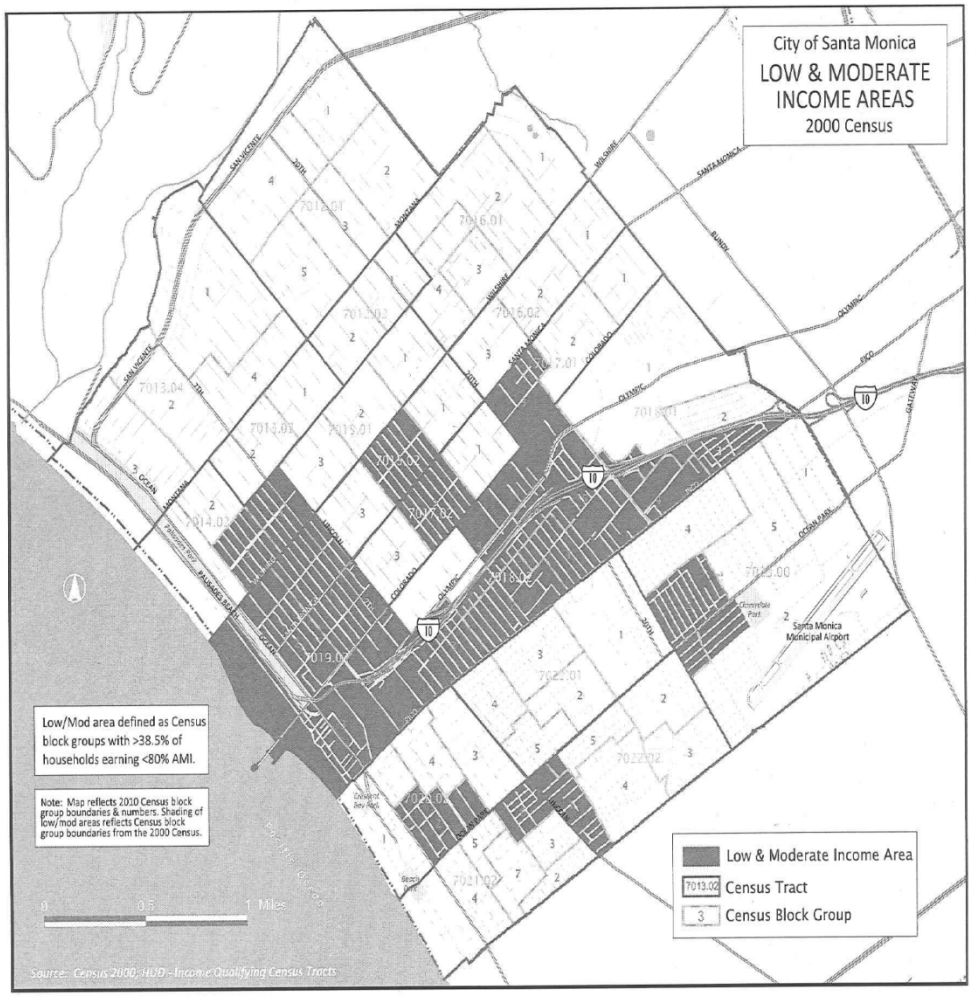


Figure 3-12
Low/Moderate-Income Areas

EXHIBIT G-1
Map of Work Area

EXHIBIT G-2
Construction Drawings for Work

EXHIBIT H
CONSTRUCTION IMPACT MITIGATION PLAN

TRAF-1: Construction Impact Mitigation Plan. The Applicant shall prepare, implement, and maintain a Construction Impact Mitigation Plan which shall be designed to:

- Minimize traffic impacts on the surrounding roadway network.
- Maintain two lanes of traffic, unobstructed, in both the northbound and southbound direction on 4th Street for the duration of the project.
- Ensure no work encroaches into existing bus stop on southbound 4th Street.
- Minimize parking impacts both to public parking and access to private parking.
- Ensure safety for both those constructing the project and the surrounding community.
- Prevent truck traffic through residential neighborhoods by establishing truck routes that utilize non-residential streets.
- Ensure coordination with the Exposition Light Rail line (Expo LRT) Downtown Santa Monica station, Gas Company, Southern California Edison, Colorado Esplanade, and other nearby construction projects such as the approved 5th and Colorado Hotel projects. The Construction Impact Mitigation Plan shall be subject to review and approval by the following City departments: Public Works Department, Santa Monica Fire Department, Planning and Community Development (Transportation Engineering and Management Division), and Santa Monica Police Department to ensure that the Plan has been designed in accordance with this mitigation measure. This review shall occur prior to building permit issuance for the Project. It shall at a minimum, include the following:

    - A detailed traffic control plan for work zones shall be implemented which includes, at a minimum temporary parking and travel lane configurations; warning, regulatory, guide and directional signage; and area sidewalks, bicycle lanes and parking lanes (i.e. Temporary Traffic Control Plans). The plan shall include specific information regarding the Project's construction activities that may disrupt normal pedestrian and traffic flow, temporary close lanes, and the measures to address these disruptions. Such plans must be submitted to, reviewed and approved by the Public Works Department and the Transportation Engineering and Management Division prior to building permit issuance and implemented in accordance with this approval, as a part

of standard permitting processes for work occurring within the public right-of-way (i.e. Use of Public Property Permit process). Note that the process for submittal, review, and approval of Temporary Traffic Control Plans is separate from the Use of Public Property Permit process and has specific requirements.

- Work within the public right-of-way shall be performed between 9:00 AM and 4:00 PM, including demolition material hauling and construction material delivery. Any requests for work before or after normal construction hours within the public right-of-way shall be subject to review and approval through the After Hours Permit process administered by the Building and Safety Division.
- Streets and equipment should be cleaned in accordance with Santa Monica's established Environmental and Public Works Management ("EPWM") requirements.
- Trucks shall only travel on a City approved construction route.
- Materials and equipment should be minimally visible to the public; the preferred location for materials is to be on-site, with a minimum amount of materials within a work area in the public right-of-way, subject to a current Use of Public Property permit.

Project Coordination Elements that shall be implemented prior to commencement of construction:

- The Applicant will coordinate with the City's Public Works Department and the Transportation Engineering and Management Division to ensure that temporary lane restrictions associated with the Expo LRT, Colorado Esplanade, and 5th and Colorado Hotel projects do not occur in manner that significantly obstructs traffic flow on Colorado Avenue or 4th Street.

- The Applicant shall advise the traveling public of impending construction activities (e.g., information signs, portable message signs, media listing/notification).

- The Applicant shall specify a direct contact person (name, cell phone, and email) who can represent the contractor(s) for all construction-related activities that will occur within the public right-of-way. The contact person shall provide weekly updates to Transportation Engineering and Management Division staff on planned construction activities and associated work within the public right-of-way for the forthcoming weeks. The Applicant shall notify Transportation Engineering and Management Division staff of any changes to the designated contact person in writing at least seven (7) days prior to making and personnel changes.

- The Applicant shall obtain a Use of Public Property Permit for any construction work requiring lane closures, encroachment into public rights-of-way, detours or any other work within the public right-of-way.

- The Applicant shall provide timely notification of construction schedules to all affected agencies (e.g., Big Blue Bus, Police Department, Fire Department, Public Works Department, and Planning and Community Development Department) and to all owners and residential and commercial tenants of property within a radius of 500 feet of the construction site.

EXHIBIT I
ASSIGNMENT AND ASSUMPTION AGREEMENT

Recording Requested By and
When Recorded Mail To:

Armbruster Goldsmith & Delvac LLP
11611 San Vicente Blvd., Suite 900
Los Angeles, CA 90049
Attn: Dale Goldsmith, Esq.

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into by and between MACERICH SMC LP, a Delaware limited liability company ("Assignor"), and _____, a _____ ("Assignee").

R E C I T A L S

A. The City of Santa Monica ("City") and Assignor entered into that certain Development Agreement dated _____, 2013 (the "Development Agreement"), with respect to the real property located in the City of Santa Monica, State of California more particularly described in Exhibit "A" attached hereto (the "Project Site").

B. Assignor has obtained from the City certain development approvals and permits with respect to the development of the Project Site, including without limitation, approval of the Development Agreement and a vesting parcel map for the Project Site (collectively, the "Project Approvals").

C. Assignor intends to sell, and Assignee intends to purchase, the Project Site.

D. In connection with such purchase and sale, Assignor desires to transfer all of the Assignor's right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Project Site. Assignee desires to accept such assignment from Assignor and assume the obligations of Assignor under the Development Agreement and the Project Approvals with respect to the Project Site.

THEREFORE, the parties agree as follows:

1. Assignment. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Development Agreement and the Project

Approvals with respect to the Project Site. Assignee hereby accepts such assignment from Assignor.

2. Assumption. Assignee expressly assumes and agrees to keep, perform, and fulfill all the terms, conditions, covenants, and obligations required to be kept, performed, and fulfilled by Assignor under the Development Agreement and the Project Approvals with respect to the Project Site.

3. Effective Date. The execution by City of the attached receipt for this Agreement shall be considered as conclusive proof of delivery of this Agreement and of the assignment and assumption contained herein. This Agreement shall be effective upon its recordation in the Official Records of Los Angeles County, California, provided that Assignee has closed the purchase and sale transaction and acquired legal title to the Project Site.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their signatures below.

"ASSIGNOR"

MACERICH SMP LP,
a Delaware limited partnership

By: MACERICH SMP GP LLC,
a Delaware limited liability
company, its general partner

By:_____
Name:_____
Title:_____

"ASSIGNEE"

RECEIPT BY CITY

The attached ASSIGNMENT AND ASSUMPTION AGREEMENT is received by the City of Santa Monica on this ___ day of _____, _____.

CITY OF SANTA MONICA

_____

By: _____

Planning Director

EXHIBIT J
CONDITIONS FOR SALE OF ALCOHOLIC BEVERAGES

(1) Window or other signage visible from the public right-of-way that advertises beer or alcohol shall not be permitted.

(2) The Theater Operator shall offer food to patrons during all hours that alcohol is being served in the Theater.

(3) No alcoholic beverages shall be sold or dispensed for consumption beyond (but alcoholic beverages may be consumed anywhere within) the Theater, including the auditoriums, bar/café and Lounge.

(4) Except for special events, alcoholic beverages shall be served in containers that significantly differ in appearance from those containers utilized for non-alcoholic beverages. This condition does not preclude the service of alcoholic beverages in their original containers.

(5) No dancing is permitted at the theater premises. Live entertainment may only be permitted in the manner set forth in SMMC Section 9.04.02.030.730.

(6) Any minimum purchase requirement may be satisfied by the purchase of beverages or food.

(7) The permitted hours of alcoholic beverage service shall be 9:00 a.m. to 1:00 a.m. every day of the week. No after-hours sales of alcohol permitted.

(8) Prior to issuance of Certificate of Occupancy or business license, as applicable, the Theater Operator shall submit a theater security plan to the Chief of Police for review and approval. The plan shall address both physical and operational security issues.

(9) Prior to issuance of Certificate of Occupancy or business license, as applicable, the Theater Operator shall submit a plan for approval by the Planning Director regarding its employee alcohol awareness training programs and policies. The plan shall outline a mandatory alcohol-awareness training program for all theater employees engaged in the service of alcohol and shall state the Theater Operator's policies addressing alcohol consumption and inebriation. The program shall require all theater employees engaged in the service of alcohol to complete an ABC-sponsored alcohol awareness training program within ninety days of the date of hire, or within a reasonable time thereafter. In the event the ABC no longer sponsors an alcohol awareness training program, all theater employees engaged in the service of alcohol shall complete an alternative program approved by the Planning Director. Upon written request from the City (not more than once in any calendar year), the Theater Operator shall provide the City with a report regarding compliance with this requirement. The Theater Operator shall be subject to any future citywide alcohol awareness training program affecting similar establishments.

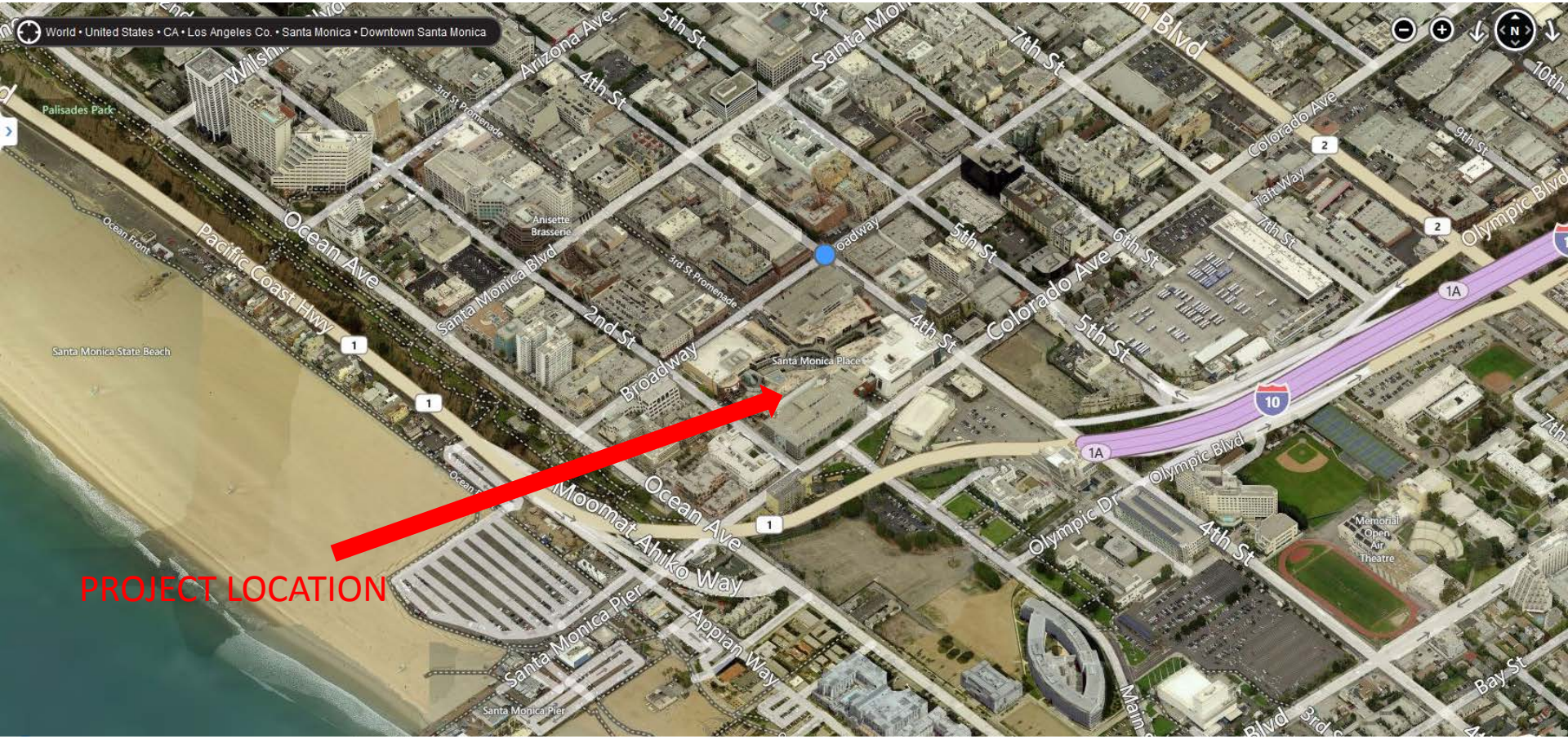
Attachment #2

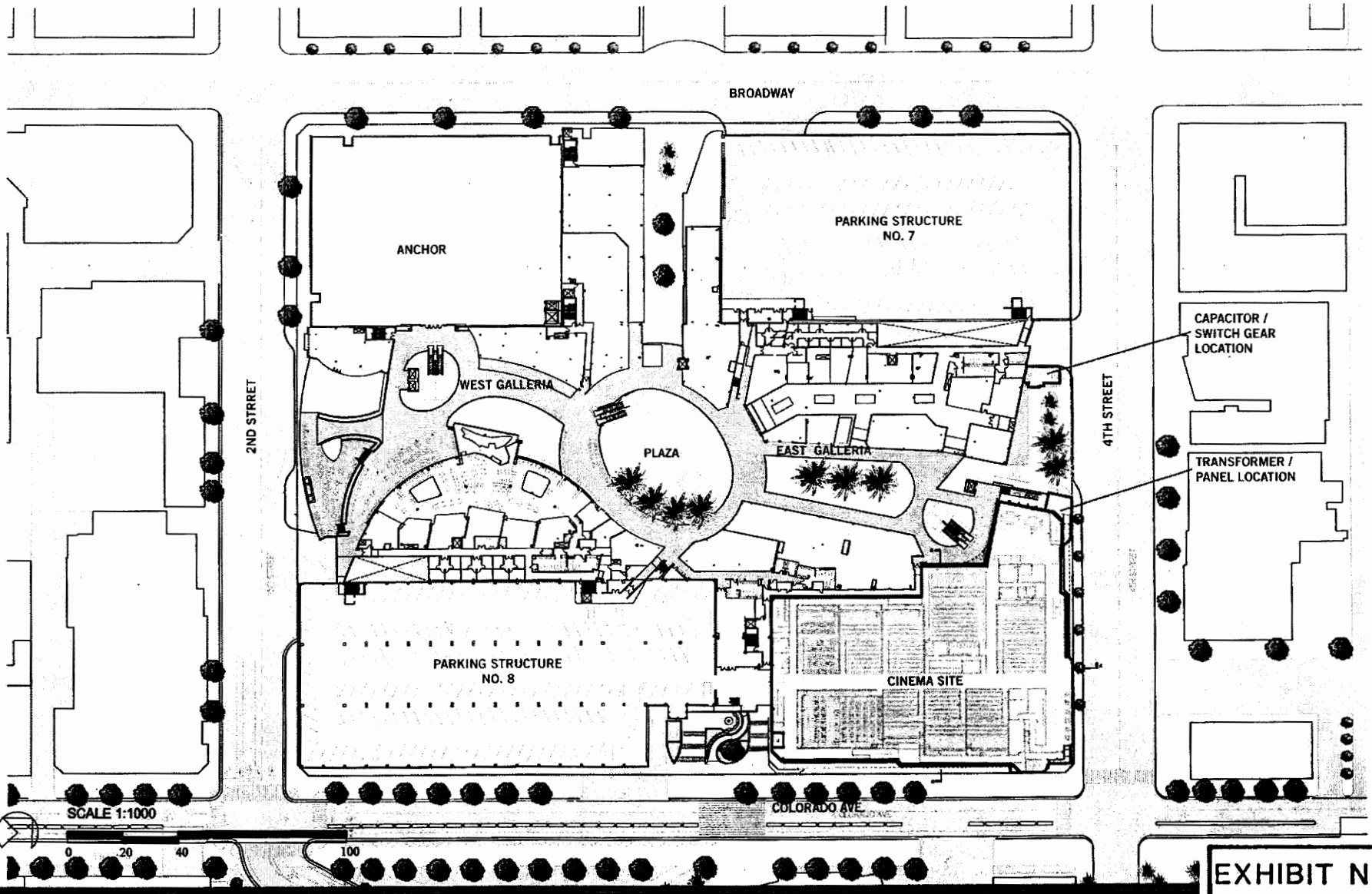
Exhibits #2, #3, and #4 From Staff Report for CDP Amendment No. 5-07-343-A2

EXHIBIT# 2
Aerial Photograph
1 of 1

Application Number:
5-07-343-A2

California Coastal Commission



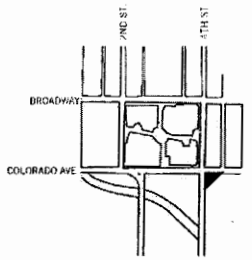


MACERICH JERDE SMS

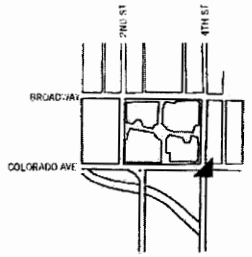
SANTA MONICA PLACE CINEMAS
Santa Monica, CA

SCHEMATIC DESIGN

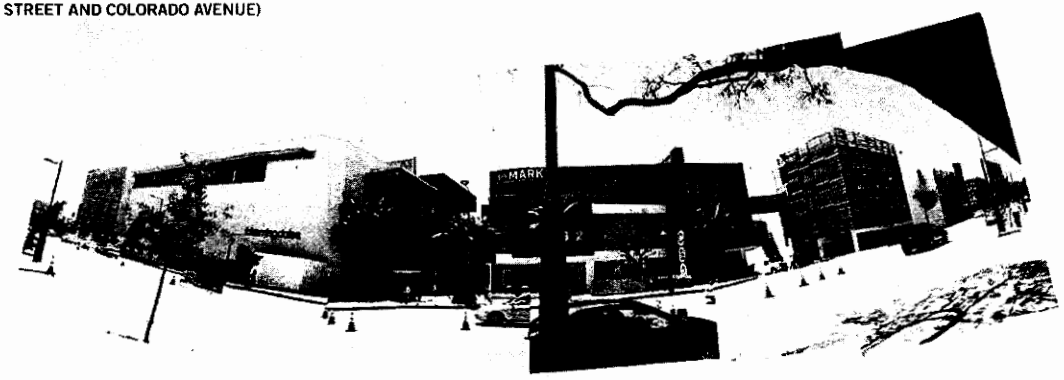
EXHIBIT NO. 3
APPLICATION NO.
5-07-343-A2
FLOOR PLAN
1 OF 1
California Coastal Commission

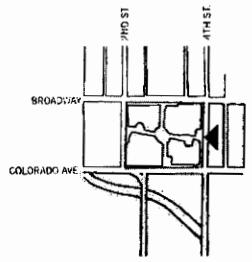


WEST VIEW (DOWN 4TH STREET AND COLORADO AVENUE)



EAST VIEW (DOWN 4TH STREET AND COLORADO AVENUE)





VIEWS OF 4TH STREET (SOUTHWEST SIDE OF STREET)

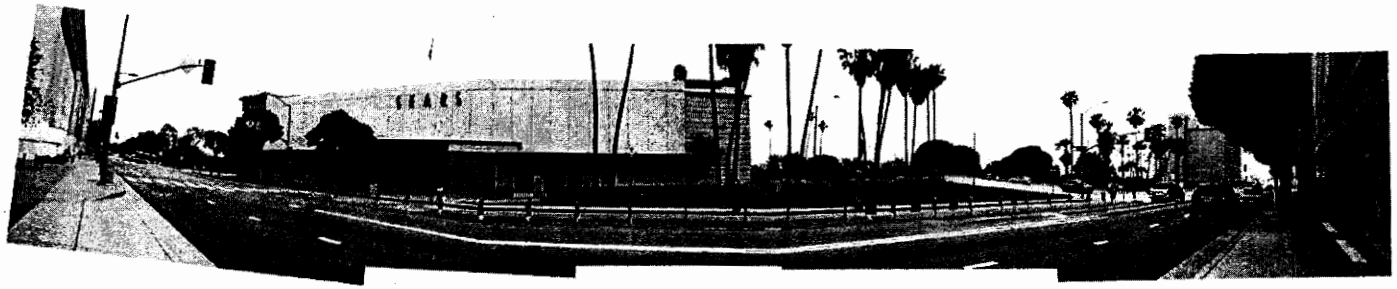
MACERICH JERDE SMS

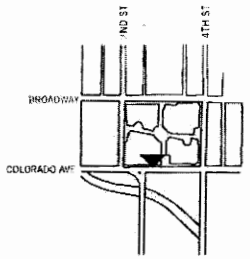
SANTA MONICA PLACE CINEMAS
Santa Monica, CA

04.22.2014

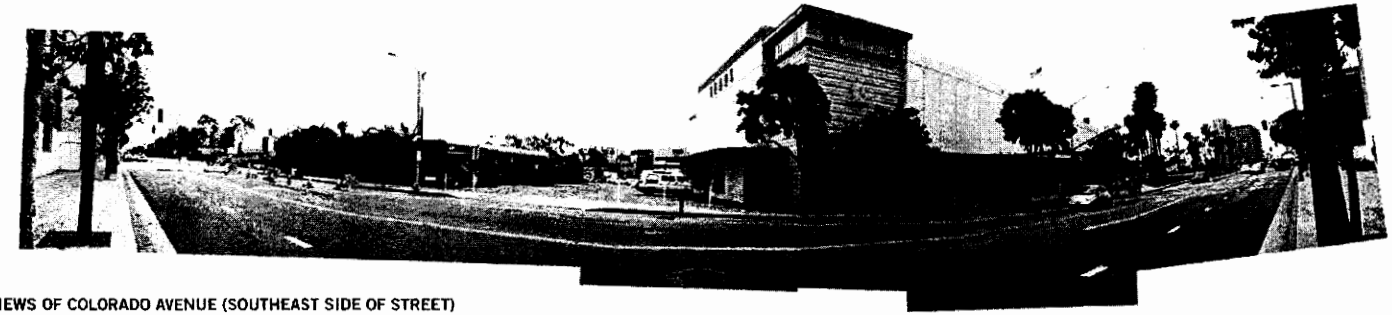
SCHEMATIC DESIGN

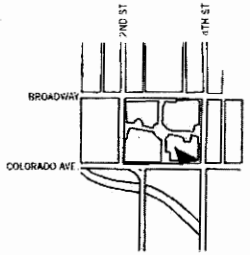
EXHIBIT NO. 4
APPLICATION NO.
5-07-343-A2
EXISTING STREET LEVEL VIEWS 1 OF 2
California Coastal Commission



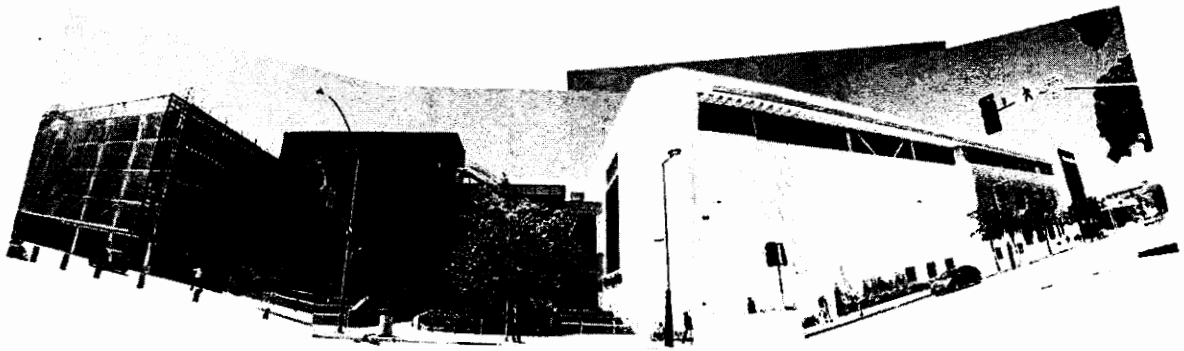


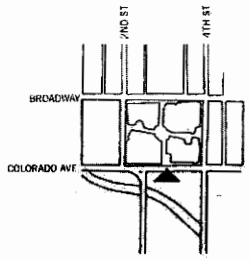
VIEWS OF COLORADO AVENUE (SOUTHEAST SIDE OF STREET)





VIEWS OF COLORADO AVENUE (SOUTHEAST SIDE OF STREET)





VIEWS OF COLORADO AVENUE (NORTHWEST SIDE OF STREET)

MACERICH JERDE SMS

SANTA MONICA PLACE CINEMAS
Santa Monica, CA

04.25.2014

SCHEMATIC DESIGN

EXHIBIT NO. 4
APPLICATION NO.
5-07-343-A2
EXISTING STREET LEVEL VIEWS 2 OF 2
California Coastal Commission