



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: December 5, 2017

Agenda Item 7A  
**Approvals:**  
City Manager MM  
Dept. Head AG  
Attorney AG  
Finance JV

**Department:** Community Development Department, Planning Division  
**Prepared By:** Amber Gregg, City Planner

**Subject:** *APPEAL 17-276, APPEAL OF THE PLANNING COMMISSION DECISION AFFIRMING THE REQUIREMENT OF A SIGN EXCEPTION PERMIT FOR FREEWAY ORIENTED SIGNAGE TO EXCEED MUNICIPAL REQUIREMENTS FOR THE OUTLETS AT SAN CLEMENTE*

**Fiscal Impact:** Unknown at this time.

**Summary:** This is an appeal of the Planning Commission decision that affirmed the Community Development Director's determination that freeway oriented signage exceeding one square foot of signage per one square foot of linear frontage at the Outlets at San Clemente requires the approval of a Sign Exception Permit.

**Background:** On February 20, 2007, the City of San Clemente ("City") City Council approved a Sign Exception Permit ("SEP 06-402") for the Outlets at San Clemente with two separate Resolutions; Resolution 07-10 was for oversized interior signs, and Resolution 07-11 was for freeway oriented signage. These resolutions are provided under Attachments 12 and 13 respectively. At the same time, the City Council also approved a Master Sign Program ("MSP") for the Outlets, which contained a provision stating that "[t]enants [of the Outlets] are permitted a maximum primary sign area that is calculated at 1.5 square feet of signage per foot of building frontage." The applicable San Clemente Municipal Code ("SCMC") Sections under 17.84.020(D) only allows 1.0 square feet of signage per foot of building frontage, façade, adjacent building elevation, thus the MSP's provision on sign area is an exception to the Code. A copy of the applicable SCMC provisions are provided under Attachment 3.

It is important to note that per the Development Agreement between the City and the developer of the Outlets, the Outlets can utilize the sign code in place at the time of the approval of the Development Agreement. The sign code at that time permitted freeway oriented signage with the approval of a SEP. A copy of this Development Agreement is provided under Attachment 4.

On June 24, 2008, the Orange County Superior Court issued a writ of mandamus ordering the City to set aside its approval of the freeway-oriented signage portion of SEP 06-402 since it found that the City did not complete an adequate California Environmental Quality Act (CEQA) review for the proposed sign package as to freeway oriented signs. Thus, on July 15, 2008, the City Council rescinded its approval of SEP 06-402 with respect to freeway-oriented signs (Resolution 07-11). The provisions of the MSP for the Outlets that were not freeway oriented were maintained and are in place today (Resolution 07-10). A copy of the Court's Order is

provided under Attachment 5. A copy of the Minutes, Resolution and Agenda Report concerning the City Council's rescission of the portion of SEP 06-402 for freeway-oriented signs is provided under Attachment 6. A copy of the MSP in place today is provided under Attachment 7.

After the City Council's rescission of Resolution 07-11, what remains in effect is an exception that allows a sign area of 1.5 square feet of signage per one linear foot of building frontage for the valid portions of the Outlet's MSP for the interior of the Outlets (but not the Outlets' freeway oriented areas).

At the July 17, 2017 Design Review Subcommittee ("DRSC") meeting, the Applicant identified that they had rights to the 1.5 exception. DRSC members questioned whether Villa San Clemente, LLC ("Applicant") was entitled to 1.5 square feet of signage for the freeway oriented signs based on the provisions of the MSP still in place. Staff conferred with the City Attorney, and the Community Development Director determined that any approvals associated with freeway oriented signage were voided per the June 28, 2008 Court Order and City Council's subsequent rescission of the portion of SEP 06-402 pertaining to freeway oriented signage, and that the Applicant would need to apply for a SEP to have freeway-oriented signage exceeding one square foot of signage per one linear foot of frontage. The Community Development Director affirmed that the Master Sign Program for all interior signs is still active. A copy of the Community Development Director's decision is provided under Attachment 8.

The Applicant appealed this decision, and on October 18, 2017, the Planning Commission heard the appeal, denied it, and affirmed the Community Development Director's decision that per the writ of mandamus ordering the City to set aside all freeway oriented sign approvals, freeway-oriented signs for the Outlets needed a Sign Exception Permit to exceed the Municipal Code requirement of one square foot of signage per one linear foot of frontage. The Planning Commission also affirmed that the Master Sign Program for all interior signage is still active. A copy of the Planning Commission Staff Report and Minutes from the October 18, 2017 meeting are provided under Attachment 2.

The applicant now appeals the Planning Commission's decision.

**Discussion:** **APPEAL**

On October 26, 2017, the Applicant submitted the subject appeal, stating: "Appeal of the Planning Commission decision upholding the determination by the City Director of Community Development, Cecilia Gallardo-Daly, that Villa San Clemente's Master Sign Program is no longer valid. This decision was in error for the reasons stated in the Notice of Appeal to the Planning Commission and its attachments and exhibits, which are incorporated herein by this reference, as well as the memo provided to the Planning Commission prior to the hearing." The Notice of Appeal to the Planning Commission stated the following as its bases for appeal:

1. Master Sign Program (MSP) was not rescinded, revoked or invalidated by the court. The City would violate the court's final judgment if they take the position that the permit which the Judge left in place is not valid.
2. 1.5 square feet of signage per foot of building frontage remain valid under the MSP.
3. The City Council findings necessary to issue the MSP and SEP 06-402 have been made and are conclusive and have not been rescinded, revoked or invalidated by the court.
4. The "determination" is not proper because it does not apply to any ambiguity in the code, but rather the legal effect of a court ruling.
5. The "determination" violates our federal and state constitutional due process, equal protection and free speech rights.
6. The determination also violates the Development Agreement, and we will be sending a notice of default if the City persists in this determination which conflicts with the City's obligations under the Development Agreement.

A complete copy of Applicant's appeal submitted to the City Council is provided under Attachment 9; the Appeal submitted to the Planning Commission is provided under Attachment 10.

#### **ANALYSIS OF THE APPEAL**

The Community Development Director did not determine that the existing MSP for the interior signs at the Outlets is not valid. The Community Development Director recognizes the MSP for non-freeway oriented signs is active, which is why the Outlets has the permanent signs that it currently has located on non-freeway oriented areas. The Community Development Director merely determined that the Outlet's existing MSP does not extend to freeway oriented signs, and the only portion that did apply to such signs—portion of SEP 06-402—the City Council rescinded as a result of the June 24, 2008 Court Order. Thus, the Applicant would need to apply for, and the City Council would need to approve, an SEP to allow freeway-oriented signs to exceed the SCMC Section 17.84.020(D)'s mandate of one square foot of signage per one linear foot of building frontage, façade, or adjacent building elevation.

The Outlet's MSP provision allowing 1.5 square feet of signage per linear foot for primary signs is an exception to the Code and does not apply to freeway oriented signs. The Outlet's MSP no longer has a provision for freeway oriented signs, i.e., portion of SEP 06-402 pertaining to freeway oriented signs Resolution 07-11, since that provision was invalidated by the Court and subsequently rescinded by the City Council. The MSP's provisions for non-freeway oriented signage do not and cannot substitute for a SEP for freeway-oriented signs.

The Applicant's main argument—that the Outlets have a right to the 1.5 square feet of signage per foot of building frontage based on the existing MSP—ignores the applicable Code and existing terms of the MSP. The MSP's provisions on primary signs do not apply to freeway oriented signs; the Court specifically invalidated the provisions in the Outlet's MSP on freeway oriented signs found in SEP 06-402. The MSP does not provide the Applicant any right to 1.5 square feet of signage per linear foot for freeway oriented signs.

The Applicant's other arguments equally fail to support its appeal. First, the Orange County Superior Court did in fact order the City to set aside and void all approvals pertaining to freeway oriented signs. As a result, the City Council rescinded any approvals for freeway oriented signs including portions of SEP 06-402 (Resolution 07-11).

Second, the MSP in place for the Outlets was and is subject to the rescinded portions of SEP 06-402 which pertained to all freeway oriented signage. Therefore, the existing MSP does not have viability with respect to freeway oriented signage without a new SEP pertaining to freeway oriented signs.

The Applicant also raises concerns about being in breach of the Development Agreement. Staff has reviewed this and although it falls out of the scope of City Council's purview in this appeal, the Development Agreement only grants the Applicant the ability to apply for an SEP. The Community Development Director's determination is in line with the Development Agreement, and therefore the City is not in violation of the agreement.

The remaining arguments fall far outside the scope of this appeal. Under San Clemente Municipal Code Section 17.12.140 E, the scope of review considers the "issues raised on appeal," and the body hearing the appeal may "review new evidence and ... consider all elements of the appealed action." Here, the issue raised on appeal is the City's Community Development Director's determination that the Applicant must apply for an SEP for its freeway-oriented signs at the Outlets if such signs are to exceed one square foot of signage per linear foot of building frontage. The elements of the appealed action are: the City's interpretation of the relevant Municipal Code provisions and its application of those Municipal Code provisions to the subject determination that the Applicant must apply for an SEP. Nonetheless, should the City Council be concerned about these other arguments and their impact on this appeal, the City addresses them briefly under Attachment 11.

Based on the above information, staff finds that the Outlet's existing MSP does not extend to freeway oriented signs, and that Applicant would need to obtain a new SEP to allow freeway oriented signs to exceed the code allowance of one square foot of signage per one linear foot of building frontage.

It should be noted that the fact that the Court invalidated the freeway oriented sign portions of SEP 06-402 due to failure to conduct an adequate CEQA review and that the City Council thus rescinded those portions, merely requires that the Applicant apply for a new SEP which will be subject to a CEQA review, including an environmental impact report. Next, only if the SEP requirements of the applicable SCMC provisions are met—which are highly discretionary criteria requiring findings on how said criteria is met—will the City Council approve an SEP.

**Recommended**

**Action:** ) PLANNING COMMISSION RECOMMENDS THAT the City Council adopt a resolution denying Appeal 17-276, and affirm that the Outlet's existing MSP does not extend to freeway oriented signs, and that Applicant would need to obtain a new SEP to allow freeway oriented signs to exceed the code allowance of one square foot of signage per one linear foot of building frontage.

**Attachments:**

1. Proposed City Council Resolution
2. Planning Commission Staff Report, Resolution and Minutes, of October 18, 2017
3. Applicable SCMC provisions 17.16.260 and 17.84
4. Marblehead Coastal Development Agreement
5. Final Ruling by Orange County Superior Court
6. City Council Minutes re Rescinding Portion of SEP 06-402, Resolution, and Agenda Report
7. Existing MSP for Outlets (non-freeway oriented signage)
8. Community Development Director's Decision
9. Appeal filed by the Applicant to the City Council, filed October 31, 2017
10. Appeal filed by the Applicant to the Planning Commission, filed August 28, 2017
11. City's Responses to Applicant's Other Arguments
12. Resolution 07-10, SEP for Interior Oversized Tenant Signs
13. Resolution 07-11, SEP for Freeway Oriented Signs

**Notification:** Notification was published in the local newspaper, the Sun Post; and all property owners within 300 feet of the subject property were notified.

# ATTACHMENT 1

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING APPEAL 17-276, APPEAL OF PLANNING COMMISSIONS DETERMINATION THAT A SIGN EXCEPTION PERMIT IS REQUIRED FOR FREEWAY-ORIENTED SIGNAGE AT THE OUTLETS AT SAN CLEMENTE TO EXCEED THE APPLICABLE CODE REQUIREMENT OF ONE SQUARE FOOT OF SIGNAGE PER LINEAR FOOT OF BUILDING FRONTAGE, LOCATED AT 101 WEST AVENIDA VISTA HERMOSA

WHEREAS, per the 1998 Development Agreement between the City and the developer of The Outlets of San Clemente ("Outlets"), the Outlets can utilize the sign code in place at the time of the approval of the Development Agreement. The applicable sign code permits freeway oriented signage with the approval of an Sign Exception Permit ("SEP"). The applicable sign code also only allows 1.0 square feet of signage per foot of building frontage. The Outlets site is located in the Commercial land use designation of the Marblehead Coastal Specific at 101 West Avenida Vista Hermosa. The site's legal description is Tract 8817, Lot 327, and Assessor's Parcel Number (APN) 691-442-13; and

WHEREAS, on February 20, 2007, the City of San Clemente ("City") City Council approved the freeway oriented signage portion of Sign Exception Permit 06-402 ("SEP 06-402") for the Outlets. At the same time, the City Council also approved a Master Sign Program ("MSP") for the Outlets, which contained a provision stating that "[t]enants [of the Outlets] are permitted a maximum primary sign area that is calculated at 1.5 square feet of signage per foot of building frontage"; and

WHEREAS, on June 24, 2008, the Orange County Superior Court issued a writ of mandamus ordering the City to set aside its approval of the freeway oriented signage portion of SEP 06-402 since it found that the City did not complete an adequate California Environmental Quality Act ("CEQA") review for the proposed sign package as to freeway oriented signs; and

WHEREAS, on July 15, 2008, the City Council rescinded its approval of SEP 06-402 with respect to freeway-oriented signs; and

WHEREAS, on August 16, 2017, the Community Development Director determined that any approvals associated with freeway oriented signage were voided per the June 28, 2008 Court Order and City Council's subsequent rescission of the portion of SEP 06-402 pertaining to freeway oriented signage, and that the Applicant would need to apply for an SEP to have freeway oriented signage exceeding one square foot of signage per one linear foot of frontage at the Outlets; and

WHEREAS, on August 28, 2017 the applicant Villa San Clemente LLC ("Applicant") submitted a notice of appeal of the Community Development Director's determination and provided the following as the bases of its appeal: "1) Master Sign Program (MSP) was not rescinded, revoked or invalidated by the court. The City would violate the court's final judgment if they take the position that the permit which the Judge left in place is not valid;

2) 1.5 square feet of signage per foot of building frontage remain valid under the MSP; 3) The City Council findings necessary to issue the MSP and SEP 06-402 have been made and are conclusive and have not been rescinded, revoked or invalidated by the court; 4) The "determination" is not proper because it does not apply to any ambiguity in the code, but rather the legal effect of a court ruling; 5) The "determination" violates our federal and state constitutional due process, equal protection and free speech rights; and 6) The determination also violates the Development Agreement, and we will be sending a notice of default if the City persists in this determination which conflicts with the City's obligations under the Development Agreement" ("Appeal 17-276"); and

WHEREAS, Appeal 17-276 is not categorized as a project under CEQA and therefore is not subject to environmental review; and

WHEREAS, on October 18, 2017, the City's Planning Commission held a duly noticed public hearing on Appeal 17-276, considered written and oral comments, and facts and evidence presented by the Applicant, City staff, and other interested parties, and affirmed that the Outlet's existing MSP does not extend to freeway oriented signs, and that Applicant would need to obtain a new SEP to allow freeway oriented signs to exceed the code allowance of one square foot of signage per one linear foot of building frontage; and

WHEREAS, on October 26, 2017, the Applicant submitted a notice of appeal of the Planning Commission's determination stating "Appeal of the Planning Commission decision upholding the determination by the City Director of Community Development, Cecilia Gallardo-Daly, that Villa San Clemente's Master Sign Program is no longer valid. This decision was in error for the reasons stated in the Notice of Appeal to the Planning Commission and its attachments and exhibits, which are incorporated herein by this reference, as well as the memo provided to the Planning Commission prior to the hearing." ("Appeal 17-276"); and

WHEREAS, on December 5, 2017, the City Council of the City of San Clemente held a duly noticed public hearing on Appeal 17-276, considered written and oral comments, and facts and evidence presented by the Applicant, City staff, and other interested parties.

NOW, THEREFORE, The City Council of the City of San Clemente does hereby resolve as follows:

**Section 1.** Incorporation of Recitals.

The City Council hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the City Council as fully set forth in this resolution.

**Section 2.** CEQA Findings

The proposed appeal is not categorized as a project under CEQA and therefore is not subject to environmental review.

**Section 3.** Appeal Findings

With respect to Appeal 17-276, the City Council finds as follows:

1. The applicable 1998 San Clemente Municipal Code Section 17.84.020.D.a, Sign Area Allowed, states the following purpose and intent:

"The purpose of this section is to regulate the maximum sign area allowed for a site. The intent of these regulations is to make the total sign area allowed for a site. The intent of these regulations is to make the total sign area allowed on a site proportionate to the length of business frontage. The intent is also to limit the total sign area along any one boundary of a site. Within this subsection, service stations are treated differently than other businesses, in terms of the total sign area permitted, because of the typically limited scale of buildings on a service station site."

2. Section 17.84.020.D.b.i. requires the following maximum sign area allowed per site: "For nonresidential building, one square foot of sign allowed for each lineal foot of all business façade." The Applicant is proposing 1.5 square feet of signage per lineal foot of building façade for freeway oriented signage.
3. Section 17.84.020.D.c, states that the maximum sign area oriented toward any one property line of a site or common parking area, pedestrian space, or driveway shall be limited as follows, "For nonresidential buildings, one square foot of sign allowed for each lineal foot of adjacent building elevation. The Applicant is proposing up to 1.5 square feet of signage per lineal foot of adjacent build elevation for freeway oriented signage.
4. Section 17.16.260C.2 states that a Sign Exception Permit is required for any sign or signs that exceed the individual sign area allowed, as listed in Section 17.84.020, General Regulations, and in the Sign Matrix, Section 17.84.030(C), Matrix of Sign Types. The Applicant is proposing 1.5 square feet of signage per lineal foot of all building façade for freeway oriented signage and therefore, requires a Sign Exception Permit.
5. The portions of Sign Exemption Permit 06-402 on freeway oriented signs was invalidated by the Orange County Superior Court and thus were rescinded by the City Council, and thus no approvals exist for freeway oriented signs at the Outlets in its MSP.
6. The Applicant will need to apply for a new SEP to have freeway oriented signage exceeding one square foot of signage per one lineal foot of frontage, which is subject to CEQA environmental review and consideration by the City to determine whether all discretionary criteria are met to approve the SEP.
7. The remaining issues submitted in Applicant's notice of appeal are outside of the scope of this appeal and are not under the purview of this reviewing body.



Section 4. City Council Denial

Based on the foregoing recitals and findings above, and the written and oral comments, facts, and evidence presented, the City of San Clemente City Council denies Appeal 17-276, Appeal of Planning Commission determination, subject to the above Findings, and affirms that the Outlet's existing MSP does not extend to freeway oriented signs, and that Applicant would need to obtain a new SEP to allow freeway oriented signs to exceed the code allowance of one square foot of signage per one linear foot of building frontage.

APPROVED, ADOPTED and SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA            )  
 COUNTY OF ORANGE            ) §  
 CITY OF SAN CLEMENTE        )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. \_\_\_\_\_ was adopted at a regular meeting of the City Council of the City of San Clemente held on the \_\_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
 CITY CLERK of the City of  
 San Clemente, California

APPROVED AS TO FORM:

\_\_\_\_\_  
 City Attorney



## STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Meeting Date: October 18, 2017

**PLANNER:** Amber Gregg, City Planner 

**SUBJECT:** Appeal 17-276, Appeal of the Community Development Director's decision that the Applicant must apply for a Sign Exception Permit for Freeway Oriented Signs at the Outlets at San Clemente to exceed one square foot of signage per linear foot of building frontage.

### **BACKGROUND**

On February 20, 2007, the City of San Clemente ("City") City Council approved the freeway oriented signage portion of Sign Exception Permit 06-402 ("SEP 06-402") for The Outlets of San Clemente ("Outlets"). At the same time, the City Council also approved a Master Sign Program ("MSP") for the Outlets, which contained a provision stating that "[t]enants [of the Outlets] are permitted a maximum primary sign area that is calculated at 1.5 square feet of signage per foot of building frontage." The applicable San Clemente Municipal Code ("SCMC") Sections under 17.84.020(D) only allows 1.0 square feet of signage per foot of building frontage, façade, adjacent building elevation, thus the MSP's provision on sign area is an exception to the Code. A copy of the applicable SCMC provisions are provided under Attachment 3.

It is important to note that per the Development Agreement between the City and the developer of the Outlets, the Outlets can utilize the sign code in place at the time of the approval of the Development Agreement. The sign code at that time permitted freeway oriented signage with the approval of an SEP. A copy of this Development Agreement is provided under Attachment 4.

On June 24, 2008, the Orange County Superior Court issued a writ of mandamus ordering the City to set aside its approval of the freeway oriented signage portion of SEP 06-402 since it found that the City did not complete an adequate California Environmental Quality Act (CEQA) review for the proposed sign package as to freeway oriented signs. Thus, on July 15, 2008, the City Council rescinded its approval of SEP 06-402 with respect to freeway-oriented signs. The provisions of the MSP for the Outlets that were not freeway oriented were maintained and are in place today. A copy of the Court's Order is provided under Attachment 5. A copy of the Minutes, Resolution and Agenda Report concerning the City Council's Rescission of the portion of SEP 06-402 is provided under Attachment 6. A copy of the MSP in place is provided under Attachment 7.

The City Council ultimately approved an SEP that permitted a maximum primary sign area of 1.5 square feet of signage per one linear foot of building frontage for the valid portions of the Outlet's MSP for the interior of the development (but not freeway oriented areas).

At the July 17, 2017 Design Review Subcommittee (DRSC) meeting, DRSC members questioned whether Villa San Clemente, LLC ("Applicant") was entitled to 1.5 square feet of signage for the freeway oriented signs based on the provisions of the MSP still in place. Staff conferred with the City Attorney, and the Community Development Director determined that any approvals associated with freeway oriented signage were voided per the June 28, 2008 Court Order and City Council's subsequent rescission of the portion of SEP 06-402 pertaining to freeway oriented signage, and that the Applicant would need to apply for a SEP to have freeway oriented signage exceeding one square foot of signage per one linear foot of frontage. A copy of the Community Development Director's decision is provided under Attachment 8.

This decision by the Community Development Director is what is being appealed here.

### **APPEAL**

On August 28, 2017, the Applicant submitted the subject appeal and stated the following as its bases for appeal:

1. Master Sign Program (MSP) was not rescinded, revoked or invalidated by the court. The City would violate the court's final judgment if they take the position that the permit which the Judge left in place is not valid.
2. 1.5 square feet of signage per foot of building frontage remain valid under the MSP.
3. The City Council findings necessary to issue the MSP and SEP 06-402 have been made and are conclusive and have not been rescinded, revoked or invalidated by the court.
4. The "determination" is not proper because it does not apply to any ambiguity in the code, but rather the legal effect of a court ruling.
5. The "determination" violates our federal and state constitutional due process, equal protection and free speech rights.
6. The determination also violates the Development Agreement, and we will be sending a notice of default if the City persists in this determination which conflicts with the City's obligations under the Development Agreement.

A copy of Applicant's appeal is provided under Attachment 9.

### **ANALYSIS OF THE APPEAL**

The Outlet's existing MSP does not extend to freeway oriented signs, and the only portion that did apply to such signs—SEP 06-402—the City Council rescinded as a result of the June 24, 2008 Court Order. Thus, the Applicant would need to apply for and the City Council would need to approve an SEP to allow freeway oriented signs to exceed the

SCMC Sections 17.84.020(D) mandate of one square foot of signage per one linear foot of building frontage, façade, or adjacent building elevation .

The Outlet's MSP provision allowing 1.5 square feet of signage per linear foot for primary signs is an exception to the Code and does not apply to freeway oriented signs. The Outlet's MSP no longer has a provision for freeway oriented signs—SEP 06-402—since that provision was invalidated by the Court and subsequently rescinded by the City Council. The MSP's provisions for non-freeway oriented signage do not and cannot substitute for a SEP for freeway oriented signs.

The Applicant's main argument—that the Outlets have a right to the 1.5 square feet of signage per foot of building frontage based on the existing MSP—ignores the applicable Code and existing terms of the MSP. The MSP's provisions on primary signs do not apply to freeway oriented signs; the Court specifically invalidated the provisions in the Outlet's MSP on freeway oriented signs found in SEP 06-402. The MSP does not provide Applicant any right to 1.5 square feet of signage per linear foot for freeway oriented signs.

The Applicant's other arguments equally fail to support its appeal. First, the Orange County Superior Court did in fact order the City to set aside and void all approvals pertaining to freeway oriented signs. As a result, the City Council rescinded any approvals for freeway oriented signs including portions of SEP 06-402.

Second, the MSP in place for the Outlets was and is subject to the rescinded SEP 06-402. Therefore, the existing MSP does not have viability with respect to freeway oriented signage without an SEP pertaining to freeway oriented signs.

The Applicant also raises concerns about being in breach of the Development Agreement. Staff has reviewed this and although it falls out of the scope of Planning Commissions purview of this appeal, the Development Agreement only grant the applicant the ability to apply for an SEP, therefore the City is not in violation of the agreement.

The remaining arguments fall far outside the scope of this appeal. Under San Clemente Municipal Code Section 17.12.140 E, the scope of review considers the "issues raised on appeal," and the body hearing the appeal may "review new evidence and ... consider all elements of the appealed action." Here, the issue raised on appeal is the City's Community Development Director's determination that the Applicant must apply for an SEP for its freeway orientated signs at the Outlets if such signs are to exceed one square foot of signage per linear foot of building frontage. The elements of the appealed action are: the City's interpretation of the relevant Municipal Code provisions and its application of those Municipal Code provisions to the subject determination that the Applicant must apply for an SEP. Nonetheless, should the Planning Commission be concerned about these other arguments and their impact on this appeal, the City addresses them briefly under Attachment 10.

Based on the above information staff finds that the Outlet's existing MSP does not extend to freeway oriented signs, and that Applicant would need to obtain a SEP to allow freeway oriented signs to exceed the code allowance of one square foot of signage per one linear foot of building frontage.

It should be noted that the fact that the Court invalidated the freeway oriented sign portions of SEP 06-402 due to failure to conduct an adequate CEQA review and that the City Council thus rescinded those portions, merely requires that the Applicant apply for a new SEP which will be subject to a CEQA review, including an environmental impact report. Next, only if the SEP requirements of the applicable SCMC provisions are met—which are highly discretionary criteria requiring findings on how said criteria is met—will the City Council approve an SEP.

### **ENVIRONMENTAL REVIEW**

The proposed appeal is not categorized as a project under CEQA and therefore is not subject to environmental review.

### **ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES**

1. The Planning Commission can concur with staff and find that the applicant does need to apply for a Sign Exception Permit for freeway oriented signs to exceed one square foot of signage per one linear foot of building frontage.

*This action would result in the denial of the appeal, and the applicant could appeal the Planning Commission's decision to the City Council.*

2. The Planning Commission can agree with portions of the appeal.

*The Planning Commission can disagree with staff's interpretation of the Municipal Code and provide clarification or direction to staff. This action would result in modifications being reviewed and incorporated accordingly.*

3. The Planning Commission can approve the appeal.

*This action would result in the Planning Commission determining that the approved Maser Sign Program does permit the freeway oriented signage to be a maximum of 1.5 square feet of signage per linear foot of frontage for primary signs.*

### **RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission deny the appeal and concur that the Applicant requires a Sign Exception Permit if it desires freeway oriented signage to exceed one square footage of signage per one linear foot of frontage.

#### **Attachments:**

1. Resolution
2. Location Map

3. Applicable SCMC provisions 17.16.260 and 17.84
4. Marblehead Coastal Development Agreement
5. Final Ruling by Orange County Superior Court
6. City Council Minutes re Rescinding Portion of SEP 06-402, Resolution, and Agenda Report
7. Existing MSP for Outlets (non-freeway oriented signage)
8. Community Development Director's Decision
9. Appeal filed by the Applicant
10. City's Responses to Applicant's Other Arguments

# ATTACHMENT 1

RESOLUTION NO. PC 17-034

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING APPEAL 17-276, APPEAL OF COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION THAT A SIGN EXCEPTION PERMIT IS REQUIRED FOR A PENDING APPLICATION FOR OUTLETS AT SAN CLEMENTE TO EXCEED THE APPLICABLE CODE REQUIREMENT OF ONE SQUARE FOOT OF SIGNAGE PER LINEAR FOOT OF BUILDING FRONTAGE, LOCATED AT 101 WEST AVENIDA VISTA HERMOSA

WHEREAS, per the 1998 Development Agreement between the City and the developer of The Outlets of San Clemente ("Outlets"), the Outlets can utilize the sign code in place at the time of the approval of the Development Agreement. The applicable sign code permits freeway oriented signage with the approval of an Sign Exception Permit ("SEP"). The applicable sign code also only allows 1.0 square feet of signage per foot of building frontage. The Outlets site is located in the Commercial land use designation of the Marblehead Coastal Specific at 101 West Avenida Vista Hermosa. The site's legal description is Tract 8817, Lot 327, and Assessor's Parcel Number (APN) 691-442-13; and

WHEREAS, on February 20, 2007, the City of San Clemente ("City") City Council approved the freeway oriented signage portion of Sign Exception Permit 06-402 ("SEP 06-402") for the Outlets. At the same time, the City Council also approved a Master Sign Program ("MSP") for the Outlets, which contained a provision stating that "[t]enants [of the Outlets] are permitted a maximum primary sign area that is calculated at 1.5 square feet of signage per foot of building frontage"; and

WHEREAS, on June 24, 2008, the Orange County Superior Court issued a writ of mandamus ordering the City to set aside its approval of the freeway oriented signage portion of SEP 06-402 since it found that the City did not complete an adequate California Environmental Quality Act (CEQA) review for the proposed sign package as to freeway oriented signs; and

WHEREAS, on July 15, 2008, the City Council rescinded its approval of SEP 06-402 with respect to freeway-oriented signs; and

WHEREAS, on August 16, 2017, the Community Development Director determined that any approvals associated with freeway oriented signage were voided per the June 28, 2008 Court Order and City Council's subsequent rescission of the portion of SEP 06-402 pertaining to freeway oriented signage, and that the Applicant would need to apply for an SEP to have freeway oriented signage exceeding one square foot of signage per one linear foot of frontage; and



WHEREAS, on August 28, 2017 the applicant Villa San Clemente LLC ("Applicant") submitted a notice of appeal of the Community Development Director's determination and it provided the following as the bases of its appeal: "1) Master Sign Program (MSP) was not rescinded, revoked or invalidated by the court. The City would violate the court's final judgment if they take the position that the permit which the Judge left in place is not valid; 2) 1.5 square feet of signage per foot of building frontage remain valid under the MSP; 3) The City Council findings necessary to issue the MSP and SEP 06-402 have been made and are conclusive and have not been rescinded, revoked or invalidated by the court; 4) The "determination" is not proper because it does not apply to any ambiguity in the code, but rather the legal effect of a court ruling; 5) The "determination" violates our federal and state constitutional due process, equal protection and free speech rights; and 6) The determination also violates the Development Agreement, and we will be sending a notice of default if the City persists in this determination which conflicts with the City's obligations under the Development Agreement" ("Appeal 17-276"); and

WHEREAS, the proposed appeal is not categorized as a project under California Environmental Quality Act (CEQA) and therefore is not subject to environmental review; and

WHEREAS, on October 18, 2017, 2017, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the Appeal 17-276, considered written and oral comments, and facts and evidence presented by the Applicant, City staff, and other interested parties.

NOW, THEREFORE, The Planning Commission of the City of San Clemente does hereby resolve as follows:

**Section 1.** Incorporation of Recitals.

The Planning Commission hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Planning Commission as fully set forth in this resolution.

**Section 2.** CEQA Findings.

The proposed appeal is not categorized as a project under CEQA and therefore is not subject to environmental review.

**Section 3.** Appeal Findings

With respect to Appeal 17-276, the Planning Commission finds as follows:

1. The applicable 1998 San Clemente Municipal Code Section 17.84.020.D.a, Sign Area Allowed, states the following purpose and intent:

"The purpose of this section is to regulate the maximum sign area allowed for a site. The intent of these regulations is to make the total sign area allowed for a site. The intent of these regulations is to make the total sign area allowed on a site proportionate to the length of business frontage.

The intent is also to limit the total sign area along any one boundary of a site. Within this subsection, service stations are treated differently than other businesses, in terms of the total sign area permitted, because of the typically limited scale of buildings on a service station site."

2. Section 17.84.020.D.b.i. requires the following maximum sign area allowed per site, "For nonresidential buildings, one square foot of sign allowed for each lineal foot of all business façade." The Applicant is proposing 1.5 square feet of signage per linear foot of building façade for freeway oriented signage.
3. Section 17.84.020.D.c, states that the maximum sign area oriented toward any one property line of a site or common parking area, pedestrian space, or driveway shall be limited as follows, "For nonresidential buildings, one square foot of sign allowed for each lineal foot of adjacent building elevation. The Applicant is proposing up to 1.5 square feet of signage per linear foot of adjacent build elevation for freeway oriented signage.
4. Section 17.16.260C.2- states that a Sign Exception Permit is required for any sign or signs that exceed the individual sign area allowed, as listed in Section 17.84.020, General Regulations, and in the Sign Matrix, Section 17.84.030(C), Matrix of Sign Types. The Applicant is proposing 1.5 square feet of signage per lineal foot of all building façade for freeway oriented signage and therefore requires a Sign Exception Permit.
5. The portions of Sign Exemption Permit 06-402 on freeway oriented signs was invalidated by the Orange County Superior Court and thus were rescinded by the City Council, and thus no approvals exist for freeway oriented signs at the Outlets in its MSP.
6. The Applicant will need to apply for a new SEP to have freeway oriented signage exceeding one square foot of signage per one linear foot of frontage, which is subject to CEQA environmental review and consideration by the City to determine whether all discretionary criteria are met to approve the SEP.
7. The remaining issues submitted in the notice of appeal are outside of the scope of this appeal and are not under the purview of this reviewing body.

#### Section 4. Planning Commission Denial

Based on the foregoing recitals and findings above, and the written and oral comments, facts, and evidence presented, the City of San Clemente Planning Commission denies Appeal 17-276, Appeal of Community Development Director's determination, subject to the above Findings.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on October 18, 2017.

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Chair

**CERTIFICATION:**

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on October 18, 2017, carried by the following roll call vote:

AYES:            COMMISSIONERS:  
NOES:            COMMISSIONERS:  
ABSTAIN:        COMMISSIONERS:  
ABSENT:         COMMISSIONERS:

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Secretary of the Planning Commission

APPEAL 17-280, APPEAL OF DENIAL OF TEMPORARY BANNER PERMIT RENEWAL APPLICATION FOR OUTLETS AT SAN CLEMENTE LOCATED AT 101 WEST AVENIDA HERMOSA.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

D. 101 West Avenida Vista Hermosa – Appeal 17-276 - Appeal of the Marblehead Outlet Signs Master Sign Program (Gregg)

Public Hearing to consider an Appeal filed by the Craig Reality Group concerning the Community Development Director's decision that the proposed Master Sign Program application for freeway oriented signs requires a Sign Exception Permit.

Presentations:

Madison Spach, of Spach, Capaldi & Waggaman, LLP, representing Villa San Clemente, LLC, the applicants, narrated a handout entitled, "Appeal of action of Community Development Director, Villa San Clemente, LLC," dated October 18, 2017. Hard copies of the presentation were distributed to the Planning Commission. In August 2017, the Community Development Director notified Villa San Clemente that the Master Sign Permit (MSP) for Villa San Clemente was invalidated because it was "subject to" Sign Exception Permit (SEP) 06-402. SEP 06-402, approved by the City Council in 2007, was invalidated by the Superior Court in 2008 due to the City's failure to perform appropriate environmental review of the freeway-oriented signs and subsequently set aside by the City Council. SEP 06-402, before being invalidated, granted exceptions to freeway signage, including length of signage (1.5 square foot of signage per lineal foot instead of 1 foot). The applicant maintains that the Community Development Director does not have the authority to void the City Council-approved MSP. He requested the Commission overturn the Community Development Director's determination that the MSP is invalid and return the project to the same status it had before the email was sent.

City Planner Gregg narrated a PowerPoint Presentation entitled, "Appeal 17-276" dated October 18, 2017. A copy of the Presentation is on file in Planning Division.

Cecelia Gallardo-Daly, Community Development Director, noted the issue of freeway signage came about during a Design Review Subcommittee meeting, when the applicant stated that oversized freeway oriented signage was still a part of the existing MSP and entitled. She researched the 2007 and 2008 actions and determined that all the freeway-oriented signage for the project was rescinded when SEP 06-402 was invalidated. The applicant would need to apply for and the City Council would need to approve a new and separate SEP to allow freeway oriented signs to exceed SCMC Section 17.84.020 (D) mandate of one square foot of

signage per lineal foot of building frontage, façade, or adjacent building elevation. The provisions of the MSP for the Villa San Clemente signage that were not freeway oriented were maintained and are in place today.

Matt Silver, counsel for staff, discussed language in the writ ordered by the Superior Court. The writ does not indicate that a SEP is not required when an applicant wants an exception to the City's code, it states that the SEP is invalid because the environmental review was not adequate. If the Commission does not require an SEP for any new signage proposed that deviates from the Municipal Code language in effect at the time the project was approved, the Commission would potentially be afoul of the writ and go against the existing environmental documentation for the project.

Public Comment:

Chair Brown opened the public hearing, announced receipt of two letters on the dais this evening regarding this item. One dated October 18, 2017, from Spach, Capaldi & Waggaman, LLP opposed to the Community Development Director's determination to invalidate the project's MSP and one dated October 18, 2017, from Richard Boyer, resident, opining that the Court's invalidation of SEP 06-402, and City Council's subsequent action to rescind its approval, precludes the applicant from installing freeway signage.

Richard Boyer, resident, supported the Community Development Director's decision and provided a history of the applicant's freeway signage. In 2007 the City Council approved the freeway signage under pressure from the applicant and a lawsuit was filed by San Clemente Citizens for Integrity in Government ("Citizens") to challenge the approval. In 2008, the City was ordered to "set aside and void" its approval of a Sign Exception Permit for freeway oriented signage.

Chair Brown closed the public hearing.

City Planner Gregg explained that the City's Zoning Ordinance requires a MSP for any development with more than 4 signs. At the time of the approval, the City's Municipal Code had a process to allow freeway signage with an SEP. Additionally, an SEP is required if an applicant requests to install oversized signage. In 2007, the City Council approved the SEP along with the MSP. The Citizens took the City to court to challenge the approval, and the Court ordered the City to rescind its approval of the section of the SEP that pertained to freeway oriented signage, finding that the City did not complete an adequate environmental review for the freeway-oriented signage package. The MSP for the project's interior signs is still valid. A new SEP for freeway-oriented oversized signage was submitted in 2016. The applicant asserts that Villa

San Clemente has the right to install oversized signage based on the MSP and is challenging the City's determination that the Court and subsequent City Council's invalidation of the SEP also voided its right for oversized signage. The applicants are challenging the Community Development Director's authority to make this determination and asking the Commission to find that the determination is invalid and should be overturned.

Rebuttals:

Steve Knoblock, attorney for appellant, commented that the Court made the decision to invalidate the SEP due to inadequate environmental review, and the City Council, in invalidating the SEP, was responding to the Court's decision. The City did not appeal the Judge's decision, and Villa San Clemente was not a party to the suit.

Madison Spach clarified that Villa San Clemente is not asking for additional rights, but are asserting that the Development Agreement and MSP entitles them to 1.5 feet of signage per 1 linear foot of building façade. They are requesting that the Commission determine that the Community Development Director does not have the authority to make a determination on the project's original MSP and subsequent actions by the City Council.

During discussion the Commissioners, either individually or in agreement, provided the following commentary:

- Questioned the City Council's action in 2008 to rescind only the portions of the MSP that deal with freeway signage rather than the entire SEP.
- Stated that although the SEP is still in existence and was not struck down in its entirety, it has no purpose and no entitlements for freeway oriented signage for the project.
- Established from staff that the MSP is still valid, as well as a separate SEP that was granted to allow oversized interior signage for the project.
- Established from staff that language in the subject email indicating that the MSP was invalidated when SEP 06-402 was invalidated could have been clarified to state "MSP as it relates to freeway signage" so as not to give the applicant the impression that the Community Development Director was indicating that the entire MSP had been invalidated.

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY VICE CHAIR CRANDELL AND CARRIED 5-0-2, WITH COMMISSIONER RUEHLIN AND COMMISSIONER SMITH ABSTAINING, TO ADOPT RESOLUTION NO. PC 17-034, A RESOLUTION OF THE PLANNING

COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING APPEAL 17-276, APPEAL OF COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION THAT A SIGN EXCEPTION PERMIT IS REQUIRED FOR A PENDING APPLICATION FOR OUTLETS AT SAN CLEMENTE TO EXCEED THE APPLICABLE CODE REQUIREMENT OF ONE SQUARE FOOT OF SIGNAGE PER LINEAR FOOT OF BUILDING FRONTAGE, LOCATED AT 101 WEST AVENIDA VISTA HERMOSA.

Amended as follows:

Page 1, resolution title amended to replace "DENYING APPEAL 17-276" WITH "AFFIRMING IN PART AND DENYING IN PART APPEAL 17-276"

Page 2, 3<sup>rd</sup> paragraph, delete the second "2017"

Page 3, 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence, replace "bindings" with "buildings"; replace "fac[ade]" with "façade"; 7<sup>th</sup> paragraph, insert "3 to 6" between "issues" and "submitted"; last paragraph, replace "denies Appeal 17-276" with "denies in part and affirms in part Appeal 17-276"

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

**9. NEW BUSINESS**

None

**10. OLD BUSINESS**

None

**11. REPORTS OF COMMISSIONERS/STAFF**

- A. Tentative Future Agenda
- B. Zoning Administrator Minutes of 10-4-17
- C. Staff Waiver 17-318

Commissioner Talley announced he will not be present at the Commission's regular meeting of November 8, 2017.

Commissioner Wu announced he will not be present at the DRSC meeting of October 25, 2017; it was established that Vice Chair Crandell and Commissioner Blackwell will be attending the October 25, 2017, DRSC meeting.

**12. ADJOURNMENT**

IT WAS MOVED BY VICE CHAIR CRANDELL, SECONDED BY COMMISSIONER RUEHLIN, AND UNANIMOUSLY CARRIED TO ADJOURN

## Attachment 3

3. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed;
  4. The design and materials of the sign provide a contrast between the background and letters;
  5. If a freestanding sign is included in the sign application, the design, scale or location of the building dictates the use of freestanding signs, rather than building-mounted signs;
  6. If a pole sign is included in the sign application, the design, scale or location of the building dictates the use of a pole sign rather than a monument sign;
  7. For Master Sign Programs:
    - a. The provisions of the Master Sign Program ensure consistency in design and style of all new signs,
    - b. The provisions of the Master Sign Program address compatibility of the design and style of any existing signs on the building or site, and
    - c. All new signs within the Master Sign Program are in compliance with the design standards of this chapter.
- G. Appeals.** An appeal of the action upon a Discretionary Sign Permit shall be reviewed in accordance with Section 17.12.140, Appeals of an Action.
- H. Modifications Requested by the Applicant.** Modifications requested by the applicant to approved Temporary Use Permits shall be reviewed in accordance with Section 17.12.180, Modifications of an Approved Application.
- I. Modifications and/or Revocations Initiated by the City.** The City may make changes or revoke the approval of applications when conditions of approval are violated, it is necessary to resolve a nuisance, and/or when the application contained incorrect, false, or misleading information. Refer to Section 17.12.175 for related procedures and required findings.
- J. Other Review Requirements.** Refer to Chapter 17.12, Development Review Process, for general application processing requirements, such as time limits on approvals and time extensions. (Ord. 1314 § 12, 2006; Ord. 1172 § 3 (part), 1996)  
(Ord. No. 1561, § 3(Exh. A, § 8), 11-27-2012; Ord. No. 1575, § 23(Exh. A, § 23), 12-3-2013; Ord. No. 1594, § 3(Exh. A, § 20), 5-5-2015)

### **17.16.260 Sign Exception Permits**

- A. Purpose and Intent.** The intent of this section is to establish a procedure for granting exceptions to the strict application of the size, number, height, length and locational requirements for signs in this chapter. The granting of a Sign Exception Permit requires findings to be met based on a site's or business' unique location or orientation in order to achieve adequate sign visibility.



**B. Authority.** The Planning Commission is the final authority on Sign Exception Permits, subject to the concurrent review and appeal provisions of Section 17.12.090, Consideration of Concurrent Applications, and 17.12.140, Appeals of an Action.

**C. Applicability.** A Sign Exception Permit is required for the following:

1. Any sign that exceeds the maximum standards, as listed in the Sign Matrix, Section 17.84.030(C), Matrix of Sign Types;
2. Any sign or signs that exceed the individual sign area allowed, as listed in Section 17.84.020, General Regulations, and in the Sign Matrix, Section 17.84.030(C), Matrix of Sign Types;
3. Any business or site that exceeds the maximum sign area allowed, as listed in Section 17.84.030, Specific Regulations by Sign Type;
4. Any sign that exceeds the permitted sign height;
5. Any business, building or site that exceeds the maximum number of signs permitted;
6. Any freeway-oriented sign, except for change of copy;
7. Any sign exceeding 75 percent of the length of the business façade.

**D. Submittal Requirements.** Please refer to the submittal requirements in Section 17.12.040, Filing an Application, and Section 17.12.060, Applications Requiring Additional Information.

**E. Application Filing, Processing, and Review.**

1. **Application Filing.** The review process is initiated when the Planning Division receives a complete application package. The application package shall include the required information and materials specified in the application and any additional information required by the City Planner or review authority to conduct a thorough review of the proposed project.
2. **Application Review.** Each application shall be reviewed to ensure that proposals are consistent with the purpose of this chapter; applicable development standards, policies, regulations, and guidelines.
  - a. **Development Management Team Review.** The Development Management Team reviews an application to determine if it is complete and complies with applicable development standards, policies, regulations, and guidelines. Within 30 calendar days of application filing, the applicant is notified if their application is complete or if information is needed to complete the application and resume the review

process. The Development Management Team also makes comments and recommendations to provide helpful information to applicants and notify them when a proposal does not comply with development standards, policies, regulations, and guidelines.

- b. **Environmental Review.** After an application is complete, the project shall be reviewed in compliance with the California Environmental Quality Act and determine if environmental studies are required. If studies are required, then they shall be conducted at the applicant's expense, which may involve the selection of a consultant.
- c. **Design Review Subcommittee Review.** The Design Review Subcommittee shall review applications. The Design Review Subcommittee is an advisory body that reviews design issues and provides a recommendation to the review authority per procedures in Section 17.12.025.

### 3. Public Hearing and Appeal Provisions.

- a. Public hearing is required. A public hearing and notification shall be conducted in compliance with Section 17.12.100.
- b. The review authority shall review the proposed project and approve, approve with conditions, or deny the application at a public hearing based on an ability to meet required findings.
- c. The review authority's decision may be appealed per Section 17.12.140.

### F. Required Findings. Prior to approval of a Sign Exception Permit, all of the following findings shall be made:

1. There are unique or unusual circumstances relating to the size of the site or business, shape of the site or business, location and orientation of the site or business, visibility of the site or business, proximity to street frontage or length of street frontage that do not allow the site or business to achieve the goals and objectives of this chapter for adequate business identification.
2. The granting of the sign exception permit is not contrary to the intent of the General Plan, Design Guidelines, relative specific plan or Architectural Overlay District in which the sign exception is proposed.
3. The granting of a Sign Exception Permit is not considered a grant of special privileges inconsistent with the limitations of other similarly situated properties.
4. The granting of a Sign Exception Permit does not create a traffic or safety hazard.

5. The granting of a Sign Exception Permit does not adversely impact surrounding properties by increasing light, glare or noise.
6. For freeway-oriented signs:
  - a. The location of the site dictates the need for a freeway-oriented sign to allow adequate business identification.
  - b. The design, scale, materials and location of the freeway-oriented sign provides necessary business identification to motorists on the freeway without creating adverse visual impacts.
  - c. The design, scale and materials of the signs harmonize with the architectural design of the building it serves and are complimentary to the City's image as viewed from the freeway.
  - d. The design and scale of the signs is appropriate to the distance from which the signs are normally viewed from the freeway.
  - e. If applicable, the design, scale and location of the building dictates the use of a freestanding, freeway-oriented sign, rather than a building-mounted, freeway-oriented sign.
- G. **Appeals.** An appeal of the action upon a Sign Exception Permit shall be reviewed in accordance with Section 17.12.140, Appeals of an Action.
- H. **Modifications Requested by the Applicant.** Modifications requested by the applicant to approved Temporary Use Permits shall be reviewed in accordance with Section 17.12.180, Modifications of an Approved Application.
- I. **Modifications and/or Revocations Initiated by the City.** The City may make changes or revoke the approval of applications when conditions of approval are violated, it is necessary to resolve a nuisance, and/or when the application contained incorrect, false, or misleading information. Refer to Section 17.12.175 for related procedures and required findings.
- J. **Other Review Requirements.** Refer to Chapter 17.12, Development. Review Process, for general application processing requirements, such as time limits on approvals and time extensions. (Ord. 1172 § 3 (part), 1996)  
(Ord. No. 1594, § 3(Exh. A, § 21), 5-5-2015)

## CHAPTER 17.84 SIGN REGULATIONS

### Sections:

- 17.84.010 Administration.
- 17.84.020 General Regulations.
- 17.84.030 Specific Regulations by Sign Type.

### 17.84.010 Administration.

- A. **Purpose and Intent.** The purpose and intent of this chapter is to establish regulations for signs. The City recognizes the need for signs to identify businesses and properties within the community. The City also recognizes that signs are an important design element of the physical environment which serve to express the individuality of the business as well as the character of the community. Sign regulations which implement the City's goals and objectives are necessary. These sign regulations will help ensure both individual expression and an attractive community character.

The City's goals are to protect and enhance the City's historical, nonhistorical and residential character, as well as to enhance the City's economic base. These goals are accomplished through approving appropriately designed signs, controlling the size, location and maintenance of the signs, eliminating visually conflicting and competing sign displays and avoiding potential traffic and pedestrian safety hazards.

The City has determined these goals are best served by following the specific objectives set forth below. It is anticipated that these objectives and associated regulations will contribute to the economic viability of the City and its overall attractiveness to the residents, visitors and businesses. The City thereby establishes the following objectives:

1. To implement sign design standards that are consistent with the City's General Plan;
2. To present a set of reasonable, content-neutral, sign standards and procedures that enable fair and consistent enforcement;
3. To facilitate the improvement and protection of the environment by prohibiting misuse of certain signs and ensuring information is presented safely and effectively;
4. To promote a high quality business environment by assuring that signs are complementary to the City's goals for historic preservation and quality urban design;
5. To ensure that signs are carefully designed, aesthetically pleasing, appropriately maintained, and professional in appearance;

6. To invite artistry and innovation in signs while maintaining and improving the appearance of buildings and neighborhoods in which they are placed;
  7. To reduce possible traffic and safety hazards through reduced sign clutter, the elimination of unauthorized signs in the public right-of-way, and minimizing visual competition among signs;
  8. To minimize the visual and lighting impacts of business signs on adjacent residential neighborhoods.
- B. Clarification of Ambiguities/Interpretations.** If ambiguity arises within the meaning and intent of this chapter, or if ambiguity exists with respect to any standards, requirements or enforcement as set forth herein, the ambiguity shall be resolved in accordance with Section 17.04.040, Interpretations, of this title.
- C. Relationship to Other Applicable Documents Including Local and State Regulations.** In addition to the provisions discussed in this chapter, there are other City and State regulations that may also apply depending on the specific sign and/or its location. These other regulations include, but are not limited to, the State Highway Code, Business and Professions Code, and Civil Code, as well as the City's Design Guidelines, Master Landscape Plan for Scenic Corridors and the applicable specific plan. The applicable specific plan may include additional sign standards and regulations beyond those of this chapter. If the specific plan is silent regarding certain sign standards, the regulations of this chapter shall prevail. Uniform Building and National Electrical Codes may also apply, when Building and Electrical Permits are required.
- D. Appeals.** Any appeal of a decision made pursuant to this chapter shall be processed in accordance with Section 17.12.140, Appeals of an Action, of this title.
- E. Sign Violations.**
1. **Enforcement by Person Appointed by the City Manager.** It shall be the duty of the person appointed by the City Manager to enforce the provisions of this ordinance pertaining to the use of signs and the erection, construction, reconstruction, moving, alteration or addition to any signs, abandoned, or unmaintained signs or any violation of this chapter. Any permit or license of any type issued by any department or officer of the City in conflict with the provisions of this chapter is declared to be null and void.
  2. **Public Nuisance and Enforcement.** Any sign erected, constructed, altered, enlarged, converted, or moved contrary to the provisions of this ordinance, and any illegal, abandoned, or unmaintained signs contrary to the provisions of this ordinance, are hereby declared to be public nuisances; refer to Section 8.52.110, Abatement by City, of this code.

- F. Removal of Temporary Signs by Unauthorized Persons—Prohibited.** Except as provided below, no person other than those authorized by Section 17.84.010(E)(1) shall remove any temporary sign from any property not owned or leased by that person, including any temporary sign within a public right-of-way. The above notwithstanding, a person not otherwise authorized by Section 17.84.010(E)(1) may remove temporary signs placed within the public right-of-way on property owned or leased by that person. (Ord. 1245 § 1, 2000; Ord. 1172 § 3 (part), 1996)

**17.84.020 General Regulations.**

- A. Purpose and Intent.** The purpose of these general regulations is to define the parameters for design, size, height and location of signs. The requirements related to the number, design type and size of signs outlined in this chapter are intended to be maximum standards which do not necessarily ensure compatibility with building architecture, the neighborhood and the community appearance. Consideration shall be given to the sign's relationship to the overall appearance of the subject property and surrounding area.
- B. General Design Standards.**
1. Construction of Signs.
    - a. Signs shall be constructed as to not obstruct line of sight for pedestrians, bicyclists or vehicular drivers.
    - b. All permanent sign faces shall be constructed of permanent materials including, but not limited to, painted and/or sandblasted wood, ceramic tile, applied letters, carved wood, metal, plastic or other compatible, durable and waterproof material. No material more combustible than treated wood shall be used in the construction of any permanent sign.
    - c. All signs shall be constructed in accordance with all applicable Uniform Building Code and National Electrical Code provisions.
    - d. Sign support hardware shall be of a compatible material and design with the sign it supports and shall compliment the architecture and design of building to which it is affixed. Sign supports of a permanent sign shall be reviewed as part of the sign application.
    - e. Signs shall be designed and oriented to minimize light or glare upon adjacent residential properties and public rights-of-way.
    - f. Sign design, scale, color and materials shall be selected that are compatible in style with the building it serves.

2. Lighting of Signs.

- a. Electrical lines from buildings to signs shall be concealed from public view. Exposed raceways are prohibited.
- b. Light fixtures in planted areas or within support structures shall be screened.
- c. All external lighting shall be directed away from any adjacent residential uses and public rights-of-way.
- d. Internally lighted signs shall be a maximum of 200,000 lumens. Neon lighting may be used as an alternative lighting source.

3. Landscaping.

- a. Landscaped planters shall be required to be installed at the base of all permanent freestanding signs.
- b. The area of the landscaped planter shall be at least equal in size to the area of two sign faces for pole signs and one sign face for monument signs.
- c. All landscaped planters shall be irrigated and landscaped with living plant material. Drought tolerant, low maintenance plants shall be utilized wherever possible.
- d. The type of irrigation required will be dependent on the type of landscaping proposed. Plants requiring extensive watering shall require automatic irrigation systems.
- e. All landscaped planter areas and plant materials shall be maintained in a neat and healthy manner and shall be kept free of all debris and trash.

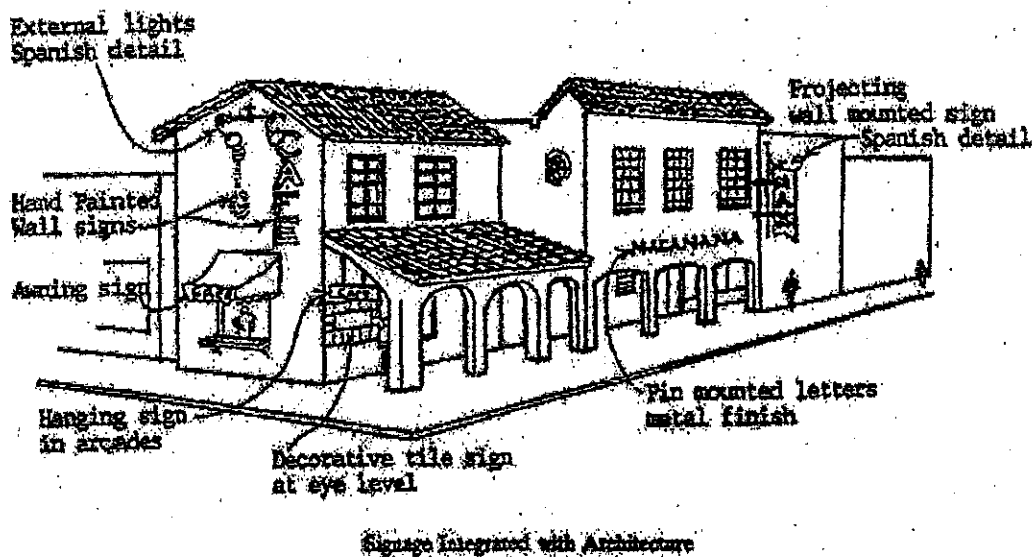
C. **Design of signs within an Architectural Overlay District.** The Architectural Overlay District sign standards are intended to maintain or enhance the character of the area. Public and private buildings have been constructed and maintained in the traditional Spanish Colonial Revival style of architecture. The district emphasizes a pedestrian orientation giving the area a distinct identity. The design, scale, color and materials of signs should be compatible with both the Spanish Colonial Revival style of architecture and the unique character of the district in which the sign is to be located. Therefore, signs within the Architectural Overlay District shall comply with the following additional standards:

1. All signs shall be hand-crafted in appearance.
2. Acceptable sign materials may include, but are not limited to, sandblasted and carved wood, hand-painted, glazed tile, pinned metal or wood letters, or other similar materials. All signs shall be constructed of and mounted and supported with materials

compatible with the Spanish architectural theme including, but not limited to, stained wood supports and accents, trowelled stucco applications, painted terra cotta tiles, ornamental wrought iron, canvas awnings or other similar materials.

3. Signs may be illuminated as follows:
  - a. External lighting (e.g. spot lighting, goose neck lights).
  - b. Back lighting.
  - c. Neon lighting with the approval of a Discretionary Sign Permit per Section 17.16.250.

Figure 17.84.020A



#### D. Sign Area Allowed.

##### 1. Maximum Sign Area Limitations for a Site.

- a. Purpose and Intent. The purpose of this subsection is to regulate the maximum sign area allowed for a site. The intent of these regulations is to make the total sign area allowed on a site proportionate to the length of business frontage. The intent is also to limit the total sign area along any one boundary of a site. Within this subsection, service stations are treated differently than other businesses, in terms of the total sign area permitted, because of the typically limited scale of buildings on a service station site.

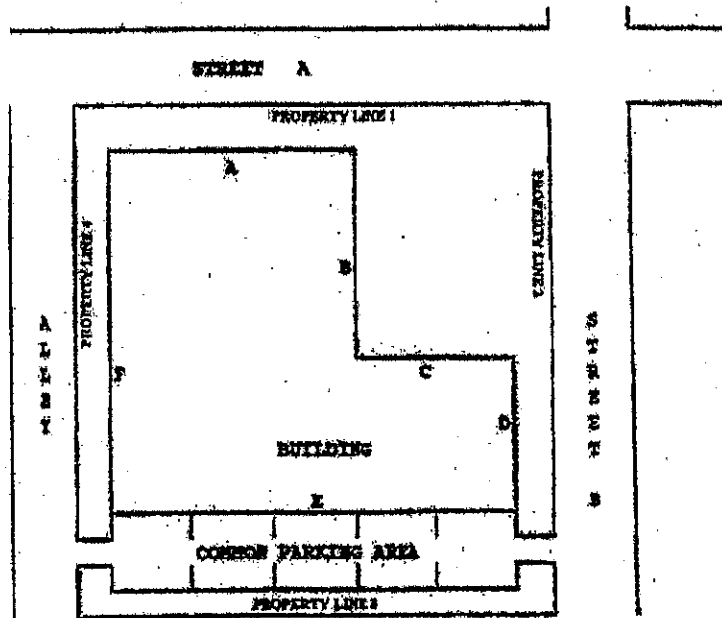


b. Maximum Sign Area Allowed Per a Site.

The maximum sign area allowed for a site shall be as follows:

- i. For nonresidential buildings, one square foot of sign allowed for each lineal foot of all business fac
- ii. For service stations, one square foot of sign area allowed for each lineal foot of street frontage.

Figure 17.84.020B



$A + B + C + D + E \times 1 \text{ sq. ft.} = \text{TOTAL SIGN AREA ALLOWED FOR THIS SITE}$

Elevation F does not count towards total sign area for a site, since it does not face on a street or common parking area.

c. Maximum Sign Area Oriented Toward Any One Property Line of a Site, Common Parking Area, Pedestrian Area, Driveway or Alley.

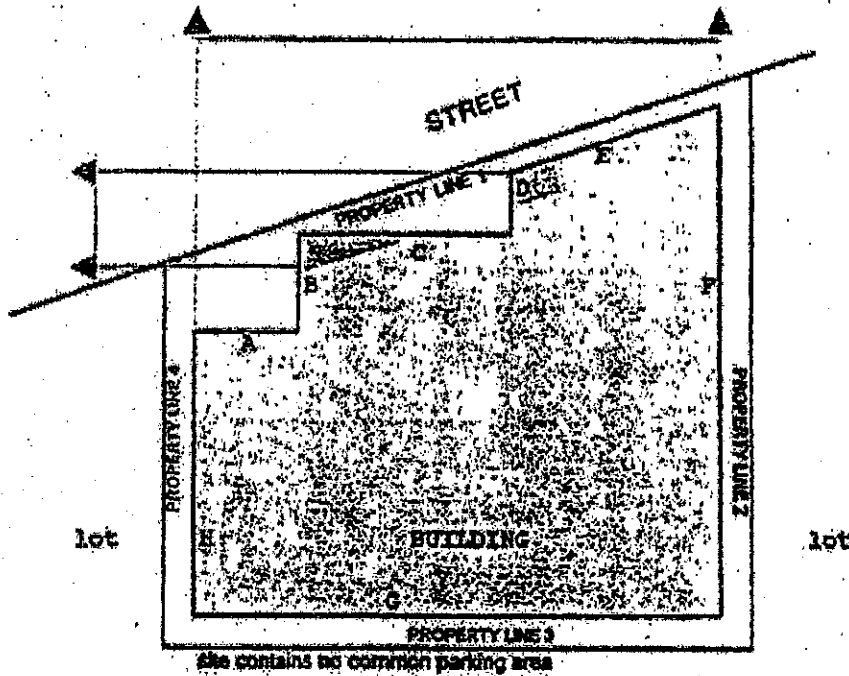
The maximum sign area oriented toward any one property line of a site or common parking area, pedestrian space, or driveway shall be limited as follows:

- i. For nonresidential buildings, one square foot of sign allowed for each lineal foot of adjacent building elevation;

- ii. For service stations, one square foot of sign area allowed for each lineal foot of adjacent street frontage;
- iii. For signs oriented toward alleys, a maximum of one six square foot nonilluminated sign per business shall be permitted.

Figure 17.84.020C

MAXIMUM SIGN AREA AND ORIENTATION ALLOWED FOR A SITE



Total Sign Area Permitted For The Site:

$A + (\text{portion of } B) + C + D + E \times 1 \text{ sq. ft.} = \text{Total sign area for the site;}$   
 elevations F, G, H and a portion of B don't front on a street or common parking area

Total Sign Area That Can Be Oriented Towards a Property Line For The Site:

Property line 1:  $A + \text{portion of } B + C + D + E \times 1 \text{ sq. ft.} = \text{Total}$

Property line 2:  $F \times 1 \text{ sq. ft.} = \text{Total}$

Property line 3:  $G \times 1 \text{ sq. ft.} = \text{Total}$

Property line 4: remaining portion of  $B + H \times 1 \text{ sq. ft.} = \text{Total}$

d. Computation of Sign Area.

- i. Sign Area of Individual Single-Faced Signs. The area of a sign shall be computed based on the entire area within a single continuous perimeter

- enclosing the extreme limits of the sign, including all words, symbols, emblems, representations or other display, together with any material or color forming an integral part of the sign or display. The area of a sign shall also include all nonstructural perimeter trim, but excludes the structures or uprights on which the sign is supported, unless such supports or uprights are designed in a manner so as to form an integral background of the sign.
- ii. **Sign Area of Window Signs.** The area of a window sign shall be the area composed of words, letters, symbols or other display. For maximum window sign area allowed, refer to sign matrix, Section 17.84.030(C) of this chapter.
  - iii. **Sign Area of Multifaced Signs.** Except for monument signs, the sign area for a sign with more than one face shall be computed by adding together the area of all sign faces. For monument signs, when two identical sign faces are placed back to back and not more than three feet apart at all points, the sign area shall be computed by the measurement of only one of the sign faces.
- e. **Maximum Sign Area Allowed Per Sign.** The maximum sign area allowed per sign is 64 square feet.
  - f. **Maximum Length of a Sign Allowed Per Business Façade.** The maximum length of a sign allowed is 75 percent of the length of the business façade.
  - g. **Maximum Sign Area Allowed Per Business.** The maximum sign area allowed per business shall be as follows:
    - i. For signs within an Architectural Overlay district, less than 25 square feet unless a Discretionary Sign Permit is approved.
    - ii. For signs within areas other than an Architectural Overlay district, 64 square feet unless a Discretionary Sign Permit is approved.
- E. Computation for Sign Height.** The height of a sign shall be computed as the distance from the base of the sign at finished grade to the top of the highest attached component of the sign. In the case when the finished grade cannot be reasonably determined, sign height and/or finished grade shall be determined by the City Planner or their designee.
- F. Maintenance of Signs.** If any sign is not maintained free of all defects, including but not limited to cracking, peeling, rusting or other States of disrepair, it shall be the duty of the owner of the sign or the property owner of the business or building to repair, if necessary paint or remove the sign. If the sign is not repaired, painted or removed, the City Planner shall initiate the public nuisance abatement procedures to cause the sign to be repaired, maintained or removed at the expense of the owner of the sign or the property owner of the business or building. Also see Section 17.84.010(E), Sign Violations, of this chapter.

**G. Master Sign Program.**

1. **Purpose and Intent.** The purpose of this section is to establish a procedure to ensure coordination of the design of new signs concurrent with the design of the project. The intent is to improve the architecture, streetscape, signs and overall aesthetics of the site. A Master Sign Program provides a clear understanding of what the standards are for new and existing signs on the site. A Master Sign Program will also provide for consistent and streamlined review, approval and administration of existing and new signs for the site. A Master Sign Program requires a Discretionary Sign Permit.
2. **Applicability.** A Master Sign Program shall be required for the following:
  - a. Any existing single-tenant building on which the owner proposes to add and/or modify four or more signs;
  - b. Any new nonresidential building;
  - c. Any new commercial project with multiple buildings;
  - d. Any gas/service station that proposes new signs or modifications to existing signs, except as allowed by State law;
  - e. Any existing building on which the owner proposes to add and/or modify four or more signs.
  - f. Any existing building on which the owner proposes to add and/or modify fewer than four signs will be reviewed by the Planning Commission, at the owner's request.
3. **Exemptions.** Subsequent signs installed that are part of a previously approved Master Sign Program and are consistent with the provisions of that Master Sign Program shall require an Administrative Sign Permit but shall be considered exempt from Discretionary Sign Permit Review.
4. **Application.** Applications for a Master Sign Program shall be made in writing on the Discretionary Sign Permit application form provided by the Planning Division and submitted to the Planning Division along with the required fees.

**H. Removal of Signs.** The City shall require removal of any sign, at the owners' expense and without compensation, that meets any of the following criteria.

1. Any sign erected without first complying with all ordinances and regulations in effect at the time of its construction, erection or use;

2. Any sign which was lawfully erected, but whose use has ceased, or the structure upon which the sign has been abandoned by its owner, for a period of not less than 90 days;
  3. Any sign which has been more than 50 percent destroyed, and the destruction is other than facial copy replacement, and the sign cannot be repaired within 30 days of the date of its destruction;
  4. Any sign whose owner seeks relocation thereof and relocates the sign;
  5. Any sign that is temporary;
  6. Any sign for which there has been an agreement between the sign owner and the City, for its removal as of any given date;
  7. Any sign whose owner, outside a change of copy, requests permission to remodel and remodels that sign, or expand or enlarge the building or land use upon which the sign is located, and the sign is affected by the construction, enlargement or remodeling, or the cost of construction, enlargement or remodeling of the sign exceeds 50 percent of the cost of the reconstruction of the building;
  8. Any sign which is or may become a danger to the public or is unsafe;
  9. Any sign which constitutes a traffic hazard not created by a relocation of streets or by acts of the City or County. (Ord. 1314 §§ 65—67, 2006; Ord. 1308 §§ 15—16, 2006; Ord. 1172 § 3 (part), 1996)
- (Ord. No. 1561, § 3(Exh. A, §§ 30, 31), 11-27-2012)

**17.84.030 Specific Regulations by Sign Type.**

- A. **Purpose and Intent.** The purpose of this section is to identify the specific sign standards relating to sign type, sign size, number of signs, height of signs, location of signs, general provisions and the Sign Permits required.
- B. **General Notes.** The following general notes shall apply to all signs listed in the following matrix, unless otherwise indicated:
  1. Signs that require Administrative or Discretionary Sign Permits are indicated in the following matrix. Other sign characteristics besides those indicated in the following matrix may also require administrative or discretionary review.
  2. Signs may be governed by other sections of this code and those sections shall also apply. If there is a conflict in regulations, the most restrictive shall apply.
  3. Change of copy to an existing sign that is identical in sign area, sign size, sign type, location and materials requires an Administrative Sign Permit.

17.84.030

4. Any change to an existing sign other than a change of copy as defined above requires compliance with the provisions of this chapter. For removal of signs, refer to Section 17.84.020(H), Removal of Signs, of this chapter.
5. All temporary signs are prohibited in the public right-of-way unless otherwise authorized by this chapter.
6. All signs listed, unless exempt from both Administrative and Discretionary Sign Permits, will count towards the total allowable sign area.
7. For Master Sign Programs, see Section 17.84.020(G), Master Sign Program, of this chapter.
8. For size of signs, see Section 17.84.020(D), Sign Area Allowed, of this chapter.
9. For height of signs, see Section 17.84.020(E), Computation for Sign Height, of this chapter.
10. For signs overhanging the public right-of-way, see Section 17.84.030(E), Permanent Signs Encroaching into Public Right-of-Way, of this chapter.
11. For sign exceptions, see Section 17.16.260, Sign Exception Permits, of this title.
12. Fascia signs cannot extend more than 18 inches above the lower edge of a sloping roof.
13. Unless otherwise permitted pursuant to this chapter, no person shall display or cause to be displayed any sign on, within or over any public street or right-of-way or public property in the City.
14. Unless otherwise permitted pursuant to this chapter, no person shall display or cause to be displayed any sign on, within or over any private property in the City without the written consent of the owner, lessee or other person lawfully in possession of the property.
15. Except as expressly permitted or authorized in this chapter, all other signs are prohibited within the City.

**Table 17.84.030A**  
**Matrix of Sign Types**

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
					These are special considerations required for the specific type of sign proposed.
Address Signs	2 per unit	4 sq. ft.	—	None	Character Height Max: Res: 8 in. Non-Res: 1 ft.
Ancillary Service Signs	5 per business	2 sq. ft. per sign	—	None	Ancillary service signs must be affixed to building, wall, window.
Animated Signs	Prohibited				
Arcade Signs	—	64 sq. ft. outside an Architectural Overlay District, less than 25 sq. ft. within an Architectural Overlay District.	—	Adm. Sign Permit	Sign must provide minimum of 8 ft. clearance between bottom of sign and sidewalk.
	—	Between 25 sq. ft. and 64 sq. ft. within an Architectural Overlay District	—	Adm. Sign Permit, and Discretionary Sign Permit	



Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
ATM Signs	2	5 sq. ft. per ATM	—	Adm. Sign Permit, in conjunction with Building Permit	Signs permitted on ATM machine only and may be lighted.
Awning signs	—	64 sq. ft. outside and Architectural Overlay District, less than 25 sq. ft. within an Architectural Overlay District	—	Adm. Sign Permit	Sign must provide minimum of 8 ft. clearance between bottom of sign and sidewalk.
		Between 25 sq. ft. and 64 sq. ft. within an Architectural Overlay District		Adm. Sign Permit, and Discretionary Sign Permit	
Balloon Signs	Prohibited				
Banner Signs	One per business	64 sq. ft.	—	Temporary Banner Sign Permit	See Section 17.84.030(H) for criteria.
Bed and Breakfast Signs: Within a Residential Zone	Refer to Section 17.28.090, Bed and Breakfast Inns, of this title				
Bed and Breakfast Signs: Outside a Residential Zone	Refer to specific sign type proposed				

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Blade Signs	One (1) per tenant street and pedestrian way frontage; no more than two (2) per tenant (See Section 17.84.030(G))	Six (6) square feet	Fifteen (15) feet from ground to the top of sign	Adm. Sign Permit	See Section 17.84.030(G) for Criteria
Blinking, Flashing Signs	Prohibited				
Business Directory Signs	1 freestanding sign per street frontage.	Freestanding sign: 24 sq. ft	6 ft.	Adm. Sign Permit, and Discretionary Sign Permits for wall mounted business directory signs 25 to 64 sq. ft. within an Architectural Overlay District	Nameplates indicating only the tenant and suite are exempt from these requirements. Residential directory signs are exempt from this requirement.
	1 wall sign per public entrance into building	Wall sign: 64 sq. ft.	—		
Canopy Signs	—	64 sq. ft. outside an Architectural Overlay District, less than 25 sq. ft. within an Architectural Overlay District	—	Adm. Sign Permit	Sign must provide minimum of 8 ft. clearance between bottom of sign and sidewalk.

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
		Between 25 sq. ft. and 64 sq. ft. within an Architectural Overlay District	—	Adm. Sign Permit, and Discretionary Sign Permit	
Channel Letter Signs	Refer to wall sign standards				
Construction Signs	1 per street frontage	12 sq. ft. within a residential zone 24 sq. ft. within a nonresidential zone	4 ft. within a residential zone 6 ft. within a nonresidential zone	None	Signage may only be displayed when building permits are active for the construction project.
Directional Signs	—	—	—	None	Cannot contain advertising.
Drive-Up Menu Board Signs for Drive-Up Food Service	2 per site	32 sq. ft.	6 feet	Adm. Sign Permit Menu board signs require a Conditional Use Permit	Menu board and speakers shall be oriented away from residential uses and from public right-of-way.
Fascia Signs	—	64 sq. ft.	—	Adm. Sign Permit, and Discretionary Sign Permit for signs 25 to 64 sq. ft. within an Architectural Overlay District	

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Flags	3 per site or building	40 sq. ft. per flag	Flag pole may not exceed the height of the zone in which it is located	None	Flag pole may require a Building Permit.
Flag Signs	1 per site or building	40 sq. ft. per flag sign	Flag pole may not exceed the height of the zone in which it is located	Adm. Sign Permit	Flag signs shall count towards total sign area.
Freestanding Signs	Refer to specific sign type				
Freeway-Oriented Signs	—	64 sq. ft.	Pole sign: 15 ft.	Adm. Sign Permit, and Sign Exception Permit for all freeway-oriented signs	State codes also regulate freeway oriented signs.
		64 sq. ft.	Monument sign: 10 ft.		
Garage Sale Signs	1 per site	4 sq. ft.	—	None	Must be posted on site and removed no later than the day after the sale. No off-site signs allowed.

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Grand Opening Signs	1 per site	4 sq. ft.	—	Temp. Banner Permit	Will not count toward banner allowance during calendar year. May be displayed for a maximum of 30 days. The application for a Temp. Banner Permit must accompany a new business license application or new certificate of occupancy.
Hand Held Signs	Prohibited				
Marquee Signs	1 per building frontage	64 sq. ft.	The sign shall not exceed the height of the building upon which the sign is located.	Adm. Sign Permit, and Discretionary Sign Permit for marquee signs 25 to 64 sq. ft. within an Architectural Overlay District	Marquee signs may be allowed for uses such as entertainment, churches, temples or other similar uses that require interchangeable copy.

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Model Home Complex Signs	Determined through the Conditional Use Permit process for model home complex, maximum 3 flags per model.	Determined through the Conditional Use Permit process	15 ft. for flag signs	Adm. Sign Permit	Signs must be removed upon buildout of subdivision. Signs for model home complex shall also require a Conditional Use Permit.
Monument Signs	1 monument sign per street frontage, 1 additional sign for sites with more than 150 ft. of street frontage	64 sq. ft.	10 ft.	Adm. Sign Permit, and Discretionary Sign Permit for monument signs which are: over 6 feet in height up to 10 feet, over 24 sq. ft. (per face) for a single-tenant monument sign, over 32 sq. ft. (per face) for a multi-tenant monument sign	Only 1 sign face of a monument sign shall count towards overall sign allowance for site.
Moving, Revolving Signs	Prohibited				

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Mural Signs	—	64 sq. ft.	—	Adm. Sign Permit and Discretionary Sign Permit for mural signs 25 to 64 sq. ft. within an Architectural Overlay District	
Noise Making or Audible Signs, Except for Drive-Up Menu Boards	Prohibited				
Nonpermanent Vehicle Signs, Including Semitrailers	Prohibited				
Off-Site, Billboard Signs	Prohibited				

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Open House Signs	1 sign on site plus 5 off-site directional signs. Maximum of 1 sign per intersection directing traffic in same direction.	4 sq. ft.	4 ft.	None	Open house sign shall be allowed only while the open house is in progress, cannot remain over night, cannot be affixed to any public above ground structure (such as utility poles) cannot be placed in the public right-of-way and cannot interfere with traffic.
Permanent Mounted Vehicle Signs	1 per side, 2 sides maximum	64 sq. ft.	—	None	Sign must be painted on the vehicle and the vehicle must be licensed and operable.



Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Project Identification Signs					Project Identification signs shall be reviewed through a Discretionary Sign Permit process.
Residential Permanent Subdivision/ Apartment Complex (5 or more units)/ Mobilehome park Signs	2 per entrance from public right-of-way	24 sq. ft.	6 ft.	Adm. Sign Permit	
Non-Residential	2 per entrance from public right-of-way	64 sq. ft.	6 ft.	Adm. Sign Permit	
Pole Signs	1 per site	64 sq. ft.	15 ft.	Adm. Sign Permit, and Discretionary Sign Permit	
Political Signs	—	12 sq. ft. within a residential zone	4 ft.	None	Sign cannot be located in public right-of-way;

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Political Signs	—	24 sq. ft. within a non-residential zone	6 ft.	None	As required by Subsection (F) of this section, prior to placing a noncommercial sign on vacant or unimproved property, the sign owner must file with the City Clerk a written form signed by the owner, lessee or other person lawfully in possession of the property consenting in writing to the placement of the sign and agreeing to be responsible for

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
					removal within any applicable time period; and the sign shall be located a minimum of three feet behind the sidewalk or, if no sidewalk exists, a minimum of eight feet behind the back of the curb or edge of the roadway; and the sign shall be removed within three days after the election; and the sign complies with all other design criteria established by this code.
Portable Signs	Maximum of 1 sign per business, and a maximum 2 signs per building for multi-tenant buildings	6 sq. ft. per side, 2 sides maximum	4 ft. for portable signs not flush against building. 6 ft. for portable signs flush against the building	Adm. Sign Permit	Refer to portable sign Section 17.84.030(D), Portable Signs. Sign cannot encroach into public right-of-way.

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Projecting Signs	1 per business	64 sq. ft.	—	Adm. Sign Permit, and Discretionary Sign Permit for signs 25 to 64 sq. ft. within an Architectural Overlay District	Sign must provide minimum of 8 ft. clearance between bottom of sign and sidewalk. Cannot project more than 2 ft. from wall to which it is affixed.
Real Estate Signs: Other than Open House Signs	1 per building or site	24 sq. ft. if within a commercial zone. 12 sq. ft. if within a residential zone	Freestanding sign: 6 feet	None	Cannot be lighted; must be located on-site; sign area of the real estate sign shall not count towards total sign area permitted for the site. Signage may only be displayed when real estate is actively on market for sale, lease, or rent.
Recycling Facility Signs	Refer to Section 17.28.250, Recycling Facilities, of this title.				
Roof-Mounted Signs	Prohibited				
Security Signs	1 per unit	2 sq. ft.	—	None	

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Service Station Signs	Canopy sign: 2 signs maximum and 1 sign maximum per elevation	24 sq. ft.	—	Adm. Sign Permit, and Discretionary Sign Permit	Price signs regulated by State.
	Spanner sign: 1 per pump island (may be 2-sided)	24 sq. ft.	—		
	Monument sign: 1 per lot frontage	32 sq. ft.	6 ft.		
	Pole sign: 1 per site	32 sq. ft.	15 ft.		
Shingle Signs	—	64 sq. ft. outside an Architectural Overlay District, less than 25 sq. ft. within an Architectural Overlay District	—	Adm. Sign Permit	Sign must provide minimum of 8 ft. clearance between bottom of sign and sidewalk.
		Between 25 sq. ft. and 64 sq. ft. within an Architectural Overlay District		Discretionary Sign Permit	
Snipe Signs	Prohibited				

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Special Event Signs	—	—	—	Adm. Sign Permit	Shall not be installed 30 days prior to the event, and shall be removed within 2 days after event. Cannot create a traffic hazard.
Umbrella Sign	—	—	1' copy	Adm. Sign Permit	Umbrellas shall be made of fire-retardant material. Copy area shall not count towards overall sign area for business and site.
Wall Sign	—	64 sq. ft.	—	Administrative Sign Permit Discretionary Sign Permit for signs 25 to 64 sq. ft. within an Architectural Overlay District	Wall signs must be permanently affixed to the building.
Wind Driven Signs	Prohibited				
Window Sign Under 25% of Individual Window	—	Less than 25% of individual window	—	None	

Sign Type	Maximum Number of Signs Permitted	Maximum Size per Sign	Maximum Height per Sign	Sign Permits Required	Other Special Considerations
Over 25% of Individual Window	—	64 sq. ft.	—	Administrative Sign Permit	

**C. Portable Signs.** Portable signs, excluding banner signs, shall be allowed for businesses subject to the following:

1. Design of Portable Signs.

- a. The portable sign shall be hand-crafted in appearance.
- b. Acceptable materials may include, but not be limited to, metal, painted wood, plastic, ceramics, or other similar durable materials. Paper, light cloth, exposed or unpainted wood and particle board are prohibited.
- c. Portable signs cannot be lighted.
- d. Portable signs shall be well maintained.
- e. The sign area of a portable sign shall not count towards the total sign area permitted for business or building.

2. Location of Portable Signs.

- a. Portable signs must be located immediately adjacent along the business storefront and in close proximity to the main public entrance of the business advertised.
- b. At no time shall portable signs be placed within any landscaped area.
- c. The portable sign must be able to be easily carried and transported, not permanently affixed to the street, sidewalk, wall, awning, public fixtures, or other similar public improvements.
- d. The portable sign may remain outside only during those hours the business is open.
- e. The portable sign shall be located outside the public right-of-way.
- f. The portable sign cannot interfere with pedestrian or vehicular traffic or parking.

g. The portable sign cannot pose a safety threat.

D. **Permanent Signs Encroaching into Public Right-of-Way.** The following permanent sign types may be allowed to encroach into the public right-of-way when all of the following standards are complied with:

1. Maximum Encroachment.

**Table 17.84.030B  
Maximum Encroachments of Permanent  
Signs into the Public Right-of-Way**

Sign Type	Maximum Encroachment into Public Right-of-Way
Arcade	24"
Awning	48"
Canopy	48"
Shingle	24"
Fascia	12"
Marquee	12"
Projecting	24"
Wall	12"

2. The sign must be permanently affixed to the building it serves.
3. The sign shall not create a traffic hazard for pedestrians or vehicles.
4. The sign shall not extend beyond the edge of sidewalk or curb adjacent to the street.
5. The sign shall maintain a minimum of eight feet vertical clearance between the sidewalk and bottom of the sign.
6. The owner of the sign encroaching into the public right-of-way shall be required to enter into an agreement with the City that indemnifies the City from all liability associated with the sign that encroaches.
7. For temporary banners over the public right-of-way refer to temporary banner sign policy.



**E. Temporary Signs, Including Political Signs.**

1. **Unpermitted Temporary Signs Found in the Right-of-Way.** Any unpermitted temporary sign found to be on or over any public street or right-of-way shall promptly be removed and confiscated by the designated official of the City. Confiscated temporary signs shall be retained by the City for the following periods of time:
  - a. 10 days after the event which the temporary sign advertises or the election to which the sign relates; or
  - b. If the sign does not advertise a specific event or relate to a specific election, 45 days from the date the sign was confiscated.

Any person may reclaim a confiscated sign by paying to the City a storage fee of \$10.00 per sign and signing a receipt indicating that the person reclaiming the sign is either the owner of the sign or the sign owner's agent. Any sign not reclaimed by the end of the applicable retention period shall be destroyed.

- F. Noncommercial Signs on Unimproved or Vacant Property.** Prior to placing noncommercial signs on vacant or unimproved property, the sign owner must file with the City Clerk a written form signed by the owner, lessee or other person lawfully in possession of the property consenting in writing to the placement of the sign and agreeing to be responsible for removal within any applicable time period; and

The sign shall be located a minimum of three feet behind the sidewalk or, if no sidewalk exists, a minimum of eight feet behind the back of the curb or edge of the roadway; and

The sign shall be removed within three days after the election; and

The sign complies with all other design criteria established by this code.

- G. Blade Signs.** Blade signs shall be allowed for businesses in the A-O District subject to the following criteria:

1. **Design of Blade Signs.**
  - a. The blade sign shall be hand-crafted in appearance.
  - b. Three dimensional blade signs are encouraged.
  - c. Acceptable sign materials may include, but not be limited to, metal, painted wood, plastic, ceramics, or other similar durable materials. Paper, light cloth, exposed or unpainted wood and particle board are prohibited.

- d. Sign supports, brackets and standards shall be made of wood and/or wrought iron. They may be painted or carved.
- e. Blade signs shall have a maximum thickness of not more than six inches.
- f. Blade signs shall be well maintained.
- g. The sign area of a blade sign shall not count towards the total sign area permitted for business or building providing all existing signage is in conformance with the Sign Code.
- h. Blade signs meeting the design criteria of this section may be added to buildings which are subject to a Master Sign Program, per Section 17.84.020(G), and shall not require modification or amendment to such Master Sign Program, so long as the Master Sign Program has been implemented and all existing signs on the building are in accordance with that Master Sign Program.
- i. Blade signs shall not be illuminated except as provided for in other discretionary processes.

## 2. Location of Blade Signs

- a. A total of two blade signs per tenant shall be permitted, although only one blade sign shall be permitted per tenant street frontage; the other shall be permitted per tenant frontage along a pedestrian way, arcade, paseo or courtyard, all of which must be internal to the project.
- b. A blade sign must provide a minimum of eight-foot clearance between the bottom of the sign and the ground.
- c. A blade sign may project a maximum of four feet from the wall of a building.

## H. Temporary Banner Signs. Temporary Banner Signs shall be allowed for businesses city-wide, excluding home-occupations.

### 1. Temporary Banner Sign Criteria.

- a. Each business shall be permitted a maximum of one temporary banner sign per business at any given time.
- b. The temporary banner sign cannot exceed 64 square feet. A temporary banner sign will not count towards a business's total sign area allowance.
- c. The temporary banner sign shall be placed on-site and flush on the building. These banners are prohibited in the following locations: city right-of-way, free-standing

walls, fences or other areas or fixtures not part of the business's primary structure; other locations as determined by the City Planner to be inconsistent with the intent of this section. No portion of the temporary banner sign shall be free-hanging and all corners of the banner shall be secured to the building.

- d. Temporary banner signs shall be constructed of cloth, canvas, fabric, plastic or other similar durable material.
- e. The temporary banner sign shall be maintained in good condition, free of any defects, including cracking, torn or ripped material, or faded copy.
- f. Each business may have up to four banner permits per calendar year. Renewals of banner permits are allowed, but in no case shall a business display a temporary banner for more than 120 days per calendar year. A minimum of 14 days between permits is required, except upon renewal of an existing banner permit. Banners may be replaced during the authorized period so long as they are the same or smaller size and installed in the approved location. These provisions are to ensure temporary banner signs are not used as permanent display or in-lieu of permanent signs for the business. (Ord. 1314 § 68, 2006; Ord. 1308 §§ 18—19, 2006; Ord. 1304 §§ 33—34, 2005; Ord. 1257 § 2, 2002; Ord. 1205 §§ 1—4, 1998; Ord. 1172 § 3 (part), 1996)

(Ord. No. 1561, § 3(Exh. A, § 32), 11-27-2012; Ord. No. 1594, § 3(Exh. A, §§ 42, 43), 5-5-2015)

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CITY OF SAN CLEMENTE  
100 Avenida Presidio  
San Clemente, CA 92672  
Attn: City Clerk

TO: 19980667761 10:30am 10/02/98

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This Development Agreement for Marblehead Coastal Property is recorded at the request and for the benefit of the City of San Clemente and is exempt from the payment of a recording fee pursuant to Government Code § 6103.

CITY OF SAN CLEMENTE

By: [Signature]  
Its: City Clerk  
Dated: 10/2/98

60169108-1261

DEVELOPMENT AGREEMENT FOR  
MARBLEHEAD COASTAL PROPERTY

by and between

CITY OF SAN CLEMENTE

and

MT. NO. I, LLC

OCT 2, 1998

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**EXHIBITS**

- Exhibit A - Legal Description of Property
- Exhibit B - Site Map
- Exhibit C - Legal Description of Coastal Commercial Parcel
- Exhibit D - Legal Description of Dudleya Preserve Parcel
- Exhibit E - Map of North Beach Planning Area
- Exhibit F - Irrevocable Offer of Dedication
- Exhibit G-1 - Memorandum of Option Agreement
- Exhibit G-2 - Memorandum of Option Agreement



## DEVELOPMENT AGREEMENT FOR MARBLEHEAD COASTAL PROPERTY

This DEVELOPMENT AGREEMENT FOR MARBLEHEAD COASTAL PROPERTY (the "Agreement") is entered into this 2nd day of OCTOBER, 1998, by and between the CITY OF SAN CLEMENTE, a municipal corporation of the State of California ("City"), and MT. NO. 1, LLC, a California limited liability company ("Developer"). City and Developer are collectively referred to herein as the "Parties" and individually as a "Party."

### R E C I T A L S

A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the "Development Agreement Statute," Sections 65864, et seq., of the Government Code. The Development Agreement statute authorizes City to enter into an agreement with any person having a legal or equitable interest in real property and to provide for the development of such property and to establish certain development rights therein.

B. Developer is the owner in fee of that certain real property consisting of approximately 250.6 acres of gross land area located in the City of San Clemente, County of Orange, State of California commonly known as the "Marblehead Coastal Property" (the "Property"). The Property is more particularly described in the legal description attached hereto as Exhibit "A" and is depicted on the Site Map attached hereto as Exhibit "B" (the "Property"). Developer desires to develop the Property with a commercial shopping and entertainment center on approximately sixty and four-tenths (60.4) acres of net land area and up to four hundred thirty-four (434) residential housing units on approximately seventy one and five-tenths (71.5) acres of net land area ("the Project").

C. In accordance with the requirements of CEQA, an environmental impact report for the Project was certified by the City Council as adequate and complete pursuant to its Resolution No. 98-40 on June 23, 1998. Prior to its approval of this Agreement, City will have considered the environmental impacts of the Project and completed its environmental review of the Project.

D. On or about August 5, 1998, the City Council of City adopted its Resolution No. 98-41 amending the City's General Plan and its Resolution No. 98-42 adopting the Marblehead Coastal Specific Plan for the Property (the "Specific Plan"). City has determined that the Project is consistent with the goals and policies of the General Plan and the Specific Plan and imposes appropriate standards and requirements with respect to the development of the Property in order to maintain the overall quality of life and of the environment within the City.

E. This Agreement is intended to be, and should be construed as, a development agreement within the meaning of the Development Agreement Statute. For the reasons recited herein, Developer and City have determined that the Project is a development for which a development agreement is appropriate. This Agreement will eliminate uncertainty in planning for and secure the orderly development of the Project, ensure a desirable and functional community environment, provide effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Project, assure attainment of the maximum effective utilization of resources within the City, and provide other significant public benefits to City and its residents by otherwise achieving the goals and purposes of the Development Agreement Statute. In exchange for these benefits to City, Developer desires to receive the assurance that it may proceed with the development of the Project in accordance with the terms and conditions of this Agreement.

F. The Parties agree that this Agreement will promote and encourage the development of the Property by providing Developer and future owners and lenders with a greater degree of certainty as to Developer's ability to expeditiously and economically complete the Project, and that the consideration to be received by City pursuant to this Agreement and the rights secured to Developer hereunder constitute sufficient consideration to support the covenants and agreements of City and Developer.

G. City acknowledges that the obligations of City set forth in this Agreement shall survive beyond the term or terms of the present City Council and that this Agreement will serve to bind City and future City Councils. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by the City staff and the City Council and have been found to be fair, just, and reasonable, and City has concluded that the Project will serve the best interests of its citizens and that the public health, safety, and welfare will be best served by entering into this Agreement.

## A G R E E M E N T

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and City hereby agree as follows:

### 1. DEFINITIONS.

The following terms when used in this Agreement shall have the meanings set forth below:

1.1. The term "Agreement" shall mean this Development Agreement for Marbléhead Coastal Property by and between City and Developer.

1.2 The term "Annual Review" shall have the meaning ascribed in Section 9 of this Agreement.

1.3 The term "Anticipated Completion Date" shall mean the date identified in the contract for the Vista Hermosa Improvements as the date the Vista Hermosa Improvements are anticipated to be opened for traffic to the public.

1.4 The term "Bluff Top Park" shall mean that portion of the Property consisting of approximately 9.35 acres of land area generally located at the corner of El Camino Real and Avenida Pico that is to be dedicated by Developer to City for public park purposes and improved in accordance with Section 3.5 of this Agreement.

1.5 The term "Bluff Top Park Improvements" shall mean each of the improvements described in the Bluff Top Park Plans and Specifications.

1.6 The term "Bluff Top Park Plans and Specifications" shall mean all City approved engineering, design, and other plans, drawings, and specifications for the construction of improvements to the Bluff Top Park.

1.7 The term "Bluff Top Park Reclaimed Water Line Expenses" shall mean an amount equal to fifty percent (50%) of the sum of the following: (i) the amount to be paid by Developer to the contractor or contractors for the construction of the Bluff Top Park Reclaimed Water Transmission Line, and (ii) reasonable costs paid by Developer to third parties for the design and engineering of the Bluff Top Park Reclaimed Water Transmission Line (but in no event to exceed 10% of the "hard cost" of construction).

1.8 The term "Bluff Top Park Reclaimed Water Transmission Line" shall mean the reclaimed water transmission line referred to in Section 3.6.1 of this Agreement that will extend from the Vista Hermosa Reclaimed Water Transmission Line to the Bluff Top Park, and the related valves and appurtenances required to make such transmission line operational. The precise alignment and diameter of the Bluff Top Park Reclaimed Water Transmission Line shall be determined by the City Engineer in his/her reasonable discretion.

1.9 The term "CEQA" shall mean the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), as the same may be amended from time to time.

1.10 The term "City" shall mean the City of San Clemente, a municipal corporation, organized and existing under the laws of the State of California.

1.11 The term "City Council" shall mean the governing body of City.

1.12 The term "City Engineer" shall mean the City Engineer of City or his or her authorized designee.

1.13 The term "Coastal Commercial Parcel" shall mean that portion of the Property consisting of approximately one (1) acre of land area more particularly described in the legal description attached hereto as Exhibit "C."

1.14 The term "Commercial Area" shall mean that portion of the Property consisting of approximately 74.5 acres of land area (approximately 60.4 net acres) which is designated for commercial development in the Specific Plan.

1.15 The term "Commercial Landscaped Areas" shall refer to the landscaping within the Commercial Area, including without limitation landscaped slopes, parkways, medians, islands, and public and private parks.

1.16 The term "Developer" shall mean MT. NO. I, LLC, a California limited liability company, and any permissible successor or assignee to the rights, powers, and responsibilities of MT. NO. I, LLC hereunder, in accordance with Section 11 of this Agreement.

1.17 The term "Development Agreement Statute" shall refer to Sections 65864 through 65869.5 of the California Government Code, as the same may be amended from time to time.

1.18 The term "Development Fee" shall mean a monetary exaction charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of public facilities related to development of the Project. The term "Development Fee" shall not include (i) City's normal fees for processing, environmental assessment/review, tentative tract/parcel map review, plan checking, sign review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), grading, encroachment, inspection, and similar fees imposed to recover City's costs associated with processing, review, and inspection of applications, plans, specifications, etc., or (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, whether or not such fees are collected by City.

1.19 The term "Downtown Area" shall mean that certain real property depicted in Figure 17.64.125 of the Municipal Code entitled "Downtown Parking Study Area."

1.20 The term "Downtown Area Fee" shall have the meaning ascribed in Section 4.3 of this Agreement.

1.21 The term "Dudleya Preserve Parcel" shall mean that portion of the Property consisting of approximately 2.1 acres of

land area more particularly described in the legal description attached hereto as Exhibit "D." The Dudley Preserve Parcel is a habitat for the Blochman's Dudleya plant.

1.22 The term "Effective Date" shall mean the date that is thirty (30) days after the date the City Council adopts the ordinance approving this Agreement.

1.23 The term "Irrigation Distribution System" shall have the meaning ascribed in Section 3.6.4.1 of this Agreement.

1.24 The term "Library Fee" shall have the meaning ascribed in Section 4.4 of this Agreement.

1.25 The term "Measure B" shall mean that certain growth control initiative adopted by the City's voters in 1986, and adopted by the City Council by its Ordinance No. 922 on March 4, 1986, and all amendments thereto, as the same may be further amended from time to time. Measure B is codified in the Municipal Code as Chapter 15.44.

1.26 The term "Mortgage" shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a portion thereof or interest therein, is pledged as security, and contracted for in good faith and for fair value.

1.27 The term "Mortgagee" shall mean the holder of a beneficial interest under a Mortgage, or any successor or assignee of any such Mortgagee.

1.28 The term "Municipal Code" shall refer to the Code of the City of San Clemente, California, as the same now exists or may be further amended from time to time consistent with this Agreement.

1.29 The term "North Beach Fee" shall have the meaning ascribed in Section 4.7 of this Agreement.

1.30 The term "North Beach Planning Area" shall mean that certain real property adjacent to the Property depicted on the map attached hereto as Exhibit "E."

1.31 The term "Park Director" shall mean City's Director of Beaches, Parks & Recreation or his or her authorized designee.

1.32 The term "Park Sites" shall collectively refer to the Bluff Top Park and the Sports Park.

1.33 The term "Planning Implementation Fee" shall have the meaning ascribed in Section 4.2 of this Agreement.

1.34 The term "Potable Water Improvement Expenses" shall mean an amount equal to the sum of the following: (i) the amount

to be paid by Developer to the contractor or contractors for the construction of the Potable Water Improvements, and (ii) reasonable costs paid by Developer to third parties for the design and engineering of the Potable Water Improvements (but in no event to exceed 10% of the "hard cost" of construction).

1.35 The term "Potable Water Improvements" shall collectively refer to (i) the vault that will be located at the future connection of the Vista Hermosa Reclaimed Water Transmission Line and the existing twelve-inch (12") diameter reclaimed water transmission line along Avenida Pico, and (ii) the potable water transmission line that will extend from the City's potable water system to the vault referred to in the preceding clause (i). Developer shall be responsible for constructing and installing the Potable Water Improvements in the event a sufficient amount of reclaimed water is not available for the irrigation of the Landscaped Areas in accordance with Section 3.6.4.2 of this Agreement.

1.36 The term "Production Home" shall mean a dwelling unit within the Residential Area that does not require a model site plan permit.

1.37 The term "Project" shall mean the development of the Property pursuant to this Agreement and the Specific Plan, which development will include mixed residential and commercial uses, and the construction of other improvements and infrastructure located within or outside of the Property, as described in this Agreement and the Specific Plan.

1.38 The term "Property" shall mean that certain real property consisting of approximately 250.6 acres of gross land area more particularly described in the legal description attached hereto as Exhibit "A" and depicted on the Site Map attached hereto as Exhibit "B."

1.39 The term "RCFPP" shall mean the City of San Clemente Regional Circulation, Financing and Phasing Program as adopted by Ordinance No. 998 of the City Council on April 5, 1989, as amended by Ordinance No. 1155 on July 19, 1995, and by Ordinance No. 1196 on December 17, 1997, as the same may be further amended from time to time by the City Council consistent with this Agreement. The RCFPP establishes cost allocations and a funding mechanism for certain major road improvements within the City.

1.40 The term "Residential Area" shall mean that portion of the Property consisting of approximately 117 gross acres of land area (approximately 71.5 net acres) which is designated for residential development in the Specific Plan.

1.41 The term "Residential Landscaped Areas" shall refer to the landscaped slope areas, parkways, medians, islands, public and private parks, and other landscaping located within the Residential Area or property that will be owned by City or owned or maintained by a homeowners association.

1.42. The term "San Clemente Library" shall refer to the San Clemente Library located at 202 Avenida del Mar, San Clemente, California. The San Clemente Library is owned by the County of Orange.

1.43. The term "Senior Citizen Center" shall mean any existing or future community center located in the City offering programs and services specifically for senior citizens.

1.44. The term "Senior Fee" shall have the meaning ascribed in Section 4.5 of this Agreement.

1.45. The term "Specific Plan" shall mean the Marblehead Coastal Specific Plan for the Property approved by the City Council on August 5, 1998, as the same may be amended from time to time in accordance with this Agreement.

1.46. The term "Sports Park" shall mean that portion of the Property consisting of approximately 7 acres of land area located adjacent to the Shorecliffs Middle School that is to be dedicated by Developer to City for public park purposes and improved in accordance with Section 3.5 of this Agreement.

1.47. The term "Sports Park Improvements" shall mean each of the improvements described in the Sports Park Plans and Specifications.

1.48. The term "Sports Park Plans and Specifications" shall mean all City approved engineering, design, and other plans, drawings, and specifications for the construction of improvements to the Sports Park.

1.49. The term "Term" shall mean that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Sections 2.1 through 2.3 of this Agreement.

1.50. The term "Vista Hermosa Improvements" shall mean the expansion of the existing bridge facility over Interstate 5 at Avenida Vista Hermosa, the construction of the Avenida Vista Hermosa Interchange on and off-ramps on both the coastal and inland sides of Interstate 5, and related signalization, roadway, drainage, utility, landscaping, and other improvements as required to create a fully functional freeway interchange in accordance with the requirements of the California Department of Transportation and City.

1.51. The term "Vista Hermosa Interchange Right-of-Way" shall mean that portion of the Property consisting of approximately 2.5 acres of land area which is needed to accommodate a portion of the Vista Hermosa Improvements, exclusive of the portion of the land area needed for the Vista Hermosa Improvements that is located within the right-of-way of the Avenida Vista Hermosa roadway itself.

1.52 The term "Vista Hermosa Reclaimed Water Line Expenses" shall mean the sum of the following: (i) the amount to be paid by Developer to the contractor or contractors for the construction of the Vista Hermosa Reclaimed Water Transmission Line, and (ii) reasonable costs paid by Developer to third parties for the design and engineering of the Vista Hermosa Reclaimed Water Transmission Line (but in no event to exceed 10% of the "hard cost" of construction).

1.53 The term "Vista Hermosa Reclaimed Water Transmission Line" shall mean the sixteen-inch (16") diameter reclaimed water transmission line referred to in Section 3.6.1 of this Agreement that will extend from the intersection of Avenida Pico and Avenida Vista Hermosa adjacent to the public right-of-way for Avenida Vista Hermosa to the Vista Hermosa Improvements, and the related valves and appurtenances required to make such transmission line operational.

1.54 The term "Wastewater Treatment Agreement" shall mean that certain Agreement for Construction of Wastewater Treatment Facilities by and among City, Developer, Estrella Properties, Ltd., a California limited partnership, Santa Margarita Company, a California corporation, and Western Properties Service Corp., an Arizona corporation, dated as of September 1984.

1.55 The term "Water Acreage Assessment Fee" shall mean the fee charged by City pursuant to Chapter 13.16 of the Municipal Code and the City Council resolution adopted pursuant thereto for the development of water facilities necessary to service new development, as the same may be amended from time to time.

1.56 The term "Water Facilities Agreement" shall mean that certain Water Facilities Installation and Financing Agreement by and among City, Arvida/UMB Partners, L.P.-II, a Delaware limited partnership, and Pacific Golf Club, Inc., a California corporation, dated May 2, 1990.

## 2. TERM.

2.1 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue thereafter for a period of twenty (20) years, unless this Agreement is terminated, modified, or extended by circumstances set forth in this Agreement or by mutual written consent of the Parties.

2.2 Termination of Agreement Upon Sale of Individual Residential Lots to Public and Completion of Construction; Sale of Individual Custom Home Sites and Conveyance of Lots to Owners Associations and City. Notwithstanding Section 2.1, the provisions of this Agreement shall terminate with respect to any individual lot within the Residential Area and such lot shall be released from and no longer subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) at such time that (a) the individual lot has been finally



subdivided and (b) one or more of the following conditions have been met:

(i) a dwelling unit built on the lot has been sold or leased to a member of the public or any other ultimate user and a certificate of occupancy has been issued or final inspection of the dwelling unit has been approved by City authorizing occupancy and City has received payment of the Per Unit/Lot Fee for the individual lot pursuant to Section 4.7 of this Agreement; or

(ii) the lot is a custom home site and has been sold to a member of the public or any other ultimate user without a dwelling unit having been built on it and City has received payment of the Per Unit/Lot Fee for the individual lot pursuant to Section 4.7 of this Agreement; or

(iii) as to any non-buildable or lettered lot, the lot has been conveyed to a non-profit association(s) made up of owners of the individual lots; or

(iv) the lot has been conveyed to City or another governmental entity.

Notwithstanding the foregoing, the obligation to maintain the Dudleya Preserve Parcel pursuant to Section 6.10 of this Agreement and the obligation to maintain the Irrigation Distribution System and to irrigate the Residential Landscaped Areas pursuant to Section 3.6.4 of this Agreement shall not terminate as to any lot(s) owned and/or managed by a homeowners' association.

City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of MT. NO. I, LLC, in and to any of the aforescribed lots), may submit to confirm the termination of this Agreement as to any such lot.

2.3 Effective Date. This Agreement shall become effective thirty (30) days after the date the City Council adopts the ordinance approving this Agreement.

### 3. DEVELOPMENT OF THE PROPERTY.

3.1 General. Other than as expressly set forth in this Agreement, the terms and conditions of development applicable to the Property, including but not limited to the permitted uses of the Property, the density and intensity of use, maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes, and provisions for the construction and installation of public improvements shall be those set forth in the Specific Plan and all other ordinances, laws, statutes, rules, regulations, and official policies governing development that may apply to the Property from time to time.

To the maximum extent permitted by law, in the event of any conflict between the express provisions of this Agreement, on the one hand, and the Specific Plan or other ordinances, laws, statutes, rules, regulations, or official policies governing development that may apply to the Property from time to time, on the other hand, the provisions of this Agreement shall prevail.

3.2 Regulations Governing Development of the Residential Area. During the Term of this Agreement, Developer shall have the vested right to develop the Residential Area in accordance with this Section 3.2:

3.2.1 Permitted Use. The Residential Area shall be developed only with those uses permitted or conditionally permitted in the Specific Plan in effect as of the Effective Date of this Agreement.

3.2.2 Maximum Number of Units. The total number of market rate residential units to be constructed within the Residential Area shall be a maximum of four hundred thirty-four (434). City shall not reduce this maximum permitted density without Developer's prior written consent, which consent Developer may grant or withhold in its sole and absolute discretion.

3.2.3 City Approvals. At such time that Developer obtains final City approval of any site plan and/or tentative tract map for all or a portion of the Residential Area (and assuming that such approval(s) is(are) not invalidated by a final non-appealable judgment of a court with jurisdiction over said matter(s)), Developer shall have the vested right to develop the Residential Area (or portion thereof) in accordance with the conditions of said approval(s) and other applicable City ordinances, resolutions, and policies consistent therewith and consistent with the other provisions of this Agreement. City agrees that the term of any such site plan and/or tentative tract map shall not be less than the remaining Term of this Agreement.

3.3 Regulations Governing Development of the Commercial Area. During the Term of this Agreement, Developer shall have the vested right to develop the Commercial Area in accordance with the development standards and land uses specified in Sections 502 (I) (Purpose and Applicability), 502(II) (Principal Uses Permitted), 502(III) (Conditional Uses Permitted), 502(IV) (Temporary Uses and Structures Permitted), and 502(V) (A) (Minimum Lot Area), (B) (Maximum Floor Area Ratio), (C) (Maximum Project Area Coverage), (G) (Signs), and (H) (Parking) of the Specific Plan in effect as of the Effective Date. All subdivisions are subject to the normal public review process and are expected to meet the high quality standards of City. Notwithstanding the first sentence of this Section 3.3, until detailed planning and engineering data is available and the public process is completed, it is not possible to determine if the maximum floor area ratio and the maximum project area coverage are achievable. In addition to the foregoing, at such time that Developer obtains final City approval of any site plan and/or tentative

tract map for all or a portion of the Commercial Area (and assuming that such approval(s) is(are) not invalidated by a final non-appealable judgment of a court with jurisdiction over said matter(s)), Developer shall have the vested right to develop the Commercial Area (or portion thereof) in accordance with the conditions of said approval(s) and other applicable City ordinances, resolutions, and policies consistent therewith and consistent with the other provisions of this Agreement. City agrees that the term of any such site plan and/or tentative tract map shall not be less than the remaining Term of this Agreement.

3.4 Police Power. In all respects not provided for in this Agreement, City shall retain full rights to exercise its police power to regulate the development of the Property. Any uses requiring a conditional use permit in accordance with City's zoning regulations shall require a conditional use permit pursuant to this Agreement, and this Agreement is not intended to vest Developer's right to the issuance of a conditional use permit or restrict City's exercise of discretion with respect thereto. Not by way of limitation of the foregoing, it is specifically understood that City reserves the right after the Effective Date to amend the portions of the Specific Plan not specifically listed in Section 3.3 as being vested and other City laws, rules, regulations, and policies applicable to the Property as to which Developer's rights are not expressly vested pursuant to procedures provided by law and such amendment or amendments shall be binding on the Property except to the extent that the same conflict with the express provisions of this Agreement, including without limitation Sections 3.2 and 3.3.

3.5 Park Land Dedications and Improvements.

3.5.1 Master Plan. City shall be responsible for processing a Master Plan for the Park Sites and preparing or causing to be prepared the Bluff Top Park Plans and Specifications and the Sports Park Plans and Specifications.

3.5.2 Site Preparation. Developer shall be responsible for rough grading the Park Sites and staking in utilities (including the installation of meters) to the boundaries of the Park Sites at locations to be mutually agreed upon by the Parties (the "Developer Park Improvements"). Developer shall complete the Developer Park Improvements for the Bluff Top Park prior to the issuance of the first building permit for a building within the Residential Area. Developer shall complete the Developer Park Improvements for the Sports Park within one (1) year after the Anticipated Completion Date. Developer shall be responsible for obtaining any and all permits from City necessary to perform the Developer Park Improvements. Notwithstanding any other provision set forth in this Agreement to the contrary, in no event shall Developer receive credit toward its financial obligations under Sections 3.5.3 and 3.5.4 of this Agreement for the costs of the Developer Park Improvements.

3.5.3 Developer's Contribution to the Bluff Top Park Improvements. Developer shall fund the Bluff Top Park Improvements as provided in this Section 3.5.3.

3.5.3.1 Planning and Design. Developer shall pay or cause to be paid to City the sum of Seventy-Five Thousand Dollars (\$75,000.00) (the "Bluff Top Park Design Contribution") no later than the date Developer submits to City its application for the first grading permit for any portion of the Property, exclusive of any grading permits issued for the Vista Hermosa Improvements. City shall apply the Bluff Top Park Design Contribution toward the costs of planning and designing the Bluff Top Park Improvements, including without limitation the costs for the preparation of the Bluff Top Park Plans and Specifications. City shall be authorized to use any remaining balance of the Bluff Top Park Design Contribution for the cost of constructing the Bluff Top Park Improvements.

3.5.3.2 Construction. Developer shall pay to City the sum of Nine Hundred Twenty-Five Thousand Dollars (\$925,000.00) (the "Bluff Top Park Construction Contribution") on or before the date that City issues the first building permit for a Production Home within the Residential Area. City shall apply the Bluff Top Park Construction Contribution toward the cost of constructing the Bluff Top Park Improvements. City shall be authorized to use any remaining balance of the Bluff Top Park Construction Contribution for the cost of constructing the Sports Park Improvements.

3.5.4 Developer's Contribution to the Sports Park Improvements. Developer shall fund the Sports Park Improvements as provided in this Section 3.5.4.

3.5.4.1 Planning and Design. Developer shall pay or cause to be paid to City the sum of Seventy-Five Thousand Dollars (\$75,000.00) (the "Sports Park Design Contribution") no later than thirty (30) days after the later of the following dates: (i) the date that City or the California Department of Transportation awards the construction contract for the Vista Hermosa Improvements or (ii) the date City issues the first grading permit for any portion of the Property, exclusive of any grading permits issued for the Vista Hermosa improvements. City shall apply the Sports Park Design Contribution toward the costs of planning and designing the Sports Park Improvements, including without limitation the costs for the preparation of the Sports Park Plans and Specifications. City shall be authorized to use any remaining balance of the Sports Park Design Contribution for the cost of constructing the Sports Park Improvements.

3.5.4.2 Construction. Developer shall pay to City the sum of Nine Hundred Twenty-Five Thousand Dollars (\$925,000.00) (the "Sports Park Construction Contribution") no later than thirty (30) days after the later of the following dates: (i) the date the Vista Hermosa Improvements are substantially com-

plete or (ii) the date City issues the first grading permit for any portion of the Property, exclusive of any grading permits issued for the Vista Hermosa Improvements. As used herein, the term "substantially complete" shall mean that the Vista Hermosa Improvements are opened for traffic to the public. City shall apply the Sports Park Construction Contribution toward the cost of constructing the Sports Park Improvements. City shall be authorized to use any remaining Sports Park Construction Contribution to reimburse itself for the costs it incurs for the construction of the Bluff Top Park Improvements. The unexpended portion of Developer's Sports Park Construction Contribution (if any) shall be retained or deposited by City in City's Park Acquisition and Development Fund for the acquisition and/or development of public parks and open space areas within the City.

### 3.5.5 Offer of Dedication of Park Sites.

Developer shall make an irrevocable offer of dedication to City of the Bluff Top Park and the Sports Park. The offer of dedication for the Bluff Top Park shall be made by Developer no later than the earlier of the following dates: (i) the date Developer is required to pay the Bluff Top Park Construction Contribution or (ii) the date any final tract map that includes the Bluff Top Park is submitted to City for approval. City shall accept Developer's offer of dedication of the Bluff Top Park no later than sixty (60) days after the later of the following dates: (i) the date the Developer Park Improvements have been satisfactorily completed or (ii) the date the offer of dedication is made. The offer of dedication for the Sports Park shall be made by Developer no later than the earlier of the following dates: (i) the date Developer is required to pay to City the Sports Park Construction Contribution or (ii) the date any final tract map that includes the Sports Park is submitted to City for approval. City shall accept Developer's offer of dedication of the Sports Park no later than sixty (60) days after the later of the following dates: (i) the date the Developer Park Improvements have been satisfactory completed or (ii) the date the offer of dedication is made.

### 3.6 Delivery of Water and Construction of Reclaimed Water Facilities.

3.6.1 Reclaimed Water Lines. Developer shall be responsible for designing, constructing, and installing the Bluff Top Park Reclaimed Water Transmission Line and the Vista Hermosa Reclaimed Water Transmission Line (individually a "Reclaimed Water Transmission Line" and collectively the "Reclaimed Water Transmission Lines"). All plans and specifications for the Reclaimed Water Transmission Lines shall be prepared in accordance with City's standards and submitted to the City Engineer for review and approval. Developer shall construct and install the Reclaimed Water Transmission Lines in strict accordance with the plans and specifications approved by City. Developer shall construct the Reclaimed Water Transmission Lines through a licensed and responsible contractor subject to City's reasonable approval with regard to the contract price and all change orders exceeding ten percent (10%) of

the contract price. Developer shall commence and complete the Reclaimed Water Transmission Lines within the times established by conditions of approval for the Project, or otherwise as determined by the City Engineer in his/her reasonable discretion. Subject to Section 3.6.2, the Reclaimed Water Transmission Lines shall be planned, designed, engineered, constructed, and installed at Developer's sole cost and expense.

3.6.2 Water Acreage Assessment Fee Credit.

3.6.2.1 Vista Hermosa Reclaimed Water Line Expenses. Within thirty (30) days after the date City accepts the Vista Hermosa Reclaimed Water Transmission Line and records the notice of completion thereof (and the time period for filing any stop notice or lien claims has expired or such claims have been released or bonded against in accordance with applicable law), Developer shall provide to City an itemized accounting, with such supporting information as City may reasonably require, documenting all of Developer's costs eligible to be considered in calculating the amount of the Vista Hermosa Reclaimed Water Line Expenses. The City Engineer shall have the final authority to calculate and approve the amount of the Vista Hermosa Reclaimed Water Line Expenses. Upon approval of the Vista Hermosa Reclaimed Water Line Expenses, City shall reimburse Developer for the Vista Hermosa Reclaimed Water Line Expenses, subject to the terms set forth in this Section 3.6.2.1. The amount of the reimbursement to Developer shall equal (i) the amount of the Vista Hermosa Reclaimed Water Line Expenses or the amount of the Water Acreage Assessment Fees paid by Developer in connection with the development of the Property, whichever is less, less (ii) the amount of any reimbursement payments made by City to Developer pursuant to Sections 3.6.2.2 and 3.6.2.3 of this Agreement. In the event that the amount reimbursed to Developer pursuant to this Section 3.6.2.1 is less than the amount of the Vista Hermosa Reclaimed Water Line Expenses, City shall credit against Developer's or any other developer of the Property's future obligation to pay the Water Acreage Assessment Fee an amount equal to the difference between the Vista Hermosa Reclaimed Water Line Expenses and the amount reimbursed to Developer.

3.6.2.2 Bluff Top Park Reclaimed Water Line Expenses. Within thirty (30) days after the date City accepts the Bluff Top Park Reclaimed Water Transmission Line and records the notice of completion thereof (and the time period for filing any stop notice or lien claims has expired or such claims have been released or bonded against in accordance with applicable law), Developer shall provide to City an itemized accounting, with such supporting information as City may reasonably require, documenting all of Developer's costs eligible to be considered in calculating the amount of the Bluff Top Park Reclaimed Water Line Expenses. The City Engineer shall have the final authority to calculate and approve the amount of the Bluff Top Park Reclaimed Water Line Expenses. Upon approval of the Bluff Top Park Reclaimed Water Line Expenses, City shall reimburse Developer for the Bluff Top Park

Reclaimed Water Line Expenses, subject to the terms set forth in this Section 3.6.2.2. The amount of the reimbursement to Developer shall equal (i) the amount of the Bluff Top Park Reclaimed Water Line Expenses or the amount of the Water Acreage Assessment Fees paid by Developer in connection with the development of the Property, whichever is less, less (ii) the amount of any reimbursement payments made by City to Developer pursuant to Sections 3.6.2.1 and 3.6.2.3 of this Agreement. In the event that the amount reimbursed to Developer pursuant to this Section 3.6.2.2 is less than the amount of the Bluff Top Park Reclaimed Water Line Expenses, City shall credit against Developer's or any other developer of the Property's future obligation to pay the Water Acreage Assessment Fee an amount equal to the difference between the Bluff Top Park Reclaimed Water Line Expenses and the amount reimbursed to Developer.

3.6.2.3 Potable Water Improvement Expenses. Within thirty (30) days after the date City concludes that the Potable Water Improvements have been satisfactorily completed (and the time period for filing any stop notice or lien claims has expired or such claims have been released or bonded against in accordance with applicable law), Developer shall submit to City an itemized accounting, with such supporting information as City may reasonably require, documenting all of Developer's costs eligible to be considered in calculating the amount of the Potable Water Improvement Expenses. The City Engineer shall have the final authority to calculate and approve the amount of the Potable Water Improvement Expenses. Upon approval of the Potable Water Improvement Expenses, City shall reimburse Developer for the Potable Water Improvement Expenses, subject to the terms set forth in this Section 3.6.2.3. The amount of the reimbursement to Developer shall equal (i) the amount of the Potable Water Improvement Expenses or the amount of the Water Acreage Assessment Fees paid by Developer in connection with the development of the Property, whichever is less, less (ii) the amount of any reimbursement payments made by City to Developer pursuant to Sections 3.6.2.1 and 3.6.2.2 of this Agreement. In the event that the amount reimbursed to Developer pursuant to this Section 3.6.2.3 is less than the amount of the Potable Water Improvement Expenses, City shall credit against Developer's or any other developer of the Property's future obligation to pay the Water Acreage Assessment Fee an amount equal to the difference between the Potable Water Improvement Expenses and the amount reimbursed to Developer.

3.6.2.4 Water Connection Fees. In addition to the foregoing, Developer shall receive credit against its obligation to pay Water Acreage Assessment Fees in the full amount of any fee City may hereafter impose on Developer for the connection of the Vista Hermosa Reclaimed Water Transmission Line to the existing twelve-inch (12") diameter reclaimed water transmission line along Avenida Pico pursuant to Section 3.4.3 of the Water Facilities Agreement.

3.6.2.5 Application for Fee Credits.  
The Water Acreage Assessment Fee credits described in Sections 3.6.2.1 through 3.6.2.4 shall be applied to the development next occurring on the Property from the date the particular fee credit is due to Developer until the entire amount of the credit is exhausted (or any remaining balance is terminated, forgiven, and discharged as provided herein). Notwithstanding any other provision of this Agreement to the contrary, any unused portion of the Water Acreage Assessment Fee credit remaining on the date that is twenty (20) years after the date said portion is due to Developer shall be terminated, forgiven, and discharged and of no further force or effect at such time.

3.6.3 City Acceptance of Reclaimed Water Transmission Lines for Ownership and Maintenance. As to each Reclaimed Water Transmission Line, upon Developer's satisfactory completion and City's inspection and approval thereof, City shall file a Notice of Completion, and thereafter the Reclaimed Water Transmission Line shall become the property of City and City shall be responsible for ownership, operation, and maintenance of the same; provided, however, that nothing herein is intended to release Developer or any of its contractors from any claims, liabilities, damages, or losses arising out of defects in construction or workmanship or failure to complete such facilities in accordance with the approved plans and specifications. Prior to City's acceptance of each completed Reclaimed Water Transmission Line for ownership and maintenance purposes, Developer shall provide or cause to be provided to City the standard one-year maintenance bond or letter of credit as normally required by City for public improvements.

3.6.4 Delivery of Water.

3.6.4.1 Irrigation Distribution System.  
The Commercial Landscaped Areas and the Residential Landscaped Areas (collectively, the "Landscaped Areas") shall be irrigated with reclaimed water provided by City, if and to the extent City determines in its reasonable discretion that it has an adequate supply of water for such purpose. Developer shall pay for City's provision of reclaimed water at the same rate as other City customers. Developer shall install, at its sole cost and expense, all transmission and distribution facilities required for the delivery of reclaimed water to the Landscaped Areas, as reasonably determined by the City Engineer (the "Irrigation Distribution System"). Developer shall maintain and operate the Irrigation Distribution System. Developer's obligation to irrigate the Landscaped Areas and operate and maintain the Irrigation Distribution System pursuant to this Section 3.6.4 shall survive the termination of this Agreement and shall remain in effect in perpetuity.

Developer shall have the option to (i) connect the Irrigation Distribution System to the Reclaimed Water Transmission Lines or (ii) install a reclaimed water transmission line through the Property within the streets (the "Distribution Line") and connect the Irrigation Distribution System to the same. If Developer



elects to install the Distribution Line, Developer shall prepare and submit to City for review and approval the final plans and specifications for the Distribution Line. The construction of the Distribution Line shall be in strict accordance with the plans and specifications approved by City. Upon Developer's satisfactory completion of the Distribution Line and City's inspection and approval thereof, City shall file a Notice of Completion, and thereafter the Distribution Line shall become the property of City and City shall be responsible for ownership, operation, and maintenance of the same.

3.6.4.2 Potable Water. Notwithstanding the foregoing, in the event that a sufficient amount of reclaimed water is not available for the irrigation of the Landscaped Areas at the time irrigation is required, Developer shall construct the Potable Water Improvements and temporarily connect the Reclaimed Water Transmission Lines to the City's potable water system until such time as reclaimed water becomes available. Developer shall construct the Potable Water Improvements through a licensed and responsible contractor subject to City's reasonable approval with regard to the contract price and all change orders exceeding ten percent (10%) of the contract price. The Potable Water Improvements shall be constructed in a manner that will permit City to disconnect the Reclaimed Water Transmission Line from the City's potable water system and connect said line to the existing twelve-inch (12") diameter reclaimed water transmission line along Avenida Pico. Subject to Section 3.6.2.3, the Potable Water Improvements shall be planned, designed, engineered, constructed, and installed at Developer's sole cost and expense. City shall accept ownership of the Potable Water Improvements after Developer satisfactorily completes the work, City files the notice of completion for the work, and the applicable lien period or stop notice period expires (or Developer satisfies any lien or stop notice claim or posts a lien release bond). Developer shall pay a fee to City for all potable water provided at the potable water rate in existence at the time such water is actually delivered.

3.6.4.3 Limitations on City's Obligation to Provide Water Service. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to create any liability of the City to Developer if there is an interruption in water service, whether potable water or reclaimed water. In this regard, City does not guarantee or warrant that water will be available in any given quantity or at any given time. City shall not be liable to Developer in the event it is unable to utilize reclaimed water due to any federal, state, or regional regulatory requirements.

3.7 State and Federal Laws. By entering into this Agreement, Developer does not waive the benefit or protection of any rights it may have under applicable state or federal laws or regulations that may apply to the development of the Property from time to time, including without limitation any laws applying the laws in effect at a given time in processing land use applications such as

Government Code Sections 66474.2 and 66498.1 through 66498.9, except to the extent that applying such laws and regulations to the Property would be inconsistent with any of the express provisions of this Agreement. In the event that state or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, the Parties agree to consider in good faith amending or suspending such provisions of this Agreement as may be necessary to comply with such state or federal laws, provided that neither Party shall be bound to approve any amendment to this Agreement unless this Agreement is amended in accordance with the procedures applicable to the adoption of development agreements as set forth in the Development Agreement Statute and each Party retains full discretion with respect thereto.

### 3.8 Measure B.

3.8.1 Participation in Litigation. Developer agrees that from and after the Effective Date, it will not participate in, finance, or otherwise promote any litigation which seeks a judicial determination that Measure B is invalid, either on its face or as applied to all or any portion of the Property, or which seeks to enjoin the enforcement of Measure B.

3.8.2 Amendments. During the Term of this Agreement, City agrees that no amendment to Measure B and no new City ordinance, resolution, rule, regulation, or official policy shall apply to the Property if and to the extent that the same either (i) reduces the number of residential building allocations that City can approve or issue in any year below the number of allocations now authorized by Measure B (i.e.: 500, as said number may be adjusted in accordance with Section 15.44.040(B) of the Municipal Code (Section 4 of Measure B)), (ii) further reduces or restricts the exemptions set forth in Section 15.44.020 of the Municipal Code (Section 2 of Measure B), or (iii) conflicts with any express provision of this Agreement.

3.9 Assurances to Developer. The Parties acknowledge that the public benefits to be provided by Developer to City pursuant to this Agreement, including without limitation the participation by Developer in the financing, construction, dedication, and/or maintenance of certain public improvements and facilities, are in consideration for and reliance upon assurances that the Property can be developed in accordance with the terms of this Agreement. Accordingly, City agrees that it will not attempt to restrict or limit the development of the Property in conflict with the provisions of this Agreement.

## 4. FEES.

4.1 Development Fees. During the Term of this Agreement, Developer shall pay all Development Fees which are required to be paid by Developer under City's ordinances, regulations, rules, and

official policies that may apply from time to time on a non-discriminatory basis to the Property and other similarly situated properties at the rates in effect at the times such Development Fees become due. Notwithstanding the foregoing or any other provision set forth in this Agreement to the contrary, if Developer elects to and does pay any Development Fee prior to the date it becomes due, Developer shall not be required thereafter to pay the amount of any increase adopted or imposed after the date the Development Fee in question is paid. This Agreement does not affect Developer's obligations to City with respect to the payment of any monetary exactions which are not "Development Fees" within the meaning of this Agreement.

4.2 Planning Implementation Fee. Developer shall pay or cause to be paid to City the sum of Fifty Thousand Dollars (\$50,000.00) (the "Planning Implementation Fee"). City shall be authorized to use the Planning Implementation Fee for the purpose of paying the costs incurred by City to update City policies, ordinances, and regulations affecting the Project. Any portion of the Planning Implementation Fee that is not utilized by City for the purpose described in the preceding sentence on or before the date that is two (2) years after the date the Planning Implementation Fee is paid shall be returned to Developer (without interest) at that time.

4.3 Downtown Area Fee. Developer shall pay or cause to be paid to City the sum of One Million Dollars (\$1,000,000.00) ("Downtown Area Fee"). City shall be authorized to use the Downtown Area Fee for any uses associated with the Downtown Area.

4.4 Library Fee. Developer shall pay or cause to be paid to City the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) ("Library Fee"). City shall be authorized to use the Library Fee for the following purposes: (i) the construction of improvements to the San Clemente Library, (ii) the support of programs sponsored by or affiliated with the San Clemente Library, and (iii) the purchase of books and other materials for use by the San Clemente Library. The Parties acknowledge that the approval of the County of Orange is required as a condition to City's use of the Library Fee for the purposes described in the preceding sentence. City does not warrant or guarantee that such approval will be forthcoming. In the event the County of Orange does not permit City to use the Library Fee for the purposes described above, City shall use the Library Fee for City recreational programs benefitting minors.

4.5 Senior Fee. Developer shall pay or cause to be paid to City the sum of One Million Dollars (\$1,000,000.00) ("Senior Fee"). City shall be authorized to use the Senior Fee for the construction of improvements to and/or the support of programs sponsored by any Senior Citizen Center.

4.6 Timing of Payments. The Planning Implementation Fee, the Downtown Area Fee, the Library Fee, and the Senior Fee de-

scribed in Sections 4.2, 4.3, 4.4, and 4.5 herein shall be paid by Developer to City no later than the earliest of the following dates: (i) the date that is ten (10) days after the later of (x) the date Developer (or other owners or agents) obtains a cumulative total of two hundred fifty (250) residential development allocations for the Residential Area pursuant to Measure B, and (y) the date City issues the first grading permit for any portion of the Property, exclusive of any grading permits issued for the Vista Hermosa Improvements, (ii) the date Developer transfers or sells the two hundred fiftieth (250th) residential lot within the Residential Area to a bona fide purchaser for value, or (iii) the date the sum of the number of residential development allocations acquired by Developer and the number of residential lots within the Residential Area transferred or sold by Developer pursuant to clauses (i) and (ii) equals two hundred fifty (250). In this regard, Developer agrees to exercise good faith in an effort to secure two hundred fifty (250) residential development allocations for the Residential Area as soon as commercially practicable after the Effective Date. In addition, it is understood that the calculation of the two hundred fifty (250) development allocations and/or lot sales provided for in this Section 4.6 shall include any lots as to which this Agreement may be terminated in accordance with Section 2.2 of this Agreement.

4.7 North Beach Fee. Developer shall pay or cause to be paid to City the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) upon the sale of lots and/or units within the Residential Area in the manner set forth in this Section 4.7 (the "North Beach Fee"). The portion of the North Beach Fee owed to City for each lot or unit shall be equal to Three Thousand Four Hundred Fifty-Six Dollars and Twenty-Two Cents (\$3,456.22) ("Per Unit/Lot Fee"). The Per Unit/Lot Fee was calculated by dividing the sum of \$1,500,000.00 by 434 (the maximum number of residential units permitted hereunder). In the event the maximum number of residential units permitted is increased or decreased, City shall adjust the Per Unit/Lot Fee. The Parties anticipate that the sale of individual lots and/or units will be consummated through separate escrows. Developer shall deposit with the escrow holder for each such escrow written instructions requiring the escrow holder to deliver to City an amount equal to the Per/Unit Lot Fee for the unit or lot sold from the funds in escrow to which Developer otherwise would be entitled at the close of escrow. If, for whatever reason, any portion of the Per Unit/Lot Fee due to City for the lot or unit sold is not paid to City through escrow, Developer shall promptly pay to City the amount of the deficiency. City shall be authorized to use the North Beach Fee for the comprehensive planning of the North Beach Planning Area and the costs associated with the acquisition, development, rehabilitation, and/or restoration of any property located within any portion of the North Beach Planning Area.

4.8 Sanitary Sewer Connection Fees. City acknowledges that pursuant to Section 8.4 of the Wastewater Treatment Agreement, (i) the formation of an assessment district (Assessment District

No. 85-1), (ii) the sale of Assessment District 85-1 bonds to help finance the refurbishment and expansion of City's wastewater treatment facility and related improvements, (iii) the levy of assessments on the separate parcels comprising the Property, and (iv) the timely payment of such assessments, shall constitute full and complete satisfaction of any obligations of Developer to pay any sanitary sewer connection fees or other fees for construction of and connection to such treatment facility. This Agreement (in particular Section 3.6) supersedes the provisions of Section 8.6 of the Wastewater Treatment Agreement.

4.9 Other Fees and Charges. Except as specifically set forth in Sections 4.1 through 4.8, nothing set forth in this Agreement is intended or shall be construed to limit or restrict City's authority to impose new fees, charges, assessments, or taxes for the development of the Property or to increase any existing fees, charges, assessments, or taxes, and nothing set forth herein is intended or shall be construed to limit or restrict whatever right Developer might otherwise have to challenge any fee, charge, assessment, or tax not in effect as of the Effective Date. In connection therewith, Developer shall pay all applicable fees and charges, assessments, and special and general taxes validly imposed in accordance with the Constitution and laws of the State of California.

## 5. RCFPP; TRAFFIC ISSUES.

### 5.1 RCFPP.

5.1.1 Compliance. Developer shall construct improvements and pay fees as required to comply with City's General Plan and the RCFPP, and shall otherwise be bound by the same, as more particularly set forth herein.

5.1.2 Payment of RCFPP Fees. Prior to and as a condition to the issuance of the first building permit for a building within the Residential Area or the Commercial Area, Developer shall, based on the RCFPP in effect at that time, pay or cause to be paid to City all RCFPP fees attributable to the construction of the Vista Hermosa Improvements. The maximum number of residential units permitted to be constructed within the Residential Area as of the date City issues the first grading permit (exclusive of any grading permits issued for the Vista Hermosa Improvements) for any portion of the Property and the maximum number of square feet of commercial building area permitted within the Commercial Area as of the date City issues the first grading permit (exclusive of any grading permits issued for the Vista Hermosa Improvements) for any portion of the Property shall be used in calculating the amount of RCFPP fees due hereunder.

5.2 Rights-of-Way

5.2.1 Dedication of Rights-of-Way. Except as provided below with respect to the Vista Hermosa Improvements, within thirty (30) days after the date Developer submits to City its application for the first grading permit (exclusive of any grading permits issued for the Vista Hermosa Improvements) for any portion of the Property, Developer shall make (and record in the Official Records of Orange County) an irrevocable offer of dedication to City of all of the rights-of-way to be located on the Property needed to accommodate the road improvements which are identified in the RCFPP and the City's General Plan, including without limitation the proposed extension of Avenida Vista Hermosa across the Property, with such offer of dedication to be of a width, size, and location acceptable to the City Engineer.

Within thirty (30) days following the Effective Date, Developer shall make (and record in the Official Records of Orange County) an irrevocable offer of dedication to City of all of the rights-of-way to be located on the Property needed to accommodate the Vista Hermosa Improvements, with the exception of the Vista Hermosa Interchange Right-of-Way, in the form attached hereto as Exhibit "F."

Developer shall make (and record in the Official Records of Orange County) an irrevocable offer of dedication to City of the Vista Hermosa Interchange Right-of-Way not later than the earlier of the following dates: (i) thirty (30) days after the date City has sufficient funds in place for the complete construction of the Vista Hermosa Improvements or (ii) the date the fair market value of the Vista Hermosa Interchange Right-of-Way is paid to Developer pursuant to Section 5.2.3 of this Agreement.

City shall have the right to accept the offers of dedication at the time City reasonably determines that the rights-of-way are needed to accommodate the road improvements. In connection therewith, City shall have the right to accept any portion of the land offered for dedication hereunder separately from any other portion and its acceptance of one portion shall not be deemed to constitute a rejection of any other portion. Developer hereby grants to City a non-exclusive license to enter onto portions of the Property adjacent to the rights-of-way for the purpose of conducting soils tests and engineering and boundary surveys and other similar tests and investigations, provided that City shall notify Developer in writing prior to any such entry and shall indemnify, defend, and hold harmless Developer with respect thereto. Except as otherwise set forth in Section 5.2.3 of this Agreement, City shall not be required to pay any compensation or fee for the rights-of-way and the non-exclusive license described in this Section 5.2.1.

5.2.2 Construction Easements. Developer hereby grants to City a non-exclusive easement in, on, over, and across the property located within the Sports Park as reasonably necessary

for the purpose of performing construction work associated with the construction of the Vista Hermosa Improvements within the rights-of-way to be dedicated by Developer pursuant to Section 5.2.1, which construction work includes but is not limited to drainage repair, slope stabilization, and construction of curbs, gutters, medians, sidewalks, and street lighting, signalization, and signage. City shall not be required to pay any compensation or fee for the non-exclusive easements described herein.

5.2.3 Valuation of Vista Hermosa Interchange Right-of-Way. City shall pay to Developer for the Vista Hermosa Interchange Right-of-Way an amount equal to the fair market value of the Vista Hermosa Interchange Right-of-Way as of the date it is estimated that the construction contract for the Vista Hermosa Improvements will be awarded (the "Award Date"); provided, however, that in no event shall the amount paid by City for the Vista Hermosa Interchange Right-of-Way exceed the sum of Three Million Dollars (\$3,000,000.00). The fair market value of the Vista Hermosa Interchange Right-of-Way (not to exceed the \$3,000,000.00 amount) shall be determined in accordance with this Section 5.2.3. The \$3,000,000.00 figure is intended only as a cap on the amount City shall pay to Developer for the Vista Hermosa Interchange Right-of-Way and shall not be construed as an opinion by City or an agreement between the parties on the fair market value of the Vista Hermosa Interchange Right-of-Way.

From and after the Effective Date, City and Developer shall negotiate in good faith in an effort to determine the fair market value of the Vista Hermosa Interchange Right-of-Way as of the Award Date. If, after and despite their exercise of reasonable diligence, City and Developer are unable to agree upon the fair market value of the Vista Hermosa Interchange Right-of-Way within seven (7) months prior to the anticipated Award Date, Developer shall, at its sole cost and expense, obtain a written appraisal of the fair market value of the Vista Hermosa Interchange Right-of-Way ("Developer Appraisal") and submit the same to City no later than five (5) months prior to the anticipated Award Date, with the understanding that in no event shall the fair market value of the Vista Hermosa Interchange Right-of-Way in the Developer Appraisal exceed Three Million Dollars (\$3,000,000.00). If City disputes the amount of the Developer Appraisal, City shall, at its sole cost and expense, obtain a written appraisal of the fair market value of the Vista Hermosa Interchange Right-of-Way ("City Appraisal") and submit the same to Developer no later than two (2) months after receipt of the Developer Appraisal. If the Developer Appraisal and the City Appraisal are within twenty percent (20%) of each other, the two appraisals shall be added and divided by two, and the resulting amount conclusively shall be deemed to be the fair market value of the Vista Hermosa Interchange Right-of-Way for purposes of this Agreement (but not for the purposes of any other acquisition of property required for the same project). If the differential between the Developer Appraisal and the City Appraisal is greater than twenty percent (20%), the amount of the higher appraisal shall be reduced such that there is a twenty percent (20%) differential

between the City Appraisal and the Developer Appraisal, and the two appraisals shall then be added and divided by two, and the resulting amount conclusively shall be deemed to be the fair market value of the Vista Hermosa Interchange Right-of-Way for purposes of this Agreement (but not for the purposes of any other acquisition of property required for the same project). Payment of the fair market value of the Vista Hermosa Interchange Right-of-Way shall be due by City to Developer within thirty (30) days after the later of (i) the actual Award Date or (ii) the date the appraisal process is completed.

Each Party shall bear the costs of its own appraisal (with the understanding that City's costs shall be an eligible charge against its RCFPP fee account). The appraisers chosen pursuant to this Section 5.2.3 shall be members of the Appraisal Institute and shall have at least ten (10) years of experience appraising real property in Southern California.

5.3 Development of Residential Area. Developer understands and agrees that, as a condition to the issuance of the first and all additional building permits for residential units within the Residential Area, City shall have sufficient funds in place for the complete construction of the Vista Hermosa Improvements. In addition, Developer understands and agrees that the issuance of building permits for residential units within the Residential Area will depend on the levels of service on Avenida Pico. If at any time during the Term of this Agreement, the traffic levels on Avenida Pico violate City's minimum level of service standards set forth in the City's General Plan and the RCFPP, City will be entitled to not issue building permits for residential units within the Residential Area until such time as the traffic condition is alleviated and the level of service violation ceases to exist.

5.4 Development of Commercial Area. Provided that Developer has satisfactorily complied with all other applicable City requirements, City shall issue building permits for buildings within the Commercial Area on the date that is no earlier than one (1) year prior to the Anticipated Completion Date. The contract for the construction of the Vista Hermosa Improvements will not be issued until such time as City has sufficient funds in place for the complete construction of the Vista Hermosa Improvements, including without limitation acquisition of the Vista Hermosa Interchange Right-of-Way. Once building permits have been issued in accordance with this Section 5.4, City shall not suspend or revoke said permits or refuse to issue final inspections or certificates of occupancy or refuse to permit occupancy and use of completed buildings on the basis of the status of the completion of the Vista Hermosa Improvements or the levels of service on or around the Property.



6. CONVEYANCE OF LAND.

6.1 Option. Developer hereby grants to City and City hereby accepts from Developer an option to acquire the Coastal Commercial Parcel and an option to acquire the Dudleya Preserve Parcel (individually a "Conveyance Parcel" and collectively the "Conveyance Parcels"), subject to the terms and conditions set forth in this Section 6. Developer and City shall enter into and cause to be recorded against the Coastal Commercial Parcel and the Dudleya Preserve Parcel a Memorandum of Option Agreement in the forms attached hereto as Exhibits "G-1" and "G-2" no later than the date City issues the first grading permit for any portion of the Property, exclusive of any grading permits issued for the Vista Hermosa Improvements.

6.2 Option Fee and Purchase Price. Developer's granting of the options referred to in this Section 6 shall be in consideration of City's performance of its obligations set forth in this Agreement. City shall not be required to pay any option fee or consideration or purchase price for the Conveyance Parcels.

6.3 Option Period. City shall have the right to exercise its options to acquire the Coastal Commercial Parcel and the Dudleya Preserve Parcel at any time during the one (1) year period following the date City issues the first grading permit (exclusive of any grading permits issued for the Vista Hermosa Improvements) for any portion of the Property, but in no event later than the date that is twenty (20) years after the date the Memorandum of Option Agreements referred to in Section 6.1 of this Agreement are recorded. If City does not exercise the option(s) within said one (1) year period, the option(s) shall automatically terminate at that time, unless Developer agrees in writing to extend the option(s) for an additional period of time. City may exercise its option to acquire either Conveyance Parcel separately from the other Conveyance Parcel and its exercise of its option to acquire one Conveyance Parcel or its rejection of the option to acquire that Conveyance Parcel shall not be deemed to constitute a rejection of the option to acquire the other Conveyance Parcel.

6.4 Manner of Exercise of Options. City shall exercise its option to acquire either or both of the Conveyance Parcels by delivering written notice to Developer of City's intention to do so. Within ten (10) days after City delivers any such notice to Developer, City and Developer shall open an escrow for conveyance of the Conveyance Parcel(s) designated in City's notice with Chicago Title Company or such other title company as may be selected by Developer and subject to City's reasonable approval (the "Escrow Agent"). The escrow instructions for the conveyance shall be consistent with this Section 6.4. City and Developer agree to execute such additional instructions as may be reasonably required by the Escrow Agent in order to accomplish the purposes of this Section 6.4 and close the escrow within sixty (60) days after the date the escrow is opened; provided, however, that in the event of any conflicts between the standard printed form escrow instructions

of the Escrow Agent and the provisions of this Section 6.4, the provisions of this Section 6.4 shall prevail.

6.5 Condition of Title. Developer shall convey fee simple title to the Conveyance Parcel(s) by grant deed. Developer shall convey and City shall accept fee simple title to the Conveyance Parcel(s) free and clear of all recorded and unrecorded monetary liens. Developer further agrees to convey the Conveyance Parcel(s) free and clear of all recorded and unrecorded non-monetary liens, encumbrances, easements, leases, covenants, conditions, restrictions, and other exceptions to or defects in title (collectively, "Title Exceptions"), excepting only the following: (i) current non-delinquent property taxes and assessments (to be paid by Developer prior to the applicable closing, subject to Developer's right to apply for a refund for any portion of said taxes or assessments allocable to the period after the applicable closing date); (ii) the lien of this Agreement; (iii) the standard printed title exceptions in the form of CLTA title policy (or ALTA policy with Western Regional Exceptions) commonly used by the Title Company identified in Section 5.8 herein; and (iv) those additional title exceptions as may be approved in writing by City in its sole and absolute discretion. Developer shall have no obligation to remove (i) Exception Nos. 3, 4, 6, 7, 9, and 10 listed in the Preliminary Title Report issued for the Coastal Commercial Parcel by Chicago Title Company under its Order No. 8504024-M61 dated May 8, 1998, (ii) Exception Nos. 4-8, and 11 listed in the Preliminary Title Report issued for the Dudleya Preserve Parcel by Chicago Title Company under its Order No. 6016408A-M61 dated May 8, 1998, or (iii) any non-monetary title exceptions created after the Effective Date which are not a result of any act or omission of Developer. Developer represents to City that it has no actual knowledge of the existence of any unrecorded Title Exceptions which may affect the Conveyance Parcels other than as may have been disclosed in writing to City prior to the Effective Date. City acknowledges that Developer has not undertaken and does not intend to take any investigation with respect to the existence of any unrecorded Title Exceptions which may affect the Conveyance Parcels. As used herein, the term "actual knowledge" specifically excludes implied knowledge.

6.6 Escrow Fees and Closing Costs. City and Developer each shall pay one-half (1/2) of the escrow fees and closing costs incurred for the conveyance of the Conveyance Parcel(s), except that Developer shall pay any non-delinquent property taxes and assessments and all costs required to place title in the condition referred to in Section 6.5. Developer and City hereby warrant and represent to one another that neither party has engaged the services of a broker or finder in this transaction, and each agrees to indemnify, defend, and hold the other harmless from and against any claims, liabilities, or losses arising out of a breach of such warranty and representation.

6.7 Right of Entry. Between the Effective Date of this Agreement and the close of escrow for the Conveyance Parcel(s),

Developer hereby grants to City and its authorized agents a non-exclusive irrevocable license to enter onto the Conveyance Parcels for the purpose of conducting soils tests and engineering and boundary surveys and other similar investigations, provided that City shall notify Developer in writing prior to any such entry and shall indemnify, defend, and hold harmless Developer with respect thereto. Notwithstanding the foregoing, City shall not be permitted to conduct any tests or investigations on the Dudleya Preserve Parcel that would be prohibited by the conditions in coastal development permit No. 5-97-136 issued on November 5, 1997, by the California Coastal Commission.

6.8 Title Insurance for Conveyance Parcels. Concurrently with the close of escrow for the Conveyance Parcel(s), Developer shall cause Chicago Title Company, or such other title insurance company as shall be approved in writing by City (the "Title Company"), to issue and deliver to City a CLTA policy of title insurance (or an ALTA policy with Western Regional Exceptions), insuring that title to the applicable Conveyance Parcel is vested in City in the condition required by Section 6.5. The total amount of title insurance coverage for each Conveyance Parcel shall be the fair market value of that Conveyance Parcel, as mutually agreed upon by the Parties in their reasonable discretion. Developer shall be responsible for all costs necessary to place title in the condition required in Section 6.5 and for all costs and premiums necessary to obtain the title policy or policies.

6.9 Physical Condition. Developer warrants and represents (which warranty and representation shall survive the close of escrow) that it has no actual knowledge of the presence of any hazardous or toxic substances or materials within the Conveyance Parcels. Developer shall indemnify, defend, and hold harmless City from any claims, liabilities, or losses incurred by City arising out of Developer's violation of this limited warranty. Otherwise, Developer makes no warranty regarding the physical condition of the Conveyance Parcels and City shall accept the Conveyance Parcels in an "as is" physical condition. City acknowledges that Developer has not undertaken and does not intend to take any investigation with respect to the physical condition of the Conveyance Parcels. As used herein, the term "actual knowledge" specifically excludes implied knowledge.

6.10 Maintenance of Dudleya Preserve Parcel. From and after the Effective Date and continuing thereafter until receipt of written notice from City to discontinue, Developer shall, at its sole cost and expense, maintain the Dudleya Preserve Parcel in accordance with the rules, regulations, standards, and requirements of the California Coastal Commission in effect and applicable to the Dudleya Preserve Parcel as of the Effective Date. Developer's obligation to maintain the Dudleya Preserve Parcel set forth in this Section 6.10 shall survive the termination of this Agreement. No later than the date that the first final map is recorded for any portion of the Residential Area or as soon thereafter as permitted by the Department of Real Estate, Developer shall record in the

Official Records of Orange County a declaration of covenants, conditions, and restrictions (CC&Rs) against the Residential Area (or portion thereof subject to the map). The CC&Rs shall contain a provision requiring that the homeowners' association created pursuant to the CC&Rs shall be responsible for maintaining the Dudleya Preserve Parcel in perpetuity.

## 7. IMPLEMENTATION.

7.1 Processing of Applications and Permits. Upon satisfactory completion by Developer of all required preliminary actions and payment of appropriate processing fees, if any, City shall proceed to process and check all applications for Project development and building approvals within the times set forth in the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the California Government Code), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government Code), and other applicable provisions of law, as the same may be amended from time to time.

In no event shall City disapprove, condition, or delay the processing of any application for Project development or building approvals for reasons inconsistent with the express provisions of this Agreement. If City is unable to timely process any of Developer's applications for Project development or building approvals, upon request by Developer, City shall consider engaging outside consultants approved by Developer to aid in such processing, provided that Developer shall be required to advance all charges to be incurred by City for such outside consultants. In this regard, Developer, in a timely manner, will provide City with all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder and will cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefor.

7.2 Tentative Subdivision Maps. With respect to applications by Developer for tentative subdivision maps for portions of the Property, City agrees that Developer may file and process vesting tentative maps in accordance with Chapter 4.5 (commencing with Section 66498.1) of Division 2 of Title 7 of the California Government Code and the applicable provisions of the City's subdivision ordinance, as the same may be amended from time to time. If final maps are not recorded for the entire Property before such tentative map(s) (whether or not any such tentative map is a vesting tentative map) would otherwise expire, the term of such tentative map(s) automatically shall be extended for the Term of this Agreement.

7.3 Permit Review. City shall have the authority to review applications for building permits as required by law and to conduct its development review of any specific improvements proposed for the Project pursuant to the applicable provisions of the Municipal Code; provided, however, no such review shall authorize or permit City to impose any condition and/or withhold approval of

any proposed building; the result of which would be inconsistent with any term or provision of this Agreement.

7.4 Environmental Review. With respect to meeting any requirements of CEQA, Developer shall provide all information required of it and pay for any necessary studies and reports, and City shall process such matters in accordance with this Section 7.4 and, to the extent permitted by CEQA, shall use and adopt existing environmental reports and studies without requiring new or supplemental environmental documentation.

7.5 Other Governmental Permits. Provided that Developer will pay the reasonable cost of such cooperation, after City has approved the development of any portion of the Property, City shall cooperate with Developer in its efforts to obtain such additional permits and approvals as may be required by any other governmental or quasi-governmental agencies having jurisdiction over such portion of the Property, which permits and approvals are consistent with City's approval and which are consistent with applicable regulatory requirements. City does not warrant or represent that any other governmental or quasi-governmental permits or approvals will be granted.

## 8. DEFAULT, REMEDY, AND TERMINATION.

8.1 Notice and Opportunity to Cure. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("Nondefaulting Party") shall comply with the notice and cure provisions of this Section 8.1. A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party in accordance with the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Nondefaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "default" of its obligations set forth in this Agreement if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within ten (10) days after the date of such notice (for monetary defaults), within thirty (30) days after the date of such notice (for non-monetary defaults), or within such lesser time as may be specifically provided in this Agreement. If, however, a non-monetary default cannot be cured within such thirty (30) day period, as long as the Defaulting Party does each of the following:

- (1) notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(ii) notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default;

(iii) promptly commences to cure the default within the thirty (30) day period;

(iv) makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(v) diligently prosecutes such cure to completion,

then the Defaulting Party shall not be deemed in breach of this Agreement. Notwithstanding the foregoing, the Defaulting Party shall be deemed in default of its obligations set forth in this Agreement if said breach or failure involves the payment of money but the Defaulting Party has failed to completely cure said monetary default within ten (10) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

8.2 Default Remedies. Subject to the foregoing, in the event of a default, the Non-Defaulting Party, at its option, may institute legal action to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement by specific performance. Furthermore, City, in addition to or as an alternative to exercising the remedies set forth in this Section 8.2, in the event of a material default by Developer, may give notice of its intent to terminate or modify this Agreement pursuant to the Development Agreement Statute, in which event the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days after the issuance of such notice to terminate, in the manner set forth in Government Code Sections 65865, 65867, and 65868, as the same may be amended from time to time. If in the future the Commercial Area and the Residential Area are owned by different parties, (i) the default by one owner shall not constitute a default by the other owner and shall not affect the non-defaulting owner's rights set forth in this Agreement unless the obligation breached by the defaulting owner is one in which the owners are jointly liable, and (ii) the default by one owner shall not relieve the non-defaulting owner from responsibility for performing the obligations set forth in this Agreement that apply to the Property as a whole or that apply only to the portion of the Property owned by the non-defaulting owner. In connection therewith, (1) the obligations set forth in Sections 3.5, 4.2, 4.3, 4.4, 4.5, and 4.7 of this Agreement shall only apply to the Residential Area, and (ii) the default by the owner of the Residential Area of the following obligations shall not constitute a default by the owner of the Commercial Area: (w) except as provided in Section 5.1.2, performance of obligations under the RCFPP that apply only to the Residential Area, (x) payment of Development Fees required for development of the Residential Area, (y) dedication of rights-of-way located within the Residential Area, and (z) conveyance of the Conveyance Parcels to the

extent the Conveyance Parcels are owned by the owner of the Residential Area. In no event shall the Parties have the right to sue one another for damages or monetary relief arising out of a Party's default of, its obligations set forth in this Agreement, the Parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be the Parties' sole and exclusive judicial remedies; provided, however, nothing herein is intended to deprive City of any legal or equitable right it may have to require Developer to timely pay the Development Fees, Planning Implementation Fee, Downtown Area Fee, Library Fee, Senior Fee, and North Beach Fee pursuant to Sections 4.1 through 4.7 of this Agreement.

8.3 Force Majeure. The obligations by either Party hereunder shall not be deemed to be in default where delays or failures to perform are due to any cause without the fault and beyond the reasonable control of such Party, including to the extent applicable, the following: war; insurrection; strikes; walk-outs; the unavailability or shortage of labor, material, or equipment; riots; floods; earthquakes; the discovery and resolution of hazardous waste or significant geologic, hydrologic, archaeological, paleontologic, or endangered species problems on the Property; fires; casualties; acts of God; governmental restrictions imposed or mandated by other governmental entities; delays caused by the other party's failure to act or timely perform its obligations set forth herein; inability to obtain necessary permits or approvals from other governmental entities; enactment of conflicting state or federal statutes or regulations; judicial decisions; or litigation not commenced by such Party. Notwithstanding the foregoing, any delay caused by the failure of City or any agency, division or office of City to timely issue a license, permit, or approval required pursuant to this Agreement shall not constitute an event of force majeure extending the time for City's performance hereunder. If written notice of such delay or impossibility of performance is provided to either Party within a reasonable time after the commencement of such delay or condition of impossibility, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by the Parties in writing, or the performance rendered impossible may be excused in writing by the Party so notified. In no event shall adverse market or financial conditions constitute an event of force majeure extending the time for such Party's performance hereunder. In addition, in no event shall the Term of this Agreement be extended by an event of force majeure.

8.4 No Obligation to Develop. It is understood that Developer's development of the Project depends upon a number of factors including, but not necessarily limited to, the housing market, the availability of financing, and general economic conditions. Nothing in this Agreement shall be construed as requiring Developer to develop the Project, and any failure to develop the Project shall not be deemed a default by Developer of its obligations set forth in this Agreement. In the event Developer fails to develop all or a portion of the Property, Developer shall not be responsible for payment of any fees required to be paid by Develop-

er as provided in this Agreement or City's ordinances, regulation, rules, and official policies that apply only to such portion of the Property that is not so developed. Nothing herein is intended to release Developer from the obligation to pay the Planning Implementation Fee, the Downtown Area Fee, the Library Fee, the Senior Fee, and the North Beach Fee in accordance with the terms and provisions set forth in Sections 4.2 through 4.7 of this Agreement.

9. ANNUAL REVIEW.

9.1 Timing and Scope of Annual Review. At least once every twelve (12) month period from the Effective Date, City shall review the good faith compliance of Developer with the terms of this Agreement (the "Annual Review"). The Annual Review shall be conducted by the City Council or its designee in accordance with Article 6 of City's regulations for consideration of development agreements, approved by Resolution No. 46-81 on June 17, 1981, as the same may be amended from time to time. The Annual Review shall be limited in scope to the determination of Developer's compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1; provided, however, that if the City Council imposes a mitigation monitoring or reporting program pursuant to CEQA which is to be completed simultaneously with the Annual Review of this Agreement, then the scope of the Annual Review may include implementation of mitigation measures pursuant to CEQA, except that compliance with mitigation measures shall not be deemed to be an obligation of either Party pursuant to this Agreement solely or partly because mitigation monitoring is conducted simultaneously with review of this Agreement.

9.2 Standards for Annual Review. During the Annual Review, Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. At the conclusion of the Annual Review, the City Council or its designee shall make a written determination, on the basis of substantial evidence, whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of any designee of the City Council shall be appealable to the City Council. If the City Council or its designee finds and determines that Developer has not complied with the terms and conditions of this Agreement, then City may declare a default by Developer in accordance with Section 8 herein. City may exercise its rights and remedies relating to any such event of default only after the period for curing a default as set forth in Section 8 has expired without cure of the default. The costs incurred by City in connection with the Annual Review process shall be paid by the Developer.

9.3 Evidence For Annual Review. City, upon request by Developer, shall provide Developer a copy of any final public staff reports and documents to be used or relied upon in conducting the Annual Review and, to the extent practical, related exhibits concerning Developer's performance hereunder, prior to any such review. Developer shall be permitted an opportunity to respond to



City's evaluation of its performance, either orally at a public hearing or in a written statement, at Developer's election.

9.4 Certificate of Compliance. With respect to each year in which City approves Developer's compliance with this Agreement, City shall, upon written request by Developer, provide Developer with a written certificate of good faith compliance within thirty (30) days of City's receipt of Developer's request for same.

## 10. MORTGAGEE RIGHTS

10.1 Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

10.2 Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) shall be subject to all of the terms and conditions of this Agreement and any such Mortgagee who takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

10.3 Mortgagee Not Obligated. Notwithstanding the provisions of this Section 10, a Mortgagee will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance, except that (i) the Mortgagee shall have no right to develop the Project without fully complying with the terms of this Agreement and (ii) to the extent that any covenant to be performed by Developer is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder.

10.4 Notice of Default to Mortgagee, Right of Mortgagee to Cure. Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of the results of the Annual Review and of any default by Developer of its obligations set forth in this Agreement. Each Mortgagee shall have a further right, but not an obligation, to cure such default within sixty (60) days after receipt of such notice or, if such default can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or

otherwise, and to remedy or cure such default within sixty (60) days after obtaining possession, and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement until expiration of such sixty (60) day period; provided, however, that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such sixty (60) day period, the Mortgagee shall have such additional time as is reasonably necessary to remedy or cure such default.

10.5 Bankruptcy. Notwithstanding the foregoing provisions of this Section 10, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Developer, the times specified in Section 10.4 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition. In addition, if this Agreement is rejected by Developer or otherwise terminated in connection with any such proceeding, then upon the request of any Mortgagee, a new development agreement upon the same terms and conditions set forth in this Agreement shall be entered into between such Mortgagee and City.

## 11. ASSIGNMENT.

11.1 Assignee Subject to Terms of Agreement. Following an assignment or transfer of any of the rights and interests of Developer set forth in this Agreement, the assignee's exercise, use, and enjoyment of the Property shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Developer.

11.2 Release of Developer. Upon the written consent of City to the partial or complete assignment of this Agreement (which consent shall not be unreasonably withheld) and the express written assumption of such assigned obligations of Developer under this Agreement by the assignee, Developer shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement, except to the extent Developer is in default hereunder prior to said transfer.

11.3 Sale to Residential Builder. Nothing herein shall prevent Developer from selling or transferring a portion of the Residential Area for residential development to a residential builder for construction of residential units in accordance with the terms of this Agreement, provided that such transfer is in compliance with applicable provisions of law, including the Subdivision Map Act, and the transferee enters into appropriate agreements with City to assure that all development obligations and restrictions hereunder related to such portion of the Property will be met.

11.4 Sale to Commercial Builder. Nothing herein shall prevent Developer from selling or transferring a portion of the Commercial Area for commercial development to a commercial builder or user for construction of commercial improvements in accordance with the terms of this Agreement, provided that such transfer is in compliance with applicable provisions of law, including the Subdivision Map Act, and the transferee enters into appropriate agreements with City to assure that all development obligations and restrictions hereunder related to such portion of the Property will be met.

## 12. INSURANCE AND INDEMNITY

12.1 Insurance. Developer shall procure and maintain, at all times during the Term when actual work on the Project is being performed by Developer or its contractors or subcontractors, in a form and content satisfactory to City, the following policies of insurance:

(i) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than Five Million Dollars (\$5,000,000.00) combined single limits.

(ii) Automobile Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (A) bodily insurance liability limits of Two Million Dollars (\$2,000,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence and property damage liability limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) in the aggregate or (B) combined single limit liability of Two Million Dollars (\$2,000,000.00). Said policy shall include coverage for owned, non-owned, leased, and hired cars.

(iii) Workers' Compensation Insurance. A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California.

The policies of insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California and rated "A:VII" or better in the most recent edition of Best's Insurance Guide. All of the aforescribed policies of insurance shall be primary insurance and shall name City and its officials and employees as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against City and its insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice to City. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evi-

dence of insurance in conformance with this Section 12.1. No work to be performed by Developer pursuant to this Agreement shall commence until Developer has provided City with certificates of insurance or appropriate insurance binders evidencing the above insurance coverage and said certificates or binders are approved by City; provided, however, that notwithstanding the foregoing, Developer shall be permitted to self-insure provided Developer submits to City evidence satisfactory to City that Developer's net worth exceeds One Hundred Million Dollars (\$100,000,000.00) and Developer complies with all other requirement of City imposed as conditions to City's approval of Developer's self insurance.

12.2 Indemnity.

12.2.1 Participation in Litigation, Indemnity.

Developer agrees to indemnify, defend, and hold harmless City and its elected and appointed boards, commissions, officers, agents, and employees from and against any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly, from the acts, omissions, or operations of Developer or Developer's agents, contractors, subcontractors, agents, or employees pursuant to this Agreement. City shall provide Developer with notice of the pendency of any such action and request that Developer defend such action. If Developer fails to do so, City may defend the action and Developer shall pay the cost thereof. The provisions of this Section 12.2.1 shall not apply to the extent such damage, liability or claim is caused by the willful misconduct or sole active negligence of City, or City's officers, officials, agents, employees or representatives.

12.2.2 Survival of Indemnity Obligations. The indemnity provisions set forth in this Agreement shall survive termination of this Agreement.

13. MISCELLANEOUS.

13.1 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of each of the Parties hereto and all successors in interest to the Parties hereto.

13.2 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties and supersedes all previous negotiations, discussions, and agreements between the Parties with respect to all or part of the subject matter hereof. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

13.3 Litigation Expenses. In any judicial proceeding or arbitration (collectively, "Action") between the Parties seeking enforcement of any of the terms and provisions of this Agreement,

the prevailing Party in such Action shall be awarded all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or 1717 in the absence of this Agreement), including expert witness fees, attorney's fees, and costs of investigation and preparation prior to the commencement of the Action. The right to recover such costs and expenses shall accrue upon commencement of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

13.4 Amendment. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall have any force or effect unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Official Records of Orange County.

13.5 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

13.6 Cooperation in the Event of Legal Challenge; Limitations. In the event of any legal action instituted by any third party challenging the validity or enforceability of any provision of this Agreement, the Parties hereby agree to cooperate in defending said action as set forth in this Section 13.6. City shall have the right to defend such action. City shall have no obligation to defend any such action, except that if Developer timely provides City with written notice that Developer has elected to defend the action, City shall not allow any default or judgment to be taken against it and shall not enter into any settlement or compromise of any claim which has the effect, directly or indirectly, of prohibiting, preventing, delaying, or further conditioning or impairing Developer's rights hereunder. In addition, if Developer elects to defend the action, City shall provide reasonable assistance to Developer, such assistance to include (i) making available upon reasonable notice, and at no cost to Developer, City officials and employees who are or may be witnesses in such action, and (ii) provision of other non-privileged information within the custody or control of City that is relevant to the subject matter of the action.

Developer shall have the right, but not the obligation, to defend any such action. If Developer defends any such action, it shall indemnify, defend, and hold harmless City and City's officials and employees from and against any claims, losses, or liabilities assessed or awarded against City by way of judgment, settlement, or stipulation. In such event, Developer shall further have the right to settle such action, provided that nothing herein shall authorize Developer to settle such action on terms that would constitute an amendment or modification of this Agreement unless such

amendment or modification is approved by City in accordance with applicable legal requirements, and City reserves its full legislative discretion with respect thereto. If Developer does not defend any such action, Developer shall have no responsibility for the payment or defense of any claims, losses, or liabilities incurred by or filed against City.

13.7 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

13.8 Parties In Interest. This Agreement and all of its terms, conditions, and provisions are entered into only for the benefit of the Parties executing this Agreement (and any successors in interest), and not for the benefit of any other individual or entity.

13.9 No Joint Venture or Partnership. City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners.

13.10 Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of one or both Parties has been materially altered or abridged by such holding.

13.11 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.12 Recordation. No later than ten (10) days after the Effective Date of this Agreement, the City Clerk shall record a copy of this Agreement in the Official Records of the Recorder's Office of Orange County. Developer shall be responsible for all recordation fees, if any.

13.13 Recopal Certificate. Either Party hereunder may, at any time, deliver written notice to the other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not

been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within fifteen (15) days following the receipt thereof. Any third party including a Mortgagee shall be entitled to rely on the Certificate.

13.14. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

13.15. Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

13.16. Notices. Any notice or communication required hereunder between City and Developer must be in writing and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated hereinbelow as the Party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. A Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:

City of San Clemente  
City Hall  
100 Avenida Presidio  
San Clemente, California 92672  
Attn: City Manager  
Telephone: (949) 361-8322  
Telecopy: (949) 361-8316

With a Copy to:

Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, California 92626  
Attn: Jeffrey M. Oderman, Esq.  
Telephone: (714) 641-5100  
Telecopy: (714) 546-9035

If to Developer:

MT. NO. I, LLC  
16592 Hale Avenue  
Irvine, California 92602  
Attn: William R. Brasher  
Telephone: (949) 757-6106  
Telecopy: (949) 261-6095

13.17 Authority to Execute. Developer warrants and represents that (i) Developer is duly organized and existing, (ii) it is duly authorized to execute and deliver this Agreement, (iii) by so executing this Agreement, Developer is formally bound to the provisions of this Agreement, (iv) Developer's entering into and performance of its obligations set forth in this Agreement does not violate any provision of any other Agreement to which Developer is bound, and (v) there is no existing or threatened litigation or legal proceeding of which Developer is aware which could prevent Developer from entering into or performing its obligations set forth in this Agreement.

13.18 Counterparts and Exhibits. This Agreement is executed in four duplicate originals, each of which is deemed to be an original. This Agreement consists of forty-two (42) pages and eight (8) exhibits, attached hereto and made a part hereof by this reference, all of which constitute the entire understanding and agreement of the Parties. Said exhibits are identified as follows:

- A Legal Description of Property
- B Site Map
- C Legal Description of Coastal Commercial Parcel
- D Legal Description of Dudleya Preserve Parcel
- E Description of Project
- F Irrevocable Offer of Dedication
- G-1 Memorandum of Option Agreement
- G-2 Memorandum of Option Agreement

[signatures on next page]



IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first written above.

"CITY"

CITY OF SAN CLEMENTE,  
a municipal corporation

Date: 9/30/98

By: [Signature]  
Mayor *Pro Tempore*

ATTEST:

[Signature]  
City Clerk

APPROVED AS TO FORM:

[Signature]  
Jeffrey M. Oderman  
City Attorney

"DEVELOPER"

MT. NO. I, LLC, a California limited liability company

By: Marblehead Coastal, Inc.,  
a California corporation,  
its managing member

Date: September 1, 1998

By: [Signature]  
Vice President & CEO

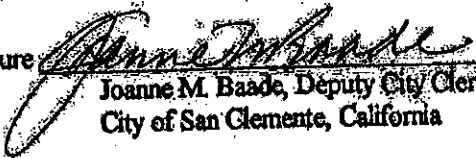
By: [Signature]  
Its Secretary

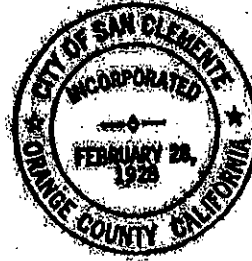
STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS.  
CITY OF SAN CLEMENTE )

On September 30, 1998, before me, Joanne M. Baade, personally appeared Lois R. Berg, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

  
Joanne M. Baade, Deputy City Clerk  
City of San Clemente, California



STATE OF CALIFORNIA )  
 )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

STATE OF CALIFORNIA )  
 )  
 ) SS.  
COUNTY OF Orange )

On Sept. 1, 1998, before me, Cheri Morden, a Notary Public,  
personally appeared Jimmy D. Johnson and William R. Brasler

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

Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public

[SEAL]

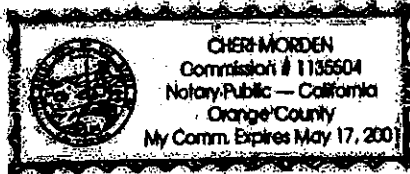


EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

That certain parcel of land being a portion of the Rancho Boca del la Playa, as shown on a map thereof recorded June 29, 1887, in Book 4 Pages 118 and 119 of Patents, Records of Los Angeles County, California and Portions of Sections 29 and 32, Township 8 South, Range 7 West, San Bernardino Meridian, per an official plat of said land filed in the District Land office.

EXHIBIT "A"  
TO DEVELOPMENT AGREEMENT

538/062266-0164/3148745.17 #08/26/98

12-05-17 / 7A-108

EXHIBIT "B"

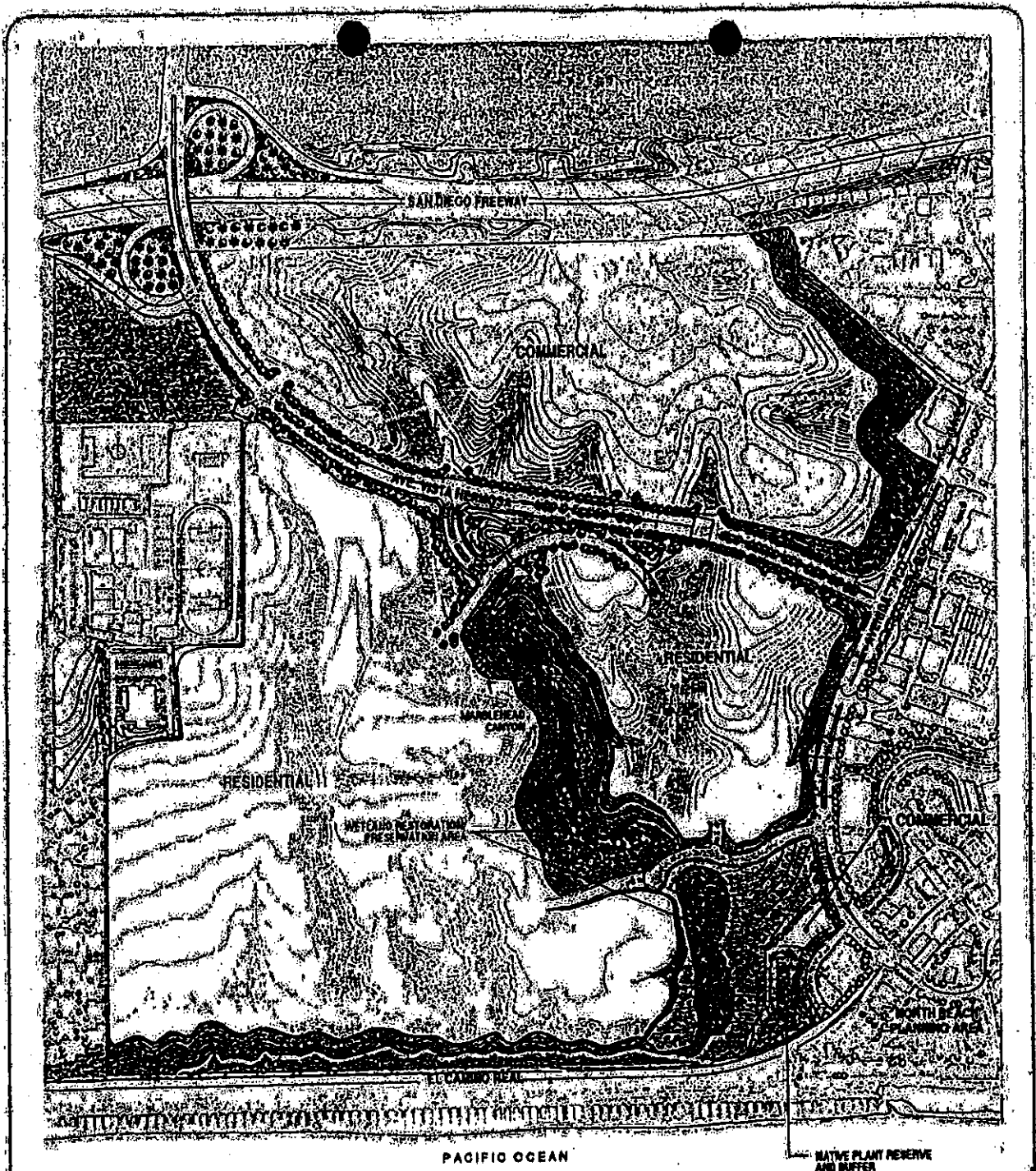
SITE MAP

[Attached]

EXHIBIT "B"  
TO DEVELOPMENT AGREEMENT

534062266-0164/3148745.17 408/26/98

12-05-17 / 7A-109



Prepared by Robert Hein, William Frost & Associates for the



**City of San Clemente**

Planning Division

910 Calle Negocio  
 Suite 100  
 San Clemente, CA 92673  
 Tel (714) 498-2553  
 Fax (714) 361-8281

**ILLUSTRATIVE SITE PLAN**

**MARBLEHEAD COASTAL**

EXHIBIT "C"

LEGAL DESCRIPTION OF COASTAL COMMERCIAL PARCEL

THAT PORTION OF THE RANCHO BOCA DE LA PLAYA, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED JUNE 29, 1887 IN BOOK 4, PAGES 118 AND 119 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY TERMINUS OF THAT CERTAIN COURSE IN THE NORTHWESTERLY LINE OF THAT CERTAIN PARCEL DESCRIBED AS THE "DUDLEYA RESERVE AREA" IN A DEED RESTRICTION RECORDED MARCH 18, 1998 AS INSTRUMENT NO. 19980153575 OF OFFICIAL RECORDS IN SAID OFFICE OF THE ORANGE COUNTY RECORDER AS BEING "SOUTH 45° 06' 21" WEST 218.75 FEET"; THENCE NORTH 87° 31' 16" EAST 380.99 FEET TO A POINT IN THE NORTHWESTERLY RIGHT-OF-WAY LINE OF AVENIDA PICO (100.00 FEET WIDE) AS DESCRIBED IN A DOCUMENT RECORDED JANUARY 26, 1970 IN BOOK 9199, PAGE 281, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 650.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 61° 50' 05" EAST; THENCE ALONG SAID CURVE AND RIGHT-OF-WAY LINE SOUTHWESTERLY 210.57 FEET THROUGH A CENTRAL ANGLE OF 18° 33' 42" TO THE EASTERLY TERMINUS OF THAT CERTAIN COURSE IN THE NORTHERLY LINE OF PARCEL M2-101 AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION FOR THE ORANGE COUNTY FLOOD CONTROL DISTRICT RECORDED AUGUST 15, 1963 IN BOOK 6678, PAGE 15 OF OFFICIAL RECORDS IN SAID OFFICE OF THE ORANGE COUNTY RECORDER; THENCE ALONG SAID NORTHERLY LINE THROUGH THE FOLLOWING COURSES: NORTH 89° 56' 50" WEST 3.50 FEET; THENCE NORTH 89° 06' 09" WEST 144.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 186.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 00° 03' 10" WEST; THENCE ALONG SAID CURVE WESTERLY 12.12 FEET THROUGH A CENTRAL ANGLE OF 03° 43' 56" TO AN ANGLE POINT IN THE NORTHEASTERLY LINE OF SAID DUDLEYA RESERVE AREA PARCEL, SAID ANGLE POINT BEING ON A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 230.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 77° 06' 00" WEST; THENCE LEAVING SAID WESTERLY LINE OF PARCEL M2-101 AND ALONG SAID NON-TANGENT CURVE NORTHWESTERLY 237.22 FEET THROUGH A CENTRAL ANGLE OF 59° 05' 39" TO THE POINT OF BEGINNING.

EXHIBIT "C"  
TO DEVELOPMENT AGREEMENT

COASTAL COMMERCIAL PARCEL

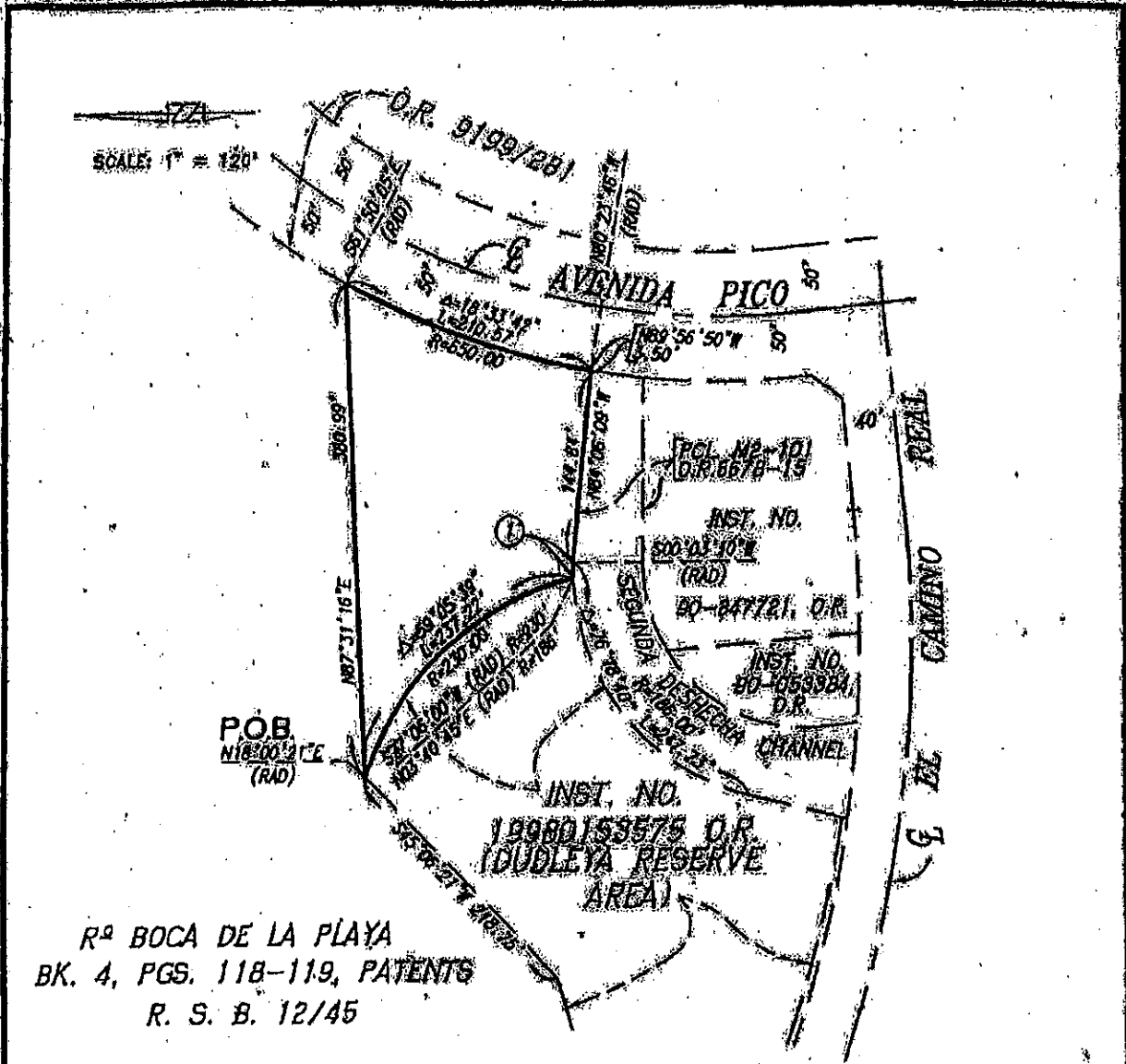


TABLE OF COURSES

①	A=03°43'55"	R= 186.00'	L= 12.12'
	A=03°42'51"	R= 186.00'	L= 12.06' PER
	PER INST. NO. 19980153575 O.R.)		

SKETCH TO ACCOMPANY A  
LEGAL DESCRIPTION FOR

CRC1 COMMERCIAL  
AREA

CONTAINING: 1.001 AC±



SHEET 1 OF 1 SHEET  
Robert Hein, William Frost & Associates  
PLANNERS, ENGINEERS, ARCHITECTS & SURVEYORS  
1000 Main Street, Suite 200, San Francisco, CA 94102  
(415) 398-1100 FAX (415) 398-1101

APR 30 1998

JLN 30461

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12-05-17 / 7A-112



EXHIBIT "D"

LEGAL DESCRIPTION OF DUBLEVA PRESERVE PARCEL

THAT PORTION OF THE RANCHO BOCA DE LA PLAYA, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED JUNE 29, 1887 IN BOOK 4, PAGES 118 AND 119 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS "NORTH 46° 27' WEST 2807.06 FEET" IN THE SOUTHWESTERLY LINE OF THE HOWARD LEWIS KRUM PARCEL ON A MAP FILED IN BOOK 12, PAGE 45 OF RECORDS OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY, SAID TERMINUS ALSO BEING IN THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CALIFORNIA STATE HIGHWAY AS DESCRIBED IN A DEED TO THE STATE OF CALIFORNIA, RECORDED SEPTEMBER 14, 1929 IN BOOK 310, PAGE 297 OF OFFICIAL RECORDS IN SAID OFFICE OF THE ORANGE COUNTY RECORDER, FOR THE PURPOSE OF THIS DESCRIPTION SAID COURSE SHALL HAVE A BEARING OF NORTH 45° 39' 11" WEST, SAID EASTERLY TERMINUS BEING THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 932.31 FEET; THENCE TANGENT FROM SAID COURSE ALONG SAID CURVE AND SAID NORTHEASTERLY RIGHT-OF-WAY LINE SOUTHEASTERLY 196.07 FEET THROUGH A CENTRAL ANGLE OF 12° 03' 00"; THENCE RADIALLY FROM SAID CURVE NORTH 32° 17' 49" EAST 5.00 FEET TO A POINT ON A CURVE CONCENTRIC WITH AND 5.00 FEET NORTHEASTERLY FROM LAST SAID CURVE AND THE TRUE POINT OF BEGINNING; THENCE ALONG SAID CONCENTRIC CURVE EASTERLY 382.42 FEET THROUGH A CENTRAL ANGLE OF 23° 37' 42" TO THE WESTERLY LINE OF PARCEL M2-101 AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION FOR THE ORANGE COUNTY FLOOD CONTROL DISTRICT RECORDED AUGUST 15, 1963 IN BOOK 6678, PAGE 15 OF OFFICIAL RECORDS IN SAID OFFICE OF THE ORANGE COUNTY RECORDER; THENCE NON-TANGENT FROM SAID CURVE, ALONG SAID WESTERLY LINE NORTH 13° 44' 16" EAST 74.52 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 186.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 76° 16' 34" EAST; THENCE ALONG SAID CURVE AND WESTERLY LINE NORTHERLY 235.67 FEET THROUGH A CENTRAL ANGLE OF 72° 35' 49" TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 230.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 77° 06' 00" WEST; THENCE ALONG SAID CURVE NORTHWESTERLY 237.22 FEET THROUGH A CENTRAL ANGLE OF 59° 05' 39"; THENCE NON-TANGENT FROM SAID CURVE SOUTH 45° 06' 21" WEST 218.75 FEET; THENCE SOUTH 73° 47' 54" WEST 222.82 FEET; THENCE SOUTH 32° 17' 49" WEST 37.66 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT "D"

TO DEVELOPMENT AGREEMENT

DUDLEYA PRESERVE PARCEL

SCALE: 1" = 100'

R<sup>o</sup> BOCA DE LA PLAYA  
BK. 4, PGS. 118-119, PATENTS

R. S. B. 12/45

SWLY LINE OF THE HOWARD LEWIS  
KRUM PARCEL PER R.S.B. 12/45  
AND THE NE'LY R/W LINE OF  
CALIFORNIA STATE HIGHWAY PER  
O.R. 310/297.

SKETCH TO ACCOMPANY A  
LEGAL DESCRIPTION FOR

DUDLEYA RESERVE  
AREA

CONTAINING: 2.14 AC.±

REVISED OCTOBER 24, 1997



SHEET 1 OF 1 SHEET  
Robert Bell Williams Frost & Associates  
Professional Engineers, Planners & Architects  
1000 California Street, Suite 1000, San Francisco, CA 94109  
Tel: 415.774.1100 Fax: 415.774.1101

SEPTEMBER 17, 1997

J.N. 30461

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12-05-17 / 7A-114

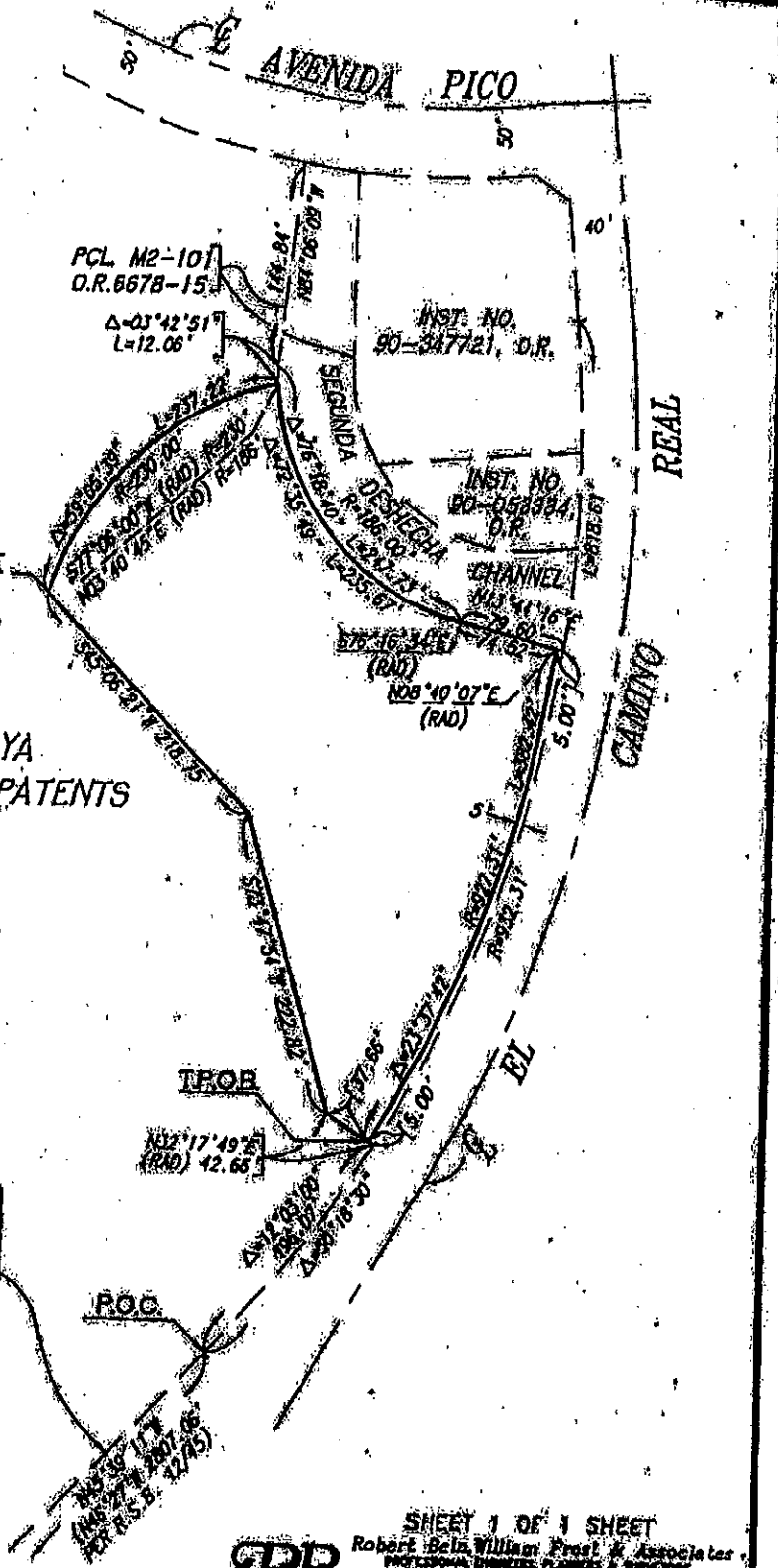


EXHIBIT "E"

MAP OF NORTH BEACH PLANNING AREA

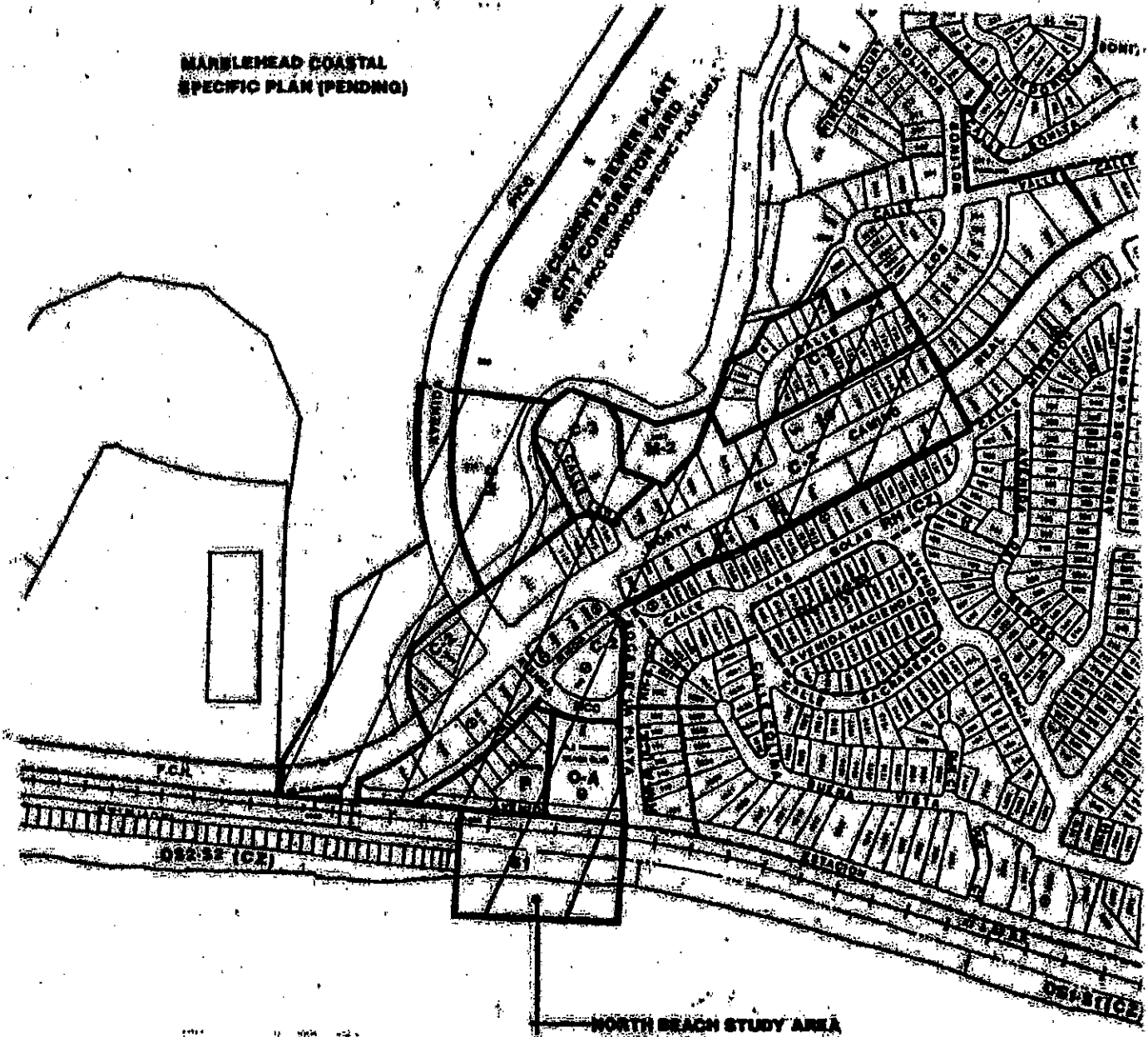


EXHIBIT "E"  
TO DEVELOPMENT AGREEMENT

538082266-0164/3148743,9 106/12/98

12-05-17 / 7A-115

EXHIBIT "F"

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672  
Attn: City Clerk

(Space Above this Line is for Recorder's Use Only)

This Irrevocable Offer of Dedication is recorded at the request and for the benefit of the City of San Clemente and is exempt from the payment of a recording fee pursuant to Government Code § 6103.

CITY OF SAN CLEMENTE

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

IRREVOCABLE OFFER OF DEDICATION

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MT. NO. I, LLC, a California limited liability company, being the owner of that certain real property located in the City of San Clemente, County of Orange, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Grantor's Property"), does hereby make an irrevocable offer of dedication of those portions of the Grantor's Property described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Dedication Parcel") to the City of San Clemente, a municipal corporation ("Grantee"), for public highway, street, and utility purposes, pursuant to California Government Code Section 7050, subject to the provisions set forth hereinbelow.

Grantee shall have the right to accept this offer of dedication at the time Grantee reasonably determines that the Dedication Parcel is needed to accommodate road improvements.

As used herein, the term "Grantor" shall include any successor or assign to the right, title, and interest of MT. NO. I, LLC, a California limited liability company, with respect to Grantor's Property.

EXHIBIT "F"  
TO DEVELOPMENT AGREEMENT

538062266-0164/3148745.17 2/26/98

12-05-17 / 7A-116

Grantees shall incur no liability with respect to this offer of dedication and shall not assume any responsibility for the Dedication Parcel until the offer has been accepted by Grantees.

The provisions of this Irrevocable Offer of Dedication shall inure to the benefit of and be binding upon the heirs, successors, assigns, and personal representatives of the parties hereto.

Dated: \_\_\_\_\_

MT. NO. I, LLC, a California  
limited liability company

By: Marblehead Coastal, Inc.,  
a California corporation,  
its managing member

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF CALIFORNIA

SS.

COUNTY OF

On \_\_\_\_\_, 1998, before me, \_\_\_\_\_  
Notary Public, personally appeared \_\_\_\_\_

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

That certain parcel of land being a portion of the Rancho Boca del la Playa, as shown on a map thereof recorded June 29, 1887, in Book 4 Pages 118 and 119 of Patents, Records of Los Angeles County, California and Portions of Sections 29 and 32, Township 8 South, Range 7 West, San Bernardino Meridian, per an official plat of said land filed in the District Land office.

EXHIBIT "A"

TO IRREVOCABLE OFFER OF DEDICATION

538/062266-0164/3148745.17 06/26/98

12-05-17 / 7A-119

EXHIBIT "B"

ROBERT BEIN, WILLIAM FROST & ASSOCIATES  
14725 Alton Parkway  
Irvine, CA 92618

June 16, 1998  
JN 30461-03  
Page 1 of 1

LEGAL DESCRIPTION

PROPOSED AVENIDA VISTA HERMOSA TO BE  
DEDICATED TO THE STATE OF CALIFORNIA  
WITHIN THE MARBLEHEAD COASTAL PROJECT

That certain parcel of the land situated in the City of San Clemente, County of Orange, State of California, being that portion of the Rancho Boca de La Playa, as shown on a map thereof recorded June 29, 1887 in Book 4, Pages 118 and 119 of Patents, records of Los Angeles County, California, described as follows:

COMMENCING at the intersection of the southeasterly line of the land designated as "Hugo Forster 63.48 acres" on a map filed in Book 11, Page 29 of Records of Surveys in the Office of the Orange County Recorder with the southwesterly line of that certain parcel of land described in Parcel 1 (re-amended) of the Final Order of Condemnation for the State of California, recorded November 27, 1957 in Book 4127, Page 488 of Official Records in said Office of the Orange County Recorder; thence along said southwesterly line South 45°56'34" East 195.448 meters to a point on a non-tangent curve concave southeasterly and having a radius of 427.634 meters, a radial line of said curve from said point bears South 62°03'10" East, said point being THE TRUE POINT OF BEGINNING; thence along said curve southwesterly 82.189 meters through a central angle of 11°00'43"; thence non-tangent from said curve North 72°59'34" West 35.570 meters to a point on a non-tangent curve concave southeasterly and having a radius of 409.346 meters, a radial line of said curve from said point bears South 74°33'05" East; thence along said curve northeasterly 36.462 meters through a central angle of 05°06'13"; thence non-tangent from said curve South 68°33'08" East 1.128 meters to a point on a non-tangent curve concave southeasterly and having a radius of 408.432 meters, a radial line of said curve from said point bears South 65°57'30" East; thence along said curve northeasterly 49.413 meters through a central angle of 06°55'55"; thence non-tangent from said curve North 29°34'26" East 12.343 meters to said southwesterly line of Parcel 1; thence along said southwesterly line South 45°56'34" East 33.571 meters to the TRUE POINT OF BEGINNING.

Unless otherwise noted, all bearings and distances in this description are metric grid based on the California Coordinate System, (CCS83) Zone VI NAD 1983 (1991.35 O.C.S. GPS Adjustment). To obtain ground distances, divide the distances herein by 0.99994956.



Robert Bein, William Frost & Associates  
pproposed Avenida Vista Hermosa  
to be dedicated to the State of California  
within the Marblehead Coastal Project

June 16, 1998  
JN 30461-03  
Page 2 of 2

CONTAINING: 3122.210 Square Meters, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT "B" attached and by this reference made a part hereof.



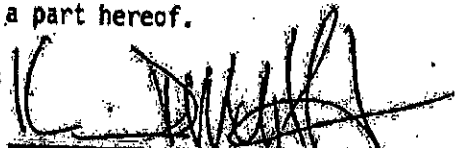
  
Kevin D. McHugh, Jr. P.L.S. 6310

EXHIBIT "B"

12-05-17 / 7A-121



EXHIBIT "G-1"

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of San Clemente  
City Hall  
100 Avenida Presidio  
San Clemente, California 92672  
Attn: City Manager

(Space above this line for Recorder's use)

This Memorandum of Option Agreement is recorded at the request and for the benefit of the City of San Clemente and is exempt from the payment of a recording fee pursuant to Government Code § 6103.

CITY OF SAN CLEMENTE

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

MEMORANDUM OF OPTION AGREEMENT  
(Coastal Commercial Parcel)

By this Memorandum of Option Agreement dated \_\_\_\_\_, MT. NO. I, LLC, a California limited liability company ("Optionor"), and the City of San Clemente, a California municipal corporation ("Optionee"), agree as follows:

1. Optionor grants to Optionee the right to acquire, on the terms and conditions stated in that certain Development Agreement for Marblehead Coastal Property dated \_\_\_\_\_, 1998 (the "Development Agreement"), that certain real property located in the City of San Clemente, County of Orange, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Coastal Commercial Parcel"). The terms of the Development Agreement relating to the Coastal Commercial Parcel are incorporated herein by reference as if fully set forth.

2. This option must be exercised by Optionee on or before the date that is one (1) year following the date Optionee issues the first grading permit (exclusive of any grading permits issued for the Vista Hermosa Improvements) for any property located within the Residential Area or the Commercial Area (as those terms are defined in the Development Agreement) (the "Option Date"), but in

EXHIBIT "G-1"  
TO DEVELOPMENT AGREEMENT

538082266-016473148745.17 2002/26/98

12-05-17 / 7A-123

EXHIBIT "A"

LEGAL DESCRIPTION

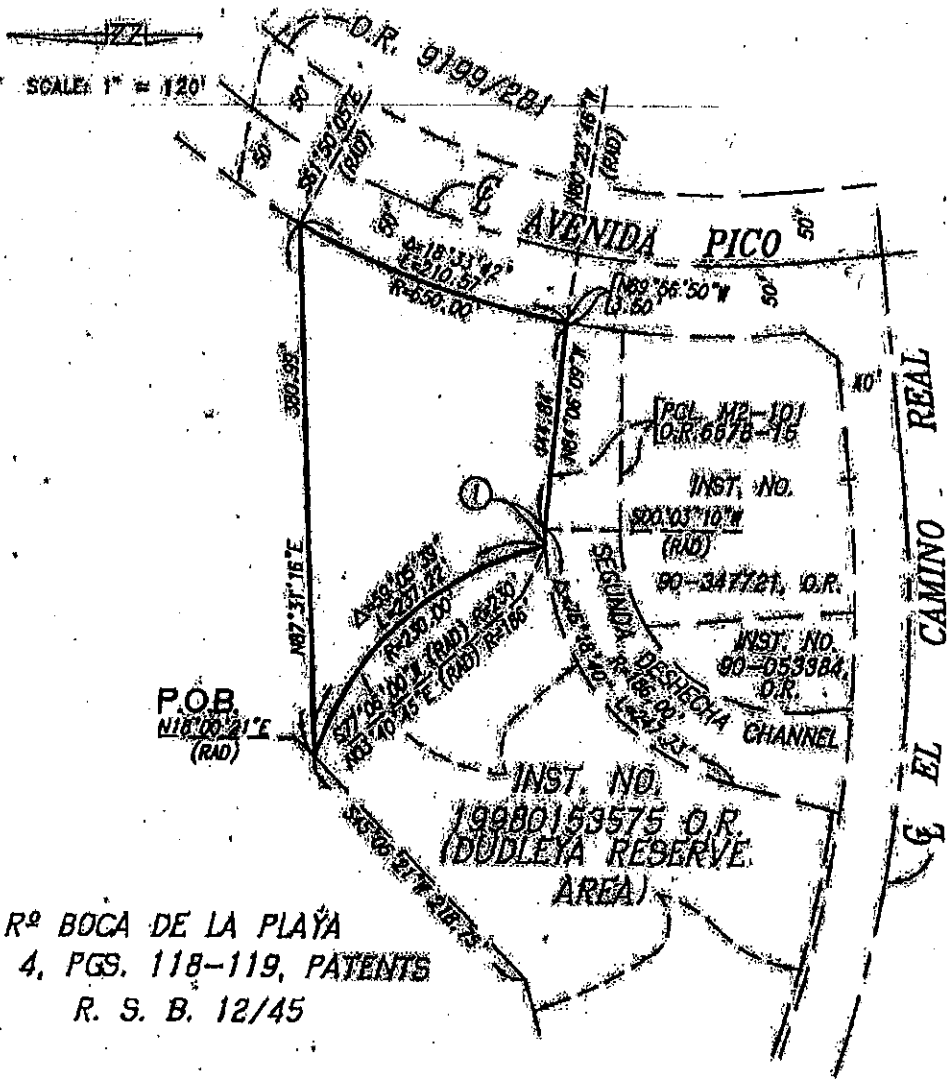
THAT PORTION OF THE RANCHO BOCA DE LA PLAYA, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED JUNE 29, 1887 IN BOOK 4, PAGES 118 AND 119 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY TERMINUS OF THAT CERTAIN COURSE IN THE NORTHWESTERLY LINE OF THAT CERTAIN PARCEL DESCRIBED AS THE "DUDLEYA RESERVE AREA" IN A DEED RESTRICTION RECORDED MARCH 18, 1998 AS INSTRUMENT NO. 19980153575 OF OFFICIAL RECORDS IN SAID OFFICE OF THE ORANGE COUNTY RECORDER AS BEING "SOUTH 45° 06' 21" WEST 218.75 FEET"; THENCE NORTH 87° 31' 16" EAST 380.99 FEET TO A POINT IN THE NORTHWESTERLY RIGHT-OF-WAY LINE OF AVENIDA PICO (100.00 FEET WIDE) AS DESCRIBED IN A DOCUMENT RECORDED JANUARY 26, 1970 IN BOOK 9199, PAGE 281, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 650.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 61° 50' 05" EAST; THENCE ALONG SAID CURVE AND RIGHT-OF-WAY LINE SOUTHWESTERLY 210.57 FEET THROUGH A CENTRAL ANGLE OF 18° 33' 42" TO THE EASTERLY TERMINUS OF THAT CERTAIN COURSE IN THE NORTHERLY LINE OF PARCEL M2-101 AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION FOR THE ORANGE COUNTY FLOOD CONTROL DISTRICT RECORDED AUGUST 15, 1963 IN BOOK 6678, PAGE 15 OF OFFICIAL RECORDS IN SAID OFFICE OF THE ORANGE COUNTY RECORDER; THENCE ALONG SAID NORTHERLY LINE THROUGH THE FOLLOWING COURSES: NORTH 89° 56' 50" WEST 3.50 FEET; THENCE NORTH 89° 06' 09" WEST 144.84 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 186.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 00° 03' 10" WEST; THENCE ALONG SAID CURVE WESTERLY 12.12 FEET THROUGH A CENTRAL ANGLE OF 03° 43' 56" TO AN ANGLE POINT IN THE NORTHEASTERLY LINE OF SAID DUDLEYA RESERVE AREA PARCEL, SAID ANGLE POINT BEING ON A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 230.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 77° 06' 00" WEST; THENCE LEAVING SAID WESTERLY LINE OF PARCEL M2-101 AND ALONG SAID NON-TANGENT CURVE NORTHWESTERLY 237.22 FEET THROUGH A CENTRAL ANGLE OF 59° 05' 39" TO THE POINT OF BEGINNING.

EXHIBIT "A"

TO MEMORANDUM OF OPTION AGREEMENT

COASTAL COMMERCIAL PARCEL



R<sup>o</sup> BOCA DE LA PLAYA  
 BK. 4, PGS. 118-119, PATENTS  
 R. S. B. 12/45

TABLE OF COURSES

①	S 83° 43' 55" W	R= 186.00'	L= 12.12'
	(S-23° 42' 51" W)	R= 186.00'	L= 12.06' PER
		PER INST. NO. 19980153575 O.R.)	

SKETCH TO ACCOMPANY A  
 LEGAL DESCRIPTION FOR

CRC1 COMMERCIAL  
 AREA

CONTAINING: 1.001 AC.±



SHEET 1 OF 1 SHEET  
 Robert Bell, William Frost & Associates  
 PROFESSIONAL ENGINEERS, PLANNERS & ARCHITECTS  
 1100 AVENUE OF THE STARS, SUITE 1000  
 FORT MYERS, FLORIDA 33902

APRIL 30, 1998

EN 30461

14 CORRAL PLAYA MARIN PLAYA ARTEVONA

no event later than the date that is twenty years after the date this Memorandum of Option Agreement is recorded.

3. Unless a memorandum extending the above option is executed by all parties to the Development Agreement, or their successors in interest, and recorded before 5:00 p.m. on the Option Date, this document shall be of no effect against the persons who would otherwise be affected by it under California Civil Code Sections 1213 to 1220, as those sections may hereafter be amended.

Dated: \_\_\_\_\_, 1998

MT. NO. I, LLC, a California limited liability company

By: Marblehead Coastal, Inc.,  
a California corporation,  
its managing member

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

"Optionor"

CITY OF SAN CLEMENTE, a California municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

"Optionee"

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF )

On \_\_\_\_\_, before me,  
personally appeared \_\_\_\_\_

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF )

On \_\_\_\_\_, before me,  
personally appeared \_\_\_\_\_

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

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

[SEAL]

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUN 24 2008

ALAN BLATER, Clerk of the Court  
*Alan Blater*  
BY J. MAUSTE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

SAN CLEMENTE CITIZENS FOR  
INTEGRITY IN DEVELOPMENT, an  
unincorporated California non-profit  
association,

Petitioner,

v.

CITY OF SAN CLEMENTE, CITY COUNCIL  
OF THE CITY OF SAN CLEMENTE, DOES 1  
through 50, inclusive,

Respondents,

VILLA SAN CLEMENTE, LLC,

Real Party in Interest.

Case No. 07CC01287

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE RONALD L. BAUER  
DEPARTMENT CX103

~~REVISED PROPOSED~~ PEREMPTORY  
WRIT OF MANDAMUS

[California Environmental Quality Act, Public  
Resources Code § 21000 et seq, and OCSC  
Local Rule 431]

ELECTRONICALLY  
RECEIVED

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CIVIC CENTER CENTER

JUN 23 2008

239062264-0379  
03/14/01 0041400

[REVISED PROPOSED] PEREMPTORY WRIT OF MANDAMUS



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TO RESPONDENTS THE CITY OF SAN CLEMENTE AND THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ("RESPONDENTS");

WHEREAS, on 6-11, 2008, judgment having been entered in this action, ordering that a Peremptory Writ of Mandamus be issued from this Court,

YOU ARE HEREBY COMMANDED to set aside the decision approving the freeway oriented signage portion of Sign Exception Permit 06-402 in Resolution No. 07-11 dated on or about February 20, 2007, which proceedings are hereby remanded to you for consideration in light of the Court's minute order of May 22, 2008. Nothing in this Writ shall limit or control in any way the discretion legally vested in you.

YOU ARE FURTHER COMMANDED to make and file a return to this Writ on or before 8-10-08, 2008, setting forth what you have done to comply.

Janet Trause  
Clerk of the Court

CONSENT CALENDAR

5K

- K. Rescinding of the Freeway-Oriented Portion of Marblehead Coastal Plaza San Clemente Sign Exception Permit 06-402

MOTION BY COUNCILMEMBER KNOBLOCK, SECOND BY COUNCILMEMBER EGGLESTON, CARRIED 5-0, to adopt Resolution No. 08-78 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RESCINDING THE FREEWAY ORIENTED SIGN PORTION OF SIGN EXCEPTION PERMIT 06-402 FOR MARBLEHEAD COASTAL PLAZA SAN CLEMENTE MASTER SIGN PROGRAM.

RESOLUTION NO. 08-78

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SAN CLEMENTE, CALIFORNIA, RESCINDING THE FREEWAY ORIENTED  
SIGN PORTION OF SIGN EXCEPTION PERMIT 06-402 FOR MARBLEHEAD  
COASTAL PLAZA SAN CLEMENTE MASTER SIGN PROGRAM

WHEREAS, on February 20, 2007, the City Council of the City of San Clemente approved Resolution No. 07-11 which approved the freeway oriented signage portion of Sign Exception Permit 06-402; and

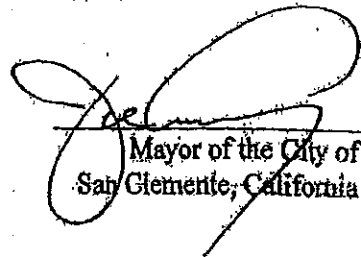
WHEREAS, on May 18, 2007, San Clemente Citizens for Integrity in Development filed suit in Orange County Superior Court challenging the freeway oriented signage portion of Sign Exception Permit 06-402 contained in Resolution No. 07-11; and

WHEREAS, the Court issued a Revised Peremptory Writ of Mandamus ordering the City to set aside its approval of the freeway oriented signage portion of Sign Exception Permit 06-402 contained in Resolution No. 07-11.

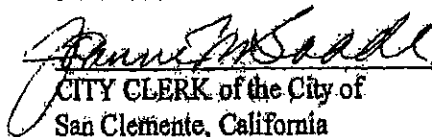
NOW THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

**Section 1:** The City Council hereby rescinds its decision approving the freeway oriented signage portion of Sign Exception Permit 06-402 in Resolution No. 07-11.

PASSED AND ADOPTED this 2nd day of September, 2008.

  
Mayor of the City of  
San Clemente, California

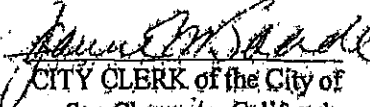
ATTEST:

  
CITY CLERK of the City of  
San Clemente, California

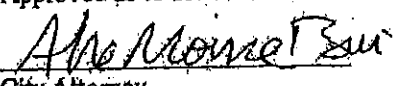
STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF SAN CLEMENTE)

I, Joanne Baade, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 08-78 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 2nd day of September, 2008, by the following vote:

AYES: DAHL, DONCHAK, EGGLESTON, KNOBLOCK, MAYOR ANDERSON  
NOES: NONE  
ABSENT: NONE

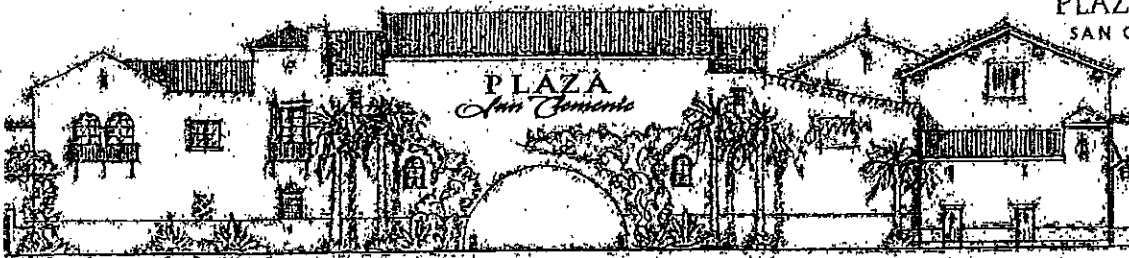
  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

  
City Attorney



PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



AL1 - EAST BUILDING SIGN  
SIGNAGE TO CENTER COURSE FACING IN  
QUANTITY 150'

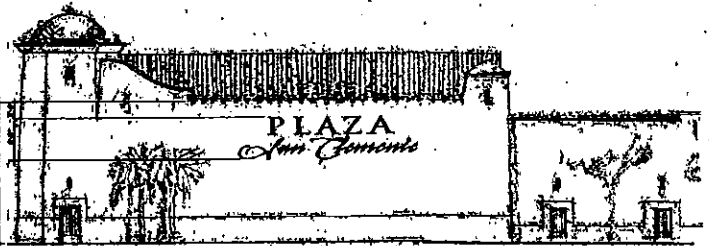
FLYING MONARCH ALLOWED 100%  
NO DARK LETTERS  
CHARACTER 1/8" H X 1/8" W  
SPACING OFF VERTICAL LETTERS BY  
CHARACTER 1/8" H X 1/8" W

NO FULL TOWER SIGNAGE PERMITTED  
CHARACTER 1/8" H X 1/8" W



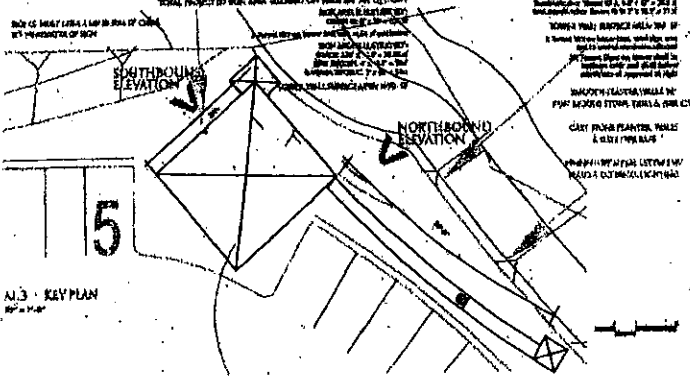
AL3 - NORTHBOUND WALL & TOWER  
TOTAL PROJECTED SIGN AREA VARIATION 50% FROM 100% SIGNAGE

AL3 - SOUTHBOUND TOWER  
TOTAL SIGNAGE ALLOWED 100%  
NO DARK LETTERS  
CHARACTER 1/8" H X 1/8" W  
SPACING OFF VERTICAL LETTERS BY  
CHARACTER 1/8" H X 1/8" W



AL2 - NORTH WALL  
TOTAL SIGNAGE ALLOWED 100%  
NO DARK LETTERS  
CHARACTER 1/8" H X 1/8" W

FLYING MONARCH ALLOWED 100%  
NO DARK LETTERS  
CHARACTER 1/8" H X 1/8" W



**CONDITIONS OF APPROVAL**  
 1. ALL SIGNAGE SHALL BE APPROVED BY THE LOCAL GOVERNMENT.  
 2. ALL SIGNAGE SHALL BE INSTALLED IN ACCORDANCE WITH THE LOCAL GOVERNMENT'S SIGNAGE ORDINANCES.  
 3. ALL SIGNAGE SHALL BE MAINTAINED IN GOOD CONDITION AT ALL TIMES.  
 4. ALL SIGNAGE SHALL BE REMOVED IMMEDIATELY UPON THE COMPLETION OF THE PROJECT.  
 5. ALL SIGNAGE SHALL BE INSTALLED IN ACCORDANCE WITH THE LOCAL GOVERNMENT'S SIGNAGE ORDINANCES.  
 6. ALL SIGNAGE SHALL BE MAINTAINED IN GOOD CONDITION AT ALL TIMES.  
 7. ALL SIGNAGE SHALL BE REMOVED IMMEDIATELY UPON THE COMPLETION OF THE PROJECT.



**STUDIO PROGETTI**  
 1030 Laguna Street  
 Santa Barbara, California 93101  
 (805) 965-4400  
 FAX: (805) 965-4401  
 projects@stprogetti.com

**MSP-1.0**  
 04/01 11/04 11/04 11/04 11/04

**PRIMARY ID SIGNS**  
 MASTER SIGN PROGRAM - 07 JUNE 2006  
 CONDITIONS OF APPROVAL UPDATE - 22 MAY 2007

PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



ALA - SECONDARY CONFERENCE CENTER ID  
AL4 - HOTEL ID  
AL9 - SECONDARY HOTEL ID

NORTH ELEVATION FACING AVENIDA VISTA HERMOSA



AL5 - HOTEL ID

SOUTH ELEVATION FACING CANYON



AL1 - PEDESTRIAN ALA, HOTEL ID  
HOTEL ID

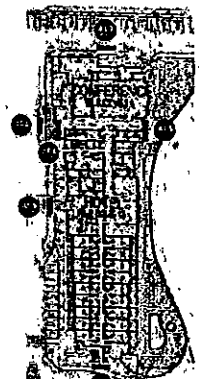
WEST ELEVATION FACING ENTRY DRIVE



AL7 - HOTEL & CONFERENCE CENTER ID

EAST ELEVATION FACING I-5

HOTEL IDENTIFICATION  
MASTER SIGN PROGRAM - 07 JUNE 2006



HOTEL SIGN KEY PLAN

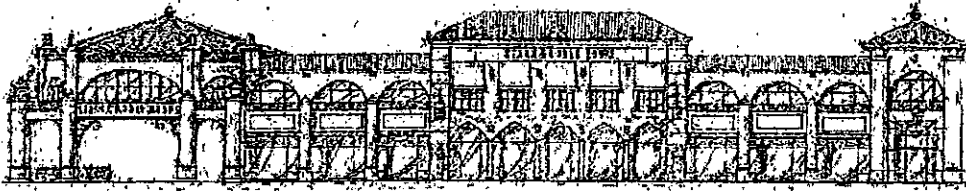
*The Lodge*  
SAN CLEMENTE

FORMERLY PALM LAYERS INN  
KALCHA CORREVALS HOTEL  
FURNISH (FORMERLY ST. PAUL)  
RECONSTRUCTION 1984-1985  
\*Hotel is an historic and National Register  
property and subject to the National Historic  
Preservation Act

STUDIO PROGETTI  
Architectural & design projects  
1818 Laguna Street  
Santa Barbara, California 93101  
805.682.4600  
805.682.4622  
progetti@comcast.net

**MSP1.1**  
©2007 Studio Progetti, Inc.

PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



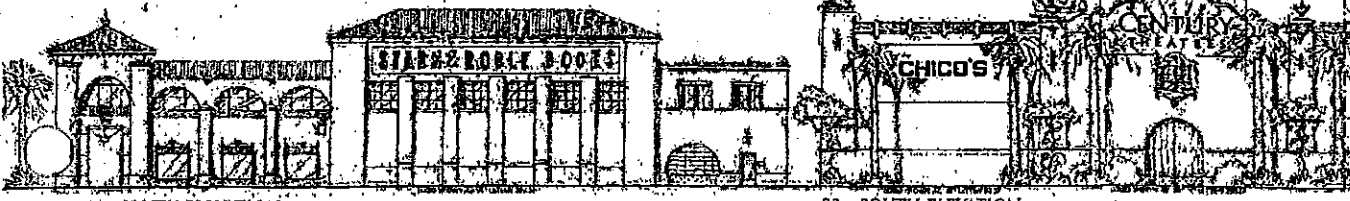
23/24 - WEST ELEVATION  
PHASE 1 - PLAZA TENANT SIGNAGE BENCH

**CONDITIONS OF APPROVAL FOR TENANT SIGNS**

Signage shall be designed, constructed and installed in accordance with the standards established in the City of San Clemente Signage Ordinance. All signage shall be designed to be aesthetically pleasing and to be in harmony with the architectural style of the building. Signage shall be designed to be easily visible and to be in harmony with the architectural style of the building. Signage shall be designed to be easily visible and to be in harmony with the architectural style of the building. Signage shall be designed to be easily visible and to be in harmony with the architectural style of the building.

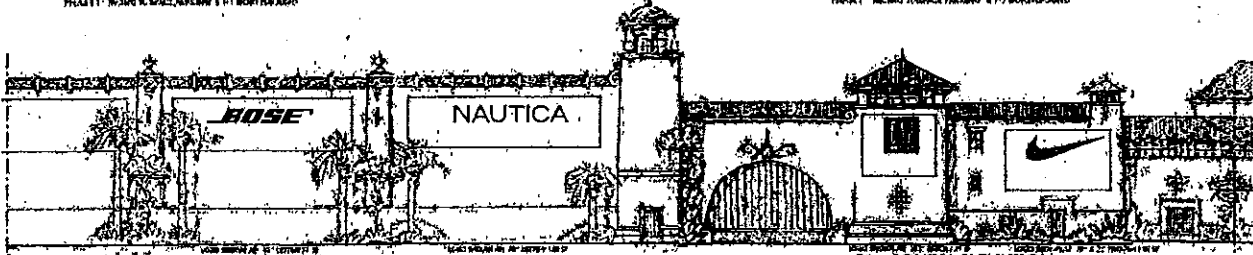
**CONDITIONS OF APPROVAL FOR FREEWAY-ORIENTED TENANT SIGNS**

Signage shall be designed, constructed and installed in accordance with the standards established in the City of San Clemente Signage Ordinance. All signage shall be designed to be aesthetically pleasing and to be in harmony with the architectural style of the building. Signage shall be designed to be easily visible and to be in harmony with the architectural style of the building. Signage shall be designed to be easily visible and to be in harmony with the architectural style of the building.



23/24 - SOUTH ELEVATION  
PHASE 1 - PLAZA TENANT SIGNAGE BENCH

22 - SOUTH ELEVATION  
PHASE 1 - PLAZA TENANT SIGNAGE BENCH



22 - SOUTH ELEVATION  
PHASE 1 - PLAZA TENANT SIGNAGE BENCH

21 - SOUTH ELEVATION  
PHASE 1 - PLAZA TENANT SIGNAGE BENCH

\* ALL SIGNS SHALL BE DESIGNED TO BE EASILY VISIBLE AND TO BE IN HARMONY WITH THE ARCHITECTURAL STYLE OF THE BUILDING. SIGNAGE SHALL BE DESIGNED TO BE EASILY VISIBLE AND TO BE IN HARMONY WITH THE ARCHITECTURAL STYLE OF THE BUILDING.

TENANT SIGNS (ILLUSTRATED) FOR SCALE AND PROPORTION ONLY. TENANT IDs SUBJECT TO CHANGE.

**RETAIL TENANT SIGNAGE**  
MASTER SIGN PROGRAM - 07 JUNE 2006  
CONDITIONS OF APPROVAL UPDATE - 27 MAY 2007

**STUDIO PROGETTI**  
ARCHITECTS & DESIGNERS  
1405 Laguna Street  
Santa Barbara, California 93101  
805.243.5400  
805.243.5402  
studio@progetti.com  
progetti.com

**MSP-3.2**  
STUDIO PROGETTI INC.







AGENDA REPORT  
SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: September 2, 2008

Agenda Item 5-K  
Approvals: \_\_\_\_\_  
City Manager \_\_\_\_\_  
Dept. Head [Signature]  
Attorney \_\_\_\_\_  
Finance \_\_\_\_\_

**Department:** Community Development Department  
**Prepared By:** James S. Holloway, Director

**Subject:** **RESCISSION OF PREVIOUSLY APPROVED FREEWAY ORIENTED SIGNAGE PORTION OF MARBLEHEAD COASTAL PLAZA SAN CLEMENTE SIGN EXCEPTION PERMIT 06-402**

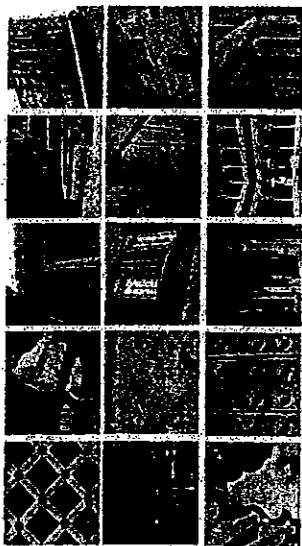
**Summary:** In its Revised Peremptory Writ of Mandamus filed June 24, 2008, the Superior Court of Orange County ordered the City of San Clemente to set aside its previous approval of the freeway oriented signage portion of Sign Exception Permit 06-402 contained in City Council Resolution No. 07-11. Consistent with the Court's order, the City Council voted to do so at its July 15, 2008, City Council meeting. This item would formalize the July 15, 2008, vote and City Council action by the adoption of a resolution.

**Background:** On February 20, 2007, the City Council approved Resolution No. 07-11 which approved the freeway oriented signage portion of Sign Exception Permit 06-402 for Marblehead Coastal Plaza San Clemente. On May 18, 2007, Citizens for Integrity in Development filed suit in the Orange County Superior Court. On June 24, 2008, the Court issued a Revised Petition for Writ of Mandamus ordering the City to set aside its previous approval of the freeway oriented signage portion of Sign Exception Permit 06-402 in Resolution No. 07-11. The attached resolution merely formalizes City Council's vote on July 15, 2008, setting aside the freeway oriented signage portion of Sign Exception Permit 06-402 in Resolution No. 07-11. A copy of the Revised Peremptory Writ of Mandamus is provided as Attachment B.

**Recommended Action:** STAFF RECOMMENDS THAT the City Council adopt the attached resolution that corresponds with the City Council's previous action rescinding the freeway oriented sign portion of Sign Exception Permit 06-402 in Resolution No. 07-11.

**Attachments:**  
A. Resolution  
B. Superior Court Revised Peremptory Writ of Mandamus

**Notification:** Steve Craig - Craig Realty  
Interested parties - list with City Clerk's office



# PLAZA

## Sam Cemente

### MASTER SIGN PROGRAM 07 JUNE 2006

REVISED FOR CITY COUNCIL CONDITIONS OF APPROVAL - 22 MAY 2007

#### MASTER SIGN PROGRAM DESIGN PHILOSOPHY

Our approach to defining the identity of the project is to define the architectural character of the building facade. To create the sense of history that the City and Design Review Subcommittee are looking for, we have created a series of brand marks, colors and textures that create a sense of an earlier time in our California history. We propose not maintaining sign but rather entry wall fragments that create a consistent yet unique architectural theme to engage the vast retail site, providing a simple low-proportioned backdrop for individual sign lettering.

The Marketplace Commercial site has evolved over the years into planning and design into a series of retail centers. Essentially a new wave of distinct activities have a retail character and are not necessarily related to the original functions. Independence and the entry wall signage provides for individual character identification to help lead visitors to their destination.

Sign letters are shallow recessed channels with white back lighting and non-illuminated panelled off letters. The architectural wall fragments and back landscapes are assembly illuminated with soft amber lighting to reinforce the entrance as a whole, creating a warm like approach and not just illuminating sign letters.

The project is unique from other large scale shopping complexes. Unlike other like the Inland Empire, development has not provided for all tenants and the project only provides a simple dimensional identification to the great diversity on the building facade.

Our custom three dimensional block sign program and in creative window displays and graphics.

As a result our Tenant Signage philosophy is clear. We believe in strong sign comes but realize that such of our warmer distinct brand needs to be emphasized in proportion to each unique building facade. In allowing proportional signage, the tenant brand becomes a complimentary extension of the building and not just a sign next to the wall. Tenant signage is pulled into a detailed sign criteria with specific sign lettering. The program is designed to be consistent and encourages a diversity of sign styles and materials that strengthen the individual identities of the tenants.

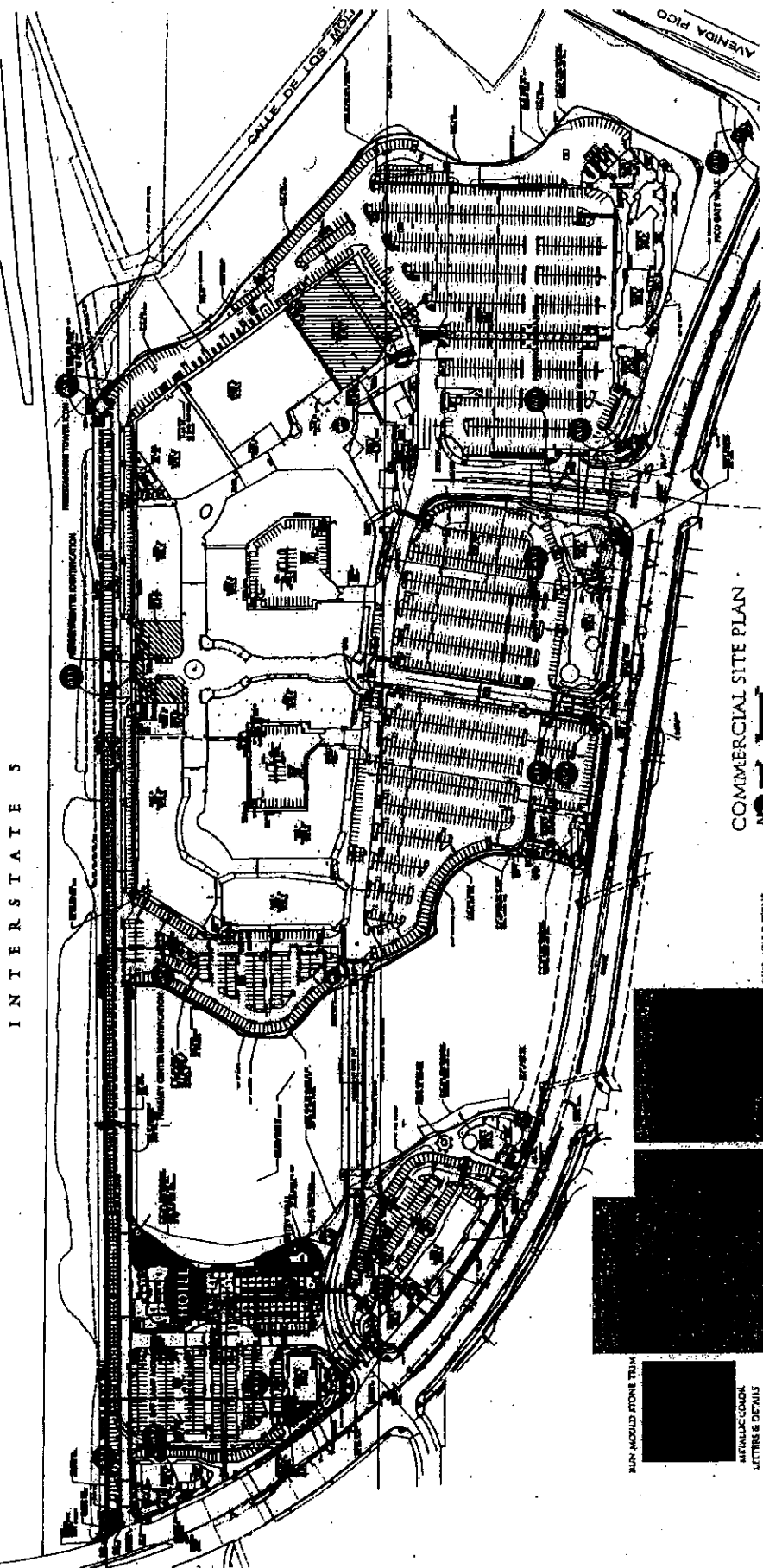
STUDIO PRO  
architects

1815 U  
Santa Barbara Cali

pro

DEVELOPMENT  
CRAIG BEAL

PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



INTERSTATE 5

COMMERCIAL SITE PLAN

**STUDIO PROGETTI**  
architecture & design projects  
1819 Laguna Street  
Santa Barbara California 93101  
PHONE 805-963-4100  
FAX 805-963-4482  
progetticoor.net

**MSP-0.0**  
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PROJECT IDENTITY SITE PLAN  
MASTER SIGN PROGRAM - 07 JUNE 2006

MAIN BUILDING STONE  
TEXTURE

CASTSTONE PLASTER, PORCEL  
TEXTURE

MAIN BUILDING STONE TRIM

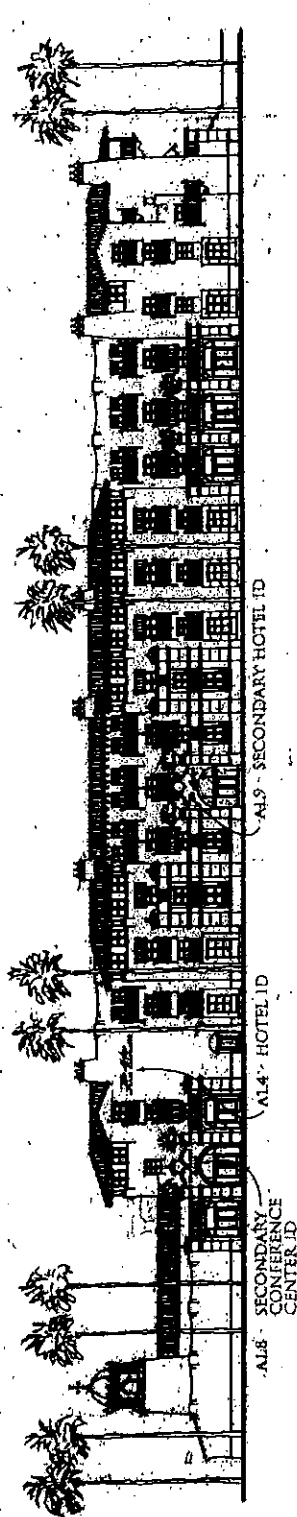
ARTIFICAL CORNER  
LETTERS & DETAILS  
LETTERING MAY ALSO BE  
IN A WHITE  
POSSIBLE PLASTER, COLOR

CASTSTONE CORNER & TEXTURE

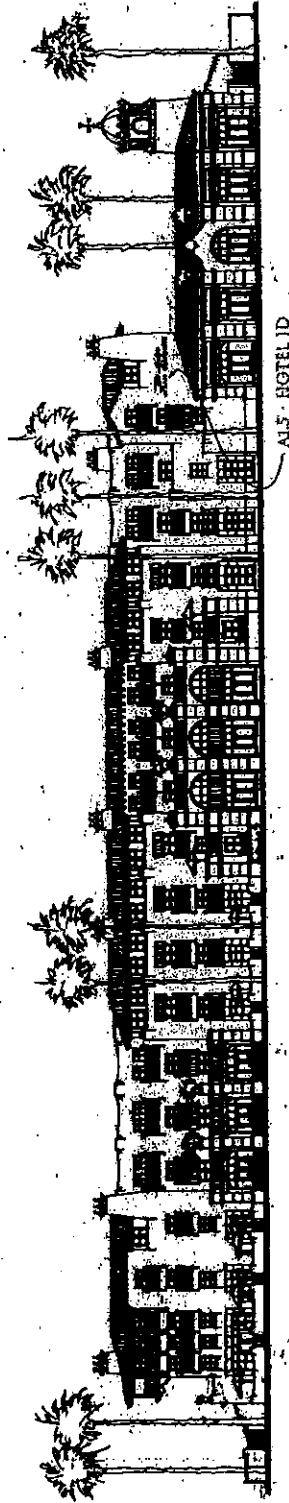
**ENTRY WALL  
MATERIALS**



PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



NORTH ELEVATION FACING AVENIDA VISTA HERMOSA



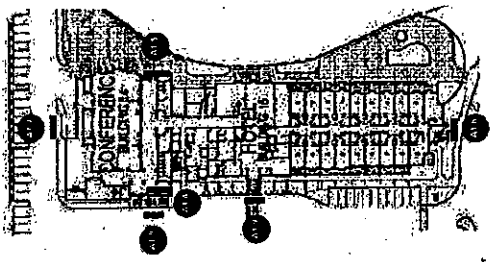
SOUTH ELEVATION FACING CANYON



WEST ELEVATION FACING ENTRY DRIVE

EAST ELEVATION FACING I-5

HOTEL IDENTIFICATION  
MASTER SIGN PROGRAM, 07 JUNE 2006



HOTEL SIGN KEY PLAN

*The Lodge*  
SAN CLEMENTE

FINISHED OPERATIONAL LETTERS BY  
HANSON EXTERIOR LIGHTING  
PRIMARY SIGN 100 FT EACH  
SECONDARY SIGN 50 FT EACH  
\*Subject to approval of the local jurisdiction and the manufacturer of the sign.  
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STUDIO PROGETTI  
architecture & design projects

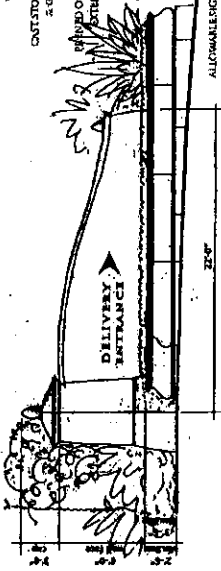
1818 Laguna Street  
Santa Barbara California, 93101  
805.583.4460  
781.583.4442  
www.studioprogetti.com

**MSP1.1**  
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# PLAZA SAN CLEMENTE SAN CLEMENTE CALIFORNIA

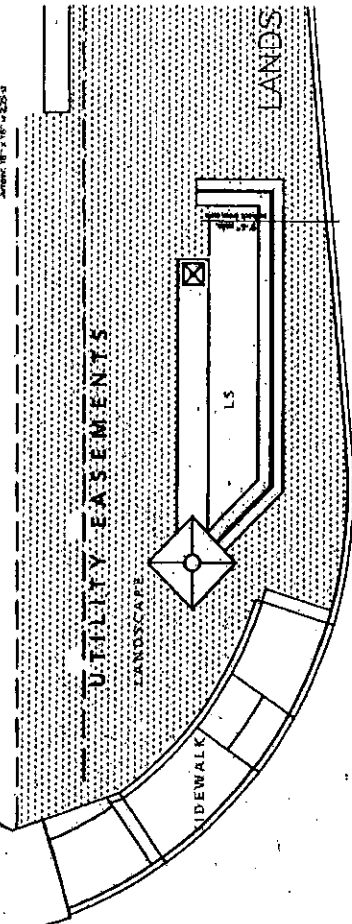
SMOOTH PLASTER WALLS W/  
IRON MOULD STONE TRIM  
& PERGOLA  
CONT. STONE PLANTER WALLS  
& GATE PER WAY

OFF-METAL LETTERS W/  
ASTHRAK LIGHTING

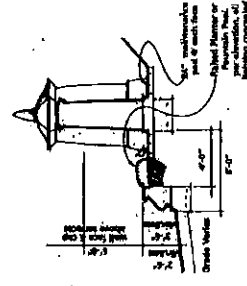


A3.1 - SERVICE ENTRY WALL

ALLOWABLE SIGN AREA 20 SF  
WALL SURFACE AREA 34 SF  
SIGN AREA ILLUSTRATED  
COPING: 15" x 6" x 5" x 4"  
SPACING: 18" x 18" x 20" x 20"



A3.1 - KEY PLAN



TYPICAL SECTION

STUDIO PROGETTI  
Architecture & design projects

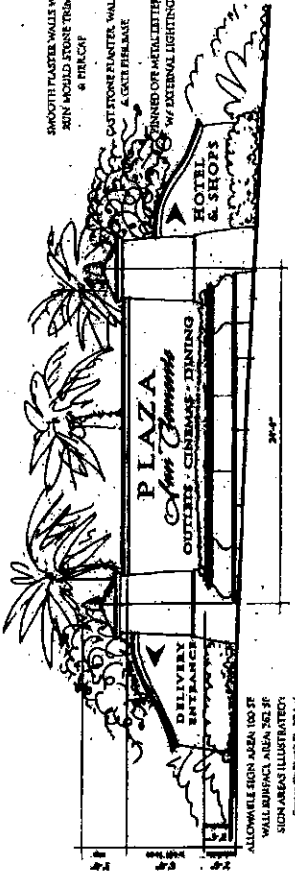
1815 Laguna Street  
Santa Barbara, CA 93101  
Tel: 805.558.4460  
Fax: 805.558.4462  
project@ocotier.com

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AVH ENTRY WALL SIGNS  
MASTER SIGN PROGRAM - 07 JUNE 2006  
WALL POSITION UPDATE - 22 AUGUST 2006

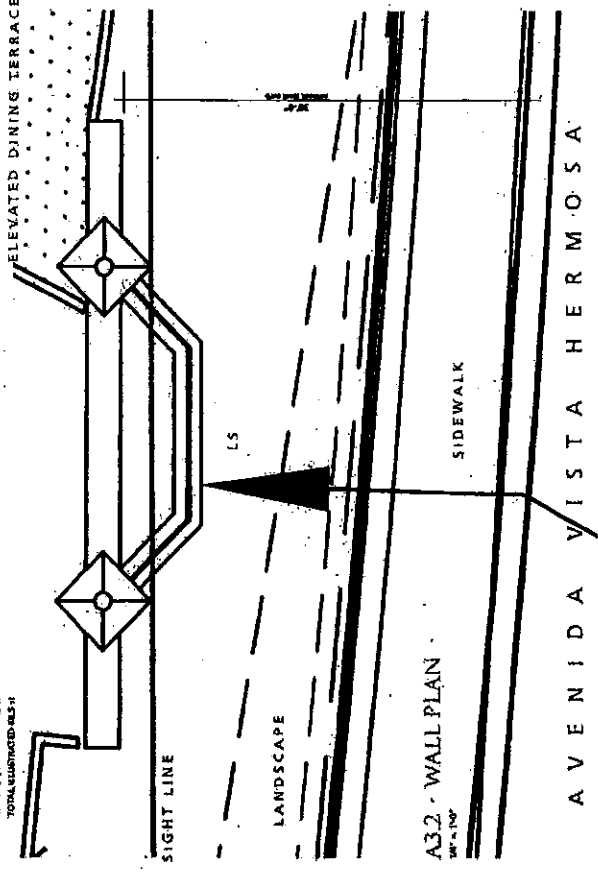
SMOOTH PLASTER WALLS W/  
IRON MOULD STONE TRIM  
& PERGOLA  
CONT. STONE PLANTER WALLS  
& GATE PER WAY

OFF-METAL LETTERS W/  
ASTHRAK LIGHTING

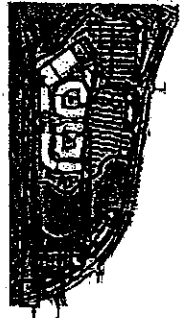


A3.2 - OFF-RAMP MONUMENT WALL

ALLOWABLE SIGN AREA 100 SF  
WALL SURFACE AREA 762 SF  
SIGN AREA ILLUSTRATED  
COPING: 15" x 6" x 5" x 4"  
SPACING: 18" x 18" x 20" x 20"  
TOTAL ILLUSTRATED: 483 SF

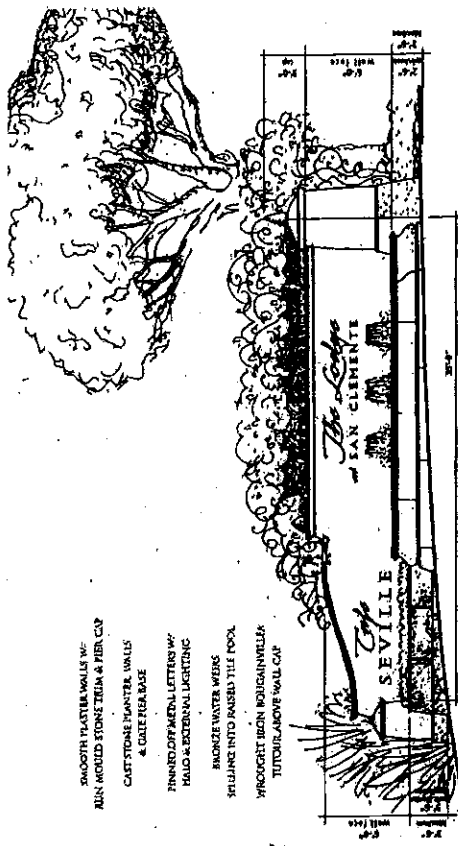


A3.2 - WALL PLAN



A3.1  
A3.2

Project & Wall Sign Illustrations are for informational purposes only. All dimensions are approximate and subject to change without notice.



A3.3 • HOTEL GATE WALL

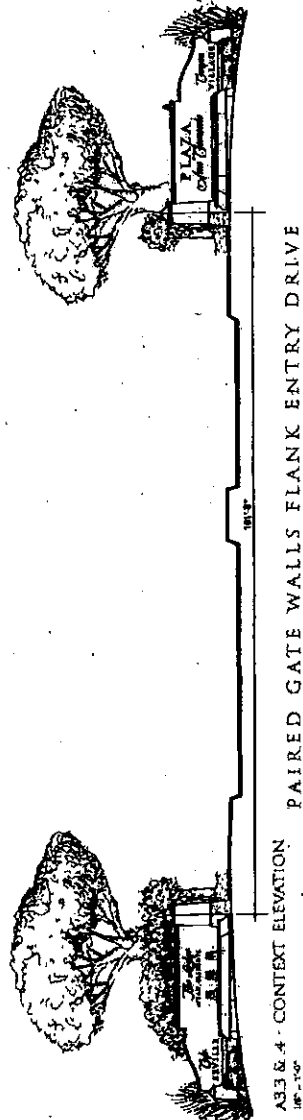
- SMOOTH PASTER WALLS W/ ALN ROUNDED STONE TRIM & PIER CAP
- CAST STONE PASTER WALLS & GATE POSTAGE
- PINKED OFF METAL LETTERS W/ HALO & EXTENSIVE LIGHTING
- RONZE WATER WEBS
- PLUJING INTO PAVED TILE POOL
- WROUGHT IRON BOUGHIN WELLS TUTOR ABOVE WALL CAP

A3.4 • NORTH GATE WALL

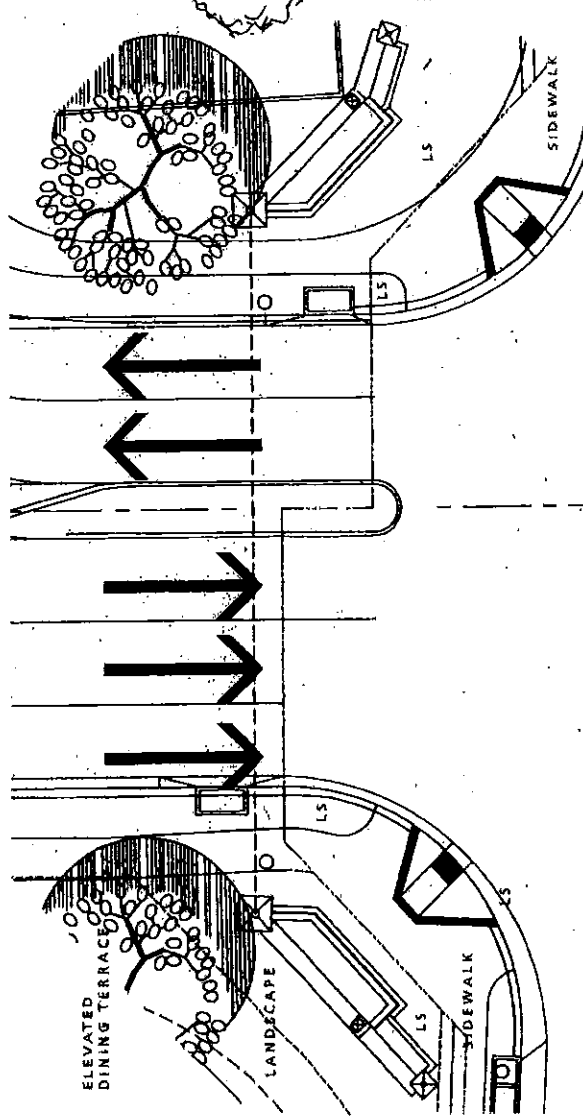
TOTAL SIGN ALLOWABLE SIGN AREA: 35 SF  
 WALL SURFACE AREA: 204 SF  
 SIGN AREA ILLUSTRATED: 25 SF  
 Height: 2.5 x 11.5 x 26 SF  
 Attachment: 2 x 20 x 27 SF

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 Santa Barbara, CA 93101  
 805.562.4460  
 fax 805.442.4482  
 projects@stpro.net

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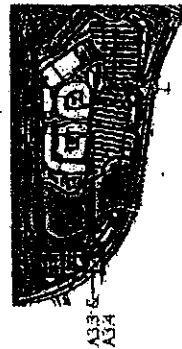


A3.3 & 4 • CONTEXT ELEVATION  
 1/8" = 1'-0"



A3.3 & 4 • CONTEXT PLAN  
 1/8" = 1'-0"

A V E N I D A V I S T A H E R M O S A

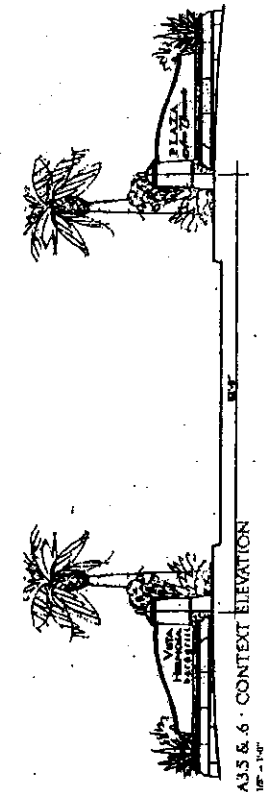


A3.3 & 4

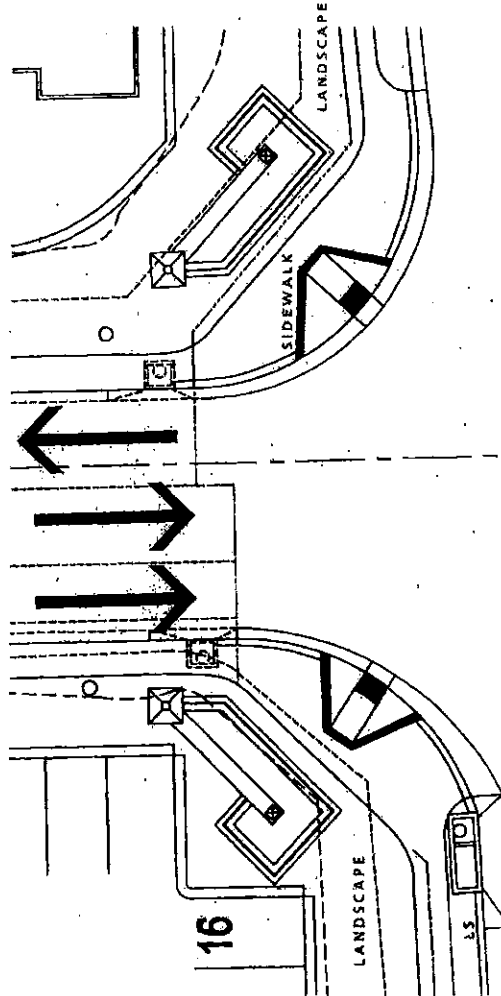
AVH ENTRY WALL SIGNS  
 MASTER SIGN PROGRAM • 07 JUNE 2006  
 LANDSCAPE UPDATE • 22 AUGUST 2006



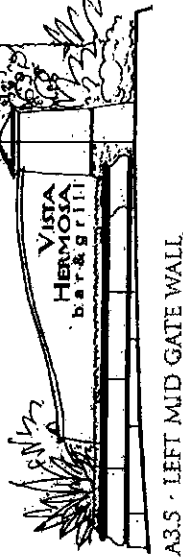
PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



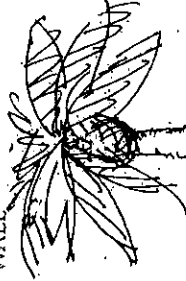
PAIRED GATE WALLS FLANK ENTRY DRIVE



A3.5 & 6 - CONTEXT PLAN  
1/8" = 1'-0"

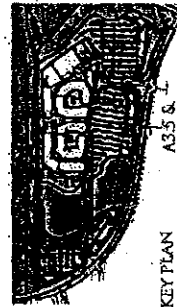


A3.5 - LEFT MID GATE WALL



A3.6 - RIGHT MID GATE WALL

SMOOTH PLASTER WALLS/  
IRON MOULD STONE TRIM & BENCH  
CASTSTONE/PAINTER  
WALLS & COFFER BASE  
PRINTED ORF METAL LETTERS/  
FLUO & EXTERNAL LIGHTING



KEY PLAN  
A3.5 & 6

EACH ALLOWABLE SIGN AREA: 50 SF  
EACH WALL STRUCTURE AREA: 60 SF  
SIGN AREA: 1100 SF  
SIGN AREA: 1100 SF  
SIGN AREA: 1100 SF  
SIGN AREA: 1100 SF

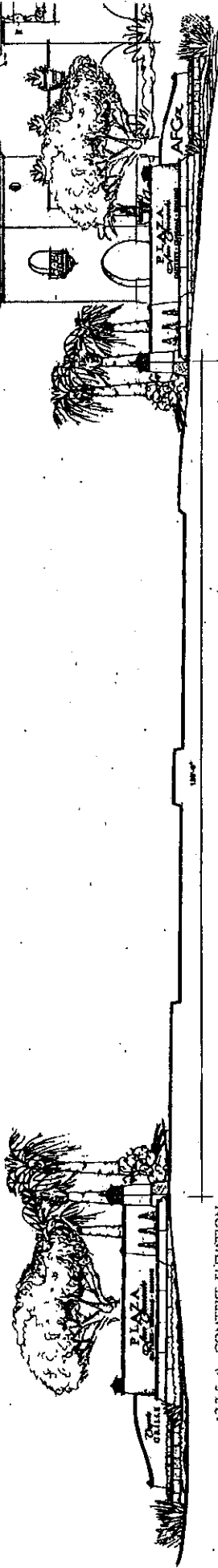
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1514 Laguna Street  
Santa Barbara California 93101  
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805.563.4442  
PROGETTI@COM.ATE

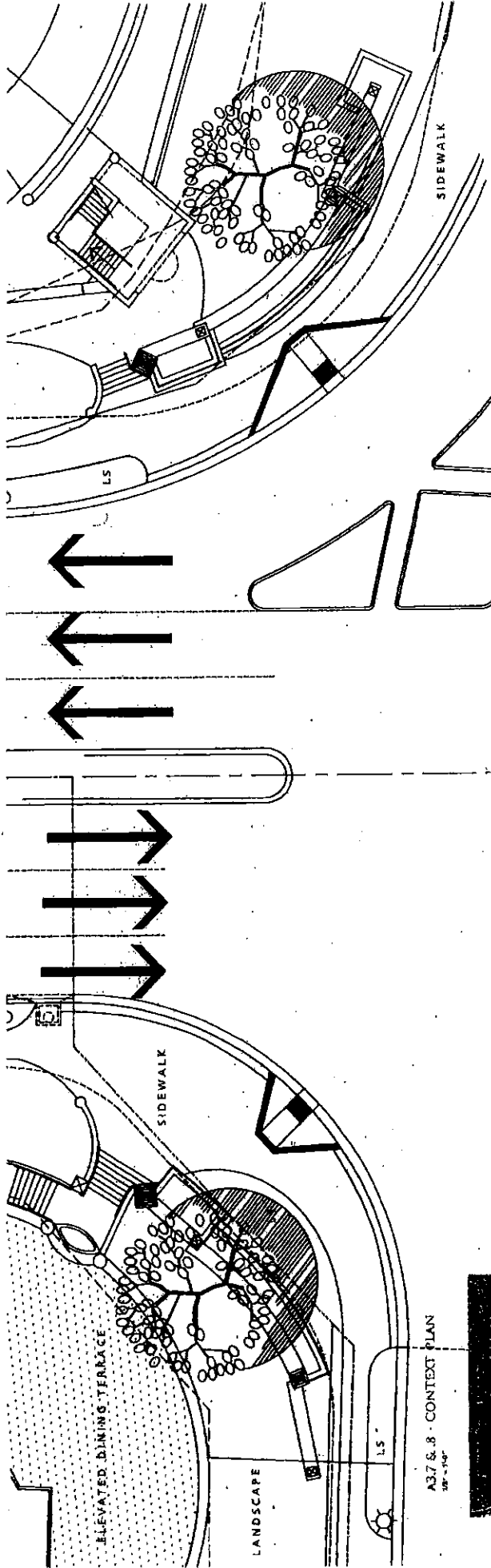
**MSP-1.4**  
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AVH ENTRY WALL SIGNS  
MASTER SIGN PROGRAM - 07 JUNE 2006  
REPLACED PROJECT ID WITH BUILDING & ID - 22 AUGUST 2006

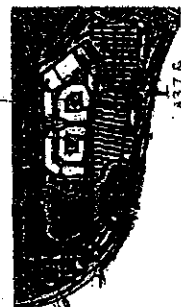
PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



A37 & 8 - CONTEXT ELEVATION  
1/8" = 1'-0"



A37 & 8 - CONTEXT PLAN  
1/8" = 1'-0"



12-05-17 / 7A-146

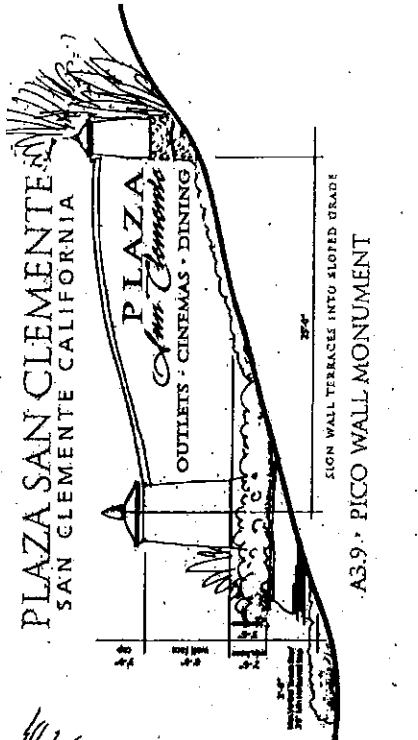
A V E N I D A V I S T A H E R M O S A

AVH ENTRY WALL SIGNS  
MASTER SIGN PROGRAM • 07 JUNE 2006

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Tel. 805.568.4460  
Project: 0600000000

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LANDSCAPE UPDATE • 22 AUGUST 2006.



PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA

PLAZA  
*San Clemente*  
OUTLETS · CINEMAS · DINING

Tropic  
GRILLE

SIGN WALL TERRACES INTO SLOPED GRADE

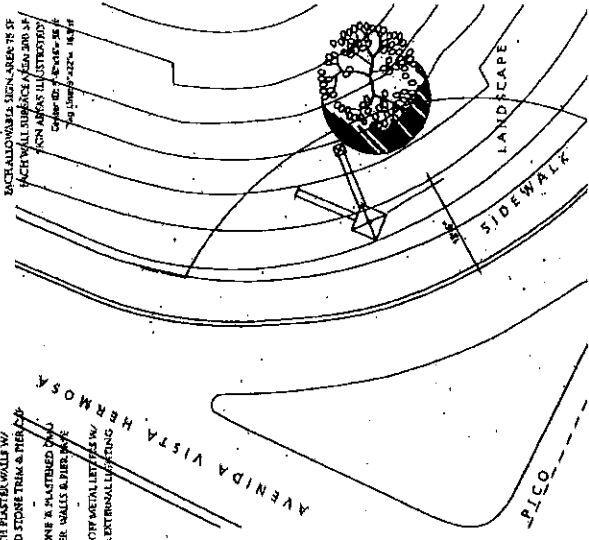
A3.9 · PICO WALL MONUMENT

SMOOTH PLASTER WALLS W/  
RUN MOULD STONE TRIM & TIE-INS

CURT STONE & PLASTERED PAINT  
PLASTER WALLS & TIE-INS

PINNED METAL LETTERS W/  
HALO & EXTERNAL LIGHTING

BACKLASH WALLS: MEN-AREA: 75 SF  
EACH WALL SURFACE AREA: 200 SF  
SIGN AREAS ILLUSTRATED:  
Cover: 10' x 10' x 10' x 10'  
Top Lines: 5' x 10' x 10' x 10'  
Bottom: 10' x 10' x 10' x 10'



AVENIDA VISTA HERMOSA

PICO

LANDSCAPE

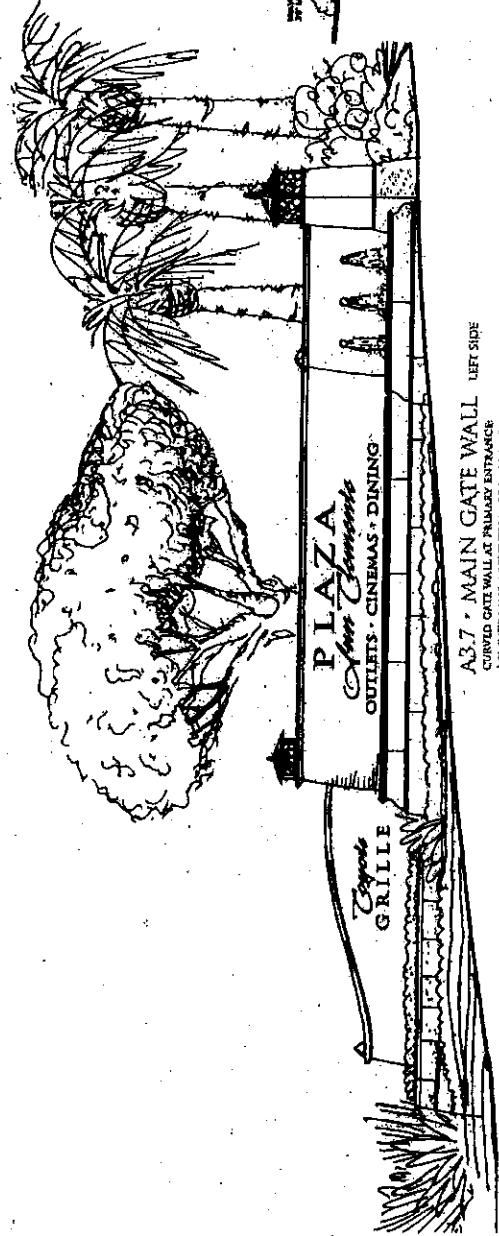
SIDEWALK

A3.9 · PICO WALL MONUMENT PLAN

STUDIO PROGETTI  
architect & design project

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Santa Barbara California 93101  
Tel: 805-963-4452  
progetti@cox.net

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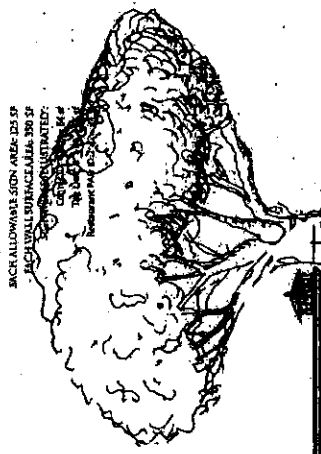


A3.7 · MAIN GATE WALL LEFT SIDE

CURVED GATE WALL AT PRIMARY ENTRANCE

6'-0" GATE WALL ABOVE TERRACE WALLS & PLANTERS. SEE TYPICAL SECTION.

BACKLASH WALLS: MEN-AREA: 75 SF  
EACH WALL SURFACE AREA: 200 SF  
SIGN AREAS ILLUSTRATED:  
Cover: 10' x 10' x 10' x 10'  
Top Lines: 5' x 10' x 10' x 10'  
Bottom: 10' x 10' x 10' x 10'



A3.8 · MAIN GATE WALL RIGHT SIDE

CURVED GATE WALL AT PRIMARY ENTRANCE

6'-0" GATE WALL ABOVE TERRACE WALLS & PLANTERS. SEE TYPICAL SECTION.

BACKLASH WALLS: MEN-AREA: 75 SF  
EACH WALL SURFACE AREA: 200 SF  
SIGN AREAS ILLUSTRATED:  
Cover: 10' x 10' x 10' x 10'  
Top Lines: 5' x 10' x 10' x 10'  
Bottom: 10' x 10' x 10' x 10'



A3.8 · MAIN GATE WALL RIGHT SIDE

CURVED GATE WALL AT PRIMARY ENTRANCE

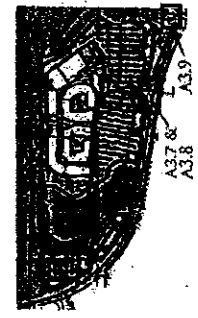
6'-0" GATE WALL ABOVE TERRACE WALLS & PLANTERS. SEE TYPICAL SECTION.

SMOOTH PLASTER WALLS W/  
RUN MOULD STONE TRIM

CURT STONE PLASTER WALLS &  
GATE PIER BASE

PINNED METAL LETTERS W/  
HALO & EXTERNAL LIGHTING

EACH ALLOWABLE SIGN AREA: 25 SF  
EACH WALL SURFACE AREA: 200 SF  
SIGN AREAS ILLUSTRATED:  
Cover: 10' x 10' x 10' x 10'  
Top Lines: 5' x 10' x 10' x 10'  
Bottom: 10' x 10' x 10' x 10'

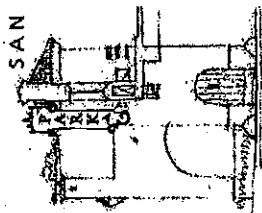


AVH ENTRY WALL SIGNS

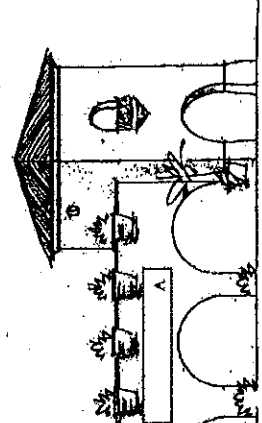
MASTER SIGN PROGRAM · 07 JUNE 2006

LANDSCAPE & WALL CONFIG UPDATE · 22-AUGUST 2006

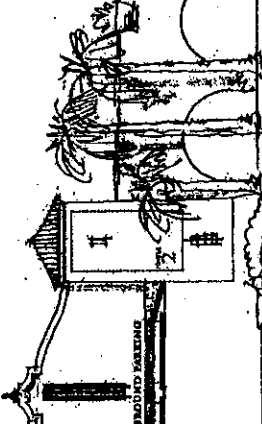
PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



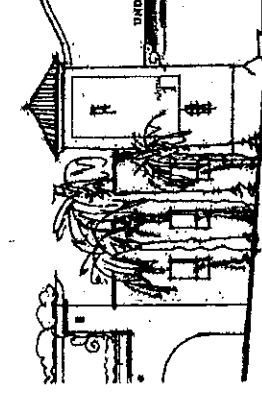
A2.3 - PROJECTING  
ENTRANCE TO LOWER LEVEL PARKING  
HALL LIFT PUSH THROUGH & ARROW  
WITH DISPLAY FACE.



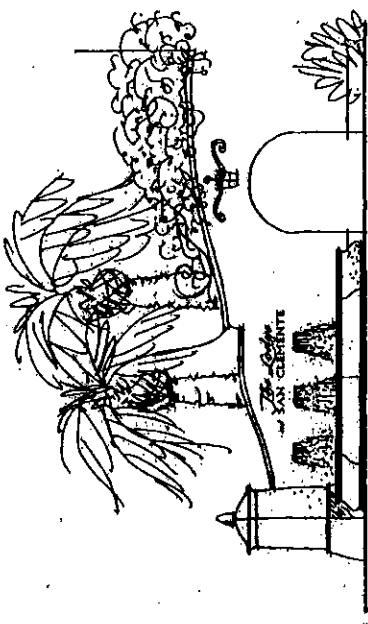
NORTH WALL PARKING DECK  
EXTERNAL RESTAURANT TENANT SIGN LOCATIONS SEE GUIDE TRAFFIC MATRIX/DA  
ONE SIGN PER TENANT REMOTE FROM BUILDING SIGN INCLUDED IN SIGN COUNT IS MAXI



A2.3 - PARKING ENTRANCE  
ENTRANCE TO LOWER LEVEL PARKING  
WALL LETTERS AS ILLUSTRATED: 12" H x 24" W  
PROJECTING VERTICAL TYPE SIGN: 12" H x 18" W x 24" D  
SPECIAL PRINT & MOVIE BANNERS  
Distanced away from AVI, other vertical signs with incorporate a  
wrought iron bracket for periodic banner mounting. When banners are  
not in use the bracket will remain as ornamentation.  
EACH BANNER: 12" wide x 22' tall.



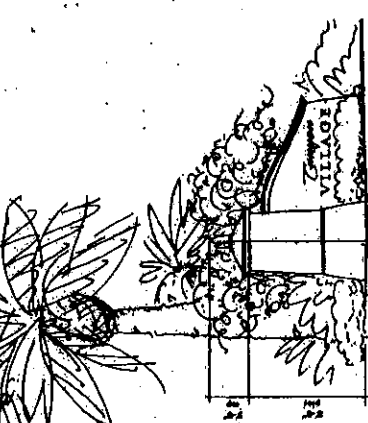
WEST WALL PARKING DECK  
RESTAURANT TENANT SIGN LOCATIONS TO GUIDE TRAFFIC. MAXIMUM ONE SIGN PER  
TENANT REMOTE FROM BUILDING.



A2.1 - HOTEL WALL

ALLOWABLE SIGN AREA: 30 SF  
WALL SURFACE ABACUS: 24"  
SIGN ADJUSTMENT: 12"  
SIGN: 12" H x 24" W

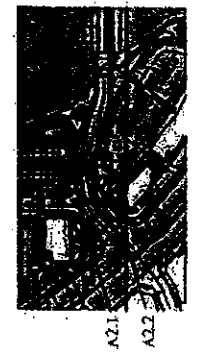
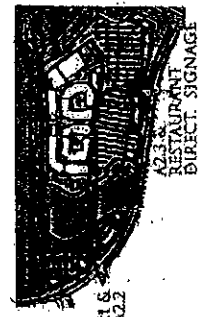
A2.1 - HOTEL WALL PLAN



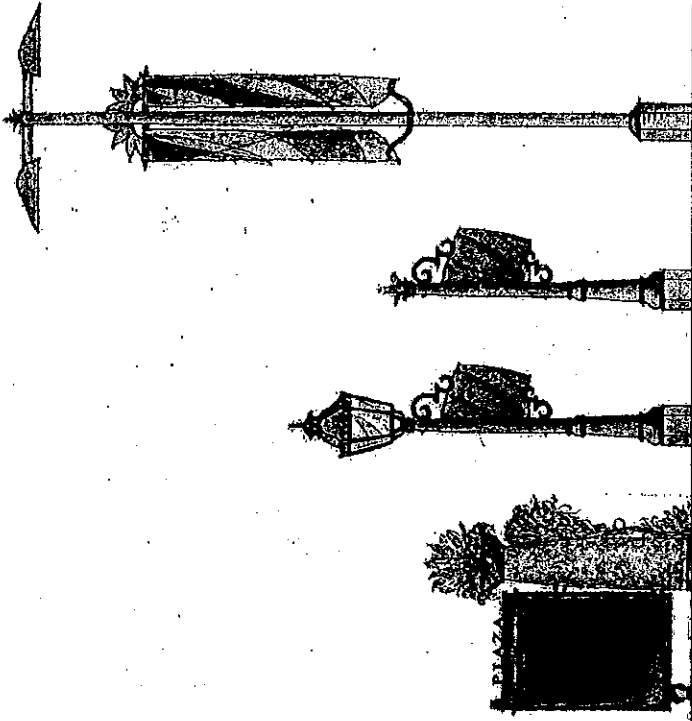
A2.2 - VILLAGE WALL  
DOWNTOWN  
ALLOWABLE SIGN AREA: 30 SF  
WALL SURFACE ABACUS: 24"  
SIGN ADJUSTMENT: 12"  
SIGN: 12" H x 24" W

STUDIO PROGETTI  
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93101  
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progetti@comcast.net

SECONDARY IDENTIFICATION  
MASTER SIGN PROGRAM - 07 JUNE 2006



PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



A2.4 DIRECTORY A2.5 LIGHT STANDARD & TRAILBLAZER A2.6 TRAILBLAZER A2.7 PARKING LOT BANNER

PLAZA STREET FURNITURE

THE MEANINGS OF STREET FURNITURE APPROVED BY THE LOCAL CLEARANCE DESIGN REVIEW SUBCOMMITTEE WILL LIST END INTO THE ENTIRE COMMERCIAL SITE.

DIRECTORY SHALL BE INTERNALLY ILLUMINATED AND MAY INCORPORATE AN INTERACTIVE ANIMATED DISPLAY. SET

SIGN POST MOUNTED WAITING WILL BE UTILIZED TO GUIDE VEHICULAR TRAFFIC THRU SITE. HOTEL PLAZA & VILLAGE RETAIL SEE GRAPHIC LOGO & STANDARD TYPE FOR ALL OTHER DISTINCTIONS. 3 LISTINGS PER SIGN MAXIMUM 7 DIRECTIONAL ARROWS. MAXIMUM PANEL SIZE 5' TALL X 30" WIDE. ALL MATERIAL SHALL BE CORROSION RESISTIVE WITH AUTOMOTIVE PAINTS.

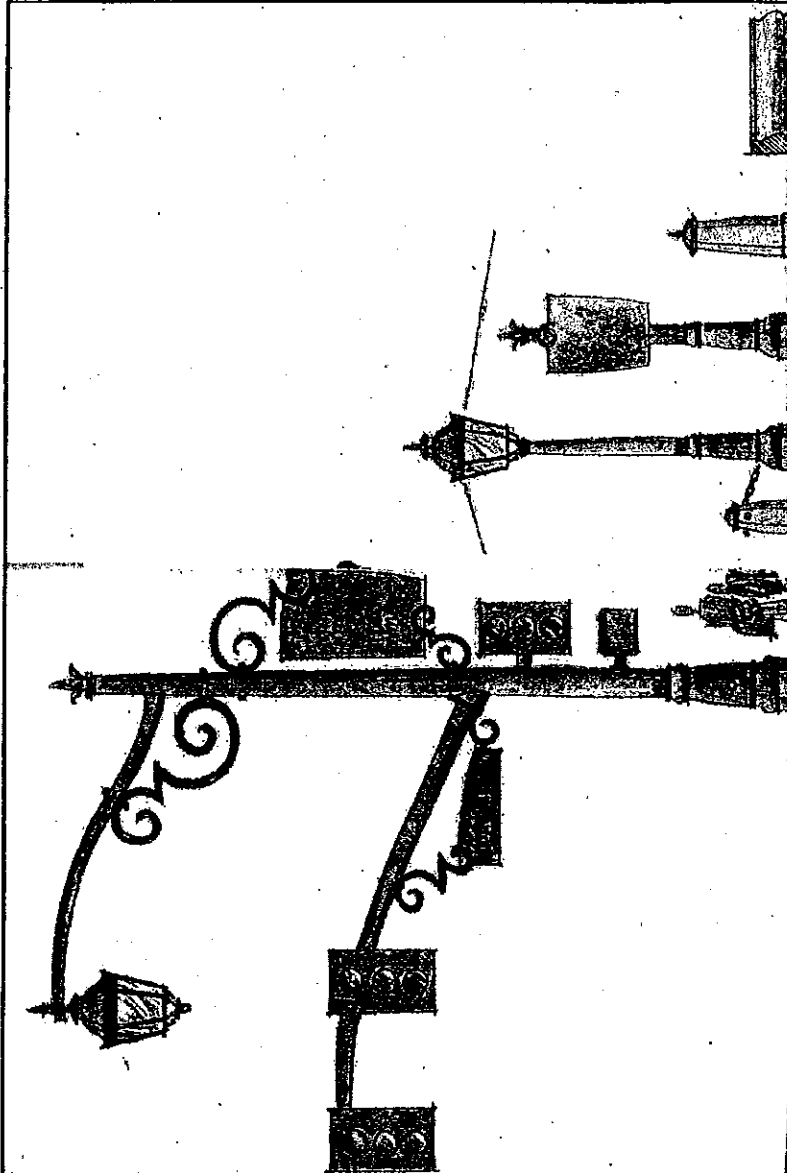
ALL LIGHTPOLES AND TRAILBLAZERS SHALL HAVE A RAISED COLORED CONCRETE BASE WITH DECOGNITIVE PROFILE

SEASONAL LIGHT BANNERS MOUNTED TO LIGHT POLES IF X' OF 4' NO TEXT OIL LOCKS COLORED AND ART TO VARY THRU SITE.

STUDIO PROGETTI

architectural design projects  
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STREETLIGHT STANDARD BOLLARD PEDESTRIAN LIGHT STANDARD SIGN POST MARKER PIER PRECAST LOW WALL

MARBLEHEAD STREET FURNITURE

Integrating a Spanish design into a series of custom fabricated street elements will create a distinctive character to the street and the overall development.

Lanterns will have down casting lighting for night sky preservation.

SECONDARY IDENTIFICATION  
MASTER SIGN PROGRAM - 07 JUNE 2006



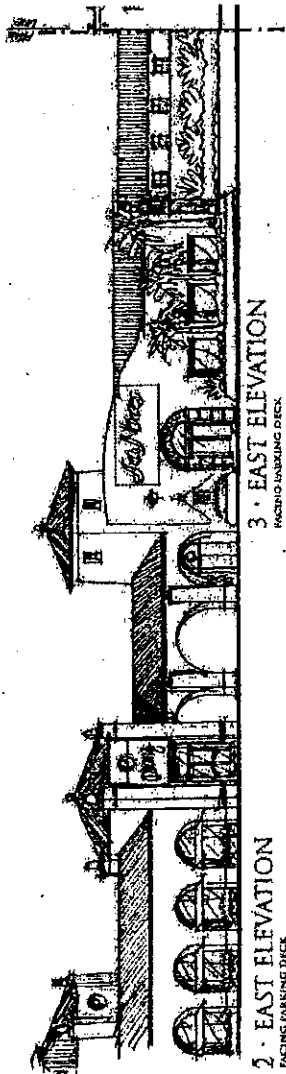
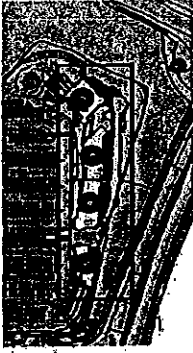




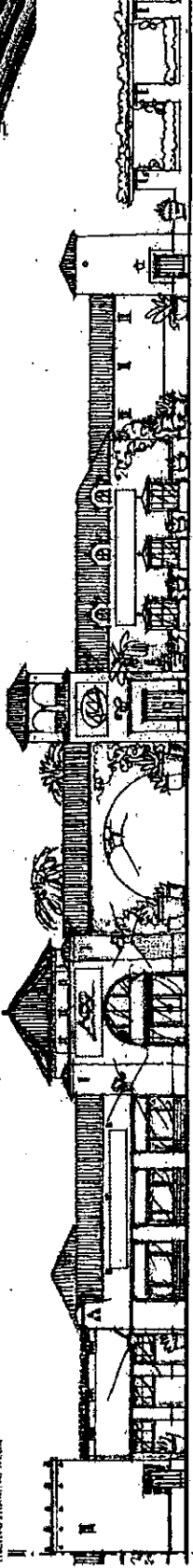




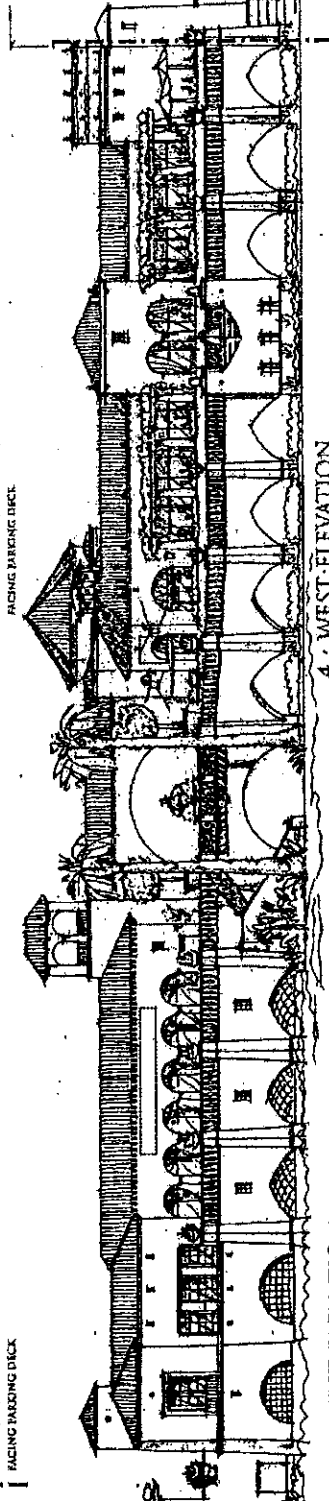
PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



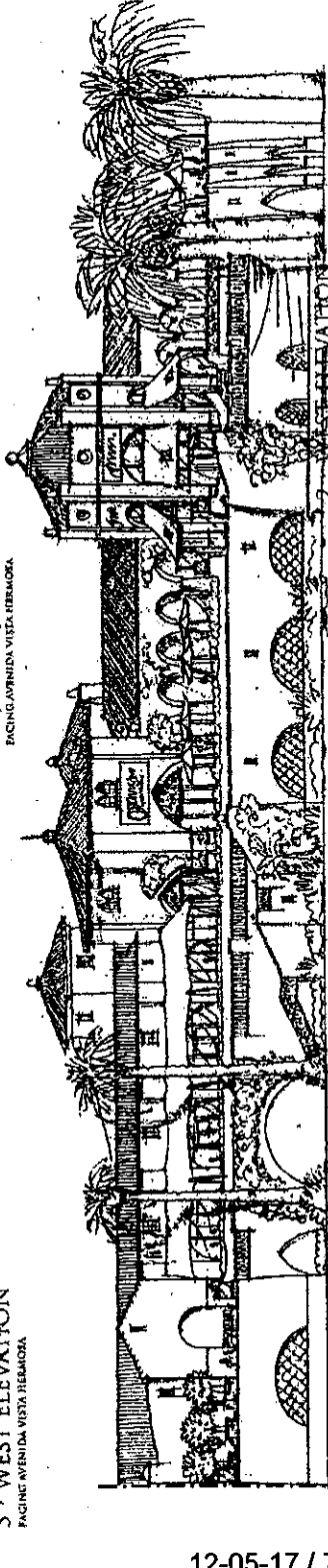
3 • EAST ELEVATION  
FACING PARKING DECK



5 • EAST ELEVATION  
FACING PARKING DECK



4 • WEST ELEVATION  
FACING AVENIDA VISTA HERMOSEA



3 • WEST ELEVATION  
FACING AVENIDA VISTA HERMOSEA & PICO

**CONDITIONS OF APPROVAL FOR TENANT SIGNS**

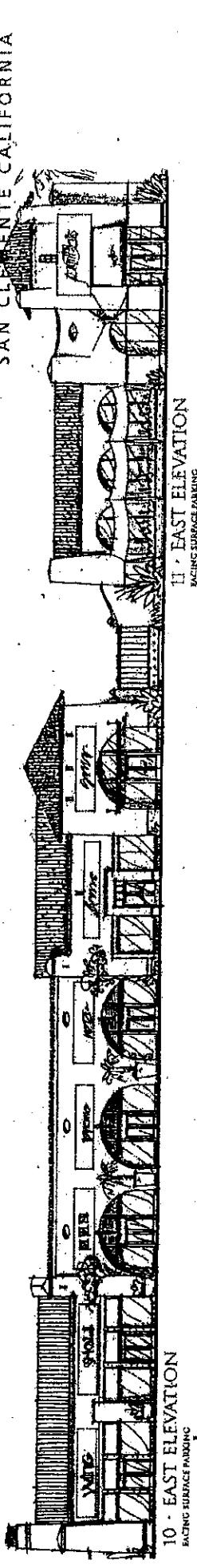
Tenant signs shall be designed, constructed and installed consistent with the criteria described on Sheet MSP-3.4. The specifications shall include, but not be limited to, the following: signs shall be permitted without the approval of the Community Development Director or Designer. Signs shall be designed and installed in accordance with the specifications for each building facade as illustrated herein, and any other applicable building department rules and regulations. The use of this document is a condition of the approval and shall not be construed as a guarantee of approval. The Designer or Designer shall provide design, site plan, site plan, specifications and other relevant data for any proposed sign installation or modification to the Community Development Director or Designer for review. Lighting shall be designed and installed in a manner that is consistent with the applicable codes and regulations. The Designer shall ensure that the signs are visible, readable and do not obstruct the view of the building or other adjacent property.

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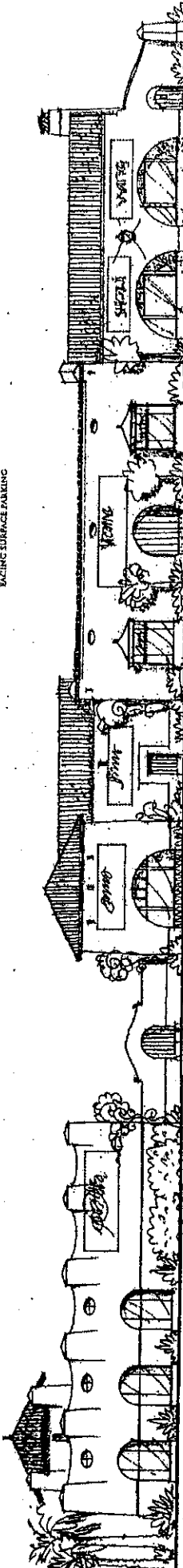
**VISTA POINTE RESTAURANT SIGNAGE**  
MASTER SIGN PROGRAM - 07 JUNE 2006  
CONDITIONS OF APPROVAL UPDATE - 22 MAY 2007

PLAZA SAN CLEMENTE  
SAN CLEMENTE CALIFORNIA



10 • EAST ELEVATION  
FACING SURFACE PARKING

11 • EAST ELEVATION  
FACING SURFACE PARKING



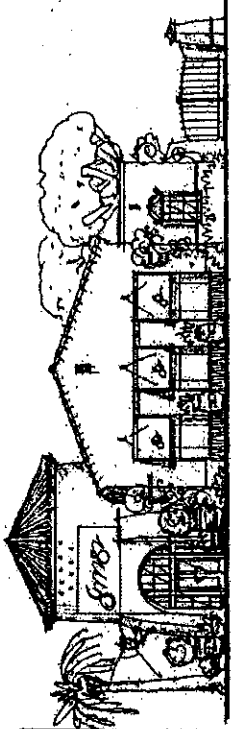
11 • WEST ELEVATION  
FACING AVENIDA VISTA HERMOSA

10 • WEST ELEVATION  
FACING AVENIDA VISTA HERMOSA

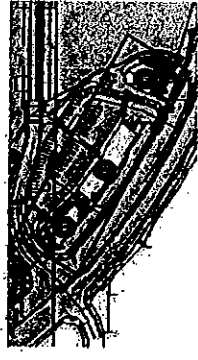
**CONDITIONS OF APPROVAL FOR TENANT SIGNS**

Tenant signs shall be designed, constructed and installed consistent with the criteria described on sheet 1203-B.1. No signage from the approval of the Community Development Director or California Department of Public Safety shall be installed on any building developed for such building except as illustrated herein and any other conditions set forth in the terms and conditions of this condition. It is further noted that this condition does not conflict with the architectural details of the building.

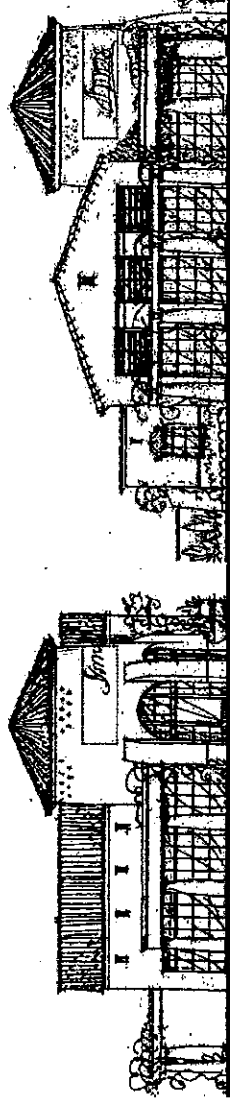
The Owner or Designer shall provide signs, preparation, or lighting. Any area lighting associated with the project shall be subject to review by the Community Development Director or Designer. Lighting shall be designed and installed in a manner that does not create a glare, or spillover into adjacent properties.



9 • NORTH ELEVATION  
FACING SURFACE PARKING

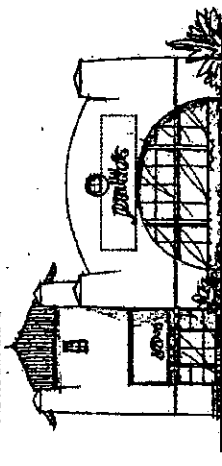


10 • SOUTH ELEVATION  
FACING EAST DRIVE



9 • EAST ELEVATION  
FACING SURFACE PARKING

9 • SOUTH ELEVATION  
FACING CANYON



11 • NORTH ELEVATION  
FACING ENTRY DRIVE

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PROGETTI@CSG.NET

CANYON VILLAGE SIGNAGE  
MASTER SIGN PROGRAM • 07 JUNE 2006  
CONDITIONS OF APPROVAL UPDATE • 22 MAY 2007

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Steven Knoblock

From: Gallardo-Daly, Cecilia [Gallardo-DalyC@san-clemente.org]  
 Sent: Wednesday, August 16, 2017 4:44 PM  
 To: Steven Knoblock; Louis Troiani  
 Cc: Gregg, Amber; Taiga.Takahashi@lw.com; Armijo, Albert  
 Subject: Master Sign Program

Dear Steve & Louis,

At the July 26, 2017 meeting of the Design Review Subcommittee (DRSC), the DRSC raised a question regarding the entitlements for the Master Sign Program at the Outlets at San Clemente. In 2007, when the City Council approved the sign permits for (1) interior signage and (2) exterior freeway oriented signage, they also approved a Master Sign Program (MSP) (February 20, 2007). The MSP states "Tenants are permitted a maximum primary sign area that is calculated at 1.5 square feet of signage per foot of building frontage." (MSP, Sheet MSP -3.0, General Criteria for Primary Signs – All Zones & Districts, #5)

Since the sign code allows 1.0 square feet of signage per foot of building frontage, the 1.5 in the MSP is an exception. The DRSC inquired as to the applicability of the 1.5 to the proposed freeway oriented signage, since the sign exception permit (SEP) for freeway oriented signage was rescinded (SEP 06-402). The applicant's position is that since the MSP was not rescinded, the Outlets have rights to the 1.5 square feet of signage per foot of building frontage and are utilizing this exception to calculate the sign areas requested as part of the proposed SEP.

We have further researched this open question for the DRSC and your position that you have rights under the previously issued MSP. We disagree that you have any rights under that MSP, which does not have viability separate from SEP 06-402.

We agree that you do have certain rights to signage, but with respect to freeway-oriented signage, your rights under the MSP were "subject to" SEP 06-402. When SEP 06-402 was invalidated by the superior court, the MSP which was authorized by that approval, was also invalidated.

The fact that the Court invalidated the Sign Exception Permit because proper environmental review had not occurred, mandated that a new SEP be issued after an environmental impact report was completed. An environmental impact report is only required for discretionary actions. If this was a ministerial matter, no EIR would be required. Therefore new environmental review and a new SEP is required. The SEP requirements of the SCMC contain highly discretionary criteria, and findings must be made that the criteria have been met.

The MSP provided that it was "subject to SEP 06-402." "Subject to" means "conditional upon." The MSP does not have continuing viability without SEP 06-402. The MSP may yet be useful if a new SEP is approved and the MSP is used as an example of what is proposed, and is, again, incorporated by reference as approved by the new SEP. Without an SEP, however, the MSP has no independent existence.

This constitutes my determination on this matter. If you disagree with this determination, you may appeal my decision to the Planning Commission, using the procedure to obtain and interpretation of an ambiguity (See SCMC §17.84.010, referencing the procedure set forth in §17.84.040) or you might pursue review utilizing SCMC §17.12.140. In either case review of my decision would go to the Planning Commission, and if you are not satisfied with that determination, to the City Council.

You may also include in your current application a request to apply the "1.5 square feet of signage per foot of building frontage standard" to the project and that will be reviewed and evaluated against the findings for an SEP.

If you have any questions, please do not hesitate to contact me.

Sincerely,  
Cecilia Gallardo-Daly  
Community Development Director  
949-361-6106

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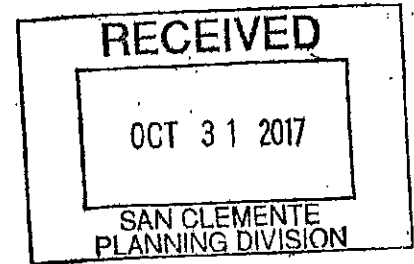
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# City of San Clemente

## NOTICE OF APPEAL CITY OF SAN CLEMENTE



Appellant's Name: Villa San Clemente LLC

Appellant's Address: 4100 MacArthur Blvd., Suite 100  
Newport Beach, CA 92660

Appellant's Phone Number: 949-224-4100

Decision Being Appealed: Appeal of Invalidation of Master Sign Program

Decision Made By: Planning Commission

Date of Decision: October 18, 2017

State basis for the appeal. (Note: only grounds for appeal noted here will be permitted to be raised before the appellate body. Failure to state grounds for appeal will waive the Appellant's ability to raise that issue at the appellate hearing.)

Appeal of Planning Commission decision upholding the determination by the City Director of Community Development, Cecilia Gallardo-Daly, that VSC's Master Sign Program is no longer valid. This decision was in error for the reasons stated in the Notice of Appeal to the Planning Commission and its attachments and exhibits, which are incorporated herein by this reference, as well as the memo provided to the Planning Commission prior to the hearing, attached hereto as **Exhibit 1.**

Appellant's signature: \_\_\_\_\_

SPACH, CAPALDI & WAGGAMAN, LLP  
Attorneys for Appellant Villa San Clemente, LLC

# Exhibit 1

SPACH, CAPALDI & WAGGAMAN, LLP

ATTORNEYS AT LAW  
4675 MACARTHUR COURT  
SUITE 550

NEWPORT BEACH, CALIFORNIA 92660

PHONE: (949) 852-0710  
FACSIMILE: (949) 852-0714  
WEBSITE: WWW.SCWLAW.US

October 18, 2017

SENT VIA EMAIL AND U.S. MAIL

City of San Clemente  
Community Development Dep't, Planning Division  
Attn.: Planning Commission  
City of San Clemente  
910 Calle Negocio, Suite 100  
San Clemente, CA 92673

Re: Hearing Brief of Villa San Clemente, LLC for October 18, 2017  
Planning Commission Hearings Regarding City's Invalidation of Villa  
San Clemente Master Sign Program

Dear Planning Commission:

Villa San Clemente, LLC ("VSC"), submits the following in support of its appeal of the City's purported invalidation of VSC's Master Sign Program.

The City's new assertion, at this late date, that the MSP is invalid, and that the City Council "revoked" the MSP, is simply incorrect.

The Master Sign Program is approved through a discretionary sign permit. The applicable permit for the MSP is therefore DSP 05-176, which was approved in 2006. *DSP 05-176 was not challenged and was not set aside by the Court.* The conditions of approval to DSP 05-176 do not "disapprove" of the MSP pages relating to freeway signs. When the City took action in response to Judge Bauer's ruling, it did not invalidate DSP 05-176. Rather, the City rescinded City Council Resolution 07-11, which pertained only to the freeway-oriented sign portion of Sign Exception Permit ("SEP") 06-402.

Second, the City's position, as stated in the August 16, 2017 email of Ms. Cecilia Gallardo-Daly, the City's Community Development Director, appears to intentionally misquote the MSP to support her unwarranted invalidation of VSC's MSP. Her reasons for making this "determination" at this time are unknown, but are consistent with the City's pattern of delay regarding the processing of the environmental review for VSC's permanent sign application SEP 15-428 (it has been roughly 16 months since the application for SEP 15-428 was deemed complete), and the City's unrelenting harassment of VSC regarding the



temporary banners it has posted to provide some level of advertising until the City finally completes its review of SEP 15-428.<sup>1</sup>

Her email incorrectly states that "the MSP specifically states that it was 'subject to SEP 06-402.'" The MSP does not say this. The words "subject to" appear throughout the document not in relation to SEP 06-402, but usually to note that the illustrated signs and dimensions were subject to change depending on the tenant. DSP 05-176 also does not say it is "subject to" SEP 06-402. Resolution 07-10, which relates to the *interior* signs, states that the MSP "is subject to" DSP 05-176 and SEP 06-402, but this only means that the additional conditions attached to the SEP approval also attach to the MSP. It cannot mean that the MSP itself suddenly does not exist, is invalid, or has "no independent viability," because the MSP is subject to a separate approval that was not challenged and remains in effect, i.e., DSP 05-176. Otherwise, there would be no purpose for a discretionary sign permit.

Most importantly, Ms. Gallardo-Daly did not have the authority to take the action she did. She is not the City Planner or the City Council, and cannot somehow on her own initiative invalidate the City Council's approval of VSC's Master Sign Program. In addition, Section 17.04.040, which Ms. Gallardo-Daly cited (initially erroneously as 17.84.040 but subsequently corrected), relates to determinations regarding ambiguities in the City's Zoning Ordinance. However, the issue of whether and to what extent the MSP is viable does not relate to an ambiguity in the City's Zoning Ordinance but rather the legal effect of the Superior Court's 2008 writ of mandate and the City's actions taken in compliance therewith. Ms. Gallardo-Day's August 16th "determination," which was not requested by VSC, was therefore improper under the San Clemente Municipal Code.

Because the City's position is factually and legally incorrect, and because Ms. Gallardo-Daly overstepped her authority, the City's "determination" that VSC's Master Sign Program is now suddenly invalid is without merit and should be overturned.

In her email of August 16, 2017, Ms. Gallardo-Daly, who is not an attorney, took it upon herself to unilaterally, and without a hearing or a request from VSC, make the following "determination" regarding the legal effect of the Superior Court's order of 2008, more than nine years after the ruling, and after both VSC and the City have proceeded with the development for years in reliance on both SEP 06-402 and the Master Sign Program:

We have further researched this open question for the DRSC and your position that you have rights under the previously issued MSP. We disagree that you have

---

<sup>1</sup> VSC initially obtained Temporary On-Site Banner Sign Permits for its temporary signs. Beginning in April of 2017, the City has refused to renew its temporary sign permits and has engaged in a non-stop campaign to try to force VSC to remove its signs, even though permit applications were pending, and VSC has appealed the City's denial of its temporary sign permits.

any rights under that MSP, which does not have viability separate from SEP 06-402.

We agree that you do have certain rights to signage, but with respect to freeway-oriented signage, your rights under the MSP were "subject to" SEP 06-402. When SEP 06-402 was invalidated by the superior court, the MSP which was authorized by that approval, was also invalidated.

The fact that the Court invalidated the Sign Exception Permit because proper environmental review had not occurred, mandated that a new SEP be issued after an environmental impact report was completed. An environmental impact report is only required for discretionary actions. If this was a ministerial matter, no EIR would be required. Therefore new environmental review and a new SEP is required. The SEP requirements of the SCMC contain highly discretionary criteria, and findings must be made that the criteria have been met.

The MSP provided that it was "subject to SEP 06-402." "Subject to" means "conditional upon." The MSP does not have continuing viability without SEP 06-402. The MSP may yet be useful if a new SEP is approved and the MSP is used as an example of what is proposed, and is, again, incorporated by reference as approved by the new SEP. Without an SEP, however, the MSP has no independent existence.

This constitutes my determination on this matter. If you disagree with this determination, you may appeal my decision to the Planning Commission, using the procedure to obtain and interpretation of an ambiguity (See SCMC §17.84.010, referencing the procedure set forth in §17.84.040) or you might pursue review utilizing SCMC §17.12.140. In either case review of my decision would go to the Planning Commission, and if you are not satisfied with that determination, to the City Council.

Not only does Ms. Gallardo-Daly not have the authority to invalidate VSC's Master Sign Program, but even if there were some super-secret charter granting staff the unilateral ability to overturn court decisions, and prior acts of the City Council, her analysis is fatally flawed. This unwarranted invalidation of VSC's Master Sign Program, without authority to do so, and which is clearly intended to prevent VSC's freeway-oriented signs at this late date, must be overturned.

***A. The City's Invalidation of the Master Sign Program Should Be Reversed Because the Superior Court Did Not Invalidate SEP 06-402, Only Resolution 07-11***

Although the City was ordered to set aside the portion of SEP 06-402 relating to freeway signs (i.e., Resolution 07-11 approving the freeway-oriented sign portion of SEP 06-402) by the Superior Court in May 2008 (*San Clemente Citizens For Integrity In Development v. City of San Clemente, et al.* [OCSC Case No. 07CC01287]), neither the

City's separate SEP findings nor Discretionary Sign Permit No. 05-176 associated with the Master Sign Program were ever challenged or set aside.

In fact, the City not only supported its approval of the freeway-oriented sign portion of the Master Sign Program in the litigation, its attorneys made sure that the Court only set aside Resolution 07-11, and *not* SEP 06-402, as the court's initial order erroneously would have done. The court revised its judgment to make clear that it only invalidated Resolution 07-11, and *not* SEP 06-402. Resolution 07-11 was set aside solely on the grounds that the City's environmental review of the freeway-oriented on-site advertising signs was inappropriate for the City to pass Resolution 07-11.

The Court did *not* set aside the findings for granting the SEP, did not state that the findings were inaccurate, or that Discretionary Sign Permit No. 05-176 or the Master Sign Program were in any way defective. The Court merely directed the City to set aside Resolution 07-11 and complete the appropriate environmental review of the freeway-oriented portion of SEP 06-402 before approving it for construction:

\*\*\*\*\*

5. A Peremptory Writ of Mandate shall issue from this Court remanding the proceedings to Respondents [the City] and commanding Respondents to set aside the decision approving the freeway oriented signage portion of Sign Exception Permit 06-402 in Resolution No. 07-11 dated on or about February 20, 2007 and consider the action in light of the Court's minute order of May 22, 2008.

6. Nothing in this Judgment or in the Writ shall limit or control in any way the discretion legally vested in Respondents.

*(San Clemente Citizens For Integrity In Development v. City of San Clemente, et al. [OCSC Case No. 07CC01287], Item Nos. 5 and 6 from Revised Judgment Granting Preemptory Writ of Mandamus, dated June 24, 2008.)*

In his May 22, 2008 Minute Order, the court stated the reason it was invalidating Resolution 07-11 was because the City had failed to perform the appropriate environmental review of the freeway-oriented signs portion of SEP 06-402. The practical effect of this was *not* to invalidate SEP 06-402 as a whole, as the City is now claiming (the original judgment dated June 16, 2008 was amended to make that clear), but only to require the City to step back, and perform the required environmental review of the freeway-oriented signs portion of 06-402 before approving those freeway-oriented signs.

While the City did invalidate Resolution 07-11 to comply with the judgment and writ of mandate, *it never performed the environmental review of the freeway-oriented signs for SEP 06-402*. Nothing prevented the City from curing the defects in Resolution 07-11 by simply conducting an environmental review as required by the court's 2008 judgment and completing the processing of SEP 06-402 for VSC's freeway-oriented signs; the City

just chose to follow a different path by doing nothing, and then later demanding that VSC submit a new sign permit application, SEP 15-428, that the City has not yet completed reviewing.

Importantly, VSC and the City have been implementing SEP 06-402 and the Master Sign Program for Outlets' non-freeway-oriented signs since 2007 since the Court expressly did not invalidate Resolution 07-10 (which approved the non-freeway portions of SEP 06-402), or SEP 06-402 itself.

This comes after a long process during which the parties have faithfully been implementing SEP 06-402 and other sign permit applications in reliance on the validity of the Master Sign Program, and both have spent significant time, money and effort. In reliance on the approved Master Sign Program, VSC has invested millions of dollars in infrastructure improvements. The City cannot now deny the validity of the Master Sign Program and refuse VSC's freeway-oriented signs. By its actions repeatedly affirming the Master Sign Program, the City is estopped from now denying its validity.

Thus, Ms. Gallardo-Daly's "determination" that the Master Sign Program is no longer valid must be overturned.

***B. The City's Invalidation of the Master Sign Program Is in Violation of the Development Agreement***

Before commencing the Project, the then-owner of the Project signed a Development Agreement with the City of San Clemente (the "City") on October 2, 1998. The Development Agreement was entered into to:

[P]romote and encourage the development of the Property by providing Developer and future owners and lenders with a greater degree of certainty as to Developer's ability to expeditiously and economically complete the Project.

The Development Agreement was supposed to "eliminate uncertainty in planning for and secure the orderly development of the Project...."

With regard to signs, the Development Agreement specifically provided a "vested right to develop the Commercial area in accordance with the development standards and land uses specific in Sections... (G) Signs... of the Specific Plan."

The Development Agreement intended to eliminate any uncertainty related to signage for the Project by expressly including this right to signs in accordance with the Specific Plan and a sign plan, rather than a separate SEP.

Section 3.9 ("Assurances to Developer") further states the following:

The Parties acknowledge that the public benefits to be provided by Developer to City pursuant to this Agreement, including without limitation the participation by Developer in the financing, construction, dedication,

and/or maintenance of certain public improvements and facilities, are in consideration for and reliance upon assurances that the Property can be developed in accordance with the terms of this Agreement. Accordingly, **City agrees that it will not attempt to restrict or limit the development of the Property in conflict with the provisions of this Agreement** [emphasis added].

As recognized by this provision, VSC and its predecessors-in-interest provided millions of dollars in infrastructure improvements and other public benefits to the City in exchange for the rights to develop this project. Part of this project, as embodied in the Development Agreement and related specific plans, permits and agreements, included the freeway-oriented signs to advertise Outlets San Clemente and its tenants pursuant to VSC's approved Master Sign Program.

The City approved the Master Sign Program for the Project in 2006, and then again in May of 2007 when it was revised to include Conditions of Approval from the City Council. This Master Sign Program including VSC's permanent signs on the freeway-facing portions of Outlets, as well as the other signs for the Project. The City has been implementing that Master Sign Program since its approval in May of 2007.

The Development Agreement also prohibits the City from stalling the Project. It states that "[i]n no event shall City disapprove, condition, or delay the processing of any application for Project development or building approvals for reasons inconsistent with the express provisions of this Agreement." (Development Agreement, at Section 7.1.)

Here, the City has been delaying approval of VSC's permanent signs for many years, first by refusing to perform the environmental review of SEP 06-402, and then demanding that the new application SEP 15-428. The City then refused to apply (or even consider) the express exemptions from the California Environmental Quality Act ("CEQA") requirements for on-site signs under Title 14 of the California Code of Regulations ("C.C.R."), Section 15311, which would have provided for relatively streamlined environmental review given the categorical determination that typical projects of this type (on-premises signs) do not result in significant adverse environmental impacts. The right to potential CEQA categorical exemptions was clearly provided by Section 7.4 of the Development Agreement, which stated that the "City shall process such matters in accordance with this Section 7.4 and, to the extent permitted by CEQA, shall use and adopt existing environmental reports and studies without requiring new or supplemental environmental documentation." Rather, the City insisted on performing an Environmental Impact Report ("EIR") for SEP 15-428 that has now stretched well beyond the statutory deadlines by which the City is required to complete processing SEP 15-428, which is also a violation of the Development Agreement.

SEP 15-428 was submitted to the City by VSC in April of 2016, over 18 months ago, and because of the City's delays is not expected to be completed until February of 2018, if not later.

This sudden pronouncement by Ms. Gallardo that the MSP that the parties have been operating under since 2007 is now somehow suddenly invalid appears to be nothing more than a blatant attempt to cause *further* delay, evidenced by the need to now engage in this lengthy appeal process.

Pursuant to Government Code sections 65864 et seq., the Development Agreement gives VSC a "vested right to develop the Commercial area in accordance with the development standards and land uses specific in Sections... (G) Signs... of the Specific Plan."

Developing the Project unequivocally extends to the right to critically necessary freeway-oriented signs, as contemplated by the Specific Plan, the Development Agreement, and the Master Sign Program. The Project's vested right to develop a regional shopping center intrinsically includes the right to attract customers in the region who are driving past the Project on the freeway. This is not possible without freeway-oriented signs.

Failing to permit freeway-oriented signs for the Project will constitute a deprivation of VSC's vested right to customary freeway signage for its factory outlet center. Under 42 U.S.C. § 1983, any person within the United States may bring an action at law, a suit in equity, or another proper proceeding for redress for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws."

By depriving VSC of its vested right to signage, the City has caused monetary damages in excess of \$16,000 per day in lost revenue from potential customers who drove past the Outlet Center and did not know it was there because of the lack of appropriate signage. VSC has lost additional revenue from its inability to secure sufficient tenants because new businesses do not want to move into a space that is not adequate marked with customary signage. This is causing reverberations in other aspects of VSC's business, including impeding build-out of the remaining entitled space. Finally, the diminished sales translates to diminished tax dollars, which only hurts the local community.

Additionally, VSC has rights to due process and compliance with California statutory law for processing of development project applications established by the Permit Streamlining Act. The City has violated those rights by demanding an unnecessary SEP, refusing to apply statutory and/or categorical exemptions from conducting an EIR for VSC's freeway-oriented signs which would have shortened the review process for SEP 15-428, and then delaying what should have been a simple EIR (since by definition on-site advertising signs do not have an adverse environmental effect [see 14 C.C.R. 14311]) for what will be nearly two years from the date SEP 15-428 was originally submitted.

VSC also has due process rights with regard to the City taking away Master Sign Program approvals that were made by the City Council long ago, and which have been relied on by the parties for many years to develop Outlets and to invest millions of dollars in infrastructure improvements.

Because invalidation of the Master Sign Program is in violation of the Development Agreement, and VSC's rights thereunder, and VSC's due process rights, as well as the City Council's approval of the MSP, Ms. Gallardo-Daly's "determination" invalidating the Master Sign Program must be overturned.

*C. Staff has no power to issue a unilateral rescission of such a right without prior notice*

Most importantly, neither Ms. Gallardo-Daly nor any other individual at the City has the authority to unilaterally declare the Master Sign Program to be invalid.

The Master Sign Program was approved by the City Council when it approved Discretionary Sign Permit No. 05-176 associated with the Master Sign Program, and again when it approved DSP 06-057 (through Planning Commission Resolution 06-057 Conditions of Approval No. 1). **(The Judgment by the Superior Court did nothing to invalidate these Permits or resolutions. Ms. Gallardo-Daly certainly cannot overrule the City Council.)**

In Ms. Gallardo-Daly's "determination," she purports to interpret whether or not the MSP continues to exist following the Court's 2008 ruling invalidating Resolution 07-11. Under Section 17.04.040 of the Municipal Code, which only applies to ambiguities in the City's Zoning Ordinance, this determination was improper. Rather, this issue relates to the legal effect of the Superior Court's 2008 writ of mandate and the City's actions taken in compliance therewith, and, therefore, Ms. Gallardo-Daly's "determination" was not a proper subject under Section 17.04.040. Further, it should be noted that VSC did not request this determination to be made, nor was it necessary, since VSC has, in the spirit of cooperation with the City, been diligently pursuing a SEP approval for the past two years.

If Ms. Gallardo-Daly believed there was an ambiguity regarding the Master Sign Program following the court's 2008 judgment, she was required to submit this to the City Planner for determination at some time in the last nine years, or at the latest 18 months ago when VSC submitted SEP 15-428, which she did not do. (Section 17.04.040(B) ["The City Planner shall make the determination whether an ambiguity exists...and whether an interpretation is minor or major."].) As this "interpretation" profoundly affects the rights of VSC, constitutionally and under the terms of the parties' Development Agreement, this clearly would be a "major" interpretation. If the City Planner had determined it was a major interpretation, the City Planner was required to submit the issue *to the Planning Commission* for a hearing to determine the issue in accordance with Section 17.04.040(F), at which time the affected parties would be entitled to present their arguments before the Planning Commission either approved or denied the interpretation request. (See Section 17.04.040(F)(2).) This did not occur.

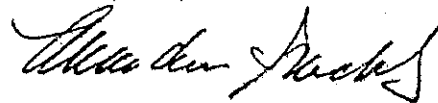
Since Ms. Gallardo-Daly is neither the City Planner nor the Planning Commission, she did not have the authority to make the determination that the Master Sign Program was

Letter to Planning Commission  
Appeal of Invalidation of Master Sign Program  
October 18, 2017  
Page 9

invalid. Because Ms. Gallardo-Daly overstepped her authority, her "determination" that the Master Sign Program is invalid must be overturned.

Nothing in the above is intended to in any manner waive VSC's rights, all of which are expressly reserved.

Very truly yours,



MADISON S. SPACH, JR.

Enclosures

cc: Client  
Mr. Alan R. Burns, Esq., Harper & Burns LLP (via email)  
Mr. Matthew R. Silver, Esq., Silver & Wright LLP (via email)





# City of San Clemente

## NOTICE OF APPEAL CITY OF SAN CLEMENTE

Appellant's Name: Villa San Clemente, LLC

Appellant's Address: 4100 MacArthur Blvd., Ste. 100  
Newport Beach, CA 92660

Appellant's Phone Number: 949-224-4100

Decision Being Appealed: That our Master Sign Program (MSP) is invalid  
(see attached email)

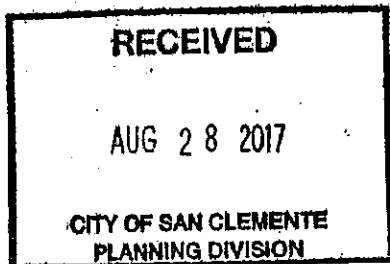
Decision Made By: Cecilia Gallardo-Daly, Community Development Dir

Date of Decision: 8-16-17

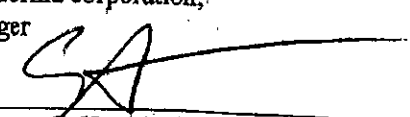
State basis for the appeal. (Note: only grounds for appeal noted here will be permitted to be raised before the appellate body. Failure to state grounds for appeal will waive the Appellant's ability to raise that issue at the appellate hearing.)

- MSP was not rescinded, revoked or invalidated by the court. The City would violate the court's final judgment if they take the position that the permit which the Judge left in place is not valid.
- 1.5 square feet of signage per foot of building frontage remain valid under the MSP.
- The city council findings necessary to issue the MSP and SEP 06-402 have been made, are conclusive and have not been rescinded, revoked or invalidated by the court.
- The "determination" is not proper because it does not apply to any ambiguity in the code, but rather the legal effect of a court ruling.
- The "determination" violates our federal and state constitutional due process, equal protection and free speech rights.
- The determination also violates the Development Agreement, and we will be sending a notice of default if the City persists in this determination which conflicts with the City's obligations under the Development Agreement.

Appellant's signature: Villa San Clemente, LLC,  
a California limited liability company



By: Eureka Realty Partners, Inc.,  
a California corporation,  
Manager

By:   
Steven C. Knoblock, Assistant  
General Counsel

## Extraneous Issues Raised on Appeal

Villa San Clemente, LLC ("Applicant") raises various extraneous issues in its Notice of Appeal dated October 26, 2017. Each of these other issues VSC raises are outside the scope of this appeal. Under San Clemente Municipal Code Section ("SCMC") 17.12.140 E, the scope of review considers the "issues raised on appeal," and the body hearing the appeal may "review new evidence and ... consider all elements of the appealed action." Here, the issue raised on appeal is the City's Community Development Director's determination that the Applicant must apply for an SEP for its freeway orientated signs at the Outlets if such signs are to exceed one square foot of signage per linear foot of building frontage. The elements of the appealed action are: the City's interpretation of the relevant Municipal Code provisions and its application of those Municipal Code provisions to the subject determination that the Applicant must apply for an SEP. Nonetheless, these extraneous issues are briefly addressed here to assuage any concerns the Planning Commission may have about them and their impact on this appeal.

## Issues Raised on Appeal

### **1. The Determination Does Not Violate the Development Agreement**

The Applicant argues that the Community Development Director's determination that the Applicant must apply for an SEP for its freeway orientated signs at the Outlets if such signs are to exceed one square foot of signage per linear foot of building frontage, violates the "Development Agreement." (Notice of Appeal to Planning Commission re Subject Appeal; Letter Applicant Provided to Planning Commission dated October 18, 2017, 5-8.) This contract law question is far outside the scope of this appeal which only considers the propriety of the Community Development Director's determination with respect to the Code and how it applied in this instance.

And even if the Planning Commission could consider this issue, the City has not violated the Development Agreement. Specifically, the subject Development Agreement between the City and the developer of the Outlets permitted the Outlets to utilize the sign code in place at the time of the approval of the Development Agreement. (See Development Agreement, Section 3, et. seq.) The sign code at that time permitted freeway oriented signage with the approval of an SEP. (See e.g., SCMC 17.84.030A [Matrix of Sign Types - Freeway Oriented Signs].) The Community Development Director's determination permits the Applicant to use the then applicable sign code, which allows freeway oriented signage *with the approval of an SEP*. Requiring the Applicant to obtain an SEP for its freeway oriented signage is thus, precisely in line with the terms of the Development Agreement.

A copy of this Development Agreement is provided under Attachment 4. A copy of the applicable SCMC is provided under Attachment 3.

### **2. The Determination Does Not Violate Applicant's Federal and State Constitutional Due Process, Equal Protection or Free Speech Rights**

Without providing any specific explanation, Applicants assert purported constitutional right violations. (Notice of Appeal to Planning Commission re Subject Appeal.) Such constitutional questions fall far outside the scope of this review.

Nonetheless, the Community Development Director's determination has violated no such constitutional rights. As explained in the accompanying report, the Community Development Director's

determination was based on her interpretation of the then existing SCMC requirements. Her determination merely requires that the Applicant abide by the applicable provisions of the SCMC which require an SEP for freeway oriented signage. No SEP on freeway oriented signage was in place, given that the City Council rescinded the portion of SEP 06-402 on freeway oriented signage after Court Order. The Applicant was made aware of this determination, was given an opportunity to appeal the decision (which it has done) and an opportunity to apply for a new SEP to be considered by the City.

No due process, equal protection, or free speech rights were violated. The determination was not arbitrary or unreasonable. As explained in the accompanying report, the City is merely ensuring that the applicable provisions of the SCMC are not violated. The City is empowered to ensure that provisions of the applicable SCMC are not violated. Applicant is permitted to display signage; indeed, it was approved an SEP for interior signage as noted in the accompanying report. And if Applicant's submitted SEP meets all criteria of the applicable SCMC provisions and passes CEQA review, it will be allowed freeway oriented signs exceeding one square foot of signage per linear foot of building frontage.

Furthermore, to the extent the Applicant challenges the City's right to regulate signs, the City is empowered to regulate commercial signage in its borders. (*See Central Hudson v. Public Service* (1980) 447 U.S. 557 (noting commercial speech is afforded lesser protection than other forms of expression, and that 4-part test used to determine validity of restrictions on commercial speech).)

### **3. The Determination Did Not Invalidate Applicant's MSP, Contrary To Its Mistaken Belief**

Applicant asserts various arguments against the Community Development Director's purported invalidation of its entire MSP. (Notice of Appeal to Planning Commission re Subject Appeal; Letter Applicant Provided to Planning Commission dated October 18, 2017.) However, none of these arguments apply given that the Director of Community Development did not invalidate Applicant's MSP. The City Council need not even consider these arguments.

As explained in the accompanying report, the challenged Community Development Director's determination only required that the Applicant abide by the applicable provisions of the SCMC which require an SEP for freeway oriented signage. No SEP on freeway oriented signage was in place, given that the City Council rescinded the portion of SEP 06-402 on freeway oriented signage after the Court ordered such action. All portions of Applicant's MSP that pertain to non-freeway oriented signs are still in place today.

MAR 28 2007  
SAN CLEMENTE  
PLANNING DIVISION

## RESOLUTION NO. 07-10

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SAN CLEMENTE, CALIFORNIA, APPROVING SIGN EXCEPTION PERMIT 06-  
402, MARBLEHEAD COASTAL PLAZA SAN CLEMENTE MASTER SIGN PROGRAM  
OVERSIZED INTERIOR TENANT SIGNS**

**WHEREAS**, on August 5, 1998 the City Council approved Tentative Tract Map 8817, Site Plan Permit (SPP) 97-16 and Coastal Development Permit 97-42, to allow the subdivision of 250.6 acres and the development of 434 single family residential dwelling units, and denied Site Plan Permit 97-17, Conditional Use Permit 97-18 and Sign Exception Permit 97-19, proposing development of the commercial portion of the project; and

**WHEREAS**, on July 7, 1999 the City Council approved Site Plan Permit 99-16, Conditional Use Permit 99-17 and Sign Exception Permit 99-18 (with the exception of freeway-oriented signs) to allow the development of 443,860 square-feet of specialty retail, 176,232 square-feet of entertainment and 80,048 square-feet of general retail; and

**WHEREAS**, on April 9, 2003, the California Coastal Commission conditionally approved the Marblehead Coastal project; and

**WHEREAS**, on September 16, 2003, the City Council approved an Amendment to TTM 8817 to preserve additional environmentally sensitive habitat areas and other open space by reducing the amount of developed acreage, including a reduction in commercial square footage and the number of residential lots from 424 to 313; and

**WHEREAS**, on July 20, 2004, the City Council approved Amendment to Site Plan Permit 97-16, to reduce the residential units from 424 to 313 and to allow the replacement of architectural product on each lot, and Amendment to Site Plan Permit 99-16, to reduce the amount of development from 700,140 square-feet to 642,584 square-feet of commercial uses including a 125 room hotel, conference center, theater, restaurants and outlet retail uses; and

**WHEREAS**, on September 19, 2005, Discretionary Sign Permit and Sign Exception applications were submitted by Villa San Clemente, LLC, 1500 Quail Street, Suite 100, rt Beach, California 92660 to request the approval of a Master Sign Program for the materials, locations, sizes and installation of signs and monuments including freeway-signs and signs that exceed the standards of the Zoning Ordinance within the previously Marblehead Coastal Plaza San Clemente project; and

**WHEREAS**, the Planning Division completed an Environmental Initial Study for the project in accordance with the California Environmental Quality Act (CEQA)

and determined that the proposed project has been adequately addressed in previously prepared Final Environmental Impact Report (EIR) 95-01 for the Marblehead Coastal Project (State Clearing House Number 95091037). Pursuant to CEQA and the CEQA Guidelines, the San Clemente City Council certified Marblehead Coastal Final Environmental Impact Report (FEIR) 95-01 (SCH NO. 95091037). Certification of the document also included the adoption of Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program. In July 1998, February 2000, September 2003, April 2003 and July 2004 the City Council certified Addendums to FEIR 95-01. Addendum No. 5 to FEIR 95-01 (certified July 2004) considers all environmental impacts of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines.

**WHEREAS**, the City's Development Management Team reviewed the proposed Discretionary Sign Permit and Sign Exception Permit for consistency with the General Plan policies and other applicable City ordinances and policies; and

**WHEREAS**, the Design Review Subcommittee reviewed the applications on August 22, August 24 and August 30, 2006 and provided comments to the applicant; and

**WHEREAS**, on August 16, 2006, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application and considered evidence presented by City staff, the project applicant and other interested parties and continued the hearing to September 6, 2006; and

**WHEREAS**, on September 6, 2006, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application and considered evidence presented by City staff, the project applicant and other interested parties and adopted a resolution approving Discretionary Sign Permit 05-176 and denying Sign Exception Permit 06-402. The Planning Commission supported the request for oversized interior signage, but denied the application for a Sign Exception Permit based on concerns about proposed freeway oriented signs; and

**WHEREAS**, on September 15, 2006, an appeal was filed by Villa San Clemente, LLC, 1500 Quail Street, Suite 100, Newport Beach, California 92660, to request approval of previously denied Sign Exception Permit 06-402; and

**WHEREAS**, on November 6, 2006, the City Council of the City of San Clemente held a duly noticed public hearing on the subject appeal and considered evidence presented by City staff, the project applicant and other interested parties. The City Council established the Marblehead Coastal Signage Task Force to consider alternative freeway-oriented signage solutions and continued the hearing to January 23, 2007; and

**WHEREAS**, on January 3, 2007, the Marblehead Coastal Signage Task Force conducted a public meeting to consider alternative freeway-oriented signage; and

WHEREAS, on January 23, 2007, the City Council of the City of San Clemente held a duly noticed public hearing on the subject appeal and continued the hearing to February 20, 2007.

NOW THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

**Section 1:** The City Council finds and determines that the proposed project has been adequately addressed in previously prepared Final Environmental Impact Report (EIR) 95-01 for the Marblehead Coastal Project (State Clearing House Number 95091037). Pursuant to CEQA and the CEQA Guidelines, the San Clemente City Council certified Marblehead Coastal Final Environmental Impact Report (FEIR) 95-01 (SCH NO. 95091037). Certification of the document also included the adoption of Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program. In July 1998, February 2000, September 2003, April 2003 and July 2004 the City Council certified Addendums to FEIR 95-01. Addendum No. 5 to FEIR 95-01 (certified July 2004) considers all environmental impacts of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines.

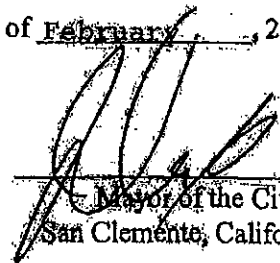
**Section 2:** The City Council finds and determines as follows with regard to Sign Exception Permit 06-402 (Oversized Interior Tenant Signs):

- A. There are unique or unusual circumstances relating to the size of the site or business, shape of the site or business, location and orientation of the site or business proximity to street frontage or length of street frontage that do not allow the site or business to achieve the goals and objectives of the sign code, in that the project is located on a 50.5 acre site adjacent to a freeway and between two off-ramps. The total building area devoted to commercial uses is approximately 640,000 square feet and buildings are up to 55 feet high. Due to the size of the project site and scale of the buildings, there is a need for some signs that exceed the dimensional standards of the sign code and the proposed signs meet the goal of granting a Sign Exception Permit.
- B. The granting of a Sign Exception Permit is not contrary to the intent of the General Plan, Design Guidelines or the Marblehead Coastal Specific Plan in that the Specific Plan anticipated the need for larger signs due to the size of the project and scale of the buildings.
- C. The granting of the Sign Exception Permit is not considered a grant of special privileges inconsistent with the limitations of other similarly situated properties in that there are other retail developments that have received Sign Exception Permits to allow signage that exceed certain standards.

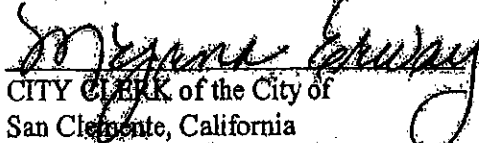
- D. The granting of a Sign Exception Permit does not create a traffic or safety hazard in that the exception granted for this portion of Sign Exception Permit 06-402 is to allow signs that exceed the sign area allowed under Section 17.84.020 of the Municipal Code which states that "for non-residential buildings, one (1) square foot of sign allowed for each linear foot of all building façade". The proposal for a maximum of 1.5 square feet of sign for each linear foot of building façade as described in this portion of the Sign Exception Permit is limited to tenant signs which are oriented internally toward the subject property and would not be distracting to motorists.
- E. The granting of a Sign Exception Permit for this portion of Sign Exception Permit 06-402 does not adversely impact surrounding properties by increasing light, glare or noise, in that this portion of the Sign Exception Permit is limited to tenant signs which are oriented internally toward the subject property. Furthermore, the lighting of signs are conditioned to require that the owner shall provide design details, photometrics, specifications and/or other relevant data for any proposed illumination or lighting. Any area lighting associated with the project shall be subject to review by the Community Development Director or designee. Lighting shall be designed and installed in a manner that is subdued and ensures that absence of glare, or spillover onto adjacent properties.

**Section 3:** The City Council hereby approves Sign Exception Permit 06-402, Marblehead Coastal Plaza San Clemente Master Sign Program (Oversized Interior Tenant Signs), subject to the above Findings.

PASSED AND ADOPTED this 20th day of February, 2007.

  
\_\_\_\_\_  
Mayor of the City of  
San Clemente, California

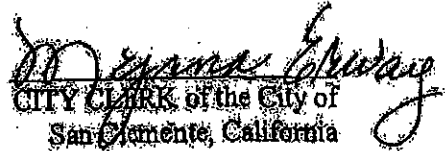
ATTEST:

  
\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF SAN CLEMENTE)

I, Myrna Erway, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 07-10 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 20th day of February, 2007, by the following vote:

AYES:           ANDERSON, DONCHAK, EGGLESTON, KNOBLOCK, MAYOR DAHL  
NOES:           NONE  
ABSENT:        NONE

  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

  
City Attorney



EXHIBIT 1

CONDITIONS OF APPROVAL  
SIGN EXCEPTION PERMIT 06-402, MARBLEHEAD COASTAL PLAZA SAN  
CLEMENTE MASTER SIGN PROGRAM OVERSIZED INTERIOR TENANT SIGNS

GENERAL CONDITIONS

1. The Marblehead Coastal Plaza San Clemente Master Sign Program is subject to Discretionary Sign Permit 05-176 as approved by the Planning Commission on September 6, 2006 by Resolution No. PC 06-057, Sign Exception Permit 06-402 (Oversized Interior Tenant Signs) as approved by the City Council on February 20, 2007 by Resolution No. 07-\_\_\_\_ and Sign Exception Permit 06-402 (Freeway Oriented Signs) as approved by the City Council on February 20, 2007 as Resolution No. 07-\_\_\_\_. ■■ (PIng.) \_\_\_\_\_
2. Sign Exception Permit 06-402 is approved as illustrated on the Plaza San Clemente Master Sign Program dated June 7, 2006 and approved by the City with the following additional conditions: ■■ (PIng.) \_\_\_\_\_ (Eng.) \_\_\_\_\_
  - A. Tenant Signs shall be designed, constructed and installed consistent with the criteria described on Sheet MSP 3.0. No deviations from the materials, colors or locations shall be permitted without the approval of the Community Development Director or designee.
  - B. Tenant Signs shall be located within the limits of the signage envelopes for each building façade as illustrated on Sheets MSP 3.1, MSP 3.2, MSP 3.3, MSP 3.4, MSP 3.5 and any other exhibits that identify building mounted tenant signs. The intent of this condition is to ensure that signage does not conflict with architectural details on the building.
  - C. The owner or designee shall provide design details, photometrics, specifications and/or other relevant data for any proposed illumination or lighting. Any area lighting associated with the project shall be subject to review by the Community Development Director or designee. Lighting shall be designed and installed in a manner that is subdued and ensures the absence of glare, or spillover onto adjacent properties.
3. Within 90 days of approval, the owner or designee shall submit a revised Master Sign Program that incorporates revisions required by these conditions of approval and any revisions required by the City Council. The owner or designee shall also submit plans in a format acceptable to the City Planner for use by the City Planning Division in reviewing subsequent administrative sign permits within the limits of the project. ■■ (PIng.) \_\_\_\_\_

4. This project is approved subject to the provisions of Final Environmental Impact Report (FEIR) 95-01 and subsequent Addendums and the mitigation measures adopted with FEIR, included by reference with these conditions of approval. (PIng.) \_\_\_\_\_
5. The owner or designee shall develop the approved project in conformance with all applicable submittals approved by the City subject to modifications by these Conditions of Approval. Any deviation from the applicable submittals approved by the City Council shall require that, prior to the issuance of any permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the City Planner or designee. If the City Planner or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain the approval of the City Council. (PIng.) \_\_\_\_\_
6. The owner or designee agrees to defend, indemnify and hold harmless the City of San Clemente and its elected and appointed boards, commissions, agents, officers and employees from any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly, from the acts, omissions, or operations of the owner or owner's agents, contractors, subcontractors, or employees concerning Sign Exception Permit 06-402 when such action is brought within the time period provided under Government Code Section 66499.37. The City shall notify the owner or designee of the pendency of any such action and request that the owner or designee defend such action. If the owner or designee fails to do so, the City may defend the action and the owner or designee shall pay the cost thereof. The provisions herein shall not apply to the extent that such damage, liability or claim is caused by the willful misconduct or sole active negligence of the City, or the City's officers, officials, agents, employees or representatives. (PIng.) \_\_\_\_\_

- \* All Conditions of Approval are Standard, unless indicated as follows:
- Denotes modified Standard Condition of Approval
  - ■ Denotes project-specific Condition of Approval

12-05-17



## RESOLUTION NO. 07-11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF SAN CLEMENTE, CALIFORNIA, APPROVING SIGN EXCEPTION PERMIT 067  
402 MARBLEHEAD COASTAL PLAZA SAN CLEMENTE MASTER SIGN PROGRAM  
FREEWAY ORIENTED SIGNS**

WHEREAS, on August 5, 1998 the City Council approved Tentative Tract Map 8817, Site Plan Permit (SPP) 97-16 and Coastal Development Permit 97-42, to allow the subdivision of 250.6 acres and the development of 434 single family residential dwelling units, and denied Site Plan Permit 97-17, Conditional Use Permit 97-18 and Sign Exception Permit 97-19, proposing development of the commercial portion of the project; and

WHEREAS, on July 7, 1999 the City Council approved Site Plan Permit 99-16, Conditional Use Permit 99-17 and Sign Exception Permit 99-18 (with the exception of freeway-oriented signs) to allow the development of 443,860 square-feet of specialty retail, 176,232 square-feet of entertainment and 80,048 square-feet of general retail; and

WHEREAS, on April 9, 2003, the California Coastal Commission conditionally approved the Marblehead Coastal project; and

WHEREAS, on September 16, 2003, the City Council approved an Amendment to TTM 8817 to preserve additional environmentally sensitive habitat areas and other open space by reducing the amount of developed acreage, including a reduction in commercial square footage and the number of residential lots from 424 to 313; and

WHEREAS, on July 20, 2004, the City Council approved Amendment to Site Plan Permit 97-16, to reduce the residential units from 424 to 313 and to allow the replacement of architectural product on each lot, and Amendment to Site Plan Permit 99-16, to reduce the amount of development from 700,140 square-feet to 642,584 square-feet of commercial uses including a 125 room hotel, conference center, theater, restaurants and outlet retail uses; and

WHEREAS, on September 19, 2005, Discretionary Sign Permit and Sign Exception Permit applications were submitted by Villa San Clemente, LLC, 1500 Quail Street, Suite 100, Newport Beach, California 92660 to request the approval of a Master Sign Program for the design, materials, locations, sizes and installation of signs and monuments including freeway-oriented signs and signs that exceed the standards of the Zoning Ordinance within the previously approved Marblehead Coastal Plaza San Clemente project; and

WHEREAS, the Planning Division completed an Environmental Initial Study for the above referenced project in accordance with the California Environmental Quality Act (CEQA) and determined that the proposed project has been adequately addressed in previously prepared

Final Environmental Impact Report (EIR) 95-01 for the Marblehead Coastal Project (State Clearing House Number 95091037). Pursuant to CEQA and the CEQA Guidelines, the San Clemente City Council certified Marblehead Coastal Final Environmental Impact Report (FEIR) 95-01 (SCH NO. 95091037). Certification of the document also included the adoption of Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program. In July 1998, February 2000, September 2003, April 2003 and July 2004 the City Council certified Addendums to FEIR 95-01. Addendum No. 5 to FEIR 95-01 (certified July 2004) considers all environmental impacts of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines.

**WHEREAS**, the City's Development Management Team reviewed the proposed Discretionary Sign Permit and Sign Exception Permit for consistency with the General Plan policies and other applicable City ordinances and policies; and

**WHEREAS**, the Design Review Subcommittee reviewed the applications on August 22, August 24 and August 30, 2006 and provided comments to the applicant; and

**WHEREAS**, on August 16, 2006, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application and considered evidence presented by City staff, the project applicant and other interested parties and continued the hearing to September 6, 2006; and

**WHEREAS**, on September 6, 2006, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application and considered evidence presented by City staff, the project applicant and other interested parties and adopted a resolution approving Discretionary Sign Permit 05-176 and denying Sign Exception Permit 06-402; and

**WHEREAS**, on September 15, 2006, an appeal was filed by Villa San Clemente, LLC, 1500 Quail Street, Suite 100, Newport Beach, California 92660, to request approval of previously denied Sign Exception Permit 06-402; and

**WHEREAS**, on November 6, 2006, the City Council of the City of San Clemente held a duly noticed public hearing on the subject appeal and considered evidence presented by City staff, the project applicant and other interested parties. The City Council established the Marblehead Coastal Signage Task Force to consider alternative freeway-oriented signage solutions and continued the hearing to January 23, 2007; and

**WHEREAS**, on January 3, 2007, the Marblehead Coastal Signage Task Force conducted a public meeting to consider alternative freeway-oriented signage; and

**WHEREAS**, on January 23, 2007, the City Council of the City of San Clemente held a duly noticed public hearing on the subject appeal and continued the hearing to February 20, 2007; and

WHEREAS, on February 20, 2007, the City Council of the City of San Clemente held a duly noticed public hearing on the subject appeal and considered evidence presented by City staff, the project applicant and other interested parties.

NOW THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

**Section 1:** The City Council finds and determines that the proposed project has been adequately addressed in previously prepared Final Environmental Impact Report (EIR) 95-01 for the Marblehead Coastal Project (State Clearing House Number 95091037). Pursuant to CEQA and the CEQA Guidelines, the San Clemente City Council certified Marblehead Coastal Final Environmental Impact Report (FEIR) 95-01 (SCH NO. 95091037). Certification of the document also included the adoption of Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program. In July 1998, February 2000, September 2003, April 2003 and July 2004 the City Council certified Addendums to FEIR 95-01. Addendum No. 5 to FEIR 95-01 (certified July 2004) considers all environmental impacts of the proposed project and is complete and adequate and fully complies with all requirements of CEQA and the State CEQA Guidelines.

**Section 2:** The City Council finds and determines as follows with regard to Sign Exception Permit 06-402 (Freeway-Oriented Signs):

- A. There are unique or unusual circumstances relating to the size of the site or business, shape of the site or business, location and orientation of the site or business, visibility of the site or business, proximity to street frontage or length of street frontage that do not allow the site or business to achieve the goals and objectives of the sign code, in that the project is located on a 50.5 acre site that is adjacent to a freeway, and between two off-ramps. The project's location adjacent to the freeway results in several unique circumstances: the setbacks along the freeway frontage exceed the setbacks for a typical retail project, and thus render the project less visible to motorists than similar retail projects located on arterial streets; and the traffic on the freeway moves more rapidly than traffic along an arterial street, such that small scale signs are not as noticeable to motorists as they would be to slower-moving traffic. The Marblehead Coastal Specific Plan contemplates that the general site location will be developed with a regional shopping center. Due to the size of the site and project (i.e., the total building area devoted to commercial uses is approximately 640,000), the project's success depends on the project becoming such a regional center, and attracting regional shoppers and visitors, rather than solely serving the local community. For all of the reasons discussed above, there is a need for limited freeway-oriented signs and for some signs that exceed the dimensional standards of the sign code. The proposed signs meet the goal of granting a Sign Exception Permit.

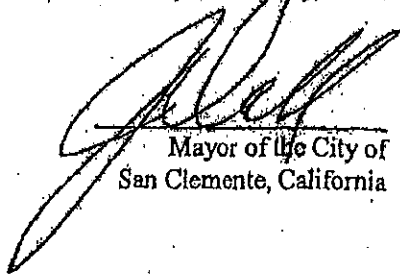
- B. The granting of a sign exception permit is not contrary to the intent of the General Plan, Design Guidelines or the Marblehead Coastal Specific Plan in that the Marblehead Coastal Specific Plan provides for a regional shopping center to be developed in the general location of the site, and anticipates that because of the size and proportions of the buildings, appropriate scaled signage could require maximum sign area allowances greater than currently specified in the sign code.
- C. The granting of the sign exception permit is not considered a grant of special privileges inconsistent with the limitations of other similarly situated properties in that there are other businesses adjacent to the freeway that have signage that is visible from the freeway, including freeway-oriented signs and/or signs that exceed the dimensional standards of the sign code. The Project Identification Signs and Tenant Signs act as commercial district identification/directional/wayfinding devices.
- D. The granting of a Sign Exception Permit does not create a traffic or safety hazard in that the project has been conditioned to limit the number, size, colors, and illumination for the signs in a manner that limits visual distraction for motorists on the freeway.
- E. The granting of a Sign Exception Permit does not adversely impact surrounding properties by increasing light, glare or noise, in that the illumination would be limited to internal white halo illumination and the lighting would be controlled by an automatic timer.
- F. For freeway-oriented signs:
  - 1. The location of the site dictates the need for limited freeway-oriented signs to allow adequate business identification in that the project is located on a 50.5 acre site adjacent to a freeway and between two off-ramps. The general location of the site has been identified in the Marblehead Coastal Specific Plan for development of a regional shopping center. In order for the shopping center, which has extensive freeway frontage, to be viable, signs advertising the businesses in the center must be visible to traffic traveling along the freeway. The setbacks along the site's freeway frontage are larger than those along an arterial street, rendering the project and interior signs less visible than similar retail projects located on arterial streets. Because of the location of the site, there is thus a need for freeway oriented Project Identification and Tenant Signs. The Project Identification Signs and Tenant Signs act as commercial district identification/directional/wayfinding devices and the proposed signs meet the goal of granting a Sign Exception Permit.

2. The design, scale, materials and location of the requested freeway-oriented signs provide necessary business identification to motorists on the freeway without creating adverse impacts, in that in order to mitigate potential safety impacts created by the freeway oriented signs, the freeway-oriented signs have been conditioned to limit the quantity, location, size, and color of the signs. These limitations will reduce the potential for distraction to motorists.
  3. The design, scale and materials of the requested freeway-oriented signs, as conditioned, harmonize with the architectural design of the buildings they serve and are complimentary to the City's image as viewed from the freeway, in that in order to mitigate potential aesthetic impacts created by the freeway-oriented signs, the freeway-oriented signs have been conditioned to limit the quantity, location, size, and color of the signs. These limitations will ensure that the signs are compatible with the architecture of the buildings, including the color scheme thereof, and are complimentary to the City's image.
  4. The design and scale of the signs is appropriate to the distance from which the signs are normally viewed from the freeway in that in order to mitigate potential aesthetic impacts created by the freeway-oriented signs, the freeway oriented signs have been conditioned to limit the quantity, location, size, and color of the signs. The average tenant sign is conditioned to be a maximum of 36" in height which is acceptable for viewing from the freeway while still being complimentary to the architecture and image of the City.
  5. The design, scale and location of the building dictates the use of a freestanding, freeway-oriented sign in addition to building-mounted, freeway-oriented signs in that due to the size of the project site and scale of the buildings, there is a need for a freeway oriented Project Identification and Tower Sign. The Project Identification Signs and Tower Signs act as commercial district identification/directional/wayfinding devices and the proposed signs meet the goal of granting a Sign Exception Permit.
- G The City Council expressly finds that it would not have approved this Sign Exception Permit in the absence of the required color scheme provided consistent with this resolution and accordingly, if for whatever reason a court of competent jurisdiction determines that the requirement for color uniformity of registered trademarks violates the Lanham Act or other applicable law, the authorization for the display of any registered marks and other tenant/occupant logos on the sign(s) automatically shall be considered null and void and any such registered marks and logos displayed on the sign(s) shall be removed within thirty (30) days after written notice provided by the City to the applicant (or its successor).

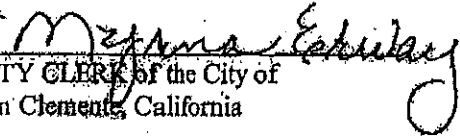


**Section 3:** The City Council hereby approves Sign Exception Permit 06-402, Marblehead Coastal Plaza San Clemente Master Sign Program (Freeway Oriented Signs), subject to the above Findings.

PASSED AND ADOPTED this 20th day of February, 2007.

  
\_\_\_\_\_  
Mayor of the City of  
San Clemente, California

ATTEST:

  
\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

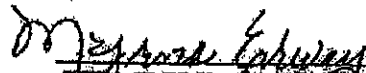
STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF SAN CLEMENTE)

I, Myrna Erway, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 07-11 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 20<sup>th</sup> day of February, 2007, by the following vote:

AYES: ANDERSON, KNOBLOCK, MAYOR DAHL

NOES: DONCHAK, EGGLESTON

ABSENT: NONE

  
\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

  
\_\_\_\_\_  
City Attorney

EXHIBIT 1

**CONDITIONS OF APPROVAL  
SIGN EXCEPTION PERMIT 06-402, MARBLEHEAD COASTAL PLAZA SAN  
CLEMENTE MASTER SIGN PROGRAM FREEWAY ORIENTED SIGNS**

GENERAL CONDITIONS

1. The Marblehead Coastal Plaza San Clemente Master Sign Program is subject to Discretionary Sign Permit 05-176 as approved by the Planning Commission on September 6, 2006 by Resolution No. PC 06-057 and Sign Exception Permit 06-402 as approved by the City Council on February 20, 2007 by Resolution No. 07-\_\_\_ and Resolution No. 07-\_\_\_.
2. Sign Exception Permit 06-402 is approved as illustrated on the Plaza San Clemente Master Sign Program dated June 7, 2006 and approved by the City with the following exceptions: ■■ (Png.) \_\_\_\_\_ (Eng.) \_\_\_\_\_
  - A. 1. Tenant signage on the East Elevation as illustrated on Sheet MSP 3.3:
    - 1) Shall be limited to a maximum of ten (10) tenant signs at any of the 14 sign locations shown on Sheet MSP 3.3.
    - 2) An average of the 10 tenant signs shall be 36" in height. Each individual sign height shall be measured from the tallest element of each individual sign.
    - 3) All tenant signs shall be constructed of aluminum or other acceptable metal material and painted a uniform color. The color shall be selected from the color palette that includes: black, dark navy blue, brown, gray, copper, white or other colors determined acceptable in consultation between the owner and Community Development Director or designee after the final coat of the building finish has been completed.
    - 4) Signs shall be attached to the building façade by using "pinned-off" installation method.
    - 5) Any illumination to signs shall be limited to white, halo illumination using the industry standard of 6500 Degrees Kelvin.
  - B. Project Identification signage on the East Elevation as illustrated on Sheet MSP 3.3:
    - 1) Shall be limited to a maximum of one (1) project identification sign.

- 2) The project identification sign shall be constructed of aluminum or other acceptable metal material and painted a uniform color. The color shall be selected from the color palette that includes: black, dark navy blue, brown, gray, copper, white or other colors determined acceptable in consultation between the owner and Community Development Director or designee after the final coat of the building finish has been completed.
  - 3) Signs shall be attached to the building façade by using "pinned-off" installation method.
  - 4) Any illumination to signs shall be limited to white, halo illumination using the industry standard of 6500 Degrees Kelvin.
- C. Tenant signage on the North Elevation as illustrated on Sheet MSP 3.3 and the Northwest Elevation of Building 16 that is visible from the freeway:
- 1) Shall be limited to a maximum of three (3) tenant signs on the North Elevation and three (3) tenant signs on the Northwest Elevation of Building 16.
  - 2) All tenant signs shall be constructed of aluminum or other acceptable metal material.
  - 3) Tenant signs may be painted a variety of colors within a limited palette that includes: black, dark navy blue, brown, gray, copper, white or other colors determined acceptable to the Community Development Director or designee. The color palette may also include up to a total of four other color exceptions to the prescribed color palette at the owner's discretion. The total of four color exceptions allowed is to be distributed between the North Elevation, Northwest Elevation of Building 16 and South Elevation as deemed necessary by the owner.
  - 4) Signs shall be attached to the building façade by using "pinned-off" installation method.
  - 5) Any illumination to signs shall be limited to white, halo illumination using the industry standard of 6500 Degrees Kelvin.
- D. Project Identification signage on the North Elevation as illustrated on Sheet MSP 3.3:
- 1) Shall be limited to a maximum of one (1) project identification sign.
  - 2) The project identification sign shall be constructed of aluminum or other acceptable metal material and painted a uniform color. The color shall be

selected from the color palette that includes: black, dark navy blue, brown, gray, copper, white or other colors determined acceptable in consultation between the owner and Community Development Director or designee after the final coat of the building finish has been completed.

- 3) Signs shall be attached to the building façade by using "pinned-off" installation method.
- 4) Any illumination to signs shall be limited to white, halo illumination using the industry standard of 6500 Degrees Kelvin.

E. Tenant signage on the South Elevation as illustrated on Sheet MSP 3.2:

- 1) Shall be limited to a maximum of eight (8) tenant signs.
- 2) All tenant signs shall be constructed of aluminum or other acceptable metal material.
- 3) Tenant signs may be painted a variety of colors within a limited palette that includes: black, dark navy blue, brown, gray, copper, white or other colors determined acceptable to the Community Development Director or designee. The color palette may also include up to a total of four other color exceptions to the prescribed color palette at the owner's discretion. The total of four color exceptions allowed is to be distributed between the North Elevation, Northwest Elevation of Building 16 and South Elevation as deemed necessary by the owner.
- 4) Signs shall be attached to the building façade by using "pinned-off" installation method.
- 5) Any illumination to signs shall be limited to white, halo illumination using the industry standard of 6500 Degrees Kelvin.

F. Project Identification signage on the Northbound Wall and Tower as illustrated on Sheet MSP 1.0:

- 1) Shall be limited to a maximum of one (1) project identification sign, a maximum of three (3) tenant signs on the Northbound Tower and two (2) tenant signs on the Southbound Tower.
- 2) The project identification sign and all tenant signs shall be constructed of aluminum or other acceptable metal material and painted a uniform color. The color shall be selected from the color palette that includes: black, dark navy blue, brown, gray, copper, white or other colors determined acceptable in consultation between the owner and Community

Development Director or designee after the final coat of the building finish has been completed.

- 3) Signs shall be attached to the wall façade by using "pinned-off" installation method.
  - 4) Any illumination to signs shall be limited to white, halo illumination using the industry standard of 6500 Degrees Kelvin.
- G. The owner or designee shall provide design details, photometrics, specifications and/or other relevant data for any proposed illumination or lighting. Any area lighting associated with the project shall be subject to review by the Community Development Director or designee. Lighting shall be designed and installed in a manner that is subdued and ensures that absence of glare, or spillover onto adjacent properties.
- H. Banners shall be prohibited from all freeway-oriented façades. Banners within the interior of the project will be permitted subject to the provisions of the City Zoning Code.
- I. Permanent tenant signs shall be limited to nationally recognized trademark logos and signs.
- J. Merchant signage lighting shall be turned off one hour after closing of the merchant stores.
3. Within 90 days of approval, the owner or designee shall submit a revised Master Sign Program that incorporates revisions required by these conditions of approval and any revisions required by the City Council. The owner or designee shall also submit plans in a format acceptable to the City Planner for use by the City Planning Division in reviewing subsequent administrative sign permits within the limits of the project. ■■ (PIng.) \_\_\_\_\_
  4. This project is approved subject to the provisions of Final Environmental Impact Report (FEIR) 95-01 and subsequent Addendums and the mitigation measures adopted with FEIR, included by reference with these conditions of approval. (PIng.) \_\_\_\_\_
  5. The owner or designee shall develop the approved project in conformance with all applicable submittals approved by the City subject to modifications by these Conditions of Approval. Any deviation from the applicable submittals approved by the City Council shall require that, prior to the issuance of any permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the City Planner or designee. If the City Planner or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain the approval of the City Council. (PIng.) \_\_\_\_\_

6. The owner or designee agrees to defend, indemnify and hold harmless the City of San Clemente and its elected and appointed boards, commissions, agents, officers and employees from any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) which may arise, directly or indirectly, from the acts, omissions; or operations of the owner or owner's agents, contractors, subcontractors, or employees concerning Sign Exception Permit 06-402 when such action is brought within the time period provided under Government Code Section 66499.37. The City shall notify the owner or designee of the pendency of any such action and request that the owner or designee defend such action. If the owner or designee fails to do so, the City may defend the action and the owner or designee shall pay the cost thereof. The provisions herein shall not apply to the extent that such damage, liability or claim is caused by the willful misconduct or sole active negligence of the City, or the City's officers, officials, agents, employees or representatives. (Png.) \_\_\_\_\_
7. The City Council expressly finds that it would not have approved this Sign Exception Permit in the absence of the required color scheme provided consistent with this resolution and accordingly, if for whatever reason a court of competent jurisdiction determines that the requirement for color uniformity of registered trademarks violates the Lanham Act or other applicable law, the authorization for the display of any registered marks and other tenant/occupant logos on the sign(s) automatically shall be considered null and void and any such registered marks and logos displayed on the sign(s) shall be removed within thirty (30) days after written notice provided by the City to the applicant (or its successor). ■■ (Png.) \_\_\_\_\_

- \* All Conditions of Approval are Standard, unless indicated as follows:  
■ Denotes modified Standard Condition of Approval  
■■ Denotes project-specific Condition of Approval