



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 032-08

535 E. MONTECITO STREET

MODIFICATION, TENTATIVE SUBDIVISION MAP, SPECIFIC PLAN

AUGUST 21, 2008

**APPLICATION BY PEIKERT GROUP ARCHITECTS, AGENT FOR BERMANT HOMES
AND THE HOUSING AUTHORITY OF THE CITY OF SANTA BARBARA, 535 E.
MONTECITO STREET, APN 031-351-010; M-1 LIGHT MANUFACTURING, ZONE;
GENERAL PLAN DESIGNATION: INDUSTRIAL; MST 2006-00530**

The proposed project consists of 48 residential condominium units in six three-story buildings. In total, 24 two-bedroom and 24 three-bedroom units would be provided, and 90,966 net square feet of building area (including garages) would be constructed. The size of the residential units would vary, ranging between 1,621 and 2,242 square feet (net area including the garage). Each of the six buildings would contain eight residential units, would be approximately 15,161 square feet (net) in area, and would provide eight two-car garages arranged in a tandem configuration. Two additional parking spaces would be provided on-site for guest parking, resulting in a total of 98 on-site parking spaces. Vehicle access to and from the site would be provided by two driveways on Calle Cesar Chavez and one driveway on East Montecito Street. Forty (40) of the 48 units would be sold as Below-Market Price units.

The discretionary applications required for this project are:

1. Certification of Final Environmental Impact Report pursuant to the California Environmental Quality Act Guidelines Section 15091;
2. Modification to allow less than the required number of guest parking spaces (SBMC§28.90.100.G and 28.92.110.A);
3. Tentative Subdivision Map (TSM) to create a one-lot subdivision for 48 residential condominium units (SBMC§27.20); and
4. Recommendation to the City Council to Adopt Specific Plan (SP-10 Zone) to establish a zoning overlay to allow a below-market rate residential development in the M-1 zone district (SBMC§28.08.010 and 28.92).

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, 3 people appeared to speak in favor of the application, and no one appeared to speak in opposition thereto, and the following exhibits were presented for the record:

1. Staff Report with Attachments, August 14, 2008
2. Site Plans

3. Correspondence received in support of the project:
 - a. Elizabeth Tudor, via email
 - b. Patti Uratsu, via email
 - c. Laura Hout, via email
 - d. Karen Prechtel, via email
 - e. Kristin Anderson, via email
4. Correspondence received in opposition to the project:
 - a. Paula Westbury, Santa Barbara

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

- I. Approved the subject application making the following findings and determinations:
 - A. **Environmental Findings Pursuant to the California Environmental Quality Act (CEQA) for the Final Environmental Impact Report (Per Public Resources Code (PRC) Section 21081 and California Code Of Regulations (CCR) Section 15090)**
 1. The Final Environmental Impact Report for the proposed project was presented to the Planning Commission of the City of Santa Barbara. The Planning Commission reviewed and considered the information contained in the Final Environmental Impact Report, along with public comment and responses to comments.
 2. The Final Environmental Impact Report for the proposed project has been completed in compliance with the California Environmental Quality Act and Guidelines, reflects the City of Santa Barbara Planning Commission's independent judgment and analysis, and constitutes adequate environmental evaluation and documentation for the proposed project.
 3. The location and custodian of documents and materials that constitute the record of proceedings upon which this decision is based is the City of Santa Barbara Community Development Department, Planning Division, 630 Garden Street, Santa Barbara, CA, which is also the Lead Agency.
 4. A mitigation monitoring and reporting program (MMRP) is hereby adopted. Mitigation measures have been made enforceable through incorporation into the project description or are included as conditions of project approval.
 5. **Class I Impacts (Significant and Unavoidable).** The project would result in the following significant and unavoidable impacts identified in the Final EIR. These findings are supported by substantial evidence in the record including the Final EIR.
 - a. **Cumulative Traffic Impacts.** The proposed project would result in a significant and unavoidable cumulative traffic impact at the Gutierrez Street/Garden Street intersection and at the Garden Street/U.S. 101

northbound ramps intersection. The Gutierrez Street/Garden Street intersection is expected to operate at level of service "D" during the morning and evening peak hours under cumulative conditions, and the project would add 14 morning peak hour trips and 12 evening peak hour trips to the intersection. The U.S. 101 northbound ramps/Garden Street intersection is expected to operate level of service "D" during the evening peak hour under cumulative conditions and the proposed project would add 10 evening peak hour trips to the intersection. No feasible mitigation measures were identified that would mitigate these impacts to a less than significant level.

- b. **Parking Impacts.** The proposed project would provide two onsite guest parking spaces. Based on estimates of the project's demand for guest parking spaces, the project would need to use on-street parking for guest needs during the evening hours. Although recent parking surveys indicated that adequate on-street parking would be available to serve the project, it cannot be ensured that adequate on-street parking would remain available over the life of the project. Therefore, the project would have the potential to result in a significant parking impact. No feasible mitigation measures were identified to fully avoid these impacts; however, the off-site parking alternative may be feasible if the applicant were to execute an off-site parking agreement with the adjacent property owner.

6. **Class II Impacts (Potentially Significant and Mitigated).** Project elements incorporated as part of the project description and mitigation measures applied as conditions of project approval would result in the avoidance or substantial lessening of the following environmental impacts to less than significant levels. These findings are supported by substantial evidence in the record including the Final EIR.

- a. **Air Quality:** The proposed project would result in dust emissions during construction activities. This impact would be reduced to a less than significant level with implementation of standard dust control mitigation measures.
- b. **Biological Resources:** The proposed project would result in the removal of skyline specimen trees located on the project site. This impact would be reduced to a less than significant level with the installation of replacement skyline trees.
- c. **Geologic Hazards:** The proposed project has the potential to be affected by ground shaking and other seismic hazards. This impact would be reduced to a less than significant level with the implementation of the recommendations in the Geotechnical Engineering Report, including the use of vibro-replacement stone columns, compaction grouting, deep compaction and/or use of geopiers, as well as compliance with building

code requirements that would minimize potential hazards associated with ground shaking.

- d. **Noise:** Interior noise levels within units fronting or facing East Montecito Street, adjacent to Calle Cesar Chavez and adjacent to the western project boundary may exceed 45 dBA. This impact would be reduced to a less than significant level with the implementation of the requirement that forced air circulation must be provided for these units.
 - e. **Water Resources:** The proposed project has the potential to result in significant short- and long-term water quality impacts. These impacts would be reduced to a less than significant level with the implementation of erosion control measures, compliance with standard City requirements, and the use of storm drain surface pollutant interceptors.
7. **Class III Impacts (Less than Significant).** The proposed project would result in a less than significant impact in the following environmental issue areas identified in the Final EIR. Mitigation measures are incorporated as conditions of project approval to further reduce the level of impact, consistent with City policies. These findings are supported by substantial evidence in the record including the Final EIR.
- a. **Aesthetics:** The proposed project could result in adverse but less than significant aesthetics and lighting impacts. The project would not change existing skyline views as seen from Highway 101 nor would it significantly obstruct or change scenic views of the mountains and hillside areas of the City but would add building mass in close proximity to the highway. The project is subject to review and approval by the Architectural Board of Review, which will result in further aesthetic improvements.
 - b. **Air Quality:** Project-related grading and construction activities would result in emissions of NOx and PM2.5 from construction equipment that would be well below the established threshold of significance. Standard dust control measures to further reduce potential impacts are included in the Conditions of Approval. Therefore, the proposed project is anticipated to have a less than significant long-term air quality impact.
 - c. **Public Services:** The proposed project would result in the short-term generation of construction and demolition waste, and long-term generation of waste from residential uses. The project specific impact is considered less than significant because the 196 tons per year threshold is not exceeded, however, an adverse cumulative impact would result because waste generation would exceed 40 tons per year.

Project grading would require some export of non-structural fill. Construction-related waste generation would be short-term and less than significant. Application of recommended standard mitigation to reduce,

re-use, and recycle construction waste to the extent feasible would minimize this effect.

- d. **Transportation/Circulation:** The proposed project would result in a short-term increase in traffic due to construction-related activities. This would constitute a change to existing conditions but would be a less than significant effect, and would be further reduced by construction haul route and parking mitigation measures.

8. **Findings of Infeasibility of Alternatives (per PRC Section 21081 and CCR Section 15091).** The Planning Commission finds that specific economic, legal, social, technological, environmental, or other considerations, make infeasible the project alternatives identified in the Final Environmental Impact Report for the proposed project for the following reasons:

Project Alternative 8.1.1 - No Project - No Development

The project site would remain in a vacant condition, existing traffic conditions would continue to occur, and the cumulative traffic impacts of the proposed project would be avoided. The No Project - No Development Scenario alternative is the environmentally superior alternative; however, this alternative would not attain any of the proposed projects' objectives.

Project Alternative 8.1.2 - No Project - Allowable Site Development

This scenario would result in the development of either a light industrial or manufacturing use on the project site. The establishment of a manufacturing use would result in a slight reduction in average daily trips and peak hour traffic when compared to the proposed project. However, both alternative uses would result in significant cumulative traffic impacts at the Garden Street/Gutierrez Street intersection and the U.S. 101 northbound ramps/Garden Street intersection. This alternative would not attain any of the proposed projects' objectives.

Project Alternative 8.1.3 - Reduced Project Size

The Reduced Project Size alternative would result in the development of fewer units at the project site. If only 19 units were provided, this alternative would not result in a significant cumulative traffic impact at the U.S. 101 northbound ramps/Garden Street intersection during the morning or evening peak hours, but a significant cumulative impact would continue to occur at the Garden Street/Gutierrez Street intersection. If only 13 units were provided, this alternative would not result in a significant cumulative impact at the Garden Street/Gutierrez Street intersection or the U.S. 101 northbound ramps/Garden Street intersection during the morning or evening peak traffic hours. The Reduced Project size alternative is the only alternative evaluated that might partially achieve the primary objective of the proposed project to develop residential units on the project site and reduce the project's cumulative traffic impacts to a less than significant level. Therefore, the Reduced Project Size alternative is environmentally superior to the proposed project; however, this

alternative is not economically feasible nor would it result in any affordable housing units and would thus not meet the project objectives.

Project Alternative 8.1.4 - Purchase Parking

The Purchase Parking alternative would provide additional parking spaces on the project site, and could reduce the demand for on-site parking. However, this alternative would also have the potential to result in significant parking impacts in neighborhoods adjacent to the project site. The Purchase Parking alternative could reduce the number of peak hour vehicle trips generated by the project, which would minimize the project's cumulative impacts at the Garden Street/Gutierrez Street and U.S. 101 northbound ramps/Garden Street intersections. This alternative, however, would not be capable of reducing the project's cumulative traffic impacts to a less than significant level.

Project Alternative 8.1.5 - Project Redesign

The Project Redesign alternative would combine elements of the Purchase Parking and Reduced Project Size alternatives. The Project Redesign alternative identifies the maximum number of residential units that could be developed on the project site without resulting in a significant cumulative traffic impact based on varying levels of project occupant participation in a purchase parking program. The Project Redesign alternative could feasibly reduce the project's cumulative traffic impacts to a less than significant level while allowing the development of more units on the project site than would be allowed by the Reduce Project Size alternative. However, if an assumed participation rate in a purchase parking program were not maintained over the life of the project, the units developed on the project site would have the potential to result in a significant cumulative traffic impact at the Garden Street/Gutierrez Street and U.S. 101 northbound ramps/Garden Street intersections. This alternative would also have the potential to result in parking impacts to areas surrounding the project site. Therefore, the Project Redesign alternative was not considered to be an environmentally superior alternative.

Project Alternative 8.1.6 - Off-site Parking

The Off-Site Parking alternative could reduce the significant parking impacts of the proposed project to a less than significant level; however, it has not been demonstrated at this time if the alternative would be feasible to implement. In addition, this alternative would not address the cumulative traffic impacts of the project and impacts to the U.S. 101 northbound ramps at Garden Street, and the Gutierrez Street/Garden Street intersection.

9. Statement of Overriding Considerations

After careful consideration of the environmental documents, staff reports, public testimony, and other evidence contained in the administrative record, the Planning Commission has balanced the benefits of the project against the

unavoidable environmental impacts and has concluded that the benefits of the project outweigh the significant cumulative traffic and parking impacts sufficiently to make the adverse effects acceptable. The Planning Commission makes the following Statement of Overriding Considerations, which support approval of the project, notwithstanding that all identified environmental impacts are not fully mitigated to a level of insignificance. Remaining significant effects on the environment are deemed acceptable due to the following finding:

The project would provide below-market rate housing units for homebuyers and would provide an important and needed housing type in the City that may not otherwise be provided.

10. Findings for the Fish & Game Code

An Environmental Impact Report has been prepared by the lead agency (City of Santa Barbara), which has evaluated the potential for the proposed project to result in adverse effects, either individually or cumulatively, on wildlife resources. For this purpose, wildlife is defined as "all wild animals, bird, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability." The proposed project has the potential for adverse effects on native specimen trees and associated wildlife during project construction. Mitigation measures have been applied such that potential impacts will largely be reduced to less than significant levels, and a Statement of Overriding Considerations has been made for those impacts that can not be reduced to less than significant levels. The project does not qualify for a waiver and is subject to payment of the California Department of Fish and Game fee.

B. Findings for the Development Project

1. Modification (SBMC§28.90.100.G and 28.92.110.A)

Upon making the finding for the Statement of Overriding Considerations, the modification to allow less than the required number of guest parking spaces will not be inconsistent with the purposes and intent of the Zoning Ordinance and will not cause an increase in demand for parking or loading space in the immediate area.

2. Specific Plan No. 10

Following City Council approval of Specific Plan No. 10 and Zoning Ordinance amendments, the existing and future uses at the project site will be in compliance with the standards described in the Specific Plan and contained in the SP-10 zone.

3. Tentative Subdivision Map (SBMC §27.07.100)

With the approval of the modification and the adoption of the Specific Plan 10, the Tentative Subdivision Map is consistent with the General Plan and the Zoning Ordinance of the City of Santa Barbara. The site is physically suitable for the proposed development and the proposed use is consistent with the vision for this neighborhood of the General Plan. The design of the project will not cause substantial environmental damage, and associated improvements will not cause serious public health problems.

4. New Condominium Development (SBMC §27.13.080)

- a. There is compliance with all provisions of the City's Condominium Ordinance.
- b. The project complies with the physical standards for condominiums including laundry facilities, separate utility metering, adequate unit size and storage space, and the required outdoor living space.
- c. The proposed development is consistent with the General Plan of the City of Santa Barbara.
- d. The project can be found consistent with policies of the City's General Plan including the Housing Element, Conservation Element, and Land Use Element. The project will provide infill residential development that is compatible with the surrounding neighborhood.
- e. The proposed development is consistent with the principles of sound community planning and, upon making the finding for the Statement of Overriding Considerations, will not have an adverse impact upon the neighborhood's aesthetics, parks, streets, traffic, parking and other community facilities and resources.
- f. With the approval of the Specific Plan, the project is an infill residential project proposed in an area where residential development is a permitted use. The project is adequately served by public streets, will provide adequate parking to meet the demands of the project and will not result in traffic impacts, upon making the finding for the Statement of Overriding Considerations. The design has been reviewed by the City's design review board, which found the architecture and site design appropriate.

II. Said approval is subject to the following conditions:

- A. **Approval Contingent Upon Adoption of Specific Plan/Ordinance.** Approval of the subject project is contingent upon adoption of an Ordinance approving the Specific Plan by the City Council.
- B. **Recorded Agreement.** Prior to the issuance of any Public Works permit or Building permit for the project on the Real Property, the Owner shall execute an "*Agreement Relating to Subdivision Map Conditions Imposed on Real Property*", which shall be

reviewed as to form and content by the City Attorney, Community Development Director and Public Works Director, recorded in the Office of the County Recorder, and shall include the following:

1. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate.
2. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats, or trailers shall be stored on the Real Property.
3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan approved by the Architectural Board of Review (ABR). Such plan shall not be modified unless prior written approval is obtained from the ABR. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan. If said landscaping is removed for any reason without approval by the ABR, the owner is responsible for its immediate replacement.
4. **Storm Water Pollution Control and Drainage Systems Maintenance.** Owner shall maintain the drainage system and storm water pollution control devices intended to intercept siltation and other potential pollutants (including, but not limited to, hydrocarbons, fecal bacteria, herbicides, fertilizers, etc.) in a functioning state (and in accordance with the Operations and Maintenance Procedure Plan approved by the Building Official). Should any of the project's surface or subsurface drainage structures or storm water pollution control methods fail to capture, infiltrate, and/or treat, or result in increased erosion, the Owner shall be responsible for any necessary repairs to the system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Community Development Director to determine if an amendment or a new Building Permit is required to authorize such work. The Owner is responsible for the adequacy of any project-related drainage facilities and for the continued maintenance thereof in a manner that will preclude any hazard to life, health, or damage to the Real Property or any adjoining property.
5. **Ownership Unit Price Restrictions.** The resale prices of the below-market priced units shall be controlled by means of a recorded price-control covenant executed by Owner and the City to assure continued affordability for at least ninety (90) years from the initial sale of the unit. No unit may be rented prior to its initial sale. The covenant shall include the following requirements:
 - a. The owners must occupy their unit as their principal residence.
 - b. At least one owner of each below-market priced unit must work in the City of Santa Barbara at the time of purchase.

- c. Forty (40) of the 48 units shall be sold as Below-Market Price units.
 - d. The remaining 8 units may be sold at market prices, without any limits on the incomes of the purchasers.
 - e. The total sale prices of the 48 dwelling units on the property, including the 8 market-rate units, shall not exceed the sum of the Development Costs plus a Developer's Fee (which shall not exceed \$2,000,000). The term "Development Costs" shall mean the total costs of buying and holding the land, plus all soft costs (including architecture, engineering, consultants, etc.), financing costs, all construction costs including contractor profit and overhead, and costs of marketing and sale. Development Costs shall be determined prior to the initiation of marketing through a cost certification process to be overseen by the Community Development Director.
 - f. The average pricing of the 40 Below-Market Price Units on initial sale shall not exceed \$565,000. No Below-Market Price Unit shall be priced at more than \$645,000 on initial sale. The average pricing charged to the initial buyers of the 40 Below-Market Price Units may continue to increase by up to 2.5% annually between Planning Commission approval and the sale of the units, in order to defray increased construction costs which may occur.
6. The Below-Market Price units shall be subject to recorded price control covenants in a form approved by the City Attorney and to be signed by the Developer and City that restrict the resale prices for at least 90 years. The annual price increase allowed shall be 2.5%.
 7. **Approved Development.** The development of the Real Property approved by the Planning Commission on August 21, 2008 is limited to 48 residential condominium units in six, three-story buildings, subject to the price restrictions stated above, and the improvements shown on the Tentative Subdivision Map and project plans signed by the chairman of the Planning Commission on said date and on file at the City of Santa Barbara.
 8. **Required Private Covenants.** The Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal easement agreement, or a similar agreement which, among other things, shall provide for all of the following:
 - a. **Common Area Maintenance.** An express method for the appropriate and regular maintenance of the common areas, common access ways, common utilities and other similar shared or common facilities or improvements of the development, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance among the various owners of the condominium units.

- b. **Garages Available for Parking.** A covenant that includes a requirement that all garages be kept open and available for the parking of vehicles owned by the residents of the property in the manner for which the garages were designed and permitted.
 - c. **Landscape Maintenance.** A covenant that provides that the landscaping shown on the approved Landscaping Plan shall be maintained and preserved at all times in accordance with the Plan.
 - d. **Trash and Recycling.** Trash holding areas shall include recycling containers with at least equal capacity as the trash containers, and trash/recycling areas shall be easily accessed by the consumer and the trash hauler. Green waste shall either have containers adequate for the landscaping or be hauled off site by the landscaping maintenance company. If no green waste containers are provided for common interest developments, include an item in the CC&Rs stating that the green waste will be hauled off site.
 - e. **Covenant Enforcement.** A covenant that permits each owner to contractually enforce the terms of the private covenants, reciprocal easement agreement, or similar agreement required by this condition.
- 8. **Tot Lot.** The Homeowner's Association shall include a budget to create a tot lot in the open space onsite.
 - 9. **Off-Site Parking Agreement.** If feasible, submit an off-site parking agreement to provide off-site parking to meet the parking demand for guest parking, as determined by the Public Works Director. The agreement shall comply with the provisions of Subsection 28.90.001.18 of the Santa Barbara Municipal Code and is subject to review and approval by the City Attorney.
 - 10. **Residential Permit Parking Program.** Residents shall not participate in the Residential Permit Parking Program.
- C. **Public Works Submittal Prior to Final Map Approval.** The Owner shall submit the following, or evidence of completion of the following, to the Public Works Department for review and approval, prior to processing the approval of the Final Map and prior to the issuance of any permits for the project:
- 1. **Final Map.** The Owner shall submit to the Public Works Department for approval, a Final Map prepared by a licensed land surveyor or registered Civil Engineer. The Final Map shall conform to the requirements of the City Survey Control Ordinance.
 - 2. **Water Rights Assignment Agreement.** The Owner shall assign to the City of Santa Barbara the exclusive right to extract ground water from under the Real Property in an "Agreement Assigning Water Extraction Rights." Engineering Division Staff will prepare said agreement for the Owner's signature.

3. **Required Private Covenants.** The Owner shall submit a copy of the recorded private covenants, reciprocal easement agreement, or similar private agreements required for the project. If the private covenants have not yet been approved by the Department of Real Estate, a draft of such covenants shall be submitted.
4. **Drainage Calculations/Hydrology Report.** The Owner shall submit final revised drainage calculations/ hydrology report prepared by a registered civil engineer or licensed architect demonstrating that the new development will not increase runoff amounts above existing conditions for a 25-year storm event. The report shall be subject to the approval of the Building and Safety Official and the Public Works Director. Any increase in runoff shall be retained on-site.
5. **Drainage and Water Quality.** Project plans for grading, drainage, stormwater treatment methods, and project development, shall be subject to review and approval by City Building Division and Public Works Department. Sufficient engineered design and adequate measures shall be employed to ensure that no significant construction-related or long-term effects from increased runoff, erosion and sedimentation, urban water pollutants, or groundwater pollutants would result from the project. The Owner shall maintain the drainage system and storm water pollution control methods in a functioning state.
6. **Calle Cesar Chavez Public Improvement Plans.** The Owner shall submit building plans for construction of improvements along the property frontage on Calle Cesar Chavez. As determined by the Public Works Department, the improvements shall include new and/or remove and replace to City standards, the following: sidewalk, driveway apron modified to meet Title 24 requirements, curbs, gutters, access ramp at intersection of Calle Cesar Chavez and East Montecito Street, slurry seal to the centerline of the street along entire subject property frontage and a minimum of 20 feet beyond the limit of all trenching, underground service utilities, construction of private water, storm drain and sewer systems and connection to City water and sewer systems, public drainage improvements with supporting drainage calculations and hydrology report for installation of on-site Engineered system, supply and install two City standard street lights and three pedestrian street lights, style to be determined by the Public Works Department and the Architectural Board of Review, consistent with the Street Lighting Design Guidelines, coordinate with City staff to retire light standard on existing utility pole, preserve and/or reset survey monuments and contractor stamps, supply and install directional/regulatory traffic control signs, storm drain stenciling, off-site biofilter/swale sized per drainage calculations, eleven new Magnolia street trees per approval of the City Arborist and provide adequate positive drainage from site. Any work in the public right-of-way requires a Public Works Permit.
7. **East Montecito Street Public Improvement Plans.** The Owner shall submit building plans for construction of improvements along the property frontage on East Montecito Street. As determined by the Public Works Department, the

improvements shall include new and/or remove and replace to City standards, the following: sidewalk, curbs, gutters, slurry seal to the centerline of the street along entire subject property frontage and a minimum of 20 feet beyond the limit of all trenching, underground service utilities, connection to City water and sewer mains, public drainage improvements with supporting drainage calculations and hydrology report for installation of on-site retention system, preserve and/or reset survey monuments and contractor stamps, supply and install directional/regulatory traffic control signs, storm drain stenciling, five new Jacaranda street trees per approval of the City Arborist and provide adequate positive drainage from site. Any work in the public right-of-way requires a Public Works Permit.

8. **Land Development Agreement.** The Owner shall submit an executed "*Agreement for Land Development Improvements,*" prepared by the Engineering Division, an Engineer's Estimate, signed, and stamped by a registered civil engineer, and securities for construction of improvements prior to execution of the agreement.
9. **Removal or Relocation of Public Facilities.** Removal or relocation of any public utilities or structures must be performed by the Owner or by the person or persons having ownership or control thereof.
10. **Off-Site Parking Agreement Required.** If feasible, submit an off-site parking agreement to provide off-site parking to meet the parking demand for guest parking, as determined by the Public Works Director. The agreement shall comply with the provisions of Subsection 28.90.001.18 of the Santa Barbara Municipal Code and is subject to review and approval by the City Attorney.
11. **Storm Drain System Stenciling and Signage.** Within the project area, the applicant shall implement stenciling of all storm drain inlets and catch basins, and posting of signs at all public access points along channels and creeks, with language in English and Spanish and graphic icons prohibiting dumping, per approved plans. The applicant shall submit project plans to the satisfaction of Public Works Engineering that identify storm drain inlet locations throughout the project area, and specified wording and design treatment for stenciling of storm drain inlets and signage for public access points that prohibit dumping. The owners association shall maintain ongoing legibility of the stenciling and signage for the life of the project, and shall inspect at least annually. (W-3)
12. **Trash Storage Area Design.** Project trash container areas shall incorporate approved long-term structural storm water best management practices (BMPs) to protect water quality: Trash containers shall have drainage from adjoining roofs and pavement diverted around the areas; and trash container areas shall be screened or walled to prevent off-site transport of trash. The applicant shall submit project plans to the satisfaction of Public Works Engineering and Solid Waste that incorporate long-term structural best management practices for trash storage areas to protect storm water quality. The owners association shall

maintain these structural storm water quality protections in working order for the life of the project, and shall inspect at least annually. (W-4)

13. **Traffic Control Plan.** A traffic control plan shall be submitted, as specified in the City of Santa Barbara Traffic Control Guidelines. Traffic Control Plans are subject to approval by the Transportation Manager.

D. California Department of Fish and Game Fees Required. Pursuant to Section 21089(b) of the California Public Resources Code and Section 711.4 et. seq. of the California Fish and Game Code, the approval of this permit/project shall not be considered final unless the specified Department of Fish and Game fees are paid and filed with the California Department of Fish and Game within five days of the project approval. The fees required are \$2,606.75 for projects with Environmental Impact Reports. Without the appropriate fee, the Notice of Determination cannot be filed and the project approval is not operative, vested, or final. The fee shall be delivered to the Planning Division immediately upon project approval in the form of a check payable to the California Department of Fish and Game.

E. Design Review. The following items are subject to the review and approval of the Architectural Board of Review (ABR). ABR shall not grant preliminary approval of the project until the following conditions have been satisfied.

1. **Design Review.** Prior to building permit issuance, proposed project grading and landform alteration, structural design, landscaping, and lighting is subject to preliminary and final review and approval by the Architectural Board of Review for consistency with design guidelines for views, visual aesthetics and compatibility, and lighting. (A-1)
2. **Lighting.** Lighting design shall conform with City Lighting Ordinance requirements, including shielding and direction to the ground to avoid off-site lighting and glare effects, and shall be approved by the Architectural Board of Review. (A-2)
3. **Skyline Tree Replacement.** The preliminary landscape plan, which includes replacement skyline trees, shall be submitted to the ABR for review and approval. The approved landscaping shall be maintained for the life of the project. (B-1)
4. **Screened Check Valve/Backflow.** The check valve or anti-backflow devices for fire sprinkler and/or irrigation systems shall be provided in a location screened from public view or included in the exterior wall of the building.
5. **Photovoltaics.** Stub-outs shall be included in all units for future installation of photovoltaics.
6. **Additional Open Space Area.** Work with the applicant to provide a more open area at the corner of the property facing Calle Cesar Chavez and Montecito Street. Changes to the design shall not result in the loss of a unit.

- F. **Public Works Requirements Prior to Building Permit Issuance.** The Owner shall submit the following, or evidence of completion of the following to the Public Works Department for review and approval, prior to the issuance of a Building Permit for the project.
1. **Recordation of Final Map and Agreements.** After City Council approval, the Owner shall provide evidence of recordation to the Public Works Department.
 2. **Approved Public Improvement Plans and Concurrent Issuance of Public Works Permit.** Upon acceptance of the approved public improvement plans, a Public Works permit shall be issued concurrently with a Building permit.
- G. **Community Development Requirements Prior to Building or Public Works Permit Application/Issuance.** The following shall be finalized prior to, and/or submitted with, the application for any Building or Public Works permit:
1. **Project Environmental Coordinator Required.** Submit to the Planning Division a contract with a qualified representative for the Owner, subject to approval of the contract and the representative by the Planning Division, to act as the Project Environmental Coordinator (PEC). The PEC shall be responsible for assuring full compliance with the provisions of the Mitigation Monitoring and Reporting Program (MMRP) and Conditions of Approval to the City. The contract shall include the following, at a minimum:
 - a. The frequency and/or schedule of the monitoring of the mitigation measures.
 - b. A method for monitoring the mitigation measures.
 - c. A list of reporting procedures, including the responsible party, and frequency.
 - d. A list of other monitors to be hired, if applicable, and their qualifications.
 - e. Submittal of biweekly reports during demolition, excavation, grading and footing installation and monthly reports on all other construction activity regarding MMRP and condition compliance by the PEC to the Community Development Department.

The PEC shall have authority over all other monitors/specialists, the contractor, and all construction personnel for those actions that relate to the items listed in the MMRP and conditions of approval, including the authority to stop work, if necessary, to achieve compliance with mitigation measures.
 2. **Construction Notice.** At least 30 days prior to commencement of construction, the contractor shall provide written notice to all property owners and building occupants within 450 feet of the project area. Notice to Casa de la Raza shall be provided 90 days prior to the commencement of construction. The notice shall contain a description of the proposed project, a construction schedule including days and hours of construction, the name and phone number of the Project

Environmental Coordinator (PEC) who can answer questions, and provide additional information or address problems that may arise during construction. A 24-hour construction hot line shall be provided. Informational signs with the PEC's name and telephone number shall also be posted at the site. (N-1)

3. **Contractor and Subcontractor Notification.** The Owner shall notify in writing all contractors and subcontractors of the site rules, restrictions, and Conditions of Approval. Submit a copy of the notice to the Planning Division.
4. **Geotechnical Requirements.** Site preparation and project construction related to soil conditions and seismic hazards shall be in accordance with the recommendations contained in the Geotechnical Engineering Report prepared by Fugro West, Inc., dated December 8, 2006. Compliance shall be demonstrated on plans submitted for grading and building permits. (G-1)
5. **Green Building Techniques Required.** Owner shall design the project to meet Santa Barbara Built Green Two-Star Standards and strive to meet the Three-Star Standards.
6. **Recorded Price-Control Covenant.** Submit to the Planning Division a copy of a price-control covenant that has been approved as to form and content by the City Attorney and Community Development Director, and recorded in the Office of the County Recorder, which includes the following:
 - a. At least one owner of each below-market priced unit must work in the City of Santa Barbara at the time of purchase.
 - b. Forty (40) of the 48 units shall be sold as Below-Market Price units.
 - c. The remaining 8 units may be sold at market prices, without any limits on the incomes of the purchasers.
 - d. The total sale prices of the 48 dwelling units on the property, including the 8 market-rate units, shall not exceed the sum of the Development Costs plus a Developer's Fee (which shall not exceed \$2,000,000). The term "Development Costs" shall mean the total costs of buying and holding the land, plus all soft costs (including architecture, engineering, consultants, etc.), financing costs, all construction costs including contractor profit and overhead, and costs of marketing and sale. Development Costs shall be determined prior to the initiation of marketing through a cost certification process to be overseen by the Community Development Director.
 - e. The average pricing of the 40 Below-Market Price Units on initial sale shall not exceed \$565,000. No Below-Market Price Unit shall be priced at more than \$645,000 on initial sale. The average pricing charged to the initial buyers of the 40 Below-Market Price Units may continue to increase by up to 2.5% annually between Planning Commission approval and the

sale of the units, in order to defray increased construction costs which may occur.

- f. The Below-Market Price units shall be subject to recorded price control covenants in a form approved by the City Attorney and to be signed by the Developer and City that restrict the resale prices for at least 90 years. The annual price increase allowed shall be 2.5%. The owners must occupy their unit as their principal residence.

7. **Letter of Commitment for Pre-Construction Conference.** The Owner shall submit to the Planning Division a letter of commitment that states that, prior to disturbing any part of the project site for any reason and after the Building permit has been issued, the General Contractor shall schedule a conference to review site conditions, construction schedule, construction conditions, and environmental monitoring requirements. The conference shall include representatives from the Public Works Department Engineering and Transportation Divisions, the assigned Building Inspector, the Planning Division, the Property Owner, the Architect, the Landscape Architect, the Project Engineer, the Project Environmental Coordinator, the Contractor and each subcontractor.

H. **Building Permit Plan Requirements.** The following requirements/notes shall be incorporated into the construction plans submitted to the Building and Safety Division for Building permits.

1. **Design Review Requirements.** Plans shall show all design and landscape elements, as approved by the Architectural Board of Review.
2. **Pre-Construction Conference.** Not less than 10 days or more than 20 days prior to commencement of construction, a conference to review site conditions, construction schedule, construction conditions, and environmental monitoring requirements, shall be held by the General Contractor. The conference shall include representatives from the Public Works Department Engineering and Transportation Divisions, Building Division, Planning Division, the Property Owner, Architect, Landscape Architect, Project Engineer, Project Environmental Coordinator, Mitigation Monitors, Contractor and each Subcontractor.
3. **Mitigation Monitoring and Reporting Requirement.** Note on the plans that the Owner shall implement the Mitigation Monitoring and Reporting Program (MMRP) for the project's mitigation measures, as stated in the Environmental Impact Report for the project.
4. **Sound Barriers During Construction.** As part of the building plan submittal, prepare and submit a sound control plan including devices and techniques such as noise shields and blankets in order to reduce noise impacts to surrounding sensitive noise receptors during construction. (N-4)

5. **Noise Reduction.** As recommended in the Community Noise Analysis prepared by URS Corporation , dated February 2007, a ventilation system shall be installed for all units expected to be exposed to exterior noise levels above 60 dBA in the future (at least 2016). Ventilation systems shall be installed and operable prior to Certificate of Occupancy. (N-5)
6. **Construction Erosion/Sedimentation Control Plan.** Project grading and construction shall be conducted in accordance with an approved erosion control plan to protect water quality throughout the site preparation, earthwork, and construction process. Prior to the issuance of a demolition or building permit for the proposed project, the applicant or project developer shall prepare an erosion control plan that is consistent with the requirements outlined in the *Procedures for the Control of Runoff into Storm Drains and Watercourses* and the Building and Safety Division *Erosion/Sedimentation Control Policy* (2003). The erosion control/water quality protection plan shall specify how the required water quality protection procedures are to be designed, implemented and maintained over the duration of the development project. A copy of the plan shall be submitted to the Community Development and Public Works Departments for review and approval, and a copy of the approved plan shall be kept at the project site.

At a minimum, the erosion control/water quality protection plan prepared for the proposed project shall address the implementation, installation and/or maintenance of each of the following water resource protection strategies: Paving and Grinding, Sandbag Barriers, Spill Prevention/Control, Solid Waste Management, Storm Drain Inlet Protection, Stabilize Site Entrances and Exits, Illicit Connections and Illegal Discharges, Water Conservation, Stockpile Management, Liquid Wastes, Street Sweeping and Vacuuming, Concrete Waste Management, Sanitary/Septic Waste Management, Vehicle and Equipment Maintenance, Vehicle and Equipment Cleaning, Vehicle and Equipment Fueling. (W-1)
7. **Minimization of Storm Water Pollutants of Concern.** The applicant shall implement approved plans incorporating long-term storm water best management practices (BMPs) to minimize identified storm water pollutants of concern including automobile oil, grease and metals. The applicant shall submit project plans incorporating long-term BMPs to minimize storm water pollutants of concern to the extent feasible, and obtain approval from Public Works Engineering. The owners association shall maintain approved facilities in working order for the life of the project, and shall inspect annually and submit report to City annually. (W-2)
8. **Trash Enclosure Provision.** A trash enclosure with adequate area for recycling containers shall be provided on the Real Property and screened from view from surrounding properties and the street. Dumpsters and containers with a capacity

of 1.5 cubic yards or more shall not be placed within five (5) feet of combustible walls, openings, or roofs, unless protected with fire sprinklers. (PS-1)

9. **Utilities.** Provide individual water, electricity, and gas meters, and sewer lateral for each residential unit. Service lines for each unit shall be separate until a point five feet (5') outside the building.
10. **Project Directory.** A project directory, (including map and parking directional signs) listing all units on-site shall be indicated on the project plans. This directory shall be lit sufficiently for readability for site visitors and placed in a location or locations acceptable to the Fire Department, shall meet current accessibility requirements, and is subject to Sign Committee Approval.
11. **Conditions on Plans/Signatures.** The final Planning Commission Resolution shall be provided on a full size drawing sheet as part of the drawing sets. Each condition shall have a sheet and/or note reference to verify condition compliance. If the condition relates to a document submittal, indicate the status of the submittal (e.g., Final Map submitted to Public Works Department for review). A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

Property Owner	Date
Contractor	Date
	License No.
Architect	Date
	License No.
Engineer	Date
	License No.

- I. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field by the Owner and/or Contractor for the duration of the project construction.
 1. **Construction Dust Control – Minimize Disturbed Area/Speed.** Minimize amount of disturbed area and reduce on site vehicle speeds to 15 miles per hour or less. (AQ-1)
 2. **Construction Dust Control - Watering.** During site grading and transportation of fill materials, regular water sprinkling shall occur using recycled water whenever the Public Works Director determines that it is reasonably available. During clearing, grading, earth moving or excavation, sufficient quantities of water, through use of either water trucks or sprinkler systems, shall be applied to

prevent dust from leaving the site. Each day, after construction activities cease, the entire area of disturbed soil shall be sufficiently moistened to create a crust. (AQ-2)

Throughout construction, water trucks or sprinkler systems shall also be used to keep all areas of vehicle movement damp enough to prevent dust raised from leaving the site. At a minimum, this will include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency will be required whenever the wind speed exceeds 15 mph.

3. **Construction Dust Control – Tarping.** Trucks transporting fill material to and from the site shall be covered from the point of origin. (AQ-3)
4. **Construction Dust Control – Gravel Pads.** Gravel pads shall be installed at all access points to prevent tracking of mud on to public roads. (AQ-4)
5. **Construction Dust Control – Stockpiling.** If importation, exportation and stockpiling of fill material are involved, soil stockpiled for more than two days shall be covered, kept moist, or treated with soil binders to prevent dust generation. (AQ-5)
6. **Construction Dust Control – Disturbed Area Treatment.** After clearing, grading, earth moving or excavation is completed, the entire area of disturbed soil shall be treated to prevent wind pickup of soil. This may be accomplished by:
 - a. Seeding and watering until grass cover is grown;
 - b. Spreading soil binders;
 - c. Sufficiently wetting the area down to form a crust on the surface with repeated soakings as necessary to maintain the crust and prevent dust pickup by the wind;
 - d. Other methods approved in advance by the Air Pollution Control District. (AQ-6)
7. **Construction Dust Control – Paving.** All roadways, driveways, sidewalks, etc., shall be paved as soon as possible. Additionally, building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. (AQ-7)
8. **Construction Dust Control – PEC.** The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when construction work may not be in progress. The name and telephone number of such persons shall be provided to the Air Pollution Control District prior to land use clearance for map recordation and land use clearance for finish grading for the structure. (AQ-8)

9. **Diesel Engines.** Heavy-duty diesel-powered construction equipment manufactured after 1996 (with federally mandated "clean" diesel engines) shall be utilized wherever feasible. (AQ-9)
10. **Engine Size.** The engine size of construction equipment shall be the minimum practical size. (AQ-10)
11. **Equipment Use Management.** The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time. (AQ-11)
12. **Equipment Maintenance.** Construction equipment shall be maintained in tune per the manufacturer's specifications. (AQ-12)
13. **Engine Timing.** Construction equipment operating onsite shall be equipped with two to four degree engine timing retard or pre-combustion chamber engines. (AQ-13)
14. **Catalytic Converters.** Catalytic converters shall be installed on gasoline-powered equipment, if feasible. (AQ-14)
15. **Diesel Emission Reduction.** Diesel catalytic converters, diesel oxidation catalysts and diesel particulate filters as certified and/or verified by EPA or California shall be installed, if available. (AQ-15)
16. **Diesel Equipment Reduction.** Diesel powered equipment shall be replaced by electric equipment whenever feasible. (AQ-16)
17. **Low Sulfur Fuel.** To the maximum extent feasible, ultra low sulphur fuel or biodiesel shall be used for all construction equipment. (AQ-17)
18. **Engine Idling Limitations.** Idling of heavy-duty diesel trucks during loading and unloading shall be limited to five minutes; auxiliary power units shall be used whenever possible. (AQ-18)
19. **Demolition/Construction Materials Recycling.** Recycling and/or reuse of demolition/construction materials shall be carried out to the extent feasible, and containers shall be provided on site for that purpose, in order to minimize construction-generated waste conveyed to the landfill. Indicate on the plans the location of a container of sufficient size to handle the materials, subject to review and approval by the City Solid Waste Specialist, for collection of demolition/construction materials. A minimum of 90% of demolition and construction materials shall be recycled or reused. Evidence shall be submitted at each inspection to show that recycling and/or reuse goals are being met. (PS-2)
20. **Construction-Related Truck Trips.** Construction-related truck trips shall not be scheduled during peak hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00

p.m.). The purpose of this condition is to help reduce truck traffic on adjacent streets and roadways.

21. **Construction Related Traffic Routes.** The route of construction-related traffic shall be established to minimize trips through surrounding residential neighborhoods, subject to approval by the Public Works Director.
22. **Haul Routes.** The haul route(s) for all construction-related trucks, three tons or more, entering or exiting the site, shall be approved by the Public Works Director.
23. **Traffic Control Plan.** All elements of the approved Traffic Control Plan shall be carried out by the Contractor.
24. **Construction Hours.** Noise-generating construction activities (which may include preparation for construction work) shall be permitted weekdays and weekend days between the hours of 7:00 a.m. and 6:00 p.m., excluding holidays observed by the City as legal holidays: New Year's Day (January 1st); Martin Luther King Jr.'s Birthday (3rd Monday in January); President's Day (3rd Monday in February); Memorial Day (Last Monday in May); Independence Day (July 4th); Labor Day (1st Monday in September); Thanksgiving Day (4th Thursday in November); Day Following Thanksgiving Day (Friday following Thanksgiving); Christmas Day (December 25th). *When a holiday falls on a Saturday or Sunday, the preceding Friday or following Monday respectively shall be observed as a legal holiday.

Occasional night work may be approved for the hours between 6 p.m. and 7 a.m. weekdays by the Chief of Building and Zoning per Section 9.13.015 of the Municipal Code). In the event of such night work approval, the applicant shall provide written notice to all property owners and occupants within 450 feet of the project property boundary and the City Planning and Building Divisions at least 48 hours prior to commencement of night work. Night work shall not be permitted on weekends and holidays. (N-2)

25. **Construction Parking/Storage/Staging.** Construction parking and storage shall be provided as follows:
 - a. During construction, free parking spaces for construction workers and construction shall be provided on-site or off-site in a location subject to the approval of the Public Works Director. Construction workers are prohibited from parking within the public right-of-way, except as outlined in subparagraph b. below.
 - b. Parking in the public right of way is permitted as posted by Municipal Code, as reasonably allowed for in the 2006 Greenbook (or latest reference), and with a Public Works permit in restricted parking zones. No more than three (3) individual parking permits *without extensions* may be issued for the life of the project.

- c. Storage or staging of construction materials and equipment within the public right-of-way shall not be permitted, unless approved by the Transportation Manager.
26. **Street Sweeping.** The property frontage and adjacent property frontages, and parking and staging areas at the construction site shall be swept daily to decrease sediment transport to the public storm drain system and dust.
27. **Construction Best Management Practices (BMPs).** Construction activities shall address water quality through the use of BMPs, as approved by the Building and Safety Division.
28. **Mitigation Monitoring Compliance Reports.** The PEC shall submit biweekly reports during demolition, excavation, grading and footing installation and monthly reports on all other construction activity regarding MMRP and condition compliance by the PEC to the Community Development Department.
29. **Construction Contact Sign.** Immediately after Building permit issuance, signage shall be posted at the points of entry to the site that list the contractor(s) and Project Environmental Coordinator's (PEC) name, contractor(s) and PEC's telephone number(s), work hours, site rules, and construction-related conditions, to assist Building Inspectors and Police Officers in the enforcement of the conditions of approval. The font size shall be a minimum of 0.5 inches in height.
30. **Construction Equipment Sound Control.** All construction equipment, including trucks, shall be professionally maintained and fitted with standard manufacturers' muffler and silencing devices. (N-3)
31. **Graffiti Abatement Required.** Owner and Contractor shall be responsible for removal of all graffiti as quickly as possible. Graffiti not removed within 24 hours of notice by the Building and Safety Division may result in a Stop Work order being issued, or may be removed by the City, at the Owner's expense, as provided in SBMC Chapter 9.66.
32. **Archaeological Resources Discovery Procedures and Mitigation.** Standard discovery measures shall be implemented per the City Master Environmental Assessment throughout grading and construction:

Prior to the start of any vegetation or paving removal, demolition, trenching or grading, contractors and construction personnel shall be alerted to the possibility of uncovering unanticipated subsurface archaeological features or artifacts.

If during any grading or construction on the site such archaeological resources are encountered or suspected, work shall be halted immediately, the City Environmental Analyst shall be notified and a City-approved archaeologist shall be employed to assess the nature, extent and significance of any discoveries and to develop appropriate management recommendations for archaeological resource treatment, including but not limited to redirection of grading and/or

excavation activities. If the findings are potentially significant, further analysis and/or other mitigation shall be prepared and accepted by the Environmental Analyst and the Historic Landmarks Commission, and implemented by the project Work in the area may only proceed after the Environmental Analyst grants authorization.

If prehistoric or other Native American remains are encountered, a Native American representative shall be consulted, and the archaeologist and Native American representative shall monitor all further subsurface disturbances in the area of the find.

If the discovery consists of potentially human remains, the Santa Barbara County Coroner and the California Native American Heritage Commission must also be contacted. (CR-1)

- J. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy, the Owner of the Real Property shall complete the following:
1. **Repair Damaged Public Improvements.** Repair any damaged public improvements (curbs, gutters, sidewalks, roadways, etc.) subject to the review and approval of the Public Works Department per SBMC §22.60.090. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified arborist.
 2. **Complete Public Improvements.** Public improvements, as shown in the improvement/building plans, including utility service undergrounding and installation of street trees.
 3. **Fire Hydrant Replacement.** Replace existing nonconforming type fire hydrant(s) with commercial-type hydrant(s) described in Standard Detail 6-003.1 Paragraph 2 of the Public Works Department Standard Details.
 4. **Manholes.** Raise all sewer and water manholes on easement to final finished grade.
 5. **New Construction Photographs.** Photographs of the new construction, taken from the same locations as those taken of the story poles prior to project approval, shall be taken, attached to 8 ½ x 11" board and submitted to the Planning Division.
 6. **Mitigation Monitoring Report.** Submit a final construction report for mitigation monitoring.
 7. **Evidence of Private CC&Rs Recordation.** Evidence shall be provided that the private CC&Rs required in Section A have been recorded.
- K. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's

denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

NOTICE OF APPROVAL TIME LIMITS:

The Planning Commission's action approving the Modification shall terminate two (2) years from the date of the approval, per Santa Barbara Municipal Code §28.87.360, unless:

1. An extension is granted by the Community Development Director prior to the expiration of the approval; or
2. A Building permit for the use authorized by the approval is issued within and the construction authorized by the permit is being diligently pursued to completion and issuance of a Certificate of Occupancy.
3. The approval has not been discontinued, abandoned or unused for a period of six months following the earlier of (a) an Issuance of a Certificate of Occupancy for the use, or (b) two (2) years from granting the approval.

If multiple discretionary applications are approved for the same project, the expiration date of all discretionary approvals shall correspond with the longest expiration date specified by any of the discretionary applications, unless such extension would conflict with state or federal law. The expiration date of all approvals shall be measured from date of the final action of the City on the application, unless otherwise specified by state or federal law.

NOTICE OF TENTATIVE SUBDIVISION MAP TIME LIMITS:

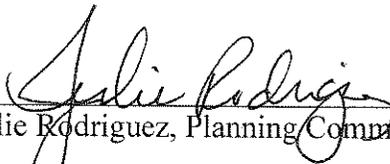
The Planning Commission's action approving the Tentative Map shall expire two (2) years from the date of approval. The subdivider may request an extension of this time period in accordance with Santa Barbara Municipal Code §27.07.110.

PLANNING COMMISSION RESOLUTION No.032 -08
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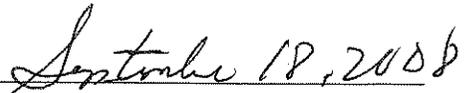
This motion was passed and adopted on the 21st day of August, 2008 by the Planning Commission of the city of Santa Barbara, by the following vote:

AYES: 5 NOES: 1 (Jacobs) ABSTAIN: 0 ABSENT: 1 (Jostes)

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.



Julie Rodriguez, Planning Commission Secretary



Date

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.