



MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

1180 - 1200 ROSECRANS

Office Use Only

Date Submitted: 7/5/17
Received By: RAFAEL
F&G Check Submitted:

1180 - 1200 ROSECRANS AVENUE AND
2600 - 3600 SEPULVEDA BLVD KNOWN AS MANHATTAN

Project Address

SEE ATTACHED

Legal Description

COMMERCIAL

General Plan Designation

GC & CC

Zoning Designation

2

Area District

For projects requiring a Coastal Development Permit, select one of the following determinations¹:

Project located in Appeal Jurisdiction

☐ Major Development (Public Hearing required)

☐ Minor Development (Public Hearing, if requested)

Project not located in Appeal Jurisdiction

☐ Public Hearing Required (due to UP, Var. ME, etc.)

☐ No Public Hearing Required

Submitted Application (check all that apply)

<input checked="" type="checkbox"/> Appeal to PC/PPIC/BBA/CC	4225	<input type="checkbox"/> Use Permit (Residential)	4330
<input type="checkbox"/> Coastal Development Permit	4341	<input type="checkbox"/> Use Permit (Commercial)	4330
<input type="checkbox"/> Continuance	4343	<input type="checkbox"/> Use Permit Amendment	4332
<input type="checkbox"/> Cultural Landmark	4336	<input type="checkbox"/> Variance	4331
<input type="checkbox"/> Environmental Assessment	4225	<input type="checkbox"/> Park/Rec Quimby Fee	4425
<input type="checkbox"/> Minor Exception	4333	<input type="checkbox"/> Pre-application meeting	4425
<input type="checkbox"/> Subdivision (Map Deposit)	4300	<input type="checkbox"/> Public Hearing Notice	4339
<input type="checkbox"/> Subdivision (Tentative Map)	4334	<input type="checkbox"/> Lot Merger/Adjust./\$15 rec. fee	4225
<input type="checkbox"/> Subdivision (Final)	4334	<input type="checkbox"/> Zoning Business Review	4337
<input type="checkbox"/> Subdivision (Lot Line Adjust.)	4335	<input type="checkbox"/> Zoning Report	4340
<input type="checkbox"/> Telecom (New or Renewed)	4338	<input type="checkbox"/> Other	

Fee Summary: (See fees on reverse side)

Total Amount: \$ 3500 (less Pre-Application Fee if applied within past 3 months)

Receipt Number: Date Paid: Cashier:

Applicant(s)/Appellant(s) Information

3500 SEPULVEDA, LLC

Name

PO BOX 3357, MANHATTAN BEACH CA 90266-1357

Mailing Address

OWNER OF 3500 SEPULVEDA

Applicant(s)/Appellant(s) Relationship to Property

MARIA NEUMANN

310-546-5151

Contact Person (include relation to applicant/appellant)

Phone number / email

PO BOX 3357, MANHATTAN BEACH, CA 90266-1357

Address

[Signature]

310-546-5151

Applicant(s)/Appellant(s) Signature

Phone number / email

Complete Project Description- including any demolition (attach additional pages as necessary)

Appeal of Planning Commission's 6-14-2017 approval of RREEF America REIT II Corporation BBB's Application for an Amendment to the Master Use Permit to Modify Conditions of Approval for the Manhattan Village Shopping Center Renovation Project

¹ An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)

OWNER'S AFFIDAVIT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I/We 3500 SOPULVEDA, LLC being duly sworn,
depose and say that I am/we are the owner(s) of the property involved in this application and that
the foregoing statements and answers herein contained and the information herewith submitted
are in all respects true and correct to the best of my/our knowledge and belief(s).

Signature of Property Owner(s) - (Not Owner in Escrow or Lessee)

3500 SOPULVEDA, LLC BY MARK NEUMANN NIEHBOER

Print Name

PO BOX 3357, MANHATTAN BEACH CA 90266-1357

Mailing Address

310-546-5191

Telephone/email

Subscribed and sworn to (or affirmed) before me this 5th day of July, 2017
by Lena Sanchez, Notary Public, proved to me
on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature

[Signature]
Notary Public



Fee Schedule Summary

Below are the fees typically associated with the corresponding applications. Additional fees not shown on this sheet may apply - refer to current City Fee Resolution (contact the Planning Division for assistance.) Fees are subject to annual adjustment.

Submitted Application (circle applicable fees, apply total to Fee Summary on application)

Coastal Development Permit

Public hearing - no other discretionary approval required: \$ 4,787 ☐
Public hearing - other discretionary approvals required: 2,108 ☐
No public hearing required - administrative: 1,303 ☐

Use Permit

Use Permit: \$ 6,287 ☐
Master Use Permit: 9,703 ☐
Master Use Permit Amendment: 5,037 ☐
Master Use Permit Conversion: 4,623 ☐

Variance

Filing Fee: \$ 6,078 ☐

Minor Exception

Without notice: \$ 1,452 ☐
With notice: 1,952 ☐

Subdivision

Certificate of Compliance: \$ 1,625 ☐
Final Parcel Map + mapping deposit: 528 ☐
Final Tract Map + mapping deposit: 732 ☐
Mapping Deposit (paid with Final Map application): 500 ☐
Merger of Parcels or Lot Line Adjustment: 1,133 ☐
Quimby (Parks & Recreation) fee (per unit/lot): 1,817 ☐
Tentative Parcel Map (4 or less lots / units) No Public Hearing: 1,309 ☐
Tentative Parcel Map (4 or less lots / units) Public Hearing: 3,557 ☐
Tentative Tract Map (5 or more lots / units): 4,060 ☐

Environmental Review (contact Planning Division for applicable fee)

Environmental Assessment (no Initial Study prepared): \$ 215 ☐
Environmental Assessment (if Initial Study is prepared): 3,079 ☐
Fish and Game/CEQA Exemption County Clerk Posting Fee²: 75 ☐

☐ Public Hearing Notice applies to all projects with public hearings and covers the City's costs of envelopes, postage and handling the mailing of public notices. Add this to filing fees above, as applicable: \$ 70 ☐

²Make a separate \$75 check payable to LA County Clerk, (DO NOT PUT DATE ON CHECK)

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June 29, 2017

Mayor Lessor
Mayor Pro Tem Howorth
Honorable Members of the City Council
Attn: City Clerk
Manhattan Beach City Hall
1400 Highland Ave,
Manhattan Beach, CA 90266

Re: Appeal of Planning Commission's approval of RREEF America REIT II Corporation BBB's Application for an Amendment to the Master Use Permit to Modify Conditions of Approval for the Manhattan Village Shopping Center Renovation Project

Dear Mayor Lesser and Honorable Members of the Manhattan Beach City Council,

This office represents 3500 Sepulveda, LLC ("3500 Sepulveda") in connection with RREEF America REIT II Corporation BBB's ("RREEF") Manhattan Village Shopping Center Renovation Project ("Project"). 3500 Sepulveda is a limited liability company whose sole asset is its interest in real property and improvements located at 3500 Sepulveda Boulevard, Manhattan Beach, CA 90266, which is contained within the Project site. The property is improved with a two-story building known as the "Hacienda Building."

The Planning Commission recently approved a series of modifications to the conditions of approval associated with the Project. This approval fails in several respects: (1) RREEF's application to amend conditions of approval was not signed by the applicant or the relevant property owners; (2) the Amended Application was predicated on an earlier site plan that was never lawfully approved by the City; (3) the Planning Commission did not treat RREEF's request as a new application; (4) the Planning Commission failed to make the requisite findings to approve revised conditions of approval; (5) the modifications were adopted without requisite CEQA review; (6) the modifications substantially and disproportionately impact 3500 Sepulveda; and (7) the Planning Commission stripped away those conditions the City adopted in 2014 to protect 3500 Sepulveda. Although 3500 Sepulveda does not categorically oppose the concept of the Project, our client is entitled to a fair discretionary process. Accordingly, we ask

Mayor and Honorable Members of the City Council

June 29, 2017

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that the City Council reverse the decision of the Planning Commission and reinstate the very protections the Council adopted for the benefit of our client.

I. BACKGROUND

A. The City's Approval Of The Project.

Beginning in 2012 the City held numerous public hearings regarding RREEF's proposed Project. Once the matter escalated to the City Council in 2013, 3500 Sepulveda testified at each subsequent hearing regarding the adverse impacts of the Project on the Hacienda Building.¹ It was not until December 2, 2014, after seven City Council meetings and eight Planning Commission ("PC") meetings, that the Council approved the Project along with various conditions of approval. The City Council engaged in these lengthy deliberations to, among other things, address 3500 Sepulveda's concerns and to adopt necessary safeguards against the Project's impacts on our client.

B. RREEF's 2016 Site Plan.

In December 2016, RREEF substantially modified its 2014 site plan in an effort to strip away the very conditions that were adopted for the benefit of impacted property owners, including 3500 Sepulveda ("2016 Site Plan"). Despite the fact that RREEF's 2016 modifications substantially "deviat[ed] from the Approved Plans," the Director of Community Development ("CDD") nonetheless approved the 2016 Site Plan. (See Section 18.1 of Resolution 14-0026.) Pursuant to Manhattan Beach Municipal Code ("MBMC") 10.84.100.A, "changes in conditions of approval of a use permit [...] or a change to development plans that would affect a condition of approval [...] must] be treated as a *new application*." Notwithstanding the fact that the 2016 Site Plan substantially affected the conditions of approval, the CDD nonetheless approved the plan without having made the findings required for *new applications*.

Even more egregious was the CDD's presentation of the Project to the City Council, whereby the Council "endorsed" the site plan modifications. The Council's endorsement of the 2016 Site Plan was not a legally recognizable action in the MBMC or elsewhere. Indeed, the illegality of the CDD's decision and the City Council's subsequent endorsement are the very issues pending before the Los Angeles Superior Court in *3500 Sepulveda, LLC v. City of Manhattan Beach et. al.* Case No. BS167464.

¹ Prior to the City Council hearings in 2013, 3500 Sepulveda was not permitted to voice its concerns at PC hearings beyond general public comment. It was only after the matter reached the City Council that 3500 Sepulveda was treated as an applicant with allotted time to discuss its concerns.

C. RREEF's Application To Amend The Conditions Of Approval.

Making matters worse, RREEF submitted an application on May 5, 2017 to further amend the conditions of approval ("Amended Application") that the City Council specifically adopted in 2014 for the benefit of 3500 Sepulveda. The below table lists the conditions that were adopted in 2014 and the corresponding amendments that were recently approved by the PC.

	Condition 13(f)	Condition 50(q)	Condition 50(r)	Condition 50(s)
Original condition for the benefit of the Hacienda Building	Provide a U-turn, traffic circle or other connection directly from Rosecrans Ave. to the lower level culvert parking lot.	Provide a stairway and elevator on the west side of the North Parking Deck.	Set back level 2 of the North Parking Deck 90 ft. from the western edge of the structure's footprint (i.e. western-most 90 ft. of the structure is essentially capped at G+1).	Add thirty parking spaces on the west side of the lower level culvert parking lot with pedestrian access to the Hacienda Building.
RREEF's Modification approved by the PC	Directly connect Rosecrans Ave. to the Northeast Parking Deck and decrease the length of the lower level parking culvert.	Provide a stairway and elevator in the western half of the North Parking Deck.	Set back level 2 of the North Parking Deck 177 ft. from the eastern boundary of the Hacienda Building property line and the western edge of the structure's footprint setback no less than 112 ft. from the eastern boundary of the Hacienda Building (i.e. western-most 60 ft. of the structure is essentially capped at G+1).	Provide 580 total parking spaces in the Northeast Parking Deck and the lower level culvert parking lot.

The Amended Application was accompanied by a site plan that was predicated on the invalid 2016 Site Plan and contained additional annotations ("2017 Site Plan"). In response to RREEF's Amended Application, we submitted to the PC two comment letters on June 7 and June 14, 2017. Despite undeniable legal grounds for denying RREEF's Amended Application, the PC

nonetheless approved RREEF's so-called "refinements." (Attached hereto as Exhibit A are true and correct copies of excerpts from the transcript of the June 14, 2017 PC hearing.) Curiously, the PC concluded the hearing with a series of comments expressing their sympathy for our client, their disappointment in RREEF in dealing with adjacent property owners, and their discomfort with the decision that had been made. (See Exhibit A, pp. 39-40).

II. THE PLANNING COMMISSION IMPROPERLY APPROVED RREEF'S AMENDED APPLICATION.

A. The Planning Commission Improperly Approved An Amended Application Predicated On An Invalid Site Plan.

As briefly discussed in Section I.B., the 2016 Site Plan was never properly approved. Thus, the PC on June 14, 2017 approved modifications to conditions that were predicated on an unenforceable version of the site plan. In other words, RREEF sought to bless its unlawful 2016 Site Plan through corresponding revisions to the conditions of approval – an action that should not be condoned.

B. The Planning Commission Approved An Amended Application That Was Legally Invalid Because It Was Unsigned By The Relevant Property Owners.

Section 10.84.030 of the MBMC requires a "completed application form, signed by the property owner or authorized agent." The PC accepted an application that failed, on *two* grounds, to comply with this simple and straightforward mandate.

First, RREEF's application was and has always been legally invalid because neither Macy's nor 3500 Sepulveda were signatories to RREEF's Amended Application. In 2012, RREEF and the City compelled Macy's and 3500 Sepulveda to sign an Owner's Affidavit authorizing RREEF to process the initial Master Use Permit Application. (See Exhibit B for true and correct copies of the completed Owner's Affidavits for Macy's and 3500 Sepulveda). Accordingly, 3500 Sepulveda is indisputably an applicant of the Master Use Permit ("MUP") and any applications to amend the MUP must have been signed by all the permit applicants in order to be considered by the PC. After all, since the MUP directly governs our client's use of its property, our client must consent to any changes that will adversely impact it. Accordingly, RREEF's exclusion of our client in its Amended Application rendered it legally void well-before it was ever even considered by the PC. The PC should not have made a determination on an application that was never valid in the first instance.

Second, RREEF's Amended Application was not even signed by the very "property owner, or authorized agent" that initiated this application. (MBMC, § 10.84.030). As can be seen on RREEF's Master Use Form, attached hereto as Exhibit C, the Applicant did not sign the

form authenticating the application on behalf of RREEF. Thus, the PC's decision was based on an application that was never legally valid.

C. The Planning Commission Did Not Treat RREEF's Request As A New Application And Thereby Failed To Make The Requisite Findings.

Section 10.84.100.A of the MBMC states that "[a] request for *changes in conditions of approval* of a use permit [...] or *a change to development plans that would affect a condition of approval, shall be treated as a new application.*" Neither RREEF nor the PC treated RREEF's proposed modifications to the conditions of approval as a new application and thus, the express mandate of MBMC, § 10.84.100.A was wholly disregarded. Notably, RREEF characterized its application as a "use permit *amendment*" as can be seen in RREEF's Master Application Form. (See Exhibit C). Likewise, the Staff Report issued by the Department of Community Development titled the matter as a "Request for a Master Use Permit *Amendment* to refine certain conditions of approval...."

Had the PC treated RREEF's request as a new application, the application would have had to been signed by RREEF, Macy's, and 3500 Sepulveda pursuant to MBMC, § 10.84.030 and the PC would have had to make the requisite findings encoded in MBMC, § 10.84.060.A before approving the modifications. The PC failed to comply with these procedural and substantive requirements despite the Staff Report's explicit instructions to do so: "Section 10.84.060A [...] provides the findings that are necessary to approve a Use Permit." (See Staff Report for July 14, 2017 PC hearing, p. 9).

The glaring question is how the Department of Community Development could have recommended approval of RREEF's proposed modifications when they *all* "adversely impact [...] nearby properties" and they are *all* "detrimental to properties or improvements in the vicinity." (See RREEF's Amended Application, p. 8). After all, an application for a use permit may only be approved if the decision making authority finds that nearby properties will not be impacted by, among other things, "traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated." (MBMC, § 10.84.060.A.4). The Commissioners could not have made this finding for any of the conditions described in the table in Section I.C. because they all substantially and detrimentally impact our client, its property, and its tenants. In fact, the Commissioners testified to the contrary – that the modifications *do* significantly impact 3500 Sepulveda. (See Exhibit A).² Thus, contrary to RREEF's bold statement in its Amended

² It is also noteworthy that the rationales for various modifications in the Staff Report and the Commissioners' testimony on these matters were exceedingly general and broad. In fact, the Commissioners never testified about any of the remaining findings encoded in MBMC, § 10.84.060.A.1 and 3, including, but not limited to, the consistency of RREEF's proposals with

Application, the modifications to the Project *will* "result in adverse impacts to nearby properties." In actuality, RREEF *has not been* "sensitive to nearby properties with respect to aesthetic design, site planning, building layout, and parking structures. (See RREEF's Amended Application, p. 8.) The following subsections detail these adverse impacts.

1. The Modifications To The Conditions Of Approval Adversely Impact 3500 Sepulveda.

The conditions that were arduously developed and adopted in 2014 by the City Council were designed to protect our client's interests in, among other things, generating pedestrian traffic, securing sufficient parking, and providing easy access to the Hacienda Building. Now, in addition to the revisions that were invalidly "approved" in 2016, the PC approved RREEF's additional site plan annotations and revised conditions of approval to create, in piecemeal fashion, an entirely new site plan. To this point, RREEF's intention to segment its Project to avoid environmental review and the City's discretionary review process is clear. We strongly oppose this approach and the modifications the PC approved on July 14, 2017.

First, the revision to Condition No. 13(f) connects Rosecrans Avenue to the Northeast Deck instead of to the lower level parking lot, which unjustifiably impedes customer access to the parking lot nearest to the Hacienda Building.

Second, modified Condition No. 50(q) takes away the promised elevator and stairway on the west side of the North Parking Deck and instead provides that it should be placed in the "western half" of the parking structure. This modification enables RREEF to locate the elevator on the south side of the lot such that customers exiting the structure will have no view of, or direct access to, the Hacienda Building.

Third, amended Condition No. 50(r) that sets back level 2 of the North Parking Structure a minimum of 177 feet from the eastern boundary of the Hacienda Building property line moves the North Parking Structure closer to the Hacienda Building, further shading and obstructing views of the Hacienda Building from the east side of the Project site.³

the General Plan, the adequacy of the location of the use, and compliance with conditions required for the proposed use in the district.

³ The comment letter submitted for PC review on June 7, 2017 mistakenly states that RREEF's proposed modification to Condition No. 50(r) essentially moves the North Parking Structure further away from the Hacienda Building. However, the North Parking Structure is actually moving closer to the Hacienda Building, which further obstructs pedestrian views of the Hacienda Building from the primary retail area of the Project site. Mr. Neumann has repeatedly alerted RREEF to its concerns regarding the mass, scale, and positioning of the North Parking

Lastly, Condition No. 50(s) was revised to state that RREEF will provide a total of 580 parking spaces between the Northeast Parking Deck and the lower level culvert parking lot rather than guaranteeing 30 additional parking spots in the lower lot. In other words, this modification takes away significant parking from 3500 Sepulveda – a condition that was adopted precisely for the benefit of the Hacienda Building.⁴

2. The Planning Commission Used The Wrong Standard Of Review To Evaluate RREEF's Amended Application.

At the PC hearing on June 14, Commissioner Seville-Jones asked a series of questions regarding the standard of review to apply in reviewing RREEF's proposed modifications to the conditions of approval. Anne Macintosh, the CDD present at the PC hearing, responded to those questions and set forth standards utterly inconsistent with the law.

Commissioner Seville-Jones asked whether the PC should evaluate RREEF's modifications in light of "the overall project, and the parking on the overall project" or "the impact to the adjoining property owner." The CDD's response was erroneous and largely unintelligible:

"I'm trying to think of a, a way to answer that in a way that's understandable, and – and answers all of your questions. [...] As to the other four conditions, they relate to the fine tuning of actual construction drawings, and location decisions that were dictated by the revised site plan. And so – we're not trying to second guess any intention of why the original plan was approved the way it was. [...] It isn't that we required them to improve the condition, or to change the relationship between where the parking is to the Hacienda. It's as the project was refined during the construction and design phase, it, it may have what they think are beneficial, or benefits. So some of what we heard, in terms of, you know, that this will be better, or it will be more parking, those sorts of things, are a result of the site plan, not a result of trying to address the needs of the neighboring property owner. And in every case, the applicant has stated that they feel that it's more parking, that the distance is better distance. But those aren't things that the City required. Those

Deck to no avail. In fact, in modifying Condition No. 50(r) to bring the North Parking Deck closer to the Hacienda Building, RREEF has exacerbated the problem.

⁴ Importantly, in addition to the 30 spaces that the PC recently took away from 3500 Sepulveda as initially guaranteed by Resolution 14-0026, the 2016 Site Plan also eliminated 37 spaces from the site plan that was approved in 2014. In other words, whereas the site plan associated with Resolution 14-0026 plotted 122 spaces in the lower level parking culvert, the 2016 and 2017 Site Plans only provide 85 spaces in that lot. Thus, in the lower level parking lot alone, 3500 Sepulveda has 67 fewer spaces than originally guaranteed (30 spaces from Condition No. 50(s) + 37 additional spaces plotted in the site plan prior to 2016.)

are assertions by them on how they feel that the project is better than it had been. Does that make sense?" (See Exhibit A, pp. 34-35).

In actuality, the CDD's response does not make sense. There was a clear answer to Commissioner Seville-Jones's question that comes straight out of the MBMC – and those are the findings that the PC was required to make in evaluating RREEF's modifications to the conditions of approval. (MBMC, § 10.84.060.A). Among the four listed findings in the MBMC was the express requirement that the PC *find* that the modifications to the conditions of approval *would not* "adversely impact nearby properties." The PC never made this finding, likely due to the CDD's misguided response on the standard of review that applies.

Relatedly, Commissioner Seville-Jones asked whether to take into consideration excerpts from the transcript of the City Council meeting when the conditions of approval were adopted. The CDD responded as follows: "The, the way that I always suggest that you do it is you look at the Resolution of Approval, and the Findings, and the Conditions, and the Mitigation Measures in the record." (See Exhibit A, p. 35.) The CDD thus suggested that the PC disregard years of City Council and PC hearings, testimony, and deliberations.

The City Council's discussions and development of the conditions of approval it imposed in order to approve the Project *are* part of the record and must be taken into consideration. After all, these excerpts were attached to our comment letter dated June 14, 2017 and thus, there can be no dispute the testimony is now part of the record. Further, it is illogical and unfair that the mere suggestion of changes to conditions of approval could justify the PC's disregard of all the underlying concerns that prompted the City to condition RREEF's Project approval on its commitment to protecting 3500 Sepulveda. Such an approach gives RREEF an unfettered right to chip away at the measures that were adopted by the City Council for a specific purpose.

However, even assuming such testimony should be excluded from the proceedings, which is incorrect, Resolution 14-0026 itself states that it was adopted, in part, to "confer[] benefits to 3500 Sepulveda." (Resolution 14-0026, Section 17). Thus, even taking the CDD's assertion as true, the "Resolution of Approval" says it all – that several of the conditions, including Condition Nos. 13(f), 50(q), 50(r), and 50(s), were adopted to protect 3500 Sepulveda. The transcript excerpts simply enhance that point.

Commissioner Seville-Jones also asked whether to evaluate the modifications in comparison to the initially approved project or today's state of the property. (See Exhibit A, pp. 36). The CDD stated that "you would just make that finding- under this current proposal" [...] "as if this was the only proposal before you." (*Id.* at 37.) Again, the CDD's purported standard or review is invalid. First, RREEF's submission of an addendum assumes some continuity with the prior environmental analyses, documents and the findings for the Project. Accordingly, RREEF's proposed modifications should have been evaluated in the context of the Project's

entire history and evolution. Second, the Project was *only* approved because the City was able to condition its approval on RREEF providing certain protections to adjacent property owners. At minimum, no one can know whether the Council would have approved the Project had it, for example, been prohibited from adopting conditions that would protect the Hacienda Building from adverse impacts. Under the CDD's ludicrous position, RREEF could intermittently seek "refinements" to conditions of approval until it eliminated all of those conditions it initially committed to in order to get its Project approved in the first place. In approving RREEF's "refinements," the PC has essentially rewarded RREEF's manipulative approach to obtaining project approvals while ridding itself of all its prior obligations and guarantees to adjacent property owners, including the Hacienda Building.

Even if the CDD's interpretation of the standard of review was correct, which it was not, the PC still failed to make the findings in accordance with the CDD's instruction. Commissioner Seville-Jones correctly noted that neither the Staff Report nor the Applicant's presentation addressed impacts to the Hacienda Building. (See Exhibit A, p. 37.) Nonetheless, the PC adopted the modifications *solely* on the basis of the CDD's conclusory statement that staff does "not feel that it has a negative impact on that property." (*Id.*) Indeed, when asked what the approximate delta of lost parking was to the Hacienda Building, the CDD responded "I can't answer it [...] because I don't know." (*Id.* at 38.) How could the CDD unequivocally recommend approval of the "refined" conditions of approval if she did not know what the parking impacts would be on 3500 Sepulveda? And further, how could the PC find that there would be no adverse impact to the Hacienda Building when the *only* testimony on this matter clearly showed otherwise. Neither the Applicant nor the CDD presented *any* evidence demonstrating that there would be no impact to the Hacienda Building as a result of, for example, eliminating the 30 additional spaces guaranteed in the lower level culvert parking lot.

On the one occasion that the Assistant City Attorney chimed in regarding the validity of RREEF's Amended Application, counsel's analysis was flawed. Commissioner Seville-Jones asked whether RREEF was required to obtain 3500 Sepulveda's signature on its Amended Application to which the Assistance City Attorney responded "The conditions that are being modified do, do not involved the zoning or the uses on the property, other than – other than the property that is owned by RREEF." (See Exhibit A, p. 34.) To the contrary, the MUP and the conditions of approval contained in Resolution 14-0026 directly regulate the use, and essentially the zoning, of 3500 Sepulveda. (See, e.g., Resolution 14-0026, Section 18.18(d) ["The 3500 Sepulveda Boulevard building may be occupied with 100% Business and Professional and/or Medical and Dental offices, as long as the total combined office square footage on the entire Mall site does not exceed 98,100 square feet, and the parking requirements are met."].) Concluding otherwise implies that 3500 Sepulveda may disregard the MUP in deciding how to use its property, which is factually and legally inaccurate.

Further, the Assistant City Attorney was careless in stating that the Amended Application only involved RREEF's property. (See Exhibit A, p. 34.) Not so. Four of the nine conditions of approval that were before the PC were directly applicable to the Hacienda Building and were adopted specifically for the benefit of the Hacienda Building. Thus, it defies logic that the Assistant City Attorney would conclude that RREEF's proposed modifications have no effect on or relevance to property owned by anyone other than RREEF.

Lastly, the City explicitly mandated that 3500 Sepulveda sign the initial MUP application. (See Exhibit D for a true and correct copy of RREEF's correspondence with 3500 Sepulveda ["There are a number of prerequisites to scheduling this first [planning commission] meeting, among them is the City's receipt of signed affidavits from both Hacienda and Macy's, as owners included in the [Master Land Use Application], authorizing RREEF to process the amended application."].) It follows that all amendments to the initial MUP Application must be consented to by the original signatories. Although 3500 Sepulveda was a signatory – a compelled signatory – to the MUP, the PC has now contradicted the City Council's mandate by endorsing an amended application without 3500 Sepulveda's signature.

3. The Planning Commission Misunderstood The Issues Before Them.

The PC's line of questioning made clear that they were confused as to the issues before them. A majority of the Commissioners believed our client was categorically opposed to the Project and all modifications thereto. This was not the case nor has it ever been. Rather, our client specifically opposed changes to the Project that either eliminated the very protections the City Council adopted for 3500 Sepulveda's benefit or deprived the public of necessary information to ascertain the Project's impacts. Irrespective of the fact that our client and its respective counsel specifically addressed four of the nine conditions of approval RREEF sought to modify, Condition Nos. 13(f), 50(q), 50(r), and 50(s), the Commissioners still conversed in generalities about the Project. For example, Commissioner Morton stated the following:

"I was hearing more attacks on really the three legs of the entire project than I am on the nine points that are before us. [...] [I]t sounds like it, it's more of a fundamental disagreement with the whole way by which this was approved in an effort to disqualify the project [...] than it is really [a] principled stand on the, the – certain nuances of the elevator, or the parking, or some of those." (Exhibit A, p. 34.)

Commissioner Morton clearly misunderstood our position. Our client explicitly stated that he was not opposed to the Project, but rather to RREEF's and the City's disregard for the Hacienda Building within the Project Site. Indeed, of primary concern to 3500 Sepulveda were RREEF's proposed modifications to the elevator and the parking, which we thoroughly addressed in *two* comment letters submitted to the PC on June 7th and June 14th, and which we reiterated throughout the PC hearing. (See Exhibit A, p. 20 ["[N]ow they are revising the condition to say

that the elevator must be located in the western half of the parking lot [...], which is not what my client had negotiated, and [...] will substantially affect [...] pedestrian traffic and vehicular traffic near my [client's...] building...we were promised 30 additional spaces in that lower parking lot" and now they are probably "moving a bunch of parking into the northeast deck, which is a lot further from where our client's building is, and it's just taking away parking spaces."]

While 3500 Sepulveda does oppose several missteps that have occurred throughout the processing of this Project, our client has been very clear in its specific ask that Condition Nos. 13(f), 50(q), 50(r), and 50(s) *not* be modified. Thus, the PC was plainly incorrect when it asserted that our client's primary goal was to enjoin the Project altogether.

III. THE PLANNING COMMISSION ELIMINATED THE VERY CONDITIONS OF APPROVAL THE CITY COUNCIL ADOPTED FOR THE BENEFIT OF 3500 SEPULVEDA.

The conditions of approval that were recently modified by the PC's decision (among numerous others that were essentially modified through the invalid "approval" of the 2016 Site Plan) were all developed and adopted for the benefit of 3500 Sepulveda, including, but not limited to, the provision of 30 additional spaces in the lower level parking lot and the locating of the elevator and stairway on the west side of the North Parking Deck. To illustrate this point, attached hereto as Exhibit E are true and correct copies of excerpts of the transcript from the December 2, 2014 City Council meeting demonstrating, where highlighted, the Council's intention to adopt certain conditions for the protection of the owners and tenants of 3500 Sepulveda. It was at this meeting that the City Council adopted Resolution 14-0026 containing the final conditions of approval for the Project.

Interestingly, RREEF was the party that proposed many of the conditions in order to maximize its chances of Project approval. RREEF and the PC have now stripped 3500 Sepulveda of the very protections that were fiercely advocated and ultimately adopted for the benefit of our client.

The clear intention of the City Council to provide our client certain protections and guarantees through conditions of approval is also evidenced by the following facts: (1) the only structures that are close to the lower level parking lot is the Fry's Electronics store and the Hacienda Building; and (2) the lower level parking lot is of least importance to RREEF because it is the furthest lot from the mall where a majority of the retail and restaurant facilities are located. Given the close proximity of the lower level parking lot to the Hacienda Building, Condition Nos. 13(f) and 50(s) were adopted primarily, if not solely, for the benefit of the Hacienda Building. Relatedly, Condition Nos. 50(q)-(r) were adopted to provide our client fair

exposure to potential customers. We request that the City Council not lose sight of the very purpose for which the conditions of approval were initially adopted.

IV. THE 2016 AND 2017 SITE PLANS SUBSTANTIALLY DEVIATE FROM PREVIOUSLY APPROVED PLANS, ADVERSELY IMPACT 3500 SEPULVEDA, AND VIOLATE CEQA.

Section 21166 of CEQA and Section 15162 of the CEQA Guidelines make clear that a subsequent or supplemental environmental impact report is required when substantial changes occur with respect to the project or its circumstances, or when new information becomes available that was unknown at the time of EIR certification, that indicates new or more severe environmental effects would occur. The 2017 Site Plan, and the 2016 Site Plan on which it was predicated, presented substantial changes to the approved Project, which were never studied in a subsequent or supplemental EIR. Notably, the Site Plan modifications were never studied for traffic, circulation, access, parking, construction, and aesthetic impacts. These and other deficiencies deprived the public and decision makers of information critical to evaluating both the success of the Project and its potential effects. Further, and as described below, substantial evidence indicates new or more severe environmental effects would result from these changes to the Site Plan and underlying Project, or to changes in the surrounding circumstances. Thus, the City must prepare a subsequent EIR to address these changes and their potential effects.

A. The Draft EIR Traffic Study Assumed Demolition of Fry's Electronics, Which Now May Not Occur.

Substantial changes have occurred that affect the fundamental assumptions of the EIR's traffic analysis, and these changes could result in new significant impacts or substantially exacerbate impacts already identified. The Project Site includes the existing Fry's Electronics building ("Fry's"), which encompasses about 46,000 s.f. (Draft EIR, p. IV.H-36; describing it as "integral"). The Draft EIR also provides, on page IV.H-3, that demolition of the Fry's "may" occur. Despite the admittedly questionable nature of that claim, the traffic analysis of the Draft EIR assumes demolition and credits the Project with the assumed reduction in commercial floor area and an associated reduction in trips. However, that demolition appears speculative, particularly in light of the testimony of a legal representative of Fry's during the PC hearing, indicating that Fry's would continue to operate and objected to the proposed parking reductions in the vicinity of the building. (Exhibit A, pp. 16-17).

According to the EIR, Component III of the Project assumed demolition of Fry's. That demolition resulted in a net reduction in floor area of about 46,000 s.f. The traffic study included direct measurement of Fry's traffic (*see* Table IV.H-8, note b, of the Draft EIR; Final EIR Table VI-1), yielding an assumed reduction of 2,018 vehicle trips per day, including nearly 400 evening peak-hour trips, and over 400 midday Saturday trips. That assumed reduction changed Component III of the Project from a net-generator of traffic to a net reduction, and allowed the

EIR to conclude Component III would not, by itself, result in a significant traffic impact and would, in fact, result in improved operations. (*Id.*; see also pp. IV.H-40 and -44).

Based on Resolution 14-0026 and on testimony at the June 14, 2017 PC hearing, the assumption of Fry's demolition appears not to hold. (Exhibit A, pp. 16-17) As a preliminary matter, Resolution 14-0026 actually required the applicant to negotiate in good faith *to ensure Fry's remains* on-site, contrary to the scenario provided for in Component III. Also, a legal representative of Fry's appeared to address and object to various aspects of the 2017 Site Plan, including the amount and configuration of parking. (*Id.*). The failure to demolish Fry's would result in an additional and unanticipated 46,000 s.f. of commercial development, generating several hundred peak-hour and weekend midday vehicle trips that the EIR traffic analysis failed to consider. This increase is important even within the context of the traffic generated by the larger Project, because the EIR (Table IV.H-4) already projected six of the thirteen street intersections within the study area to operate at unacceptable levels of service during the morning or evening peak hour. Thus, the ability of the ultimate project, including Component III, to generate less traffic than under existing conditions was key to the impact conclusions.

Further, the Addendum prepared for the 2017 Site Plan assumed a revised project with about 6,800 s.f. less floor area than the 2014 Site Plan. (Addendum, p. 9.) For this reason, the Addendum (pp. 13, 32) concluded the floor area now proposed falls within the original analysis and no additional traffic would result. If, however, the Fry's remains—as the testimony of its representative and the original resolution for the Project each indicates—the claimed 6,800 s.f. reduction would transform into a more than 39,000 s.f. increase, requiring additional quantitative analysis of vehicle trips, as well as the associated air quality, greenhouse gas, and noise effects of that traffic and of the continued operation of that floor area.

The addendum also fails to evaluate the effects of traffic growth since adoption of the EIR, either from ambient growth or from cumulative projects approved since the EIR or now pending before the City. The only quantitative component of the traffic evaluation for the Addendum concerned comparisons of trip generation rates for the original and modified projects. (See Appendix A to the Addendum.) However, the criteria listed in section 21166 of CEQA concerning the applicability of an addendum include changes in the circumstances surrounding a project. The failure even to consider traffic growth or to disclose potential cumulative projects leaves the City's conclusion regarding changed circumstances wholly unsupported by any evidence, let alone substantial evidence. Setting aside cumulative traffic, substantial evidence in the record regarding operational traffic indicates a potentially significant increase in Project-related traffic alone, notwithstanding the failure of the addendum to account even for the possibility of Fry's remaining. Thus, substantial and uncontradicted evidence in the record indicates the potential for a new or substantially more severe environmental impact, requiring preparation of a Subsequent EIR.

B. The 2016 Site Plan Alters the Design and Aesthetic of the Project, Contrary to the General Plan and the Sepulveda Boulevard Design Guidelines.

The 2016 and 2017 Site Plans dramatically alter the design and aesthetics of the Project, altering the visual relationship of the Project to the existing uses, as well as to the original conditions of approval and to relevant plans and policies, including the City's General Plan. The original architectural style comprised a substantial component of the analysis and provided a substantial portion of the basis of the conclusions of the aesthetics analysis in the EIR.

The analysis of the potential aesthetic impacts of the 2014 Project addressed architectural character and height, among other components. As described in the EIR, the character of the existing buildings is Spanish/Mediterranean. (Draft EIR, p. IV.A-26). Moreover, building design comprised a project design feature for the purposes of the visual quality analysis, emphasizing plaster stucco finish with stone bases, and the parking decks were originally designed to "complement the Shopping Center's Spanish/Mediterranean style of architecture." (*Id.*, pp. IV.A-26-31). Figure IV.A-10, which provided renderings of the parking deck structures, shows the kinds of arches, detailing, and color palette generally associated with that style. The EIR relied on the provision of this architectural style, detailing, and color palette to conclude the parking deck structures would not result in significant impacts to visual quality. (Draft EIR, p. IV.A-31.) Subsequent revisions to the Project, after extensive hearings on the matter, reduced the north parking deck to two above-ground levels, eliminating a third above-ground half-level. (December 2, 2014 Transcript, p. 5, ll. 21-24). Volume II of the Final EIR evaluated the Project in the context of that change, in addition to others proposed over the course of extensive meetings aimed at reducing impacts to other owners surrounding the core of the shopping center.

Now, however, the 2017 Site Plan changes the architectural style of the parking decks and new buildings. The stylistic integration of the proposed parking decks becomes more important under the 2017 Site Plan than under the 2014 Site Plan, as the new parking decks are more prominent. As shown in the 2017 Site Plan, the north and northeast parking decks are oriented in such a manner as to make them more visually prominent from, among other vantage points, Sepulveda Boulevard.

Also, rather than complementing the established character of the existing development, the new buildings will employ a contemporary "beach" aesthetic, which will not only contrast and create disharmony with the existing structures on the narrower Project Site, but also with outlying buildings constructed in the Spanish/Mediterranean style. This design change would create two unexamined and adverse effects, which the original conditions of approval were intended to avoid: (1) disruption of the unified design theme, upon which the EIR relied for its impact conclusions, particularly with respect to the proposed parking decks; and (2) further distancing the outlying buildings, including the Hacienda Building, from the existing and new shopping center development, further deterring pedestrian traffic from patronizing those

buildings. To modify the applicable conditions of approval outside of a public process for review and comment—a subsequent or supplemental EIR—when substantial evidence demonstrates an impact would occur deprives the public and decisionmakers of necessary information to assess and mitigate those effects, and of the opportunity to comment on those effects, violating CEQA.

C. Certain Conditions of Approval Were Adopted Expressly to Protect Neighboring Properties and Constitute Mitigation under CEQA.

As expressly recognized in Resolution 14-0026, the City Council devoted extensive consideration to—and adopted—a series of measures designed to protect neighboring owners from the operational effects of the Shopping Center. This is consistent with the MBMC, which requires a project to address impacts to neighboring properties or uses.

The MBMC includes a series of findings required for any development, and these findings include a lack of impact to neighboring properties and uses. (MBMC § 10.84.060.A.) This theme is addressed in no fewer than two of the required findings:

"The proposed location of the use and the proposed conditions under which it would be operated or maintained . . . will not be detrimental *to properties or improvements in the vicinity.*"

(MBMC § 10.84.060.A.2; emphasis supplied.) Further,

"The proposed use *will not adversely impact* nor be adversely impacted by *nearby properties*. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics . . ."

(MBMC § 10.84.060.A.4; emphasis supplied.)

Thus, the MBMC specifically employs the language and concept of impacts under CEQA and applies them to neighboring properties. 3500 Sepulveda in particular, and other neighboring properties that are, in effect, also part of the Shopping Center, are substantially affected by the changes in the Project layout and operation.

CEQA case law makes clear that project components such as design features are properly considered mitigation even outside the context of a detailed impact analysis. *Lotus v. Department of Transportation*, 223 Cal. App.4th 645 (2014), made clear that an agency cannot avoid environmental evaluation by altering a project prior to that evaluation. Importantly, however, the case also characterized specific measures developed in response to or anticipation of environmental effects as mitigation. 223 Cal. App. 4th at 385. Here, as in *Lotus*, the City

considered and evaluated potential impacts on neighboring properties, in accordance with the requirements set forth in the MBMC. In response, the City extended the project review process to craft and adopt a range of measures to reduce those impacts—in this case, impacts related primarily to land use, parking, and aesthetics.⁵ In *Lotus*, Caltrans developed, considered, and adopted "avoidance, minimization and/or mitigation measures," which were incorporated into the project description, rather than the impact analysis of that EIR. *Id.* at 391. Despite that, however, the Court determined that those project features, because they respond to specific environmental concerns, "are not 'part of the project'." *Id.* Rather, the Court held that they were mitigation measures designed to reduce or eliminate" certain impacts. *Id.* Here, as is *Lotus* the connection of the conditions of approval—which the City and RREEF crafted and the City ultimately adopted as elements of the project description, at the urging of RREEF—to identified effects is clear and direct: their purpose was to reduce impacts. (*See, e.g.,* Transcript, pp. 8-9.)

Thus, even setting aside the lack of incorporation of these measures into the impact analysis of the EIR or the addenda, the elimination of these measures constitutes elimination of mitigation measures—an action which, by itself, requires a subsequent EIR. *Madera Oversight Coalition, Inc. v. County of Madera*, 199 Cal. App. 4th 48 (2011), established that subsequent re-determinations of significance outside the public review process are impermissible. The proposed elimination of conditions of approval designed to reduce or avoid environmental effects constitutes, in effect, a re-determination of the impacts those measures were intended to address.

Although an agency may possibly later determine a mitigation measure initially determined feasible is no longer so, "because an initial determination that a mitigation measure is infeasible must be included in the EIR and supported by substantial evidence it is logical to **require a later determination [that] a mitigation measure is infeasible be included in a supplemental EIR** and supported by substantial evidence." *Lincoln Place Tenants Assn. v. City of Los Angeles (Lincoln Place I)*, 130 Cal. App. 4th 1491, 1509 (2005) (footnotes omitted, emphasis added). Therefore, the consideration of removing conditions of approval intended to mitigate impacts to neighboring uses, and presentation of evidence that such removals will not result in significant impacts, must occur within the ambit of a subsequent EIR, not a nebulous and opaque process somewhere behind closed doors and far removed from any public oversight.

Condition No. 10(a), for example, requires "drought tolerant landscape, shade trees, hardscape, and lighting improvements through the Development Area, as well as certain areas of the entire Shopping Center property as required in these conditions." Relatedly, these Site Plans

⁵ We refer specifically to conditions 10(a) and (b), 13(f), 50(q), 50(r), 50(s), adopted specifically for traffic, pedestrian access and safety, and aesthetic effects on 3500 Sepulveda and others. We also note that Condition 17 required consistency of subsequently submitted plans with those adopted as part of the original project (i.e., the 2014 Site Plan).

eliminate "planting receptacles suitable for the planting of vines and similar plants [...] on the north and west sides of the North Parking Structure..." as guaranteed by Condition No. 10(b).

Condition 17 of Resolution 14-0026 required RREEF to "submit to the City Planning staff for Preliminary Plan Check Review all architectural plans, to show that the Project is *consistent* with the architecture, quality and concept plans as shown in the Approved Plans." (See also City's Findings and Facts attached to Resolution 14-0025 stating that the impacts to the Project's "compatib[ility] with existing and planned surrounding uses" will have a "less than significant impact.") However, pursuant to the 2016 and 2017 Site Plans, the architectural and aesthetic design that was contemplated in the EIR and Resolution 14-0026 has entirely changed and thus, what was studied at the time of EIR certification no longer applies. Significantly, the conceptual drawings included in the EIR, such as those contained in Figures II-8 and II-9 of Section II (Project Description), vastly differ from current renderings. The PC approved a modern, beach-style renovation Project despite the fact that the original plans sought to conform the Project to the existing site, which contains several Spanish-style buildings, including the U.S. Bank and the Hacienda Building. In other words, the 2016 and 2017 Site Plans are entirely incompatible with the existing character of the site and the design that was contemplated when the EIR was certified.

These extensive changes to the conceptual design and aesthetic features of the Project were never analyzed in the EIR and have certainly not been addressed in the 2016 or 2017 addenda. CEQA requires the City to study these changes in detail and afford the public an opportunity to comment—in short, a supplemental or subsequent EIR. The City's failure to provide the appropriate information and process for these substantial changes to the Project violates CEQA.

D. Building G is Located Outside the Building Envelope Area.

The site plan that was unlawfully approved by the CDD and invalidly "endorsed" by the City Council in December 2016 depicts buildings planned for construction outside the Building Envelope Area, including construction of Building "G". (See 3500 Sepulveda's June 14, 2017 comment letter to the PC.) This new building location is not encompassed in the Project Description in the Environmental Impact Report ("EIR") for this Project. Thus, the newly planned building location constitutes an expansion of the Project Site and requires further CEQA review, in combination with the other changes to the Project. To conclude otherwise would deprive the public and decisionmakers of meaningful information that is crucial to understand the scope of the proposed modifications and their potential effects. The public must have notice of and an opportunity to comment on the significant aesthetic, traffic, safety, air quality, and other environmental issues this new development would likely create. Simply stated, RREEF's proposed construction of Building G outside the Building Envelope Area without preparation of

a subsequent or supplemental EIR deprives the public and decisionmakers of this information and an opportunity comment on it, and violates CEQA.

E. Carlotta Way was supposed to be restriped to include three lanes and 30th Street was supposed to form a T-intersection with Carlotta Way

The EIR contemplated a T-intersection from 30th Street into the mall, described as follows:

"Component I would also see a minor redesign of the existing ring road and the parking aisle directly across from the 30th Street driveway within the Project site. Specifically, the internal ring road would be restriped to include three lanes, one in each direction and a third lane that would act as a two-way left-turn lane that allows drivers to enter and exit parking aisles with fewer conflicts with through traffic. Additionally, to allow cars to more efficiently enter the Project site, direct access to the parking aisle across the ring road from the 30th Street driveway would be prevented. This would force drivers to utilize the ring road to access parking and eliminate backups entering the Project site at this location." (EIR, Appendix G, pg. 97).

The 2016 Site Plan depicted 30th Street crossing through the ring road in lieu of a T-intersection as originally approved. Likewise, the December 2016 Addendum to the EIR confirms that the new plan will "directly connect Carlotta Way and Cedar Way, which make up the main internal ring road of the shopping center." (December 2016 Addendum to the EIR, Traffic Memorandum, Appx. A, pg. 3).

This modification is invalid for a number of reasons. First, the December 2016 Site Plan was never properly approved by the CDD or the City Council and thus, the modification never became effective.⁶ Second and relatedly, RREEF never addressed the proposed intersection change in the Amended Application. Third, and most importantly, the traffic and circulation impacts of this changed intersection was never studied in the EIR. Without a T-intersection "forc[ing] drivers to utilize the ring road," cars will certainly be backed-up within the site and along Sepulveda Boulevard. These traffic impacts should have been disclosed and studied in a public process, via a subsequent or supplemental EIR, before the PC approved the modifications, rather than in an addendum to an EIR, which was neither provided to the public nor exposed to the daylight of review and comment.

⁶ Indeed, the 2016 Site Plan RREEF boldly claims was approved by the CDD and the City Council is the subject of a lawsuit, *3500 Sepulveda, LLC v. City of Manhattan Beach et. al.* Case No. BS167464, pending in the Los Angeles County Superior Court and discussed in more detail in the initial comment letter that was submitted to the PC on June 7, 2017. Thus, RREEF's repeated references to the "Approved Site Plan" constitutes a misrepresentation.

Relatedly, Appendix G of the EIR expressly dictated that Carlotta Way be restriped into three lanes, one of which would serve as a two-way left-turn lane. Both the 2016 and 2017 Site Plans omitted this component, the effects of which have not been studied. Now, all customers entering the mall from 30th Street may only turn right onto the southern part of the ring road or go straight across to the eastern part of the ring road, leading all customers away from, rather than towards, the Hacienda Building. The corresponding traffic and circulation impacts of eliminating three lanes, including a two-way left turn lane, are likely immense, but at best, unknown without proper CEQA review. The lack of analysis of this issue deprived the City of substantial evidence to determine that this change to the Project or its circumstances would not have a new or more severe significant environmental effect, as required by section 21166 of CEQA.

F. Redesign of the accessway from Rosecrans into the mall requires additional CEQA review.

As previously discussed, the PC approved RREEF's proposal to relocate and redesign the accessway from Rosecrans Avenue into the mall by directly connecting Rosecrans to the Northeast Deck rather than the lower parking level. The traffic and safety impacts of the newly proposed location of the accessway and, based on our review of the plans, substantially shortens the queuing distance from Rosecrans and increases the potential for queuing onto the roadway. Numerous surrounding projects have heavily impacted the general area proposed for the accessway such that slight changes to the entrance location could create substantial traffic and circulation issues, which remain unstudied. This is exacerbated by the complete failure of either addendum to address traffic growth since approval of the Project,⁷ whether from ambient traffic increases or specific projects that either have been implemented or have now become foreseeable within the development timeline of the modified project. Consequently, neither addendum contains any evidentiary basis to conclude that the changes to the project, or to the circumstances surrounding the project, have not occurred that would create new impacts or exacerbate those identified in the EIR.

G. The Site Plan Strips Away 3500 Sepulveda's Parking.

Pursuant to the EIR's Traffic Study, "the project should provide a parking ratio of 4.1 spaces per 1,000 square feet of gross leasable area of development..." (EIR, Appx. G, pg. 2; see also Final EIR, p. VI-1). Likewise, Resolution 14-0026, which approved the MUP and imposed conditions of approval, stated that the "Project will provide parking at a ratio of 4.1 spaces per 1,000 square feet consistent with the parking demand study." (Res. 14-0026, pg. 6). The 2016 and 2017 Site Plans provide nowhere near the guaranteed parking with respect to 3500

⁷ Neither of the Gibson Transportation memoranda attached to the 2016 or 2017 addenda contain such an analysis or, indeed, any discussion at all.

Sepulveda. Notably, whereas Res. 14-0026 guaranteed 496 total spaces in the North Parking Lot, the current site plan only provides 487 spaces – 9 spaces less than promised. Likewise, whereas the originally approved site plan showed 122 parking spaces in the lower level culvert parking lot and an additional 30 spaces to be provided in that lot as set forth in Condition 50(s), the existing site plan only shows 85 parking spaces and the condition to provide 30 additional spots was eliminated by the PC on June 14th. Thus, instead of the 152 total spaces that were promised in the lower level lot, only 85 spaces are now planned – 67 fewer spaces than were guaranteed.

As the abovementioned changes and their corresponding impacts have not been disclosed or studied in the prior EIR, a subsequent EIR is required. Pub. Resources Code, § 21166(b)-(d) (subsequent or supplemental environmental impact report required when "[s]ubstantial changes occur with respect to the circumstances . . . [n]ew information, which was not known and could not have been known, becomes available"); *see also* CEQA Guidelines §§ 15162(a)(2)-(3); *see also, e.g., Eller Media Co. v. Community Redevelopment Agency* (2003) 108 Cal. App. 4th 25; *See also Madera Oversight Coalition, Inc. v. County of Madera*, 199 Cal. App. 4th 48 (2011) (holding, among other things, that subsequent re-determinations of significance outside the public review process are impermissible). RREEF disregarded its legal obligations under CEQA by segmenting the Project and conveying the modifications as minor "refinements." The PC's approval of modifications that were not reviewed for likely traffic, aesthetic, safety, and circulation impacts violated CEQA.

H. The Planning Commission Approved Modifications That Are Wholly Inconsistent With The EIR's Project Objectives

The PC approved modifications that substantially deviate from the following goals described in the FEIR's Statement of Project Objectives:

- Integrate the various uses and structures on-site with an emphasis on improving vehicular access within and adjacent to the site while promoting a pedestrian-friendly design;
- Enhance spatial relationships that promote pedestrian access within the Shopping Center site;
- Improve pedestrian access, mobility and ADA facilities on the project perimeter;
- Improve site access by providing new or re-aligned access driveways to reduce vehicular queuing and interference with traffic flows on adjacent streets;
- Enhance existing parking areas and provide additional parking with direct access to the development. (FEIR, p. II-9.)

As described above in detail, the original conditions of approval were developed to reduce impacts on neighboring properties and uses. However, those conditions also integrated the various uses and buildings by ensuring a unified design theme to create collective sense of

Mayor and Honorable Members of the City Council
June 29, 2017
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place, as well as by providing adequate parking that was easily and conveniently accessible to each use, and linked by a circulation system that encouraged—and to some degree forced—circulation among the various portions of the Project Site and the uses on those portions.

Accordingly, we respectfully urge the City Council to reverse the PC's approval of RREEF's Amended Application to modify the conditions of approval in Resolution No. 14-0026. The City thoroughly analyzed RREEF's initial Application and diligently developed conditions of approval for the benefit of all the properties within the Project site. All that we are now asking is that this Council reinstate the very protections that were thoroughly evaluated and developed for the protection of 3500 Sepulveda and like property owners, including, requiring that RREEF install a stairway and elevator on the west side of the North Parking Deck, provide 30 additional parking spaces in the lower level parking lot, and setback the second level of the North Parking Deck 90 feet from the western edge of the structure's footprint (rather than 177 feet from the eastern boundary of the Hacienda Building).

Best regards,



LARA R. LEITNER for
Jeffer Mangels Butler & Mitchell LLP

LRL:LL

EXHIBIT A

Accordingly, we respectfully urge the City Council to reverse the PC's approval of RREB's Amended Application to modify the conditions of approval in Resolution No. 14-0120. The City thoroughly analyzed RREB's initial Application and approved the proposed conditions of approval for the benefit of all the properties within the project site. All the same, we are asking that the Council maintain the very protections that were thoroughly evaluated and developed for the protection of 3500 residents and the property owners, including, requiring that RREB install a driveway and elevator on the west side of the North Parking Deck, provide additional parking spaces in the lower level parking lot, and collect the second level of the North Parking Deck 50 feet from the western edge of the structure's footprint (rather than 17 feet from the eastern boundary of the Hazenra Building).

Best regards,



TARA R. LEITHNER
Tara R. Leithner & Mitchell LLP

FILED



AUDIO TRANSCRIPTION OF

CITY OF MANHATTAN BEACH

REGULAR PLANNING COMMISSION MEETING

JUNE 14, 2017

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1 where, where we're showing it.
2 And this is the northeast deck that - that was
3 mentioned earlier. Again, you know, top quality,
4 first class materials. We're cladding the, the
5 parking structure in a way to really hide the fact
6 that it is a parking structure.
7 So we're making some other improvements, beyond
8 the shopping center expansion. If you've been out
9 there recently, you - you will see that we have some
10 structural work going on, on - on the Ralph's and the
11 CVS facades. So that's all, all in keeping with the
12 idea of tying the shopping center together, north to
13 south along Cedar Way. So you know, architecturally
14 creating a more pedestrian friendly environment where
15 people will want to walk from north to south and, and
16 visa-versa. Another image of what we're doing on the
17 CVS. That work, again, is well underway, and slated
18 to be completed this year. This is where the Chili's
19 currently sits, and what used to be the Coco's. We
20 are relocating See's Candies, and Coffee Bean and Tea
21 Leaf, and Union Bank into the, into those - that end
22 of the building; that's currently under construction.
23 And then in conjunction with this, we also did
24 a, a - an interior refresh last year that we opened
25 before the holiday. That was essentially Phase One of

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1 the interior refresh, all in keeping with bringing
2 everything up to a, a first class status in, in both
3 the exterior and the interior of the mall. So this is
4 actually a rendering. If you go out there now, or you
5 see a photograph, this looks pretty much exactly like
6 what we have now. So improved - we, we added high
7 efficiency skylights for better natural light. We, we
8 cleaned up the ceiling, added new lighting, new
9 flooring, new furniture, and really freshened up the
10 interior, brought it up to a higher standard.
11 The next phase, which we'll be starting in
12 about next month, will be to take - to vastly improve
13 the Center Court area. And that is - so essentially
14 what we are going to be doing is - right now in the
15 Center Court area above the fountain, there's a high
16 bay, clear story area. We are going to take that and
17 extend that all the way out to the front entrance of
18 the shopping center to create a more prominent volume.
19 And in keeping with what really is happening in
20 shopping centers today, it's important to, to have
21 more of a hospitality feel to the shopping center.
22 Shopping centers are shifting from just pure retail to
23 more entertainment and hospitality, and that's
24 reflected in what we're doing with the Center Court
25 area to really create more of a lobby, hotel lobby

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1 hospitality feel.
2 VICE CHAIRMAN ORTMANN: At the - at the risk of
3 being inhospitable, we're starting to get north of 15
4 minutes or so here.
5 PHIL FRIEDL: Oh, I'm sorry.
6 VICE CHAIRMAN ORTMANN: So if we could --
7 PHIL FRIEDL: Okay, I'm just - just about ready
8 to wrap up.
9 VICE CHAIRMAN ORTMANN: Okay.
10 PHIL FRIEDL: Yeah. So - actually just the
11 last image is to show you what - well, two images to
12 show you what we're doing in the entryway into the
13 shopping center, creating a more prominent entry that
14 has easy indoor/outdoor access. And also - these are
15 just renderings of what the interior will look like in
16 the Center Court area - again, more of a hospitality
17 feel.
18 So with that, we're here to answer any
19 questions you might have. Thank you.
20 VICE CHAIRMAN ORTMANN: Don't go too far.
21 PHIL FRIEDL: Okay.
22 VICE CHAIRMAN ORTMANN: Thank you very much.
23 PHIL FRIEDL: Great.
24 VICE CHAIRMAN ORTMANN: The public hearing is
25 open, and I will entertain comments from those who

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1 want to speak on this issue - both pro and con.
2 SECRETARY: (unintelligible) this
3 (unintelligible).
4 VICE CHAIRMAN ORTMANN: And if you'd come to
5 the mic and introduce yourself to us.
6 GARY GRAUMANN: Good evening. I'm Gary
7 Graumann. I represent Fry's Electronics. It was
8 close to 27 years ago, when I was standing in this
9 same room to get approval for Fry's to come to
10 Manhattan Beach - so I feel like I'm a resident, as
11 well. And I've been to other meetings since then. So
12 I feel like I'm at home. Twenty-six years ago Fry's
13 came to Manhattan Beach, took an old building, had 130
14 offices in it, with 130 different keys, two roll-up
15 doors. And we came in, and Fry's modified that
16 building into a retail building, and for the last 26
17 years has been very successful there. And probably
18 over the 26 years, there's probably nobody in town
19 that has generated more sales tax than Fry's.
20 I'm here to talk about Item Number 37 - I think
21 - no, no, I'm sorry, Number 39, which is the
22 modification for the Sepulveda right in and right out.
23 In using Sepulveda, we've used that right in and right
24 out for the last 26 years. Over the years, corporate
25 hasn't been - I - hasn't been told that they've had

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1 major issues out there of getting their trucks in and
2 out. That driveway is really used for delivery
3 trucks. They typically come in off hours. They come
4 in, right in, off of Sepulveda, then they go right out
5 on Sepulveda, and get out to Rosecrans, or continue
6 north on Sepulveda for their routes. A lot of these
7 delivery trucks and people are typically the same
8 people, so they know the routine; they know how it
9 works. With the proposed changes of how they're
10 phasing the project, it's going to have a significant
11 impact on Fry's, to the point where they may not be
12 able to be operational. They have to get product to
13 the store to sell to the customers that we bring to
14 Manhattan Beach, and for the citizens of Manhattan
15 Beach. If, if I can take what Mr. Friedl just said,
16 we're on one of the sections that they created a two-
17 lane drive aisle for cars to navigate instead of
18 driving through a parking field. What would happen,
19 and I don't know if it could happen, because we've got
20 a pinch point in just how the physical aspect of the
21 property is on one of the corners of the building,
22 where we have a, a stairwell that comes up with
23 pedestrians - we would have semi-trucks as long as 53
24 feet, that would drive through the parking field that
25 Fry's has right now. And during the construction, if

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1 - if for some chance the widening of the bridge gets
2 done before the Cedar Way gets in, we have no way of
3 getting in and out of that site with trucks.
4 So with that said, I think I have a very simple
5 solution to be able to handle this. In the Item 39, I
6 think all we need to do, really, is change two words,
7 and they happen to be the same words. I think in (a),
8 39(a), in the middle it says, 'whichever comes first'
9 should read, 'whichever comes last', so if Fry's is
10 still there after the widening of Sepulveda, which our
11 lease goes to 2020 - we would like, most likely like
12 to try to work out with RREEF to stay on. And so if
13 that would read 'comes last' then Fry's would still
14 have the right in and right out. Also, in the next,
15 in (b), the same situation where it says, 'whichever
16 comes first' - change 'first' to 'last' - and I think
17 we will solve our problem of being able to get product
18 to the store, sell it to our customers, and continue
19 to create a lot of value here to the city. They've
20 really enjoyed being in Manhattan Beach. They like
21 being part of the community, and want to continue to
22 do so here in the future. So that, that's a simple
23 solution, I think, to potentially a major problem of
24 driving semis through a parking lot, which just isn't
25 going to work; and operationally of getting product to

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1 Fry's - you'll put them out of business. And I don't
2 think the city wants to put Fry's out of business.

3 So that would be my proposal. I know Fry's has
4 sent in a letter, but I'm here to discuss that I think
5 this might solve the problem that they envision, as we
6 sit and look at the site, look at the proposed
7 changes, and, and the sequence of those changes that
8 are going to occur, now that they're changing how the
9 project was originally envisioned in 2014. So I would
10 like you to take that into consideration. I'm more
11 than happy to answer any questions.

12 VICE CHAIRMAN ORTMANN: Thank you very much.
13 If you could stick around and not - not go too far. I
14 know I have at least --

15 GARY GRAUMANN: (unintelligible)

16 VICE CHAIRMAN ORTMANN: -- one question for
17 you. Others who would like, like to speak on the
18 project.

19 FEMALE SPEAKER: Thank you so much.

20 PHILLIP COOK: Good evening. My name is
21 Phillip Cook. I'm a - I am a resident, 100 block of,
22 of Second Street. I own a commercial building in the
23 800 block of Manhattan Beach Boulevard, and I have my
24 business here, and I'm also the Secretary - Treasurer
25 for the Manhattan Beach Commercial Property Owners'

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1 Association. So I'm here with a couple of hats on -
2 one as a resident, one as a business owner, and one as
3 the Commercial Property Owners' representative.

4 Twenty-five years ago I tore down my house, and
5 rebuilt it. About seven, eight years ago, I built
6 6200 square feet of property on Manhattan Beach
7 Boulevard. So I mention that only to say that I'm a
8 little bit familiar with the process of getting
9 permits. I'm a little bit familiar with the process
10 of construction delays. I'm a little bit familiar
11 with all the money that you waste going through all
12 those problems.

13 It, it's not my day job, but - and it's
14 something I didn't want to do. I just - I got sort of
15 forced into it, if you will. The - nothing I have to
16 say is terribly specific about pro or con for the
17 thing. I know that it's easy to get bogged down in
18 all of the minutia that's involved here. Getting
19 anything done in California is a little bit like the
20 Internal Revenue Code. You add an exception, and a
21 rule, every - for, for an eternity, and pretty soon it
22 becomes unworkable. So you've got a tough job to do,
23 and I, and I recognize and, and you've got to now only
24 be responsible for the safety and the, and the, and
25 the, and the look in the city, and the - and

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1 lifestyle mall, even though we want all of these
2 things that, that come with that area where you can,
3 you can mingle, and where you can have performances
4 and all that - it's still kind of nice, maybe on a
5 gloomy day, to walk inside a mall, and go back and
6 forth in the hallways, and, and visit and things like
7 that, and not always be outside where you might need
8 an umbrella, or find an awning to get underneath. So
9 I think the combination of both of these aspects of
10 this mall is terrific.

11 As far as moving - moving things around - I
12 agree within the City. I think this is a fantastic
13 project, and it needs to continue its momentum. I
14 believe it has to be approved because what you're
15 talking about here are small businesses. Sure, we
16 always mention Macy's; we always mention Apple Store,
17 one of the top sales tax revenues in - believe it or
18 not, in, in this city - if not the top. The halo
19 effect of both those stores is - are all of these
20 small businesses that reside in there. So if we drag
21 this out any more, once again you're impacting
22 economic drivers, you're impacting - you're becoming -
23 you could be a job killer for some of these guys. So
24 it's important that we keep up the momentum.

25 Now, with respect to that, the gentleman who

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1 represents Fry's - I actually think that's probably a
2 good idea. I - that might be something to consider as
3 it relates to the trucks, and, and perhaps the folks
4 from RREEF and Phil - and Phil and those guys could,
5 could look at that. That might be something that's
6 worth considering. But don't slow down the momentum.
7 This all started in 2004, it's a - it was, it was
8 approved in 2014, and now we're still up here talking
9 about things that need to be done, and need to happen
10 with this place. I mean, if you were to put a big
11 camera in the sky, and you were to look down, and you
12 had it set up to where you could shoot for the last
13 14, 15, 16 years of what was happening, you would see
14 all this other movement and development happening with
15 the Point, with Del Amo, and all these things - and
16 then this big, slow sort of thing happening with
17 Manhattan Village. We really need to get this done.
18 We need to get it into our infrastructure, and start
19 enjoying it. Thank you.

20 VICE CHAIRMAN ORTMANN: Thank you, Mr. Lipps.

21 MARK NEUMANN: Do you want to go first, or me?

22 LARA LEITNER: Oh, do you want to? Go on.

23 MARK NEUMANN: You - you go.

24 LARA LEITNER: Good evening, Commissioners. I
25 represent 3500 Sepulveda, LLC. They have a building

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1 known as the Hacienda Building within the project
2 site.

3 VICE CHAIRMAN ORTMANN: And your name is?

4 LARA LEITNER: Lara Leitner - apologize. And,
5 and we have a number of issues. We've addressed them
6 in a public comment on June 7th, and then we submitted
7 another one today, and I believe you guys have hard
8 copies of those. So I'll try not to belabor the
9 issues, and sort of give you a global - a global
10 perspective of what's been going on.

11 So the existing application is predicated on a
12 2016 site plan that was never properly approved.
13 Right now, there's a - pending litigation on that
14 particular matter. The Community Development Director
15 basically approved substantial revisions to the
16 conditions of approval, which the Manhattan Beach
17 Municipal Code doesn't allow. It says that any change
18 to conditions of approval - I believe it's in Section
19 10:84.100.A - must be treated as a new application.
20 So we asserted in this litigation that it was not
21 treated as a new application; the Community
22 Development Director simply approved it. And then,
23 without even publicly noticing a hearing before the
24 City Council, they presented this project in a brief
25 PowerPoint presentation, and the City Council

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1 "endorsed it" - so there was no proper approval. And
2 so we believe even just the basis of this application
3 is predicated on a site plan that was never approved.
4 So all these references in the addendum that say, 'Per
5 the site plan in December 2016, you know, these
6 conditions of approval that we're asking to make
7 refinements to will make it consistent with the site
8 plan that was approved' - we believe is completely
9 legally invalid.

10 In addition to the fact that there is pending
11 litigation on that very issue, my client was not a
12 signatory to this application, even though he was a
13 signatory on the original Master Use Permit
14 application, which both the City and RREEF compelled
15 him to do. He was - he signed an owner's affidavit,
16 basically, authorizing the processing of that
17 application. So now, you know, fast forward and not
18 only in 2016 when they presented the site plan, but
19 now they're submitting substantial modifications that
20 basically almost unilaterally directly target our
21 client, without his consent, without his signature on
22 the application, which we also think makes the
23 application invalid. And just as a side note, we
24 actually think the, the application is not signed by -
25 I believe her name is Cheryl Hines (phonetic). It's,

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Audio Transcription
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19 (Pages 70 to 73)

<p>1 it's just completely unsigned. So it might be even 2 legally invalid because it's not signed by the 3 applicant itself.</p> <p>4 To continue, we - we sort of view RREEF's 5 approach to these, to these changes as a segmentation 6 approach to avoid environmental review, and the City's 7 discretionary process, because sort of - you know, 8 they're, they're sneaking in a few revisions to the 9 site plan in 2016, and having sort of these backdoor 10 approvals that, that are not going through the normal 11 course of action. And then they are now trying to 12 make these so called refinements to the conditions of 13 approval, to bless that site plan. That's not valid 14 under CEQA, and that's not valid under the Municipal 15 Code.</p> <p>16 And so I think what I'd like to do is sort of 17 briefly explain why some of these newly refined 18 conditions, and the revisions to the site plan in 2016 19 directly affect my client, and then you can read in 20 more detail in our comment letter.</p> <p>21 So Condition 50(q) with regards to the elevator 22 - originally the condition says that the elevator must 23 be located on the west side of the building. And if 24 you remember, the north deck faces directly to the 25 Hacienda Building, which - which obviously my client</p> <p>Page 74</p>	<p>1 before the 2016 "approval" that we are contesting had 2 122 spaces in there. And then we were guaranteed by 3 Condition 50(s) an additional 30 spaces, which would 4 bring us to 152 spaces. The site plan, as it's 5 currently shown, has 85 spaces, and the language of 6 the condition sort of couches it as, 'Oh, we'll 7 provide a total of 580 spaces between the northeast 8 deck and the lower culvert' - which again, probably 9 means we're moving a bunch of parking into the 10 northeast deck, which is a lot further from where our 11 client's building is, and it's just taking away 12 parking spaces. I'd also like to note that the site 13 plan does show a nine space decrease in the northern 14 parking deck, which is also a very important parking 15 lot for my client.</p> <p>16 We also thought that some of those site plan 17 revisions in 2016, that again we do not think were 18 legally blessed, implicate CEQA. So for example, 19 there's been some talk about the 30th Street 20 intersection being a cross section that crosses 21 through Carlotta Way, instead of compelling traffic to 22 go around the ring road. We think that this will just 23 back up traffic into Sepulveda, which will be a major 24 issue; and also it's taking away the left turn pockets 25 that would have enabled vehicles to basically just</p> <p>Page 76</p>
<p>1 would - is desirable for my client because the 2 customers will come out and see the Hacienda Building, 3 which has the Tin Roof Restaurant as a tenant. And 4 now they are revising the condition to say that the 5 elevator must be located in the western half of the 6 parking lot, which essentially means they're probably 7 going to keep the elevator right where it is, or move 8 it on the east side, which is not what my client had 9 negotiated, and is obviously - will substantially 10 affect customer - the pedestrian traffic and vehicular 11 traffic near my customer's - I mean, my client's 12 building.</p> <p>13 Also, with regards to Condition 50(r), as was 14 previously mentioned, there is - the refinement seeks 15 to move the northern deck further away from my 16 client's building. There's pretty much two primary 17 parking locations that will have direct, or at least 18 close access to the building, and that's in the lower 19 culvert and the north parking decks. And moving the 20 parking deck further away from my client's building is 21 not favorable to us. With regards to the parking in 22 the northeast deck and the lower culvert, we were 23 promised 30 additional spaces in that lower parking 24 lot, which is adjacent, essentially, but lower grade 25 to where our client's building is. The site plan</p> <p>Page 75</p>	<p>1 turn right towards my client's building. And - and 2 that's a significant traffic and circulation issue. 3 You know, CEQA requires you to study any of these 4 traffic, access, and circulation issues. This is not 5 a minor matter. Traffic is not only going to be 6 backed up on site, but also on Sepulveda Boulevard, 7 which is a major thoroughfare. And so you know, 8 putting this in an addendum to an EIR that's not a 9 public document, that doesn't require recirculation, 10 we feel is - is, is not legal, pursuant to CEQA.</p> <p>11 Other issues - there - on the site plan, there 12 is a Building G, along with ancillary structures that 13 are - actually is plodded outside the building 14 envelope area. So again, nothing in the IR ever 15 studied the location of the building in that area, and 16 again, was - these - this was included in an addendum. 17 There was no - no official environmental studies, and 18 - or traffic studies, aesthetics, anything like that.</p> <p>19 Finally, with regards to aesthetics, the entire 20 project has changed, basically - the feel of it. We 21 have - my client has a Spanish style building, and 22 there are a lot more Spanish style buildings on site. 23 Now it's being changed to sort of a modern, beachy 24 feel project, and - and the conditions of approval in 25 Resolution 140026, and the Project Description in the</p> <p>Page 77</p>

1 EIR specifically required previously approved plans
2 with certain aesthetic features, including for
3 example, vines on the parking structures to alleviate,
4 or soften the, the elevation of parking structures;
5 and certain plant receptacles. And these have just
6 been entirely eliminated in the December 2016 site
7 plan. And now they're just asserting that it was
8 properly approved, and this is how we're going to move
9 the project forward. We find that to be incompatible
10 with the existing structures on site, and - and - and,
11 and are now trying to seek recourse.

12 I think that's probably it. There are a number
13 of other sort of small nuances in the comment letter
14 that I think you should heed. But just as a general
15 point, we think that not only was this a legally
16 invalid way of pursuing modifications to the
17 conditions of approval, which must be treated as a new
18 application, but all - you know - I think about five
19 of the nine refinements that they're seeking to change
20 are directly affecting my client, and it's because
21 he's a small fish in the sea, and RREEF, you know,
22 would like to move pedestrian and vehicular traffic
23 towards where more of the, more of the retail is.
24 And, and I find that not only unfair, but illegal, and
25 a lot of these issues also implicate CEQA. And that's

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1 feel like I'm back in that same spot again, because an
2 application is being put forth which changes the
3 master use, which is the entitlements on my property.
4 I, I do have partners, and investors who I have a
5 fiduciary responsibility to, but the action you're
6 considering tonight will change entitlements on my
7 property, without my signature on the application.
8 And I'm - I want to go on record, and apologize for
9 hitting you with so much paperwork late, but the link
10 to the staff report wasn't working for me. I, I, I
11 sent an email and asked how to get into it. I got
12 into - you know, an email back on Monday. And so this
13 is a lot of information to digest in a short period of
14 time for somebody who's, you know, on the other side
15 of the fence. So again, I, I apologize for the thick
16 volumes that you have in front of you.

17 I want to also just say - Laura Jester had said
18 tonight is only about these nine conditions. Well,
19 there, there's so much wrong with this project, and
20 the liability that you're exposing the City to is - I,
21 I'm, I - are you the City Attorney?

22 ASSISTANT CITY ATTORNEY: Assistant City
23 Attorney.

24 MARK NEUMANN: Assistant - okay, wonderful.
25 I'm glad you're here, because last time we went

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1 just going to create liability, potentially for even
2 the City, and for RREEF. Thank you.

3 VICE CHAIRMAN ORTMANN: And thank you, Ms.
4 Leitner.

5 MARK NEUMANN: Is there any way to turn that
6 off? Can I - there we go. Good evening. My name is
7 Mark Neumann. I reside at 3208 Laurel Avenue. I've
8 been a resident of Manhattan Beach for 20 years. I
9 represent the owners of the 3500 Sepulveda Building in
10 the Manhattan Village Mall. Our building contains the
11 Tin Roof Bistro, Susie Cakes, a wine shop, a fertility
12 clinic, and RPM Mortgage Brokers - all small
13 businesses here in Manhattan Beach.

14 I want to start out by welcoming the new
15 Commissioners - Commissioner Morton, and Commissioner
16 Burkhalter. And then for Commissioner Ortmann and
17 Commissioner Seville-Jones, I want to quote Yogi Berra
18 - I think he's the right guy - but this is like déjà
19 vu all over again.

20 VICE CHAIRMAN ORTMANN: Yeah he's the right
21 guy.

22 MARK NEUMANN: When, when this - when this
23 project first came before you, you two were on the
24 Planning Commission, and at that time I was denied an
25 ability to speak about my own property. So I kind of

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1 through all this, there wasn't an attorney present a
2 lot. But there, there, there's big, big issues here.
3 And the other thing, I want to be clear - and I made
4 this statement I don't know how many times in this
5 very podium, but there's nobody in Manhattan Beach
6 that's going to gain more if this project is done
7 right, than me, and my investors. But there's also
8 nobody in Manhattan Beach that's going to lose more if
9 it's done incorrectly.

10 Now, RREEF came to us many years ago - we
11 bought our building in 2008; we entered into a
12 settlement agreement with them. If you look back, in
13 the long history there's something that says - there's
14 a settlement agreement between RREEF and 3500
15 Sepulveda. The Planning Commission - I'm sorry, the
16 Planning Department, or Community Development in
17 Manhattan Beach required us to make a deal with RREEF
18 before we could occupy our building. Our building was
19 half empty for two and a half years, and we were not
20 allowed to use it until we reached a settlement
21 agreement with RREEF. So we've, we've reached that
22 agreement, and we signed off on it. That agreement
23 says that in front of our building, the Hacienda
24 Building, or Tin Roof, there'll be 632 parking spaces.
25 That was in the settlement agreement. Today, there's

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1 487, so a loss of 145 spaces. In the settlement
2 agreement, they proposed adding retail, but they were
3 going to add parking at a commensurate rate. They were
4 going to add parking at 4.7 spaces per thousand, so
5 the new shops wouldn't affect the old shops, and
6 everything would have worked out okay. But there's
7 been a lot of changes since then, and every time the
8 site plan changes, parking goes down by our building.
9 And again, we're, we're not opposed to a new
10 development. We just want to be treated fairly. It
11 it's very interesting to me that instead of getting a
12 call from our neighbors, RREEF, 'Hey, we're going to
13 try and amend some of these conditions. What do you
14 think?' I get a letter from their lawyer saying,
15 'We're doing this. This is happening, and that's the
16 way it is.' And then I get a staff report from the
17 City that says, 'This all looks great. Let's approve
18 it.'
19 Now, remember, the original application was
20 signed by both Macy's, RREEF, and us. This
21 application is unsigned. If you look at your
22 documents, it was never signed. And it, it's proposed
23 only by RREEF. So where are the two other property
24 owners that this affects?
25 The - there was talk about a construction

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1 parking plan, and I have never seen a construction
2 parking plan in the years I've been through this.
3 There's, there's a comment somewhere in these
4 documents that are before you today, and - and I
5 apologize. I read it, and I couldn't find it again,
6 but I know I read it. It said, 'Construction parking
7 will now be provided in the areas where the garages
8 are going to be built.' Well, that, that's physically
9 impossible. You can't build a parking garage, and put
10 the trucks that the guys drive that build these things
11 there. They need spaces for parking. And that,
12 that's never been addressed and answered.
13 They talk about how they've increased the
14 parking - which is true. The parking went up from 4.1
15 to 4.2. But think about the parking that's across the
16 street at the Point. The Point has 5.7 if I got the
17 number right from memory. That number's probably a
18 little wrong, but they've got substantial more parking
19 than this project has; and what we're gearing towards
20 - retail has changed into more restaurants than
21 retail, and they, they want to put a bunch of
22 restaurants in - but we need more parking. So every
23 time you change the site plan and you squeeze on us,
24 it is not fair, and this project, again, hasn't been
25 noticed properly.

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1 The last point I'm going to make is - is the
2 elevations of this project - if you look back, what
3 was approved, and what was before the Planning
4 Commission was a Spanish style project. And the
5 resolution approving this project says any time
6 there's a change in elevations - because we want these
7 things to be consistent with what's approved - and if
8 you guys have lived in this city long enough you've
9 heard Wayne Rowell - he, he, he's - he gets pretty
10 angry when he approves something, and then they - they
11 pull a bait and switch on him, and build something
12 else. Well, this is something else. I'm not saying
13 it's bad; I'm not saying it's good. But it is
14 something else.
15 And then the - I'm going to just reiterate that
16 the current site plan - I, I guess it's not up for
17 approval today - but it violates the EIR. So if you
18 approve this action today, you're approving something
19 that violates the EIR.
20 I'm going to close with a - a - I was able to
21 email this, this document to you, which was a
22 transcript of the City Council when they approved it.
23 And I'm not sure if anyone had a chance to get through
24 it. It's a lot of pages, and again, I apologize. But
25 it, it - if you just look at all the yellow in here,

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1 you know - the City Council spent a lot of time
2 thinking about us, and they tried to do some things to
3 protect us, which our, our neighbor is now - he's
4 trying to erase, and wipe out. And, and I'm really
5 offended that, that a neighbor in Manhattan Beach
6 would do it without talking to their neighbor - they'd
7 just send a letter from their lawyer. That, that just
8 - you know, I don't think that's the way we treat our
9 neighbors at home. If you want to build a fence, you
10 walk next door and you talk to your neighbor. The,
11 the beauty in Manhattan Beach is we all live so close
12 together that we do know our neighbors. You know, a
13 lot of communities, they don't know their neighbors.
14 And, and that's - you know, that's what makes this
15 place special. It's a small town, and we know each
16 other.
17 I'm - RREEF has my phone number. They can call
18 me any time. They know how to get me. So I, I
19 respectfully request that you deny their application
20 tonight, for the many reasons stated and, and just for
21 not being a good neighbor. Thank you.
22 VICE CHAIRMAN ORTMANN: Thank you, Mr. Neumann.
23 Anyone else like to speak? Okay. For the time being,
24 I'm going to leave the public hearing open, because
25 we're going to have questions for lots of folks.

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1 widening. So it says that this will not be an
2 independent requirement caused by this document.
3 It'll be an independent requirement caused by Cal
4 Trans, and --
5 GARY GRAUMANN: Subject to Cal Trans' --
6 COMMISSIONER SEVILLE-JONES: -- Cal Trans says
7 it --
8 GARY GRAUMANN: -- interpretation.
9 COMMISSIONER SEVILLE-JONES: -- needs that. So
10 I feel like we're solving the problem in your - the
11 document before us today --
12 GARY GRAUMANN: Right.
13 VICE CHAIRMAN ORTMANN: Um-hmm.
14 COMMISSIONER SEVILLE-JONES: -- because we're
15 not making it an independent condition of this
16 document.
17 GARY GRAUMANN: Right.
18 VICE CHAIRMAN ORTMANN: Yeah. I - that feels
19 like the, you know - if, if we're going to have to -
20 pardon me - if we're going to have to split the baby
21 somehow --
22 GARY GRAUMANN: Right.
23 VICE CHAIRMAN ORTMANN: -- that feels like the,
24 the most reasonable way to do it.
25 GARY GRAUMANN: And that's how - what she's

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1 saying is staff has to approach it that way and work
2 with Cal Trans to see if we can keep that open.
3 COMMISSIONER SEVILLE-JONES: Okay.
4 COMMISSIONER MORTON: I'd like to move to
5 approve the --
6 VICE CHAIRMAN ORTMANN: Did you --
7 COMMISSIONER MORTON: -- the language as
8 suggested by the Director.
9 VICE CHAIRMAN ORTMANN: Well, I, I, I don't
10 want to - let, let's hold off on --
11 COMMISSIONER MORTON: You don't want to cut
12 off.
13 VICE CHAIRMAN ORTMANN: Yeah, making any
14 motions just yet, because we've got a whole lot of
15 other things to, to chew on here. But I'll keep that
16 in our hip pocket for hopefully sooner rather than
17 later. Any other comments on any of the other issues?
18 Ben?
19 COMMISSIONER BURKHALTER: Yes.
20 VICE CHAIRMAN ORTMANN: Okay.
21 COMMISSIONER BURKHALTER: Now we're going to
22 back onto - or - we're going to go back onto - sorry -
23 I think - did we --
24 VICE CHAIRMAN ORTMANN: You can go back onto
25 whatever you'd like to --

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1 COMMISSIONER BURKHALTER: Did we conclude the
2 Fry's discussion - I think --
3 VICE CHAIRMAN ORTMANN: I think so.
4 COMMISSIONER BURKHALTER: Yeah.
5 COMMISSIONER SEVILLE-JONES: Um-hmm.
6 VICE CHAIRMAN ORTMANN: I hope so.
7 GARY GRAUMANN: Okay.
8 COMMISSIONER BURKHALTER: Okay. Thank you.
9 GARY GRAUMANN: Thank you.
10 COMMISSIONER BURKHALTER: So - I think we -
11 let's try and address some of the issues that are
12 obvious, and - and --
13 VICE CHAIRMAN ORTMANN: Um-hmm.
14 COMMISSIONER BURKHALTER: -- see if we can find
15 some sort of reasonable solution. There may not be
16 any. But I can certainly understand the logic of why
17 the decks on the north deck parking structure were
18 pushed back. I'm not sure that not doing that would
19 be an improvement. You could certainly push the, the,
20 the elevator to the west, but then you'd have the mass
21 to deal with, and you'd have three levels of parking
22 staring you in the face. So I can understand that it
23 was a mitigation that, that might not be perfect in
24 some regards, because it does push the stair and the
25 elevator back, but it is a - it does have benefit -

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1 maybe not as apparent on paper, but I think if - in
2 visual massing, in the end, it will be a benefit. And
3 I guess - I'm trying to understand --
4 MARK NEUMANN: Am I welcome to address that, or
5 --
6 VICE CHAIRMAN ORTMANN: Sure.
7 COMMISSIONER BURKHALTER: You certainly are.
8 MARK NEUMANN: There, there's a simple solution
9 to that elevator. Add another one. And the whole,
10 the whole reason the elevator was conditioned to be on
11 the west side - you had asked the question before, and
12 I don't - I don't think the gentleman from RREEF had
13 the answer. But if you look at this site, there's
14 three parking garages being added. There's the south
15 parking garage. And for every square - thousand
16 square feet of retail that's being - in that garage -
17 they are adding 5.4 spaces. In the northeast garage,
18 for every thousand square feet of retail that's being
19 added, they're adding 6.54 spaces per thousand. And
20 if you look at the north garage, for every thousand
21 square feet of retail they're, they're adding, they
22 are adding 0.36 - less than one space per thousand for
23 every new thousand feet of retail that's being added.
24 So the parking in front of our building - and I'm here
25 defending my building; I'm here defending my tenants,

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1 because when all this happens, they're going to sue me
2 - it's going down. There's 477 spaces available
3 between us and Macy's right now. On the ground floor
4 when this is done, there's 165 spaces. If there's no
5 access up into that parking garage, those spaces are
6 dead to me - I can't use them. The other thing to
7 remember, RREEF is talking about running a valet
8 program out of this garage. I do not have the
9 specifics on that. I've never been given it to them -
10 they - I'm sorry, they've never given them to me. But
11 a valet program usually means some dedicated pool of
12 parking that's not available to the public. So the
13 numbers we're looking at here go down even farther.
14 And, and one thing I'd like to address. I, I
15 never meant to say I've never seen this site plan.
16 I've seen this site plan. What I was saying was this
17 application before you today came to me via the
18 attorney, not via my neighbor. I've seen this site
19 plan. I've told RREEF all these problems with it.
20 And, and if you look at this parking that they
21 magically added in a ditch to get approval two years
22 ago - it's gone. The spaces are down. I've got to
23 flip to get the right number, but - but every time
24 this thing changes, the parking goes down in front of
25 us. And, and I think if you look at 0.36 spaces per

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1 thousand for added thousand foot of retail - 0.36,
2 less than one car. Every other garage has 5.4 or 6.4.
3 So they just continue to squeeze me, and pull out of
4 me. But, but the sample solution would be to add
5 another elevator and another stair on the west side of
6 that garage. Let our customers have an access point
7 into that garage. So hopefully, that answers your
8 question. And it's - RREEF is the one who came up
9 with this. They said, 'We'll move it to the west
10 side. We'll give them additional 30 spaces.' And now
11 here they are, taking it away again. They never even
12 came to me and said, 'We're going to go to the City
13 and ask them to eliminate these conditions that we
14 gave to Manhattan Beach to get our project approved,
15 and now we want to take them back.' I mean, that's
16 just - that's not right. That's not how you treat
17 your neighbor.
18 VICE CHAIRMAN ORTMANN: Thank you, Mr. Neumann.
19 MARK NEUMANN: I --
20 VICE CHAIRMAN ORTMANN: Don't go too far away.
21 I'm sure we'll have more questions, and --
22 MARK NEUMANN: All right.
23 VICE CHAIRMAN ORTMANN: Can I go over here, to
24 Gerry for a moment?
25 COMMISSIONER MORTON: So, so Mr. --

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1 VICE CHAIRMAN ORTMANN: Fire away.
2 COMMISSIONER MORTON: Mr. Neumann, so I, I
3 respect your position on this. I mean, everything
4 you've articulated makes a lot of sense from the
5 standpoint of, of your position as a property owner.
6 I, I'm hearing two separate sets of requests from you,
7 right? On the one hand, you're requesting certain
8 modifications to what's being proposed tonight, to
9 create more parking --
10 MARK NEUMANN: Uh-huh --
11 COMMISSIONER MORTON: -- and to try to improve
12 on the situation. And on the other hand, you're
13 questioning the validity of the entire process, and
14 the legality, in an effort, apparently, to have it all
15 thrown out and go back to the starting gate, with no
16 project or development whatsoever. I guess my
17 question is - what do you really want?
18 MARK NEUMANN: What do I want? I'd like the,
19 the agreement we made, in the settlement agreement,
20 where we added up with additional parking in front of
21 our building; where we had protection during
22 construction. One of the things you can't see up here
23 is, is now RREEF plans on building the north deck all
24 in one feel sloop, and they expect me to go a year
25 with no parking. Okay? And, and so when - when -

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1 when I stand up here, part of CEQA law - and another
2 thing was said that, that, that I'm saying there was
3 no environmental analysis of that project? That,
4 that's entirely false. There has been environmental
5 analysis. What I am saying is this site plan you're
6 looking at now is not in compliance what was - what
7 was approved.
8 COMMISSIONER MORTON: So would you say that
9 your, your efforts to invalidate the original plan,
10 and a lot of the direction, and stop the construction
11 process in its entirety is really more of an effort to
12 extract concessions to help your property, or to try
13 to modify this by using that lawsuit as leverage? Or,
14 or - do you think that's a fair --
15 MARK NEUMANN: I don't think that's fair. I, I
16 think I'm trying to protect my property, and get what
17 is - is - was promised to me in this settlement
18 agreement, approved. I'm trying to make sure that the
19 parking in front of our building isn't diminished. I,
20 I also live here, and I know there are a lot of
21 traffic improvement things, which we've listed in our,
22 in our document today, to improve circulation in and
23 out of here, which the developer is just completely
24 ignoring, and not doing. So somebody needs to watch
25 out for --

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1 LARA LEITNER: You can stay here still.
2 MARK NEUMANN: -- our property and for our
3 city.
4 LARA LEITNER: Can I - let me clarify a little.
5 I think (unintelligible) --
6 COMMISSIONER MORTON: Sure.
7 VICE CHAIRMAN ORTMANN: Here, step up to the --
8 LARA LEITNER: Sure.
9 COMMISSIONER MORTON: Please.
10 LARA LEITNER: You can - you can stay --
11 MARK NEUMANN: I'm staying.
12 LARA LEITNER: -- by all means. We're not - I,
13 I, I think the way you're framing it is sort of like
14 back peddling, going back to the very beginning.
15 That, that's not what we're trying to do. So in 2016
16 there was a key shift - December of 2016, this is when
17 a new site plan with substantial revisions were made.
18 And we are - we sued RREEF, and the City for approving
19 a site plan unlawfully. So we want to go back to the
20 status quo, before that site plan ever came into the
21 picture. Now what's being added to that initial
22 picture is that they're trying to refine conditions of
23 approval to bless that site plan. So these
24 refinements are - it doesn't even cover even 50% of
25 what was changed in the site plan, but some of these

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1 revisions that they're now proposing are trying to
2 make lawful what is not lawful in those --
3 COMMISSIONER MORTON: Or prevail on all of your
4 counts, right?
5 LARA LEITNER: Sure.
6 COMMISSIONER MORTON: -- and, and prevail on
7 your lawsuit, and everything that you're asking for -
8 it would effectively stop the project in its entirety,
9 and force them to completely rework, with a different
10 layout, a different elevation, a whole different style
11 --
12 LARA LEITNER: Well --
13 COMMISSIONER MORTON: A completely different
14 project. I mean, it would basically constitute a
15 complete restart, and a complete --
16 LARA LEITNER: Well, that's entire - that - I'm
17 sorry to interrupt, but that's --
18 COMMISSIONER MORTON: Wouldn't it? Wouldn't
19 it, though? I mean --
20 LARA LEITNER: No, because that - because the,
21 the project is what was approved in 2014, right? So
22 that is the project. That's what we were presented
23 with. That's what we - where we negotiated all our
24 conditions and approval --
25 COMMISSIONER MORTON: And that's what you want

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1 go back to, is the 2014 project, as opposed to the --
2 LARA LEITNER: And, and not even in its
3 entirety --
4 COMMISSIONER MORTON: -- 2017 project.
5 LARA LEITNER: And not even in its entirety.
6 To the extent that we need to bring up CEQA, you know,
7 CEQA violations, which we see many of them - that's
8 one category.
9 COMMISSIONER MORTON: CEQA is really more of a,
10 of, of, of a red herring to try to get back to the --
11 LARA LEITNER: No, there's a --
12 COMMISSIONER MORTON: -- 2014 --
13 LARA LEITNER: Like I said, I pointed out the
14 ones that are relevant to my client, and I think
15 that's the most important in the context of this
16 particular hearing. But there are numerous CEQA
17 violations, glaring ones. And then there's also
18 numerous - numerous conditions of approval that the
19 City Council specifically adopted for the benefit of
20 the client, that they are trying to back pedal on.
21 And so we are not saying, "Oh, stop this whole mall
22 renovation project." I think I have a reasonable
23 client who is just saying, "I am a business owner
24 here, too. I'm a small business owner." You were
25 just hearing from the applicant talking about, "We

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1 want to, you know, be here for the small business
2 owners - and they are taking away every protection
3 that was put in the conditions of approval in --
4 COMMISSIONER MORTON: But you want to a --
5 LARA LEITNER: -- 2014.
6 COMMISSIONER MORTON: You want a Spanish theme
7 throughout the entire thing, as opposed to a more
8 contemporary theme that they've --
9 LARA LEITNER: I - I think --
10 COMMISSIONER MORTON: -- moved toward.
11 LARA LEITNER: I mean, I think you're also --
12 MARK NEUMANN: Can, can I answer that?
13 COMMISSIONER MORTON: That's a substantial
14 change.
15 MARK NEUMANN: Can, can I answer that?
16 COMMISSIONER MORTON: Right?
17 MARK NEUMANN: Can I (unintelligible) --
18 VICE CHAIRMAN ORTMANN: (unintelligible).
19 (overlapping voices)
20 ANNE MACINTOSH: Commissioner Morton, excuse
21 me. Can --
22 MARK NEUMANN: No - what - what we're really
23 (unintelligible) --
24 ANNE MACINTOSH: Can we --
25 VICE CHAIRMAN ORTMANN: All right, hold it -

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1 VICE CHAIRMAN ORTMANN: Just --
2 COMMISSIONER SEVILLE-JONES: Okay.
3 VICE CHAIRMAN ORTMANN: Hang on just a sec.
4 Gerry had the floor.
5 COMMISSIONER MORTON: Yeah, so the thrust of my
6 -- my questions were to kind of get at that, because I,
7 I was hearing more attacks on really the three legs of
8 the entire project than I am on the nine points that
9 are before us. And I guess that was why I wanted to
10 really get to the root of it. And it sounds like it,
11 it's more of a fundamental disagreement with the whole
12 way by which this was approved in an effort to
13 disqualify the project, or go back to 2014, than it is
14 really a, a, a, a principled stand on the, the --
15 certain nuances of the elevator, or the parking, or
16 some of those. It seems like those are far secondary
17 to the main thrust of --
18 LARA LEITNER: Can I (unintelligible) --
19 COMMISSIONER MORTON: -- Invalidating it.
20 VICE CHAIRMAN ORTMANN: Yeah.
21 COMMISSIONER MORTON: And, and I -- and that's
22 why I wanted it clear, in an effort to kind of get
23 back to -- well, what are we approving here, versus
24 something that's really beyond the scope of what we're
25 going to discuss tonight, which is the, the validity

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1 or lack thereof of the, the entire process. I mean,
2 we -- I'm basically approaching it from a finding that
3 it is valid --
4 LARA LEITNER: Sure, but --
5 COMMISSIONER MORTON: -- because I'm --
6 VICE CHAIRMAN ORTMANN: It's just --
7 COMMISSIONER MORTON: -- stepping into a
8 situation --
9 VICE CHAIRMAN ORTMANN: Well --
10 COMMISSIONER MORTON: -- that presumes that
11 validity, and then needs to rule on the things that
12 are in front of us tonight.
13 VICE CHAIRMAN ORTMANN: Hold on. The City
14 Attorney.
15 ASSISTANT CITY ATTORNEY: Uh, just, Mr.
16 Chairman (unintelligible) -- pardon me -- we're -- we've
17 gotten off the fact that this is a public hearing, and
18 we take testimony. We -- these Commission ask these
19 questions -- pardon -- you close the public hearing.
20 The Commission discusses -- this getting into the, the,
21 the, the dialogue here is, is getting a little far
22 afield, I think.
23 VICE CHAIRMAN ORTMANN: Okay. Well, I, I, I, I
24 think we did this sort of deliberately, knowing that
25 we had a lot of questions for both the applicant, and

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1 the adjacent property owners -- though I do agree that
2 at some point we've, we've flogged it well enough.
3 And we've probably gotten to that point. So why don't
4 we go ahead and at this point close the public
5 hearing, and we'll keep our comments to Commissioners,
6 and directed comments that we have -- directed
7 questions that we might have for the -- the developer.
8 And do you have any more comments? Okay. Now back to
9 Sandra.
10 COMMISSIONER SEVILLE-JONES: So is there a
11 valid -- I just want to make clear a couple procedural
12 points. Is there a valid application before us
13 tonight, from staff's perspective?
14 ANNE MACINTOSH: Yes.
15 COMMISSIONER SEVILLE-JONES: Okay. Thank you.
16 And there has been an allegation that signatures
17 should have been obtained from the Hacienda folks, as
18 well, for this application, and I want to confirm that
19 that is not the case, because that's been a question
20 that's asked here tonight.
21 ASSISTANT CITY ATTORNEY: The conditions that
22 are being modified do, do not involved the zoning or
23 the uses on the property, other than -- other than the
24 property that is owned by RREEF.
25 COMMISSIONER SEVILLE-JONES: So the answer is

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1 that they are not required to sign this application.
2 ASSISTANT CITY ATTORNEY: That's -- that's our
3 position.
4 COMMISSIONER SEVILLE-JONES: Okay. And then I
5 would like to understand better the standard by which
6 we are -- that we're ruling on, on this -- because --
7 well, let's take a concrete example of the, of the
8 parking for a, a second. I mean -- let's say that
9 parking is moving further away from the Hacienda
10 Building, for a second. What standard am I trying to
11 make a decision about this project on? Am I making a
12 decision about the overall project, and the parking on
13 the overall project, and whether or not these are
14 minor modifications? Or am I directly supposed to be
15 looking at the impact to the adjoining property owner?
16 Because I feel like the standard by which we're
17 supposed to be using is important here, it -- for me to
18 sort of reconcile the points that the Hacienda
19 Building has made. So if you could give us some
20 guidance, I think on how we should look at the
21 standard.
22 ANNE MACINTOSH: I'm trying to think of a, a
23 way to answer that in a way that's understandable, and
24 -- and answers all of your questions. The, the basis
25 for coming forward with the conditions were -- was the

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1 revised site plan. It was a physical document, and a
2 phasing document, in sequencing that as it was
3 implemented and we looked at the conditions and said -
4 'how do these conditions now apply as these
5 applications are coming forward' caused the applicant
6 to say, 'Well, this isn't - the way this was worded
7 was under the previous phasing, and it doesn't now
8 make sense, or it doesn't now work, or it doesn't now
9 accurately reflect the project at - in its design
10 phase'. So as to the refinements that are up on the
11 screen right now for phasing and sequencing, they
12 relate specifically to procedural review.

13 (COMMISSIONER SEVILLE-JONES: Um-hmm.

14 ANNE MACINTOSH: As to the other four
15 conditions, they relate to the fine tuning of the
16 actual construction drawings, and location decisions
17 that were dictated by the revised site plan. And so
18 we're - we're not trying to second guess any intention
19 of why the original plan was approved the way it was.
20 Some of the comments that were made about how - what
21 the results, I think were merely presented by the
22 applicant to say that they think it's a better
23 condition. It isn't that we required them to improve
24 the condition, or to change the relationship between
25 where the parking is to the Hacienda. It's as the

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1 If at all, when we are thinking about this
2 application?

3 (ANNE MACINTOSH: The, the way that I always
4 suggest that you do it is you look at the Resolution
5 of Approval, and the Findings, and the Conditions, and
6 the Mitigation Measures is the record.)

7 COMMISSIONER SEVILLE-JONES: Okay. Thank you.

8 VICE CHAIRMAN ORTMANN: Okay. I have a
9 question about that, and I'm not sure what it is. So
10 I'm going to do what I usually do, and just sort of
11 think out loud here a, a little, a little bit. Can
12 you interpret that? Can, can you restate that for me
13 so that I have - so it might help me frame --

14 ANNE MACINTOSH: Sure.

15 VICE CHAIRMAN ORTMANN: -- my --

16 ANNE MACINTOSH: Let's --

17 VICE CHAIRMAN ORTMANN: -- thoughts, a little
18 bit.

19 (ANNE MACINTOSH: -- If you take tonight's
20 hearing, there is a lot of conversation, there's a lot
21 of ideas. You may ask each other questions as you
22 deliberate. You may say - what about this, what about
23 that, as your Planning Commission discussion. But
24 when you adopt the final document, the findings that
25 are in that document, and the conditions that you

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1 project was refined during the construction and design
2 phase, it, it may have what they think are beneficial,
3 or benefits. So some of what we heard, in terms of,
4 you know, that this will be better, or it will be more
5 parking, those sorts of things, are a result of the
6 site plan, not a result of trying to address the needs
7 of the neighboring property owner. And in every case,
8 the applicant has stated that they feel that it's more
9 parking, that the distance is better distance. But
10 those aren't things that the City required. Those are
11 assertions by them on how they feel that the project
12 is better than it had been. Does that make sense?

13 (COMMISSIONER SEVILLE-JONES: Yes, that makes
14 sense. One last question, then. Mr. Neumann
15 submitted a bunch of pages that were transcripts of
16 discussions that - at the time that this was - at -
17 one of the meetings. I'm not quite sure what, which -
18

19 (ANNE MACINTOSH: A Council meeting --
20 COMMISSIONER SEVILLE-JONES: -- which Council
21 meeting.

22 ANNE MACINTOSH: -- I think.

23 COMMISSIONER SEVILLE-JONES: There were
24 comments made about these parking spaces and other
25 things. How should we be taking those into account,

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1 place on the project are the record that goes forward.
2 There isn't an expectation that somebody is going to
3 know on into the future, what caused you to make all
4 of those decisions. So that's why I suggest that you
5 look at the record. You don't need to second guess
6 the debate that the City Council may have had at a
7 meeting two years ago, or four years ago, or six years
8 ago.

9 (VICE CHAIRMAN ORTMANN: Okay. I'm glad you
10 said that, because that's what I - I, I thought that's
11 what you did, that, that's what you were advocating -
12

13 (ANNE MACINTOSH: Um-hmm.

14 (VICE CHAIRMAN ORTMANN: -- is that we look sort
15 of retroactively at the record. And if I do that, I
16 say, 'Well, gee, it feels like it's déjà vu all over
17 again.' And I have a problem with that. And - but,
18 but what you're saying suggests that's not --

19 (ANNE MACINTOSH: Right.)

20 VICE CHAIRMAN ORTMANN: -- what we should do.

21 COMMISSIONER SEVILLE-JONES: So can I --

22 VICE CHAIRMAN ORTMANN: And I'm --

23 ANNE MACINTOSH: Yeah.

24 VICE CHAIRMAN ORTMANN: I'm struggling with
25 that a little bit.

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<p>1 COMMISSIONER SEVILLE-JONES: Yeah, and I am (2) struggling a little, too. Could I ask about one, (3) then, of the conditions that's in our -- (4) VICE CHAIRMAN ORTMANN: Sure. (5) COMMISSIONER SEVILLE-JONES: Because what it (6) says is in the conditions of approval, on page 13 of (7) 39, that it won't adversely impact nearby properties, (8) including related to parking - I'll stop because I (9) didn't get -- (10) VICE CHAIRMAN ORTMANN: Hello. Hello. (11) ANNE MACINTOSH: Yeah, (unintelligible). (12) VICE CHAIRMAN ORTMANN: One of - one of you say (13) it. (14) COMMISSIONER SEVILLE-JONES: Yeah. We're - (15) we're waiting. Yeah. (16) ASSISTANT CITY ATTORNEY: We're just - another (17) point to make is that the - there is a new - although (18) there is some dispute about it, but in the City's (19) position, there is a new site plan that was approved (20) in December, a revised site plan that was approved in (21) December. (22) ANNE MACINTOSH: Endorsed. (23) ASSISTANT CITY ATTORNEY: Endorsed -- (24) VICE CHAIRMAN ORTMANN: What does that mean? (25) ASSISTANT CITY ATTORNEY: But - but - approved</p> <p>Page 138</p>	<p>1 ANNE MACINTOSH: But then you were going to (2) make a point about the -- (3) ASSISTANT CITY ATTORNEY: To - so the point I (4) was going to make is that these -- (5) VICE CHAIRMAN ORTMANN: Yes. Sorry. (6) ASSISTANT CITY ATTORNEY: -- these refinements (7) to the conditions are clarifying the - modifying - (8) refining the conditions for consistency with that 2016 (9) site plan approval. (10) VICE CHAIRMAN ORTMANN: Okay. (11) ASSISTANT CITY ATTORNEY: Does that -- (12) VICE CHAIRMAN ORTMANN: Yeah. Yeah. (13) COMMISSIONER SEVILLE-JONES: Okay. So come - (14) back to my question, and then they - because they (15) started talking -- (16) VICE CHAIRMAN ORTMANN: Sure. (17) COMMISSIONER SEVILLE-JONES: -- in the middle (18) of my question. In the - our resolution, we talk (19) about ensuring that the project will not adversely (20) impact nearby properties. This is on page 13 of 39 - (21) traffic, parking, noise, security, landscaping, (22) lighting. What is the baseline that I am comparing (23) that to? Is it today's state of the property? Is it (24) -- (25) ASSISTANT CITY ATTORNEY: (unintelligible)</p> <p>Page 140</p>
<p>1 by the - it's approved by the Community Development (2) Director, and then endorsed by the City Council, in (3) December. And so what these modifi-- (4) VICE CHAIRMAN ORTMANN: Hold, hold on - the - (5) is endorsed somehow different than approved? (6) ASSISTANT CITY ATTORNEY: It was approved by (7) the Community Development Director, to simplify - (8) blessed by the City Council. (9) VICE CHAIRMAN ORTMANN: I, I, I -- (10) ASSISTANT CITY ATTORNEY: The approval was by - (11) - (12) VICE CHAIRMAN ORTMANN: I don't know if I've (13) ever heard such a thing, that -- (14) ASSISTANT CITY ATTORNEY: The Community - the (15) approval level was at the Community Development (16) Director level. (17) VICE CHAIRMAN ORTMANN: So it didn't have to be (18) approved by Council. (19) ASSISTANT CITY ATTORNEY: My understand is not. (20) But, but it was - for reasons that I'm not privy - I (21) (unintelligible) I don't know. It, it was taken to (22) the Council, and the Council concurred - maybe that's (23) a better word. (24) VICE CHAIRMAN ORTMANN: Okay. I, I - I think I (25) understand. It just feels really unusual to me.</p> <p>Page 139</p>	<p>1 ANNE MACINTOSH: (unintelligible) Yeah. (2) COMMISSIONER SEVILLE-JONES: Sorry? (3) ANNE MACINTOSH: There's - there's no baseline. (4) It's a pure finding. (5) COMMISSIONER SEVILLE-JONES: Well, if they -- (6) ANNE MACINTOSH: So if you make that -- (7) COMMISSIONER SEVILLE-JONES: I mean, when I say (8) the baseline, let me clarify it. Right now, there's (9) not a nice parking structure sitting in front of the (10) Hacienda Building with two levels of parking. And (11) he's talking about having some number of spaces that (12) were in a plan, an iterative plan here, taken away. (13) So I'm sort of trying to understand - should I be (14) thinking about this with respect to the iteration from (15) the last plan to this plan? Or are we thinking of (16) this finding from the beginning, current, how it's (17) situated, to now? (18) ANNE MACINTOSH: No. I think you would just (19) make that finding in - under this current proposal. (20) Do you think that there is an impact to the property, (21) based on the testimony you heard. I mean, you heard - (22) you heard the applicants state what they feel - the (23) benefits are of this parking arrangement, and where (24) the parking's located, and how the parking, the (25) numbers, and the percentages. And then you heard from</p> <p>Page 141</p>

1 a neighboring property owner that they think it has an
2 impact. So you have to make a decision as to whether
3 or not you think that's an impact that warrants not --
4 COMMISSIONER SEVILLE-JONES: But it's a --
5 ANNE MACINTOSH: -- approving the project. And
6 --
7 COMMISSIONER SEVILLE-JONES: Yeah, but I guess
8 - maybe you're answering my question. It's an impact
9 from a prior interim approval, not an - okay.
10 ANNE MACINTOSH: No, I think you can just look
11 at it in its, in - it - just as if this was the only
12 proposal before you.
13 COMMISSIONER SEVILLE-JONES: Okay. And the
14 staff, can I - one last question then. Does the staff
15 believe that there is an impact to the Hacienda
16 Building, with respect to the items that Mr. Neumann
17 has brought up in his letters - because I don't feel
18 like they were specifically addressed in the report or
19 in the presentation --
20 ANNE MACINTOSH: Um-hmm.
21 COMMISSIONER SEVILLE-JONES: And I just would
22 like to have on the record what your thoughts are with
23 --
24 ANNE MACINTOSH: Right. We --
25 COMMISSIONER SEVILLE-JONES: -- respect to

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1 that.
2 ANNE MACINTOSH: So we reviewed the letter, and
3 it did not - we did not feel that the - it changed the
4 findings. We reviewed the letter from Mr. Neumann,
5 and from his representative, and did not feel that it
6 was compelling to change the findings. So we do not
7 feel that it has a negative impact on that property.
8 COMMISSIONER SEVILLE-JONES: Okay. Thank you.
9 ANNE MACINTOSH: Um-hmm.
10 COMMISSIONER MORTON: You do not feel that
11 these things that we're voting on tonight have a
12 negative impact on his property?
13 ANNE MACINTOSH: Correct.
14 COMMISSIONER MORTON: Just clarifying.
15 VICE CHAIRMAN ORTMANN: So is it fair
16 to me - fair for me to sort of - for me to have the
17 sort of take-away that staff feels that this is as, as
18 much - sort of part of the administrative process as
19 anything else?
20 ANNE MACINTOSH: Yes. I think - you know, if I
21 could speak personally as the Community Development
22 Director in place now, with the implementation of this
23 resolution - it's a very complex set of findings, and
24 mitigation measures, and conditions that are written,
25 you know, to try to address a specific - to, to

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1 address the specific site plan that was in place at
2 the time that they - that this was approved. And then
3 the site - the phasing changed, admittedly to a
4 phasing that was more favorable and more supported by
5 the community through their original testimony, I
6 think, as you heard tonight. The way that this is now
7 going forward was more consistent with how the
8 community asked for it to go forward originally. And
9 as we've tried to implement that better phased
10 project, we've noticed, you know, the applicant has
11 come to us and said, "Well, this is going to be hard
12 to do because it was written with this other phasing
13 in mind." So they've looked at those very specific
14 things that help now make the Resolution of Approval
15 consistent with how the project is now moving forward,
16 and we think that's a good thing. We think that makes
17 sense, and that it doesn't have adverse impacts. It
18 actually improves the project. It - the environmental
19 review that we've done indicates that it improves the
20 project and makes it more consistent.
21 VICE CHAIRMAN ORTMANN: And - and your - you -
22 staff is not left with any sense of this sort of
23 creep, creeping incrementalism to make this something
24 that it wasn't?
25 ANNE MACINTOSH: Right. We actually think this

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1 makes it the thing that it should be.
2 VICE CHAIRMAN ORTMANN: Okay - fair --
3 ANNE MACINTOSH: Not something that it wasn't.
4 Yeah.
5 VICE CHAIRMAN ORTMANN: Ben? Gerry? You guys
6 - I, I don't want you to --
7 COMMISSIONER MORTON: I'd like to move to a
8 vote.
9 COMMISSIONER BURKHALTER: One last question.
10 How many parking spaces do you feel - just - what,
11 what do you think the delta was?
12 VICE CHAIRMAN ORTMANN: Hey, Ben, do me a
13 favor. Direct your questions --
14 COMMISSIONER BURKHALTER: Sorry.
15 VICE CHAIRMAN ORTMANN: The public hearing's
16 closed now.
17 COMMISSIONER BURKHALTER: Sorry.
18 VICE CHAIRMAN ORTMANN: I think - it --
19 COMMISSIONER BURKHALTER: I thought we were
20 allowed to - sorry.
21 VICE CHAIRMAN ORTMANN: Yeah, if I - I - I - if
22 I open it up again, I think these guys are going to
23 beat me over the head with a stick there.
24 ANNE MACINTOSH: Was your question going to be
25 for the adjacent property owner?

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1 COMMISSIONER BURKHALTER: Um-hmm.
2 ANNE MACINTOSH: Okay. I, I can't answer it
3 the, because I don't know.
4 VICE CHAIRMAN ORTMANN: Okay. I'm going to --
5 COMMISSIONER BURKHALTER: Okay.
6 VICE CHAIRMAN ORTMANN: -- allow the property
7 owner to down, and answer this. Do I need the public
8 hearing for this?
9 ASSISTANT CITY ATTORNEY: He can just answer
10 the question.
11 VICE CHAIRMAN ORTMANN: Okay.
12 LARA LEITNER: May I accompany him?
13 VICE CHAIRMAN ORTMANN: Certainly.
14 COMMISSIONER BURKHALTER: I thought this was
15 allowable, the --
16 VICE CHAIRMAN ORTMANN: Sometimes it is,
17 sometimes it isn't. I get in trouble either way.
18 FEMALE SPEAKER: (unintelligible)
19 MARK NEUMANN: In, in the north parking lot
20 directly adjacent to our building, we've lost nine
21 spaces, and 67 spaces in the culvert. There's
22 supposed to be added spaces. So we've lost 76 spaces.
23 LARA LEITNER: And, and if - if you want a
24 little description on that, we were guaranteed 30
25 additional in the lower culvert. That's 122 that were

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1 originally on the site plan, plus 30 - that's 152.
2 And as cited on the site plan, it's 85, and one of the
3 conditions of approval that you are to consider
4 tonight is whether they can just eliminate the
5 additional 30 spaces, because they're now saying,
6 'Okay, we'll provide 580 in total, in the northeast
7 deck, and the lower culvert,' which means they can
8 just put those 30 spaces in the northeast deck.
9 VICE CHAIRMAN ORTMANN: Okay. Questions asked,
10 and answered. Now I'll, I'll go back to staff, and
11 ask you - what the heck was I going to ask you?
12 COMMISSIONER SEVILLE-JONES: Does that rise to
13 an adverse impact?
14 VICE CHAIRMAN ORTMANN: Something along those
15 lines.
16 COMMISSIONER SEVILLE-JONES: Okay.
17 VICE CHAIRMAN ORTMANN: Yeah.
18 COMMISSIONER SEVILLE-JONES: Glad to be of
19 help.
20 VICE CHAIRMAN ORTMANN: Yeah, thank you. Sorry
21 - senior moment. Yeah, I - I mean, could you respond
22 to, to --
23 ANNE MACINTOSH: The --
24 VICE CHAIRMAN ORTMANN: -- to that?
25 ANNE MACINTOSH: The analysis of the parking is

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1 in the staff report, and we've indicated where the
2 parking spaces are located, and that there is
3 additional spaces beyond the numbers that were
4 reported by the neighboring property owner.
5 COMMISSIONER SEVILLE-JONES: But you don't -
6 can - may I ask a --
7 VICE CHAIRMAN ORTMANN: Certainly.
8 COMMISSIONER SEVILLE-JONES: But that doesn't
9 address proximity. Their issue seems specific to
10 proximity. Do you have a - which I - an earlier
11 question - it's sort of like proximity, you know, is
12 there a metric I should be thinking about differently?
13 ANNE MACINTOSH: There is no metric.
14 COMMISSIONER SEVILLE-JONES: Okay.
15 ANNE MACINTOSH: We do not have anything in our
16 code that guarantees a certain number of spaces within
17 a certain business.
18 MALE SPEAKER: (unintelligible).
19 ANNE MACINTOSH: Well, it was - right, so
20 additionally, it's - it's something that was
21 considered when the site plan was evaluated again,
22 back in December.
23 COMMISSIONER SEVILLE-JONES: But he had more
24 spaces then, and he has fewer now, at least within the
25 proximate - but your view is that that's not an

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1 adverse impact because he's got parking throughout an
2 entire lot that they can use.
3 ANNE MACINTOSH: Yes.
4 COMMISSIONER SEVILLE-JONES: Okay.
5 VICE CHAIRMAN ORTMANN: Any other questions for
6 staff? Gerry, I, I, I will be happy to entertain a
7 motion if you want to attempt to --
8 COMMISSIONER MORTON: So, so I would like to --
9 VICE CHAIRMAN ORTMANN: -- cobble one together
10 here.
11 COMMISSIONER MORTON: I, I would like to move
12 to amend the Condition 39 to reflect the Community
13 Development Director's suggestion of making it subject
14 to --
15 FEMALE SPEAKER: (unintelligible).
16 COMMISSIONER MORTON: -- Cal Trans. And
17 perhaps you can give us --
18 ANNE MACINTOSH: So --
19 COMMISSIONER MORTON: -- wording that you would
20 suggest on that that we could use.
21 ANNE MACINTOSH: Right. We - I was just
22 wondering if anybody had written it down, but we - we
23 hadn't. But it was to - let me see if I can find that
24 condition. So where would it go? Or the completion -
25 I'm trying to think of the --

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1 COMMISSIONER MORTON: Or to indicate if we can
2 that, that we're amenable to --
3 ANNE MACINTOSH: Right. Or if Cal Trans, in
4 the design of the roadway, declines to require the
5 prohibition of the right turn out - it would be
6 something like that. So it's either the --
7 COMMISSIONER MORTON: If we could state it in
8 the affirmative, that, that --
9 ANNE MACINTOSH: Right.
10 COMMISSIONER MORTON: That we will not require
11 the elimination of the right turn out, unless mandated
12 by Cal Trans.
13 ANNE MACINTOSH: Okay. Perfect.
14 COMMISSIONER SEVILLE-JONES: Right. That's
15 good.
16 COMMISSIONER MORTON: Right?
17 SECRETARY: Can you say that again, please?
18 COMMISSIONER MORTON: That we will not require
19 the elimination of the right turn out unless mandated
20 by Cal Trans. So that really puts it in the
21 affirmative --
22 SECRETARY: Um-hmm.
23 COMMISSIONER MORTON: And shows that we don't
24 want it, but if Cal Trans makes us do it, then there's
25 nothing we can do, because we're subject to them.

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1 ASSISTANT CITY ATTORNEY: (unintelligible).
2 COMMISSIONER MORTON: They out rank us.
3 ASSISTANT CITY ATTORNEY: I think we might want
4 (unintelligible).
5 ANNE MACINTOSH: Okay. So we would modify A,
6 B, and C, but not D. We'd add that language in A, B,
7 and C of that condition. Okay?
8 FEMALE SPEAKER: Okay.
9 VICE CHAIRMAN ORTMANN: And?
10 COMMISSIONER MORTON: And I would like to move
11 to approve the other conditions as suggested by staff.
12 VICE CHAIRMAN ORTMANN: We've got a motion. Do
13 we have a second?
14 ASSISTANT CITY ATTORNEY: Just to clarify,
15 Commissioner, if I could - just to clarify for the
16 record. So the motion could be restated as move
17 approval of the resolution, with that modification in
18 the Condition 39.
19 COMMISSIONER MORTON: Move approval of the
20 resolution, with the modification as stated on
21 Condition Number 39.
22 VICE CHAIRMAN ORTMANN: Do we have a second?
23 COMMISSIONER SEVILLE-JONES: I think I will
24 second. I'd like to make comments --
25 VICE CHAIRMAN ORTMANN: Okay.

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1 COMMISSIONER SEVILLE-JONES: -- before we vote
2 --
3 VICE CHAIRMAN ORTMANN: We'll have --
4 COMMISSIONER SEVILLE-JONES: But --
5 VICE CHAIRMAN ORTMANN: - plenty of additional
6 comments coming.
7 COMMISSIONER SEVILLE-JONES: Great.
8 VICE CHAIRMAN ORTMANN: Okay. Motion --
9 COMMISSIONER SEVILLE-JONES: So - second.
10 VICE CHAIRMAN ORTMANN: -- second. Comments.
11 COMMISSIONER SEVILLE-JONES: Okay. I don't
12 want to - it's getting late, so I won't belabor this.
13 I think this is a really - I, I'm really glad that the
14 staff put together the presentation that they did. I
15 think that the - putting it into the two buckets
16 relating to the phasing and sequencing, and then the
17 other issues was very helpful. I was sort of trying
18 to sketch that out myself when I was reading the
19 report. I think on the phasing and sequencing, I've,
20 I've got no problems-. It's very straightforward and,
21 and, and doesn't - doesn't seem to have - create any
22 issue for anyone.
23 I, I struggle, as I go through on these,
24 thinking about each one of these. I've taken quite
25 seriously Mr. Neumann's and his counsel's comments

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1 with respect to the site plan. But listening very
2 carefully to what the staff is saying with respect to
3 the considerations that we should be thinking about, I
4 think the one - on, on the elevator, the sight line,
5 and the fact that I'm hopeful that you're meaning -
6 mean it about the signage. I'm hopeful that signage
7 can direct people to the Hacienda Building. On the -
8 on the setback, that seems to me not that material.
9 The parking is the one that I think is the hardest one
10 to grapple with a little bit. But again, it's -
11 proximity is relative. And whether or not it's in a
12 culvert down below the Hacienda Building, or in a nice
13 parking facility that's a few steps away - I feel like
14 there is a good parking on the site for patrons of the
15 Hacienda Building to be able to use. And so when I
16 look at the overall site, and the overall parking
17 that's available, I think that I can come to a finding
18 that this should be approved.
19 I'm disappointed, I will say - I think it's
20 very tricky when you've got litigation between
21 parties, and I don't think we can - should get
22 anywhere near a discussion of that. But I will say
23 that I, I wish there could have been some discussion
24 prior to you all showing up here with your letters,
25 etc., about why you were doing all of these things.

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1 And maybe it's - just can't be done, but it's - it's
2 hard when you come in front of us, and you come with
3 all of these different issues, and - and to sort
4 through. And obviously people are spending a lot of
5 time, and a lot of money to put forth their arguments
6 here.
7 But I think - I, I seconded Gerry's motion, and
8 I think we should move forward with this.
9 VICE CHAIRMAN ORTMANN: Ben, any additional
10 comments?
11 COMMISSIONER BURKHALTER: Well, obviously, I
12 think it all came - comes down to parking, and
13 proximities of parking. And I would hope and think
14 that there are some clever ways that that could be
15 dealt with. Parking distributed on a large site like
16 that, I would - just off the record, want to - you
17 might consider a tram, something that loops around
18 that site so that proximity isn't as big an issue.
19 Things like that - I think there might be creative
20 solutions - so a win-win for everyone, or at least a
21 less loss for everyone - at least mitigate things.
22 But under the narrow kind - kind of - we can't go back
23 and relive this. We weren't here - I wasn't here for
24 2010, or '13, or even '16. So under that, I'm going
25 to vote to --

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1 VICE CHAIRMAN ORTMANN: Oh, oh, I was.
2 COMMISSIONER BURKHALTER: Well - I think -
3 under what we've been given, and understanding how
4 findings work, and that that's what we have to work
5 with - and I've been on both ends of that - I'm going
6 to vote to - yes on this.
7 COMMISSIONER MORTON: So, so I had some real
8 concerns about the, the issues raised by Fry's coming
9 into the, the meeting tonight. And, and I feel that
10 we've addressed those to the degree that we can. And
11 so I feel that we've done the best we can to, to
12 mitigate that, and I feel good about that
13 modification.
14 With regard to Mr. Neumann's concerns, I feel
15 for the concerns. I mean, I understand all of his
16 issues, and they make sense. I mean, the - the, the
17 challenge with parking, and the challenge with the
18 sight line, exiting the, the parking structure, and
19 you know, mentioned Tin Roof Bistro a few times. I
20 mean, that's a very high traffic impacted restaurant,
21 and you certainly don't want to see that harmed. I
22 mean, I, I, I, I feel the - the, the challenge there.
23 And I've got to go back to, to what we can really do
24 tonight, given that we're approaching it from a
25 finding that what was done to tonight is, is correct.

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1 and we can't revisit that, and we've got to look at
2 what we have in front of us. And I'm convinced that
3 all of these move the project forward, not back. And
4 again, as staff has indicated, move it back in line
5 with really, what the, the plan is anyway, to clear up
6 some rather dear inconsistencies.
7 So I feel like it's the only real vote that,
8 that I can make tonight is, is, is to approve these.
9 VICE CHAIRMAN ORTMANN: I, I, I think - I think
10 I might surprise staff a little bit here, as I think
11 is painfully - well, and RREEF is painfully aware, I
12 was the one Commissioner two years ago - oh - three
13 years ago - whenever we voted on this - who voted
14 against the - this project. I think staff's done a
15 really good job. I, I want to commend Laurie, you and
16 Anne for, for the way you've sort of laid, laid this
17 out, and how you've kind of reeled us back in when
18 we've gotten pretty far afield tonight, on some issues
19 that I think are legitimate. And I, I share Sandra's
20 really well thought out, and very thoughtful comments
21 about the disappointment that I feel with respect to
22 the communication between the property owners. That
23 was an issue I had back when I voted against the
24 project originally. It's an issue I have still, to
25 this day. I don't know why it continues to be an

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1 issue, but it is. But I think that's a question, and
2 an issue that goes beyond our charge tonight, and you
3 guys have really made that very clear and, and, and
4 done a very good job of really kind of focusing on
5 what, what our charge tonight is.
6 That said, it doesn't matter how much parking
7 goes away. You can't keep me out of the Tin Roof, and
8 I will park my car in the middle of Sepulveda and run
9 over to SusieCakes three times a week, like I do now,
10 to - to get my SusieCakes fix. So --
11 MR. GRAUMANN: Thank you.
12 VICE CHAIRMAN ORTMANN: So I think you have at
13 both the - at both restaurants, and the - I'm not a
14 wine drinker, but it looks great - you have a loyal
15 following there that I don't think's going anywhere,
16 regardless of some of the parking issues. I wish that
17 we could figure out how to get you guys on the same
18 page, and quite frankly, I think RREEF has a lot of
19 responsibility to try and make that happen, and I
20 don't think you guys have done a good job with that.
21 That said, I'm going to support staff's
22 recommendation this evening, because I think it's the
23 - I, I think it's the only real recommendation that we
24 can make. I think you have compelling issues that go
25 way beyond what we're talking about this evening, and

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1 I think you've made - you and your attorney have done
2 a great job articulating what those concerns are.
3 And, and I, and I'm sure that conversation will
4 continue. But given what we've got in front of us
5 tonight, I'm going to vote to support staff's
6 recommendation.

7 ASSISTANT CITY ATTORNEY: Mr. Chairman, your
8 pardon - before you vote, I need to correct myself. I
9 - I was in error in the - on Condition 39, that
10 modification language. I previously suggested that it
11 apply to A, B, and C. It should only apply to A and B
12 - if that's acceptable to both the maker and the
13 second, then we should be okay.

14 COMMISSIONER MORTON: So amended.

15 VICE CHAIRMAN ORTMANN: Is the seconder?

16 COMMISSIONER SEVILLE-JONES: I just - yes, I -
17 I - okay. Yes.

18 VICE CHAIRMAN ORTMANN: Any other comments?
19 Call the question, please.

20 SECRETARY: Excuse me. Commissioner Morton?

21 COMMISSIONER MORTON: Yes.

22 SECRETARY: Commissioner Seville-Jones?

23 COMMISSIONER SEVILLE-JONES: Yes.

24 SECRETARY: Commissioner Burkhalter?

25 COMMISSIONER BURKHALTER: Yes.

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1 SECRETARY: And - I'm sorry --
2 COMMISSIONER BURKHALTER: Yes.
3 SECRETARY: And Vice Chair Ortmann?
4 VICE CHAIRMAN ORTMANN: Yes.
5 ANNE MACINTOSH: Motion carries.
6 VICE CHAIRMAN ORTMANN: This will go to - the
7 motion carries. And it'll go to Council --
8 ANNE MACINTOSH: So on the --
9 VICE CHAIRMAN ORTMANN: -- presumably for them
10 to endorse, or approve --

11 ANNE MACINTOSH: On the --

12 VICE CHAIRMAN ORTMANN: -- or whatever --

13 ANNE MACINTOSH: On the Council's --

14 VICE CHAIRMAN ORTMANN: -- they do?

15 ANNE MACINTOSH: -- agenda for Tuesday. The
16 Council has a new format for hearing how the Planning
17 Commission has acted on items before you. So it will
18 be an informational item on their agenda, on Tuesday.

19 MALE SPEAKER: (unintelligible) tomorrow.

20 ANNE MACINTOSH: Um-hmm.

21 COMMISSIONER SEVILLE-JONES: Okay. Good.

22 ANNE MACINTOSH: As will the Cheese Shop - both
23 of those items will be --

24 VICE CHAIRMAN ORTMANN: Okay.

25 ANNE MACINTOSH: -- informational items.

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1 VICE CHAIRMAN ORTMANN: Okay. We are on Agenda
2 Item Number 7, General Business. We're going to have
3 a discussion of the work plan items for the City
4 Council?

5 ANNE MACINTOSH: Right.

6 VICE CHAIRMAN ORTMANN: Yeah?

7 ANNE MACINTOSH: So Chair Ortmann, Vice Chair -
8 Chair Ortmann, you will remember that at --

9 VICE CHAIRMAN ORTMANN: What, whatever I am.

10 ANNE MACINTOSH: -- at our last meeting of the
11 Planning Commission, when we had the former Planning
12 Commissioners still on board, we had a discussion
13 about issues, or policies, or ideas that the

14 Commission may have that you may wish to discuss with
15 the City Council at your upcoming joint meeting. And
16 because we have a whole new Commission tonight, we
17 thought we should give this Commission an opportunity

18 - when you meet with the Council next Wednesday, of
19 course you can raise any issue. It's going to be an
20 open discussion. But if there's anything you'd like

21 us to include in the staff report, that you'd like to
22 specifically focus on with the Council, we would

23 welcome that. So that said, ideas would be - you

24 know, observations you have about process, or

25 conditions that result from how decisions are made at

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1 the Planning Commission, you know - the built
2 environment in the community - are there things that
3 you feel need to be addressed - anything that you wish
4 to suggest to us that should be added to that. The
5 last Planning Commission talked about the Sepulveda
6 Corridor, wanting to see more direction on issues
7 regarding Sepulveda - the community, or residential,
8 commercial interface, parking requirements, the
9 streetscape requirements, opportunity sites, other
10 things like that. And the other - I'm trying to
11 remember what the other issue was. Anyway, if there's
12 anything you'd wish to share, you can do that at this
13 point. You can have a discussion, or --

14 VICE CHAIRMAN ORTMANN: Can we email staff
15 suggestions?

16 ANNE MACINTOSH: Sure.

17 VICE CHAIRMAN ORTMANN: And, and I'm just
18 offering that.

19 MALE SPEAKER: Right.

20 VICE CHAIRMAN ORTMANN: You know, I'm, I'm
21 going to be out of the country, so I'm not going to be
22 there anyway. But - you know, if we want to - we can
23 either have a discussion --

24 ANNE MACINTOSH: Um-hmm.

25 VICE CHAIRMAN ORTMANN: -- about that now, or

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Audio Transcription
June 14, 2017

41 (Pages 158 to 161)

TRANSCRIBER'S CERTIFICATE

I, MARY HARLOW, attest that the foregoing proceedings
provided to me via audio were transcribed by me to the
best of my ability.

I further attest that I am not a relative or employee
to any attorney or party nor financially interested in
this action.

I declare under penalty of perjury under the laws of
the state of California that the foregoing is true and
correct.

Dated this 21st day of June, 2017.

MARY HARLOW

TRANSCRIPT OF PROCEEDINGS

EXHIBIT B

1 MARY HANLOW, attest that the foregoing proceedings
2 provided to me and which were read aloud to me in the
3 presence of my attorney.
4 I further attest that I am not a relative or employee
5 of any attorney of party nor financially interested in
6 his action.
7 I declare under penalty of perjury under the laws of
8 the State of California that the foregoing is true and
9 correct.

10 Dated this 21st day of June, 2017.

11 MARY HANLOW



3500 Sepulveda, LLC, 13th & Crest Associates, LLC & 6220 Spring Associates, LLC

September 24, 2012

Ms. Laurie Jester
City of Manhattan Beach City Hall – Chief Planner
1400 Highland Avenue
Manhattan Beach, CA 92266

Re: Manhattan Beach Redevelopment - 3500 Sepulveda Affidavit

Dear Ms. Jester:

Our property located at 3500 Sepulveda, Manhattan Beach, CA 90266 is owned by 3500 Sepulveda, LLC, 13th & Crest Associates, LLC and 6220 Spring Associates, LLC, as tenants in common (collectively, "3500 Sepulveda").

3500 Sepulveda has signed the Owner's Affidavit, a copy of which is attached to this letter, and thereby consents to the filing of the Amended Application, subject to 3500 Sepulveda's knowledge without any duty of inquiry or investigation, and subject to the following conditions and limitations: (i) 3500 Sepulveda's consent to the application is limited only to the consent to submit the Application for approval, and is not and shall not be deemed a consent to the commencement of any construction, demolition, renovation, testing, site preparation or development of any kind; (ii) 3500 Sepulveda's execution of the Owner's Affidavit shall not constitute a waiver of 3500 Sepulveda's rights under any agreements with RREEF or relating to the Manhattan Village Shopping Center COREA or any rights at law or in equity; and (iii) 3500 Sepulveda shall not be responsible for any fees associated with the filing of the Application. Any and all fees due or required in connection with the Application shall be the sole responsibility of RREEF.

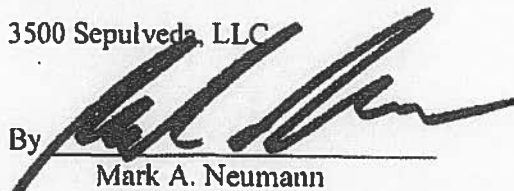
Concurrently herewith, we are submitting a separate letter related to the Application, in advance of the public hearing.

Please sign this letter where indicated below, acknowledging the terms and conditions of 3500 Sepulveda's submission of its Owner's Affidavit in connection with the Amended MUP. Please feel free to contact me with any questions/comments you might have arising from 3500 Sepulveda's submittal.

Sincerely,

3500 Sepulveda, LLC

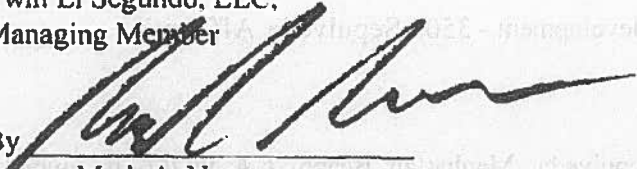
By


Mark A. Neumann
Managing Member

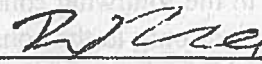

Ms. Laurie Jester
September 24, 2012
Page 2

13th & Crest Associates, LLC

By Twin El Segundo, LLC,
Managing Member

By 
Mark A. Neumann
Co-Managing Member

6220 Spring Associates, LLC

By 
Richard S. Rizika, Trustee
of the Rizika Family Trust,
Chief Executive Officer 

Agreed to and accepted by:

RREEF America REIT II Corporation BBB

By _____
Name: _____
Title: _____

Agreed to and accepted by:

City of Manhattan Beach

By _____
Name: _____
Title: _____

Enclosure (Owner's Affidavit)

PO BOX 3357 - Manhattan Beach, CA 90266-1357 - 310-546-5151 - fax 310-546-7676

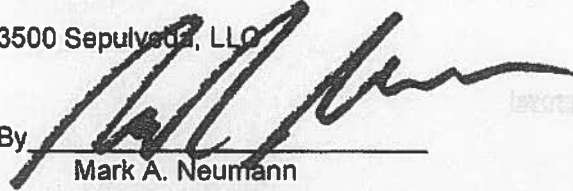
OWNER'S AFFIDAVIT

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

3500 Sepulveda, LLC, 13th & Crest Associates, LLC, and 6220 Spring Associates, LLC, being duly sworn, depose and say that we are the owners of APN 4138-020-014 of a portion of the property involved in this application and that we authorize RREEF America REIT II Corporation to process said application.

3500 Sepulveda, LLC

By

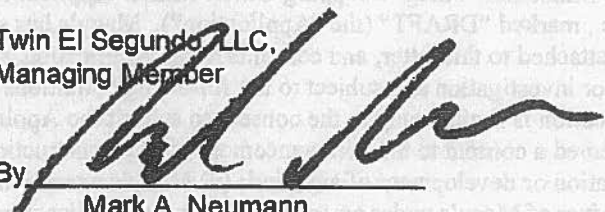

Mark A. Neumann
Managing Member

13th & Crest Associates, LLC

By

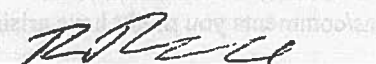

Twin El Segundo, LLC,
Managing Member

By


Mark A. Neumann
Co-Managing Member

6220 Spring Associates, LLC

By


Richard S. Rizika, Trustee
of the Rizika Family Trust,
~~Chief Executive Officer~~ 

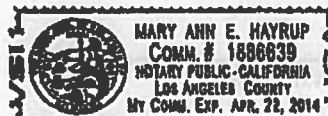
Address: Post Office Box 3357
Manhattan Beach, California 90266-1357

Telephone Number: (310) 546-5151

Subscribed and sworn to before me ^{MARY ANN E. Hayrup} (with satisfactory evidence)
24th This 24th day of September, 2012, in and for the
County of Los Angeles, State of California



Notary Public





September 5, 2012

Ms. Laurie Jester
City of Manhattan Beach City Hall – Chief Planner
1400 Highland Avenue
Manhattan Beach, CA 92266

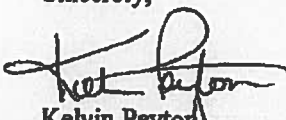
Re: Manhattan Beach Redevelopment – Macy's Approval

Dear Ms. Jester:

Macy's has been asked by RREEF America REIT II Corporation (the "Applicant") to execute an Owner's Affidavit indicating Macy's knowledge and approval of the planned redevelopment of the Manhattan Village Shopping Center as set forth in the Manhattan Village Shopping Center Master Application Form prepared by David Moss & Associates, Inc., marked "DRAFT" (the "Application"). Macy's has signed the Owner's Affidavit, a copy of which is attached to this letter, and consents to the Application, subject to Macy's knowledge without any inquiry or investigation and subject to the following conditions and limitations: (i) Macy's consent to the application is limited only to the consent to submit the Application for approval and is not and shall not be deemed a consent to the commencement of any construction, demolition, renovation, testing, site preparation or development of any kind; (ii) Macy's execution of the Owner's Affidavit shall not constitute a waiver of Macy's under any agreements with Applicant or relating to the Manhattan Village Shopping Center or any rights at law or in equity; and (iii) Macy's shall not be responsible for any fees associated with the filing of the Application. Any and all fees due or required in connection with the Application shall be the sole responsibility of Applicant.

Please sign this letter below acknowledging the terms and conditions of Macy's submission of its Owner's Affidavit. Please feel free to contact me with any questions/comments you might have arising from Macy's submittal.

Sincerely,


Kelvin Peyton
Macy's Real Estate

Agreed to and accepted by:

RREEF America REIT II Corporation

Agreed to and accepted by:

City of Manhattan Beach

Parcel Number 4138 - 020 - 012

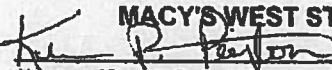
OWNER'S AFFIDAVIT - MACY'S

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I/We MACY'S WEST STORES, INC. being duly sworn,
depose and say that I am/we are the owner(s) of the property involved in this application and that
the foregoing statements and answers herein contained and the information herewith submitted
are in all respects true and correct to the best of my/our knowledge and belief(s) and without any
investigation or inquiry.

FOR:

MACY'S WEST STORES, INC., an Ohio Corporation



Signature of Property Owner(s) Representative - (Not Owner in Escrow or Lessee)

Kelvin P. Peyton, and/or

Macy's West Stores, Inc., an Ohio Corporation

Print Name

7 W. 7th St., Cincinnati, OH 45202 - 2424

Mailing Address

513 - 579 - 7131

Telephone

Subscribed and sworn to before me,

this 5th day of September, 2012

in and for the County of HAMILTON

State of OHIO



ELIZABETH J. HAASS

Notary Public, State of Ohio

My Commission Expires

March 26, 2017


Notary Public

Fee Schedule Summary

Below are the fees typically associated with the corresponding applications. Additional fees not
shown on this sheet may apply - refer to current City Fee Resolution (contact the Planning
Department for assistance.) Fees are subject to annual adjustment.

Submitted Application (circle applicable fees, apply total to Fee Summary on application)

Coastal Development Permit

Filing Fee (public hearing - no other discretionary approval required): \$ 4,615 ☒
Filing Fee (public hearing - other discretionary approvals required): 1,660 ☒
Filing Fee (no public hearing required - administrative): 920

Use Permit

Use Permit Filing Fee: \$ 5,200 ☒
Master Use Permit Filing Fee: 8,255 ☒
Master Use Permit Amendment Filing Fee: 4,740 ☒
Master Use Permit Conversion: 4,075 ☒

Variance

Filing Fee: \$ 5,160 ☒

Minor Exception

Filing Fee (without notice): \$ 1,775
Filing Fee (with notice): 2,020 ☒

Subdivision

Certificate of Compliance: \$ 1,560
Final Parcel Map + mapping deposit: 515
Final Tract Map + mapping deposit: 595
Mapping Deposit (paid with Final Map application): 500
Merger of Parcels or Lot Line Adjustment: 1,155
Quimby (Parks & Recreation) fee (per unit/lot): 1,817
Tentative Parcel Map (4 or less lots / units) No Public Hearing: 915
Tentative Parcel Map (4 or less lots / units) Public Hearing: 3,325 ☒
Tentative Tract Map (5 or more lots / units): 4,080 ☒

Environmental Review (contact Planning Division for applicable fee)

Environmental Assessment (no Initial Study prepared): \$ 215
Environmental Assessment (If Initial Study is prepared): 2,260
Fish and Game/CEQA Exemption County Clerk Posting Fee²: 50

☒ Public Notification Fee applies to all projects with public hearings and
covers the city's costs of envelopes, postage and handling the
mailing of public notices. Add this to filing fees above, as applicable: \$ 85

²Make a separate \$50 check payable to LA County Clerk, (DO NOT PUT DATE ON CHECK)

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EXHIBIT C

FOR
RECORDATION OF PROPERTY

MACY'S WEST STORES, INC., an Ohio Corporation

MACY'S WEST STORES, INC., an Ohio Corporation

MACY'S WEST STORES, INC., an Ohio Corporation

7 W. 7th St., Cincinnati, OH 45202 - 4324

1978 - 1979

1978 - 1979

1978 - 1979

1978 - 1979

1978 - 1979

Fee Schedule Summary

Below are the fees which are assessed on the property. Additional fees may be assessed on the basis of the property's location. The fee schedule is subject to change without notice.

The following fees are assessed on the property. The fee schedule is subject to change without notice.

1. Property Tax (based on assessed value) - \$1.25 per \$100 of assessed value.
2. Local Public Works Fee - \$1.00 per \$100 of assessed value.
3. Local Public Works Fee - \$1.00 per \$100 of assessed value.

4. Local Public Works Fee - \$1.00 per \$100 of assessed value.
5. Local Public Works Fee - \$1.00 per \$100 of assessed value.
6. Local Public Works Fee - \$1.00 per \$100 of assessed value.

7. Local Public Works Fee - \$1.00 per \$100 of assessed value.
8. Local Public Works Fee - \$1.00 per \$100 of assessed value.
9. Local Public Works Fee - \$1.00 per \$100 of assessed value.

10. Local Public Works Fee - \$1.00 per \$100 of assessed value.
11. Local Public Works Fee - \$1.00 per \$100 of assessed value.
12. Local Public Works Fee - \$1.00 per \$100 of assessed value.
13. Local Public Works Fee - \$1.00 per \$100 of assessed value.
14. Local Public Works Fee - \$1.00 per \$100 of assessed value.

15. Local Public Works Fee - \$1.00 per \$100 of assessed value.
16. Local Public Works Fee - \$1.00 per \$100 of assessed value.
17. Local Public Works Fee - \$1.00 per \$100 of assessed value.

18. Local Public Works Fee - \$1.00 per \$100 of assessed value.
19. Local Public Works Fee - \$1.00 per \$100 of assessed value.
20. Local Public Works Fee - \$1.00 per \$100 of assessed value.

21. Local Public Works Fee - \$1.00 per \$100 of assessed value.



MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

Office Use Only

Date Submitted:
Received By:
F&G Check Submitted:

3200 - 3600 North Sepulveda Boulevard

Project Address

See attached legal description

Legal Description

Manhattan Village

General Plan Designation

Community Commercial

General Commercial

Zoning Designation

Area District

For projects requiring a Coastal Development Permit, select one of the following determinations¹:

Project located in Appeal Jurisdiction

☐ Major Development (Public Hearing required)

☐ Minor Development (Public Hearing, if requested)

Project not located in Appeal Jurisdiction

☐ Public Hearing Required (due to UP, Var., etc.)

☐ No Public Hearing Required

Submitted Application (check all that apply)

☐ Appeal to PC/PWC/BBA/CC

☐ Coastal Development Permit

☐ Environmental Assessment

☐ Minor Exception

☐ Subdivision (Map Deposit) 4300

☐ Subdivision (Tentative Map)

☐ Subdivision (Final)

☐ Subdivision (Lot Line Adjustment)

☐ Use Permit (Residential)

☐ Use Permit (Commercial)

☒ Use Permit Amendment

☒ Variance (Bldg. Height)

☐ Public Notification Fee / \$65

☐ Park/Rec Quimby Fee 4425

☐ Lot Merger/Adjustment/\$15 rec. fee

☒ Other Development Agreement

☒ Master Sign Program

Fee Summary: Account No. 4225 (calculate fees on reverse)

Pre-Application Conference: Yes _____ No ☒ Date: _____ Fee: _____

Amount Due: \$ Fees Paid _____
Zero Due (less Pre-Application Fee if submitted within past 3 months)

Receipt Number: _____ Date Paid: _____ Cashier: _____

Applicant(s)/Appellant(s) Information

RREEF America REIT II Corp BBB, Attn: Charles E. Fancher, Jr.

Name

1200 Rosecrans Avenue, Suite 201, Manhattan Beach, CA 92612

Mailing Address

Owner

Applicant(s)/Appellant(s) Relationship to Property

Charles E. Fancher, Jr. (Owner's Representative)

Contact Person (include relation to applicant/appellant)

Phone number / e-mail

Fancher Partners, LLC 895 Dove St., 3rd Flr., Newport Beach, CA 92660 (949) 955 - 7999

Address,

Applicant(s)/Appellant(s) Signature

Phone number

Complete Project Description- including any demolition (attach additional pages if necessary)

See Application Attachment for complete Project Description - consistent

with DEIR (in process). The project includes parcels owned in fee by Hacienda and Macys. Assessor numbers are provided on the affidavits for all project parcels.

¹ An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)

OWNER'S AFFIDAVIT

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I/We _____ being duly sworn,
depose and say that I am/we are the owner(s) of the property involved in this application and that
the foregoing statements and answers herein contained and the information herewith submitted
are in all respects true and correct to the best of my/our knowledge and belief(s).

Signature of Property Owner(s) – (Not Owner in Escrow or Lessee)

Print Name

Mailing Address

Telephone

Subscribed and sworn to before me,
this _____ day of _____, 20____
in and for the County of _____
State of _____

Notary Public

Fee Schedule Summary

Below are the fees typically associated with the corresponding applications. Additional fees not shown on this sheet may apply – refer to current City Fee Resolution (contact the Planning Department for assistance.) Fees are subject to annual adjustment.

Submitted Application (circle applicable fees, apply total to Fee Summary on application)

Coastal Development Permit

Filing Fee (public hearing – no other discretionary approval required):	\$ 4,615	✉
Filing Fee (public hearing – other discretionary approvals required):	1,660	✉
Filing Fee (no public hearing required – administrative):	920	

Use Permit

Use Permit Filing Fee:	\$ 5,200	✉
Master Use Permit Filing Fee:	8,255	✉
Master Use Permit Amendment Filing Fee:	4,740	✉
Master Use Permit Conversion:	4,075	✉

Variance

Filing Fee:	\$ 5,160	✉
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Minor Exception

Filing Fee (without notice):	\$ 1,775	
Filing Fee (with notice):	2,020	✉

Subdivision

Certificate of Compliance:	\$ 1,560	
Final Parcel Map + mapping deposit:	515	
Final Tract Map + mapping deposit:	595	
Mapping Deposit (paid with Final Map application):	500	
Merger of Parcels or Lot Line Adjustment:	1,155	
Quimby (Parks & Recreation) fee (per unit/lot):	1,817	
Tentative Parcel Map (4 or less lots / units) No Public Hearing:	915	
Tentative Parcel Map (4 or less lots / units) Public Hearing:	3,325	✉
Tentative Tract Map (5 or more lots / units):	4,080	✉

Environmental Review (contact Planning Division for applicable fee)

Environmental Assessment (no Initial Study prepared):	\$ 215	
Environmental Assessment (if Initial Study is prepared):	2,260	
Fish and Game/CEQA Exemption County Clerk Posting Fee ² :	50	

✉ **Public Notification Fee** applies to all projects with public hearings and covers the city's costs of envelopes, postage and handling the mailing of public notices. Add this to filing fees above, as applicable: \$ 85

²Make a separate \$50 check payable to LA County Clerk, (**DO NOT PUT DATE ON CHECK**)



RREEF

101 California Street, Suite 2600
San Francisco, CA 94111
T 415.781.3300
F 415.651.8910
www.rreef.com

EXHIBIT D

September 5th, 2012

Mark Neumann
3500 Sepulveda, LLC
13th & Crest associates, LLC

Dear Mark,

Phil Pearson and I appreciated the chance to meet with you and Rich Rizika on Wednesday August 29th to continue our discussion on the revised site plan for Manhattan Village Shopping Center Enhancement Project as well as the City of Manhattan Beach's request for a signed affidavit from 3500 Sepulveda authorizing the submission of the revised Master Land Use Application (MLUA). As you are aware, our first planning commission meeting is scheduled for October 3rd, 2012. This meeting needs to be officially noticed and scheduled by September 15th, 2012. There are a number of prerequisites to scheduling this first meeting, among them is the City's receipt of signed affidavits from both Hacienda and Macy's, as owners included in the MLUA, authorizing RREEF to process the amended application. In Section 4c. of the Settlement Agreement 3500 Sepulveda agrees, if request by the City, to authorize, in writing, the processing of this amended application. In addition, the resolution approving the Master Use Permit Amendment allowing the Tin Roof Bistro use at 3500 Sepulveda requires 3500 Sepulveda to provide written authorization of the MLUA amendment if requested by the City. As such, we are again requesting that 3500 Sepulveda sign the affidavit in accordance with the Settlement Agreement, and, as requested by the City.

During the course of our collaboration over the past several years, both you and Rich have raised a number of site planning and ancillary issues. The following is a comprehensive response to these issues you have raised and which have been summarized in a series of written correspondence to MVSC over the past nine weeks. Both you and Rich have expressed frustration with the iterative nature of this process. While we share your wish that this process were more efficient, we do want to point out that the revised site plan is significantly better in terms of (a) parking proximity and dispersion, (b) vehicle circulation, (c) pedestrian and bicycle inclusiveness, (d) community space-making, and (e) the quality of the retail offering to the Manhattan Beach community. We appreciate the time you and Rich have taken to review the site plan iterations, and hope that if the process has been time consuming, you at

EXHIBIT E

Plaintiff and Petitioner
vs.
CASE NO. : 2013-00000
CITY OF MANHATTAN BEACH; and
DOES 1 through 100
Defendants and Respondents.
AMERICA FIRST CORP. and its
AMERICA FIRST II CORP. and DOES
101 through 1,000
Defendants and Real Parties in
Interest

REPORTER'S TRANSCRIPTION OF VIDEO ARCHIVED PROCEEDINGS
CITY OF MANHATTAN BEACH CITY COUNCIL MEETING
OF DECEMBER 2, 2013, ITEM NUMBER 17,
MANHATTAN VILLAGE SHOPPING CENTER
TRANSLATED ON MARCH 22, 2014
BY ALISA A.M. TUCKER, C.S.R. NO. 8462

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - STANLEY MOSK COURTHOUSE

SENSIBLE CITIZENS OF
MANHATTAN BEACH,

Plaintiff and Petitioner,

vs.

CASE NO.: BS152854

CITY OF MANHATTAN BEACH; and
DOES 1 through 100,

Defendants and Respondents.

AMERICA REIT CORP. BBB II; RREEF
AMERICA REIT II CORP. BBB; and DOES)
101 through 1,000,

Defendants and Real Parties in
Interest

REPORTER'S TRANSCRIPTION OF VIDEO ARCHIVED PROCEEDING
CITY OF MANHATTAN BEACH CITY COUNCIL MEETING
OF DECEMBER 2, 2014, ITEM NUMBER L7,
MANHATTAN VILLAGE SHOPPING CENTER
TRANSCRIBED ON MARCH 23, 2015
BY LISA A.M. TOOR, C.S.R. NO. 8405

1
2
3 MAYOR POWELL: December 2nd, City Council meeting.
4 And we are now on the issue of the mall. I've been given a
5 script, if you will, by our City Attorney, because there are a
6 number of items and issues that have to be said properly. So I
7 will briefly read certain things from time to time throughout
8 this item.
9 So the first is, tonight we are here to consider
10 taking action on the Manhattan Village mall. Twice we have
11 directed City Staff to come back with -- volume? Can we turn
12 the volume up? Okay. Thank you.
13 Well, I'll start over in that case. Tonight we are
14 here to consider taking action on the Manhattan Village mall.
15 Twice we have directed City Staff to come back with resolutions
16 approving the environmental impact report on the project.
17 Option A that's being proposed is the City Council
18 direction that was given on May 20th, 2014.
19 Option B is the City Council direction on
20 January 14th, with additional offers that are being proposed by
21 the property owner. And the initials are R-R-E-E-F-F [sic].
22 We've had 17 -- "we" meaning the Planning Commission
23 and the City Council -- we have had 17 meetings, and I believe
24 it's eight by the Planning Commission and nine by the City
25 Council, on the mall and lots of public input and discussion on

1 RREEF and was mentioned previously, that was posted on a City's
2 website immediately, as well as the information that this
3 meeting would take place tonight, December 2nd. So that was
4 posted online on the 17th. So that's more than -- that's two
5 weeks and one day. We also e-mailed all of the interested
6 parties. I have an e-mail list of interested parties. They did
7 receive notification. And we sent out the e-mail blast, too.

8 So staff did meet a number of times with RREEF and
9 with 3500 Sepulveda, had conversations since we did receive that
10 revision in mid-November.

11 So as I mentioned, in January the Council did direct
12 staff to prepare resolutions. Then in April the City Council
13 reviewed those resolutions based on that direction. There was
14 extensive discussion and the Council asked for further
15 refinement. And the application was continued until May 20th.
16 Then on May 20th the resolutions were brought back to Council
17 with those further revisions and they incorporated the following
18 refinements:

19 The Council asked that a
20 added to the west side of the Phase 1 north parking structure.
21 That would be to benefit 3500 Sepulveda. It would be close to
22 that project. Also to reduce the Phase 1 north parking
23 structure. That's that same parking structure to a G plus one,
24 so that's ground level plus one. What the Council was looking
25 at before was ground level one and then another half of a story

Condition No 50(q)
Stated as a benefit to 3500
Sepulveda

1 on the second level.

2 And approved Phase 1, 2 and 3. So adding Phase 3 back
3 into the project. It had been removed previously. Council
4 asked for it to be added back in, providing a copy of the
5 agreement between Macy's and RREEF when it becomes available to
6 have RREEF and 3500 Sepulveda to negotiate in good faith, and
7 then to have the City's environmental consultant to review any
8 implications for CEQA, the California Environmental Quality Act,
9 which actually has been included in your packet. And they have
10 made the determination, both from a traffic standpoint and any
11 other environmental standpoints, that there are no additional
12 impacts with these very minor proposed revisions.

13 So Option A, which is included in your packet -- those
14 are the resolutions in your packet -- are consistent with the
15 City Council direction on May 20th. You'll also see the City
16 Attorney has prepared a legislative digest which points out the
17 differences between the last resolution that the Council saw --
18 and these are the items that I mentioned already, the stairway,
19 the elevator, reducing the north parking structure, approving
20 all three phases, the agreement between Macy's, the negotiation
21 and the CEQA implications.

22 So I'd like to go through some of the community
23 benefits of the project. This applies to Option A as well as
24 Option B, providing resident serving businesses, upgrading the
25 architecture. The slide on the left, actually, shows -- that is

1 used. Having an 88 parking program, so we have very convenient
2 parking. And the pedestrian access and parking for 3500
3 Sepulveda will also be enhanced.


4 Bridges from the stores -- from the parking structures
5 into Macy's, as well as other stores. Having greenbelt
6 connection down in the culvert under Sepulveda to the Veterans
7 Parkway. Bicycle accommodations throughout. Pedestrian transit
8 linkage. And of course, having very upgraded, mature
9 landscaping, which was really important to the Council. And
10 upgrading the signage throughout the site.

11 So Option B, in addition to all those community
12 benefits, there are others, which I will go over with you. So
13 what -- what Option B is, is consistent with the January 14th
14 motion that was made by the Council, which is to maintain the
15 Phase 1 north parking structure as a G plus two, but then that
16 second level, having that be set back. So that would be set
17 back an additional 90 feet, so it's about 200 feet from the 3500
18 Sepulveda building and 90 feet back from the west edge of the
19 parking structure. So you have that stairstep, the hanging
20 landscaping and the mature landscaping around.

21 And also the applicant's requesting that the Phase 3
22 be deferred until a later date.

23 They have also offered some additional site
24 improvements as new conditions. The first one would be to add
25 30 additional parking spaces down in the culvert area adjacent

RREEF offered to add
the 30 spaces



1 to 3500 with a stairway that would lead directly from that
2 parking up to the 3500 Sepulveda building. Doing some interim
3 upgrading to the landscaping and signage at the corner of
4 Sepulveda and Rosecrans. Since Phase 3 would be deferred, we
5 wanted to -- that's a really important gateway to the city, so
6 they are suggesting to upgrade that -- that area.

7 And then as someone had mentioned before, the
8 33rd Street at Sepulveda Boulevard having a right-turn lane and
9 decel lane into the mall, that is something that they have also
10 offered.

11 If this is an option that Council approves, we can
12 draft specific portions of the resolution at tonight's meeting
13 to accommodate these modifications.

14 So this is the proposed site plan for Option B.
15 You've seen this site plan before. It basically still does not
16 show Phase 3. It has Fry's being retained on the site, the main
17 mall building, Phase 1 in the front here with the parking
18 structures, and of course, the plaza area, Phase 2 with the
19 Macy's expansion, the Macy's Men's going from this location over
20 to the north side, and this being new tenants. And then the new
21 parking structure at the north end.

22 And then the additional community benefits, I
23 mentioned all those with Option A, which would -- you would
24 still have all of those benefits with Option B. And in
25 addition, you'd have the 30 additional parking spaces down in

1 this area with the stairway that would lead up to 3500, the
2 landscaping and signage that I mentioned at the corner, and then
3 the right-turn decel here at 33rd by the Wells Fargo building.

4 So Options C and D: C would be to have additional
5 modifications and reasonable conditions as the Council feels is
6 appropriate. And Option D would be to direct staff to prepare
7 resolutions to deny the application.

8 So my conclusion slide has all your Options, A, B, C,
9 and D. And I'll just go over them very briefly again.

10 Option A would be to approve the project as directed
11 by the Council on May 20th. The resolution you have in your
12 packet is consistent with that direction. We also added the
13 condition for the interim landscaping and signage, because we
14 felt that was -- was something the Council would want.

15 Option B is consistent with the January 14th motion
16 and direction that was provided by the Council. So that would
17 have the north parking structure in Phase 1 as G plus two with
18 the second level stepped back. Phases 1 and 2 only, not
19 Phase 3. And then the landscaping and signage at Sepulveda and
20 Rosecrans, as well as adding the 30 additional parking spaces
21 next to 3500, plus the stairwell and the right-turn decel lane
22 at Sepulveda and 33rd. And, of course, Options C and D are also
23 shown.

24 And if you have questions, I will be happy to answer
25 them.

1 you can really feel it and experience it.
2 But if I may, just briefly, from an ownership
3 perspective, this rendering here, if we just have one shot to
4 leave you with, this would be it. This summarizes our vision.
5 This is what we want to create. This is precisely what we feel
6 and our experts feel is what the mall needs to preserve and
7 protect its current vitality and health, but also to position it
8 for the future, not only to compete with what's going on in the
9 trade area, but what's going on in the retail industry in and of
10 itself.

11 I did want to spend a quick minute on who we are,
12 because you're right, and we agree with you, character matters,
13 the ability to execute matters, and having deep retail --
14 significant relationships matters. As owners of the mall, we've
15 proven track record on execution. We're showing our project
16 here that Callison did, which is in Marina del Rey, Marina
17 Marketplace. A very successful renovation and repositioning of
18 that asset with significant capital investment.


19 As far as deep, significant retail relationships,
20 we're partners with Simon on St. Johns Town Center, which is the
21 largest mall between Atlanta and South Florida on the East
22 Coast, in Jacksonville. You don't get any more significant in
23 the retail world than Simon.

24 As far as the mall's ownership, the philosophy is one
25 of very conservative, long-term hold, and we believe in making

1 significant capital improvements in our assets that are
2 meaningful to keep it healthy in the current form, but also to
3 position it in the future.

4 I did want to quickly touch on the impact to the
5 community and beyond, just that retail experience that we wanted
6 to create. And Laurie touched on the site changes, which is
7 this diagram here, so I'll save the time for Amber. But I did
8 just also want to touch on, we all recognize that the mall is a
9 significant revenue producer and a major economic engine for the
10 City. So we do think it's worth emphasizing in our closing
11 argument here that you're talking to a private owner, not
12 looking for any public funds whatsoever, wanting to and asking
13 for your approval to invest well over \$100 million into the
14 largest or certainly most significant revenue producer for the
15 City.

RREEF approves all
conditions, but 50(r)



16 Our position on going forward, I believe, would be
17 summarized best in Option B that Laurie -- we're in full
18 agreement with each and every one of the 12 conditions from
19 January, and we're in agreement with most of the ones from May.
20 The one that we simply cannot do -- it's not that we won't do
21 it, it's that we can't do it because it jeopardizes the whole
22 project -- is the further reduction of any parking or anything
23 to deck two.

24 So with that, I'd like to turn it over to Amber and
25 let her take you right into the project, and hopefully, you'll

1 not giving up. Because why? It's the right thing to do. It's
2 what's needed to do. So we went back and looked at it. And
3 then we came to the conclusion after that, as he said that
4 night, we simply couldn't do that.

5 So all we're asking for is a chance to revive the
6 project back to that date and take that condition out.

7 COUNCIL MEMBER LESSER: And finally, there's been an
8 allegation that you really didn't negotiate with 3500 LLC and
9 the affiliates. I'm just wondering how you respond to that?

10 MR. SAUNDERS: I talked about in our presentation and
11 I'm going to stress it right here: Character matters. Okay.
12 And I'll stand right here and tell you that we have abided by
13 and have fulfilled and we are honoring every single element of
14 that Settlement Agreement, unquestionably.

15 COUNCIL MEMBER LESSER: Thank you.

16 I do have questions for a representative of 3500
17 Sepulveda LLC, whoever wants to address it.

18 Mr. Neumann, in the revised proposal there is this
19 offer to -- not offer, it's part of the plan -- to add these 30
20 spaces, and I know you indicated you're not sure exactly where
21 they're located. But I wanted to find out, one, why those 30
22 spaces are inadequate to address some of your concerns about
23 parking? And two, two additional proposals that are part of
24 this revised proposal that includes adding an elevator and a
25 stairway on the west side of the parking structure that is on

1 the north side, which I thought in your presentation at our
2 earlier meetings you felt were important.

3 MR. NEUMANN: Councilman, I appreciate you asking me
4 those questions. And I really appreciate being able to answer
5 them after the last answer we just got from Joe Saunders.

6 I met one time with Joe Saunders. And isn't it
7 interesting that in that meeting it was never identified where
8 these 30 spaces are. I do not know where they are. Could
9 somebody tell me? Planning staff? Somebody from Deutsche Bank?
10 So I don't know where they are. And -- and to say you
11 negotiated in good faith with a member of the community, I'm a
12 Manhattan Beach resident in addition to a property owner, and to
13 say before this Council that I negotiated in good faith and
14 character counts, when you came to a meeting and said, we're
15 18 billion -- or however many billion they are, we're the bigger
16 property owner and you have to do what we want. I really don't
17 think that's good faith.

18 Are those enough spaces? The whole -- the big thing
19 that's driving all this is parking. And we've proven to you,
20 we've shown you plans, where the parking adjacent to our
21 building continually is being reduced. The parking in the whole
22 center is being reduced.

23 And if you ask your friends and neighbors, they want
24 more parking. And what they really want, they want better
25 shops. They're not saying more shops, they just want different

1 tenants. So --

2 COUNCIL MEMBER LESSER: But from your perspective --

3 MR. NEUMANN: Is not, no. Where are the spaces? I
4 believe they're down in the ditch. Okay. How does my
5 91-year-old father in a wheelchair get to that space? Please
6 tell me. It's not comparable.

7 COUNCIL MEMBER LESSER: I don't want to interrupt your
8 response, but what about the other amenities or changes,
9 modifications, parts of this revised proposal that has been
10 presented that includes the stairs and the elevator on the west
11 side of the north parking structure?

12 MR. NEUMANN: Let's talk about the added amenities
13 that have been added to this new project. On Sepulveda, there
14 is one out of three driveways that's going to get a right-turn
15 lane. The Sepulveda design guidelines, the laws of our City say
16 every driveway has to have a right-turn deceleration lane. So
17 why are the new amenities only one driveway out of three? I
18 know why, because it doesn't disturb their other tenants. They
19 can sneak it through the Wells Fargo, but they can't sneak it
20 through at the other ones.

21 And so when you ask me about an elevator and a
22 stairwell, well, that was promised to me in 2008. The ADA laws
23 of our country and the handicap laws of our state require equal
24 access to parking in a shopping center. That should have been
25 in the project all along. Why it wasn't there, I don't know.

1 speak. So at this point I will close open comment. And now I
2 just want to read something again from the script that was
3 provided by our City Attorney. And it says let's consider the
4 options. And this is for City Council now.
5 Option A is the City Council direction on May 20th,
6 2014.
7 Option B is the City Council direction on
8 January 14th, 2014, with the additional offers and enhancements
9 by RREEF.
10 Option C is adding any additional reason conditions.
11 And Option D is directing staff to return with a
12 resolution denying the application. To me that seems like that
13 covers all the bases.
14 So now I will ask my Council Members to weigh in. And
15 it's always traditional the mayor goes last, even though I
16 always want to go first. So I see a request by Council Member
17 Howorth.
18 COUNCIL MEMBER HOWORTH: Thank you, Mr. Mayor, and my
19 fellow colleagues, and all of you sitting here tonight and at
20 home in television land.
21 I'm going to make some comments in general. And as I
22 said, thank you. Thank you all for being here tonight,
23 following us, whether it is online or at home or in a newspaper.
24 And I want to welcome, again, Marissa. Hey, welcome to your
25 second day of work, Ms. Community Development Director. I

1 other malls. Okay. We still want a place -- the residents here
2 want a place to go like that, that's easy to drive to, that they
3 can and that there is some outdoor space, the parking will be
4 easy.

5 They actually did add in an extra staircase at an
6 elevator. I want to correct that, too. Because the parking
7 structure was ADA compliant because there was an elevator and
8 staircase on the other side, they added, as a condition of --
9 the Council said to do for the Hacienda building. Please put
10 one on the Hacienda building side. So that is an added
11 condition.

12 And another thing I wanted to say and I'll try and
13 connect my dots here. When I said thank you to Mr. Mayor for
14 protecting the staff, we need it. Okay. I mean, when staff --
15 when someone -- when we need more information and we're not
16 satisfied, yeah, I get it, we need to really question people and
17 everyone needs to take responsibility for themselves. But it's
18 also well and good that, as leaders, we also take care of the
19 people who work for us when they do the right thing.

20 No one -- and it's also everyone's purview to advocate
21 for their own self-interest. Okay. Every business owner should
22 do that. Every resident should do that. Every neighbor who
23 lives -- and is going to be impacted should do that. And it's
24 my job to go 30,000 feet up and look at everything. All right.
25 And that's what I'm trying to do here.

1 property, they would have no additional development. They're
2 concerned about any further development of this parcel because
3 of larger concerns about what's happening in our region.

4 Meanwhile, RREEF and Macy's, which own the majority of
5 the 44-acre site, have their own vision. It's a vision that's
6 disputed by the third owner. And that is in the background of
7 much of what we've heard tonight and over many public hearings.

8 In 17 public meetings, 15 over the last two and a half
9 years, this proposal has evolved. It's resulted in a smaller
10 project. I would have preferred more notice for this meeting
11 tonight. I think many of us didn't know what the status of this
12 process -- I'm sorry -- of this project was and it was a
13 surprise when it came back in November.

14 But I am prepared to support Option B and support the
15 project. And let me explain why. The parking lots, the top
16 levels have been scaled back, significantly so. We saw with the
17 visuals tonight that they will be difficult to see from
18 Sepulveda. Around the perimeter there are retail stores,
19 articulation and landscaping, something that in prior public
20 meetings -- meetings open -- the Council had asked for,
21 residents had asked for, and the developer is providing. The
22 public courtyard, something I felt was terribly important, has
23 been expanded and includes a water feature and is larger than it
24 was originally proposed and I think is getting close to an
25 amount that I certainly would enjoy with my family.

1 There's been an attempt to address the concerns of
2 3500 Sepulveda LLC. The stairway and the elevator on the west
3 side of the north parking lot was presented at earlier meetings
4 as something important to them. At this point there are other
5 issues that have been raised, but RREEF has come back and done
6 them. The 30 additional parking spaces -- I mean, there had
7 been a question of exactly where they are, but I think that will
8 be helpful to what I have thought was one of the issues that
9 3500 Sepulveda LLC was concerned about originally.

10 Most significantly, to me, is the scale of the project
11 has been reduced. Phase 1 was reduced by 10,000 square feet
12 back in January. Phase 3 is deferred until there is a more
13 specific plan. There needs to be more information. And while
14 we could entitle Phase 3, my understanding is there would need
15 to still be a number of public meetings to go through the
16 specifics of what that proposal would be. So I'm not prepared
17 to entitle Phase 3 at this point. There's a lot more
18 information I'd like to know about it. And I think that two
19 phases are a responsible first step.

20 I think -- the final comments are, the retail
21 marketplace is changing dramatically. The Internet has changed
22 much. All around us in this area there are other shopping
23 developers that are well capitalized that are seeking to poach
24 various retailers and restaurants that are in our mall. And I
25 want to give the owner of the property additional tools --

1 lane, the right-turn pocket -- and it's actually only a
2 deceleration lane -- would go away when the additional lane was
3 made. The applicant is proposing to rectify that with a full
4 acceleration/deceleration lane on their property. That will
5 improve the traffic flow, and more importantly, the safety. I
6 commend them for that.

7 They also proposed the 30 additional parking spaces
8 next to the 3500 building as an accommodation. The stairs is an
9 accommodation. I can't tell you how many times that Fry's
10 parking lot was full and so I parked in the mall and had to,
11 literally, crawl down the dirt cliff, if you will, to get to
12 Fry's and then, worse, try and come back up. And I fell once.
13 And you can't do that if it's raining because it's a bunch of
14 mud. They proposed adding stairs. Long overdue.

15 Now, at our May 20th meeting I made a motion, which I
16 believe was a compromise motion. And now I regret that I made
17 that. I accepted at the time a friendly amendment to add
18 Phase 3 as a requirement, despite my better judgment. You don't
19 approve something that's conceptual. I mean, you know, that's
20 really no approval. It's like writing a blank check. And it's
21 going to require additional public hearings down the road
22 anyways. That was not the thing to do.

23 Plus, when the mall developers finish Phase 1 and 2,
24 things may have changed in the marketplace and maybe what they
25 feel is appropriate then is different from what it is now.

1 understanding as to why we're being given the various options.
2 Effectively, Option B is what we approved and directed
3 staff to come back with the resolution of approval, is to have
4 the two levels plus part of a third level in the back with the
5 pedestrian ramp so people don't have to cross, you know, that
6 street and impede other people. And we do have a bicycle safety
7 area. It's pedestrian friendly. It makes perfectly good sense.
8 And I wish that we hadn't -- or I hadn't, as a compromise,
9 reached out.

10 But you know what, after we did that and we said we're
11 going to narrow it -- limit it to two floors or ground plus one
12 level, I got a number of e-mails that said, you know what, we
13 don't want any parking structures. We don't want any expansion.
14 Yeah, if you want to remodel it, slap a coat of paint on it and
15 be done with it. Or they said, we just don't want anything.
16 Not reality either. So we and I am --

17 (Video frozen.)

18 MAYOR POWELL: -- the condition was that, within ten
19 days after the approval, in other words, the granting of the
20 mall, they will sign. We got a letter late -- as of late, which
21 was referred to, where they actually state that they are onboard
22 and in agreement and they will be consolidating.

23 Yes, it was mentioned that there will be certain
24 things that are redacted for the Council and the public not to
25 see. And they state that that is critical confidential

1 information that nobody should see, because you might as well
2 just give it to our competitors and then Macy's will go there.
3 That is understandable. That's good, plain common business
4 sense. It's not being, again, nefarious or hiding anything.
5 It's just something that really isn't relevant to us, but is
6 kind of like a trade secret. And that makes perfectly good
7 sense.

8 So for somebody to say, we need to have this agreement
9 first, that's just not reasonable. And for somebody to say, oh,
10 but they're -- they're striking out certain things that we can't
11 see, sort of like the Freedom of Information Act, it's
12 confidential trade secrets and we don't need to see it. And it
13 doesn't concern us. So I just want to make those points clear.

14 Okay. So now I'll cut to the chase. That's why they
15 probably gave me a script, because they know that I've never
16 been at a loss for words. But between the options, I select
17 Option B, which effectively is what -- not effectively, it's
18 what we directed staff, to come back with a resolution of
19 approval way back on January 14th with additional enhancements:
20 The acceleration/deceleration lane, the 30 additional parking
21 spaces, all of the things -- the stairs going down -- all of
22 those additions are good things. They're not bad things.

23 Somebody was saying, oh, now they're throwing
24 additional conditions. No, they're doing it for the benefit of
25 the public. Because over the period of the public hearings,

1 any discussion about the particulars, the EIR. And we know
2 we're going to be sued on the EIR, so let's do it the right way.
3 And if I want to go through your -- I think we had a discussion
4 last time, Mr. City Attorney --

5 MAYOR POWELL: The City Attorney wants to say
6 something.

7 MR. BARROW: I should respond to that. Yes, you have
8 to take action on the resolution on the environmental review.
9 First, in terms of discussion, it's been discussed at length
10 through all the different public hearings, all the conditions --
11 when we say the conditions, all the features of the
12 environmental impacts, they've been fully discussed at this
13 point. So at this time there should be a motion to consider
14 certifying the EIR.

15 COUNCIL MEMBER HOWORTH: So my motion would be to
16 adopt the attachment of the Resolution No. 14-0025 and adopt --
17 this is Option B, No. 14-0026, with modifications requested by
18 RREEF.

19 And the only thing I would add in there is that the
20 City have -- have some ability to make sure that the
21 construction parking plan is absolutely beneficial to the
22 Hacienda building as well. I don't know how to put teeth in
23 that. But I'm ready to approve Option B and I would ask that we
24 direct staff separately to really delve into that and get
25 involved if need be to make progress happen.

1 approve Option B, Option B is that -- you have the legislative
2 digest in your packet, which shows all the changes that were
3 made primarily to include Phase 3 and to reduce the parking --
4 the north parking structure to two levels. And so if this
5 motion is adopted to adopt Option B, I'd like to take a break --
6 or also, there may be some additional conditions added, but
7 after there is filing of a vote, I would like to take a break
8 and take this resolution and then bring it back tonight and --
9 so the public can see the changes. It's basically the stuff
10 that was crossed out of the one -- the legislative digest in
11 your packet would be the converse of that. So in other words,
12 where it says, "Phase 3 is now part of this project," it will
13 say, "Phase 3 is not part of the approvals."

14 COUNCIL MEMBER LESSER: And I have just a point of
15 order question with regard to adequate notice to the public of
16 those changes. If, in fact, you're going to take a break and
17 make some proposed changes, even though they'll be displayed
18 here, could one argue that that is inadequate notice for the
19 public?

20 MR. BARROW: I'm sure there will be some arguments,
21 not to mention anyone in this room, but since it was identified
22 in the staff report clearly, and you can take a look at the
23 conclusion, it's clearly within the scope of the potential
24 options that could take place tonight. And -- and so pursuant
25 to the Brown Act, due process, everyone who's here understands

1 that it's now December 3rd, and you agendized this meeting for
2 December 2nd. There wasn't a motion before midnight to continue
3 it beyond midnight, so I think you now have a Brown Act problem.

4 MAYOR POWELL: Actually, I think that's incorrect, but
5 I will ask the City Attorney.

6 MR. BARROW: That's incorrect.

7 MAYOR POWELL: Thank you. Okay. So we will now --

8 MR. BARROW: The motion's still on the floor.

9 COUNCIL MEMBER HOWORTH: Okay. Great.

10 MR. BARROW: But there is one issue that -- you were
11 talking about the construction plan, so if we can put the
12 options back on the screen so the public is aware of what --

13 COUNCIL MEMBER HOWORTH: Thank you.

14 MR. BARROW: -- Option B is. What's the condition on
15 the construction plan? What number, do you remember?

16 Forty-nine.

17 COUNCIL MEMBER HOWORTH: Well, that's the construction
18 plan that's in the EIR. I'm talking about the real -- you know,
19 the real plan.

20 MR. BARROW: So if you can express your concern, what
21 is it?

22 COUNCIL MEMBER HOWORTH: My concern is in the
23 worst-case, you know, scenario, if every bad thing has -- that's
24 ever been said is true, that -- and it might be -- that there
25 will be construction staging in front of where the Hacienda --

1 this is -- this is just protecting on the off chance -- I don't
2 believe this is true, actually, but I'm trying to protect -- to
3 offer some protection to the Hacienda businesses, that there
4 will still be parking in front of their building open during
5 construction. Because if people say, well, we have a
6 construction plan, you know, but they don't follow it, that
7 really impacts, like, the tenor of business. That really
8 impacts that business. And so I'm trying to say we should take
9 some responsibility for making sure that that's followed.

10 MR. BARROW: Okay. So if you take a look at Condition
11 49 on Page 275. We can emphasize with language perhaps added to
12 the first sentence --

13 COUNCIL MEMBER HOWORTH: Wait. You know what,
14 Mr. Attorney --

15 MR. BARROW: Right.

16 COUNCIL MEMBER HOWORTH: Here's what I worry about.
17 By me doing this -- I'm going to take that back. By me doing
18 this at this point, someone's going to say we didn't have enough
19 public notice and I'll get caught on that. Do you know what I'm
20 saying?

21 COUNCIL MEMBER LESSER: Can I make a suggestion? My
22 understanding is this is the typical protocol for traffic
23 management plans for large projects. I'm just wondering if we
24 can have the Planning Manager, perhaps, discuss exactly what
25 typically follows when there is a condition like this in a

1 resolution. So there might be some better understanding as
2 to --

3 COUNCIL MEMBER HOWORTH: Well, because I don't want to
4 get caught -- I mean, I would like to go ahead with this motion.
5 And I don't want this extra little direction to tie it up,
6 because somehow that wasn't noticed to the public or part of it.
7 So I'm willing to wait on that.

8 MR. BARROW: Here's my suggestion: Go ahead with the
9 motion, which I believe is Option B, and we'll put that back on
10 the screen.

11 COUNCIL MEMBER HOWORTH: Yes.

12 MR. BARROW: And --

13 COUNCIL MEMBER HOWORTH: That's what I want to do.

14 MR. BARROW: Then you can give direction -- if this
15 motion passes, then you can give direction to the staff to make
16 sure that 3500 is completely addressed during construction.

17 COUNCIL MEMBER HOWORTH: So Option B, that's what I'm
18 making the motion to approve and accept.

19 MR. BARROW: So that will be to adopt the resolution
20 14-0026.

21 COUNCIL MEMBER HOWORTH: Yes.

22 MR. BARROW: With the changes that are approving
23 Phases 1 and 2, it's maintaining the north parking structure as
24 G2 with a 90-foot setback on the second level. Be the
25 installation of interim landscaping and signage at Sepulveda and

1 Rosecrans. It's installation of 30 additional parking spaces
2 adjacent to 3500 Sepulveda in the culvert with a stairway
3 leading directly to 3500 Sepulveda, and then also, essentially,
4 accept the offer of RREEF to provide a right-turn deceleration
5 lane from Sepulveda at 33rd Street into the mall.
6 COUNCIL MEMBER HOWORTH: That is my motion.
7 UNNAMED SPEAKER: Mayor Powell said there would also
8 be an acceleration lane.
9 MAYOR POWELL: Isn't that a combined --
10 UNNAMED SPEAKER: So now it is unsafe to get out of
11 there.
12 MAYOR POWELL: Excuse me. It's a deceleration lane.
13 MR. BARROW: Leaving Sepulveda and going into the
14 mall.
15 COUNCIL MEMBER HOWORTH: Yeah, you want -- yeah.
16 MAYOR POWELL: Okay.
17 COUNCIL MEMBER HOWORTH: My motion.
18 MAYOR POWELL: That's your motion. If I can have the
19 City Clerk put it up there. Maybe you can push your --
20 COUNCIL MEMBER HOWORTH: Oh, sorry. I had and then I
21 keep --
22 MAYOR POWELL: And that's been seconded by Council
23 Member Lesser, so if now there is any discussion on that motion.
24 MAYOR PRO TEM BURTON: I had some friendly amendments.
25 MAYOR POWELL: Okay.

1 resolution, 0026, and that showed you the converse -- that
2 showed you all the deletions. So these are -- we're adding back
3 the language that was reflected in that legislative digest for
4 the most part. And we'll walk it through.

5 And once again, as a threshold issue, the two major
6 changes would be not approving Phase 3 at this time and going
7 back to the January motion with respect to the parking
8 structure, so it's G plus one and 60 percent.

9 MAYOR POWELL: With the 90-foot recess?

10 MR. BARROW: Right, the 90-foot.

11 So the first change is the typo correcting the South
12 to North Sepulveda. And it's in red.

13 The next change is deleting approval of Phase 3. And
14 so you can see the new language, which is identical to the
15 language that was in the January resolution. "The portion of
16 the application related to that corner is part of the proposed
17 Phase 3. The City is not approving Phase 3 at this time."

18 Down below we deleted CG zones, because the only
19 portion of the mall that's in the CG zone is in Phase 3.

20 MAYOR POWELL: Okay.

21 MR. BARROW: And so you'll see as we scroll down there
22 will be a number of deletions of "CG." Once again, that was not
23 in the original resolution that you considered back in May.

24 We have right-turn pockets. This adds the offer by
25 RREEF to provide for a right-turn deceleration lane at 33rd

1 So then we go to the conditions. As you can see, no
2 changes to the agenda -- the draft agenda that was in your
3 packet until you get to the -- I don't know. Once again, it's
4 referring to the deletion of Phase 3. In the event RREEFF seeks
5 approval of Phase 3, they need to submit plans for a permanent
6 city gateway identification signage at the corner of Rosecrans.

7 MAYOR POWELL: And where do we see the requirement for
8 the interim gateway signage?

9 MR. BARROW: That's above there. And that was
10 actually in both resolutions.

11 MAYOR POWELL: Oh, okay.

12 MR. BARROW: So that's not a change between -- and
13 that's right above that same paragraph, "As noted in the staff
14 report, staff felt that even if you had approved Phase 3 tonight
15 there would still be a delay before Phase 3 was actually
16 constructed and staff recommended that the City needed the
17 interim signage and landscaping, which was analyzed by our CEQA
18 consultant."

19 MAYOR POWELL: Okay.

20 MR. BARROW: Yes. And condition -- I'm not sure --
21 it's 13B.

22 MS. JESTER: 13A.

23 MR. BARROW: 13A. That's back to the north parking
24 structure as G plus two. And it says G plus one. And later on
25 we'll get to the 90-foot setback.

1 turn lane. Once again, analyzed by our CEQA consultant. Let's
2 move on.

3 And so 50 are the three new conditions, back to the
4 north parking structure, which actually is not new. It goes
5 back to the May 20th resolution. It's G plus two with a Level 2
6 setback of 90 feet from the western edge of the parking
7 structure's footprint.

8 This is the 30 -- the offer of installing -- 30
9 additional parking spaces shall be provided on the west side of
10 the lower level parking lot with pedestrian access to the 3500
11 Sepulveda building. And once again, the applicant has agreed to
12 construct the parking spaces and also the -- the stairway.

13 Once again, all those additional parking spaces and
14 the stairway were analyzed by the CEQA consultant.

15 And finally, once again, "the right-turn deceleration
16 lane northbound Sepulveda Boulevard at 33rd Street shall be
17 provided into the project site."

18 So we'll see if there is anything more. So once
19 again, all these changes were identified in the staff report.
20 They were fully discussed and fully analyzed by the CEQA
21 consultant.

22 MAYOR POWELL: Okay. So --

23 MR. BARROW: One more thing that I should mention, and
24 actually, it's not on the resolution, but I think it was
25 mentioned earlier that the condition was that RREEF would

1 COUNCIL MEMBER HOWORTH: See, he's fair. He's fair.
2 MR. BARROW: So that document will be available to the
3 public. In fact, we can perhaps print it out now if people want
4 it, but looking at -- it's 1:00 tonight. It will be available
5 tomorrow morning and there will be not just the red-line
6 version, but a clean copy that has accepted all those tracked
7 changes.
8 MAYOR POWELL: And those will be uploaded to the
9 website?
10 MR. BARROW: Yes.
11 MAYOR POWELL: With the link. Okay. Great. So I
12 believe that concludes this agenda item.
13 MR. BARROW: Yes.
14 MAYOR POWELL: Thank you.
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Manhattan Village Shopping Center
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EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MANHATTAN BEACH, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF LOT 4 IN SECTION 19, TOWNSHIP 3 SOUTH, RANGE 14 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON PARTITION MAP SHOWING PROPERTY FORMERLY OF REDONDO LAND COMPANY, SUBDIVIDED BY JAMES F. TOWELL, C.A. EDWARDS AND P.P. WILCOX, COMMISSIONER, SURVEYED AUGUST, 1897, BY L. FRIEL AND FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ON SEPTEMBER 3, 1897 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 19;
THENCE SOUTH 0° 04' 16" EAST ALONG THE WEST LINE THEREOF, 77.04 FEET;
THENCE NORTH 89° 55' 44" EAST PERPENDICULAR TO SAID WEST LINE 20.00 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 0° 04' 16" EAST PARALLEL TO SAID WEST LINE 415.97 FEET TO A POINT IN THE SOUTH LINE OF SAID LOT 4;
THENCE NORTH 89° 58' 45" EAST ALONG SAID SOUTH LINE 48.15 FEET, TO A POINT IN THE NORTHWESTERLY LINE OF THE 100 FOOT WIDE RIGHT OF WAY OF THE SOUTHERN CALIFORNIA RAILWAY COMPANY PER BOOK D-508 PAGE 76, OFFICIAL RECORDS OF SAID COUNTY, SAID POINT BEING A POINT IN A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 5779.65 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS NORTH 38° 19' 56" WEST;
THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 626.58 FEET THROUGH A CENTRAL ANGLE OF 6° 12' 42";
THENCE TANGENT TO SAID CURVE AND CONTINUING ALONG SAID NORTHWESTERLY LINE OF SAID RIGHT OF WAY NORTH 57° 52' 45" EAST 154.20 FEET TO A POINT IN THE SOUTHERLY LINE OF THE NORTHERLY 50.00 FEET OF SAID SECTION 19, SAID POINT ALSO BEING A POINT IN THE SOUTHERLY LINE OF ROSECRANS AVENUE, 100 FEET WIDE AS SAID AVENUE EXISTING ON NOVEMBER 29, 1979;
THENCE SOUTH 89° 58' 45" WEST ALONG SAID SOUTHERLY LINE FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 27.00 FEET;
THENCE WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG SAID CURVE AN ARC LENGTH OF 42.43 FEET THROUGH A CENTRAL ANGLE OF 90° 03' 01" TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF SAID LAND CONVEYED TO THE CITY OF MANHATTAN BEACH, A MUNICIPAL CORPORATION, BY DEEDS RECORDED OCTOBER 2, 1997 AS INSTRUMENT NOS. 97-1521451 AND 97-1521452, BOTH OF OFFICIAL RECORDS, SAID PORTION BEING DESCRIBED AS PARCEL 27-5 ON EXHIBIT "A" ATTACHED THERETO, TO BE KNOWN AS SEPULVEDA BOULEVARD.

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PARCEL 2:

THAT PORTION OF THE 100 FOOT WIDE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS DESCRIBED IN THAT CERTAIN DEED FROM THE REDONDO LAND COMPANY AND CHARLES SILENT, RECORDED OCTOBER 31, 1888 IN BOOK 508 PAGE 76 OF DEEDS, IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BOUNDED WESTERLY BY THE EASTERLY LINE OF SEPULVEDA BOULEVARD AS DESCRIBED IN PARCEL 4 OF THAT CERTAIN TRIAL JUDGMENT OF CASE NO.300,196 IN THE COUNTY OF LOS ANGELES SUPERIOR COURT, A CERTIFIED COPY OF WHICH WAS RECORDED ON FEBRUARY 19, 1935 AS INSTRUMENT NO. 625 IN BOOK 13277 PAGE 106 OF OFFICIAL RECORDS OF SAID COUNTY AND BOUNDED NORTHERLY BY THE SOUTHERLY LINE OF ROSECRANS BOULEVARD, 100 FEET IN WIDTH.

PARCEL 3:

PARCELS 1 THROUGH 9 INCLUSIVE, 11 AND 13 THROUGH 23 INCLUSIVE, IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP NO. 12219, FILED IN BOOK 122 PAGES 33 THROUGH 35 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM THE PARCELS 1 THROUGH 8 INCLUSIVE AND 13 THROUGH 22 INCLUSIVE AND THAT PORTION OF PARCEL 23, INCLUDED WITHIN THE LINES OF PARCEL 3 OF PARCEL MAP NO. 11262, RECORDED IN BOOK 107 PAGES 37 AND 38 OF PARCEL MAPS, ALL OIL, GAS AND OTHER HYDROCARBONS, GEOTHERMAL RESOURCES AS DEFINED IN SECTION 6903 OF THE CALIFORNIA PUBLIC RESOURCES CODE AND ALL OTHER MINERALS, WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM THE PROPERTY; PROVIDED, HOWEVER THAT ALL RIGHTS AND INTEREST IN THE SURFACE OF THE PROPERTY HAVE BEEN CONVEYED TO GRANTEE, NO RIGHTS OR INTEREST OF ANY KIND THEREIN, EXPRESS OR IMPLIED, BEING EXCEPTED OR RESERVED TO GRANTOR EXCEPT AS THEREINAFTER EXPRESSLY SET FORTH THEREIN.

ALSO EXCEPT THE SOLE AND EXCLUSIVE RIGHT FROM TIME TO TIME TO DRILL AND MAINTAIN WELLS OR OTHER WORKS INTO OR THROUGH PROPERTY BELOW A DEPTH OF 500 FEET AND TO PRODUCE, INJECT, STORE AND REMOVE FROM OR THROUGH SUCH WELLS OR WORKS, OIL, GAS AND OTHER SUBSTANCES OF WHATEVER NATURE, INCLUDING THE RIGHT TO PERFORM ANY AND ALL OPERATIONS DEEMED NECESSARY OR CONVENIENT FOR THE EXERCISE OF SUCH RIGHTS, AS RESERVED BY CHEVRON U.S.A., INC., A CALIFORNIA CORPORATION, RECORDED APRIL 19, 1979 AS INSTRUMENT NO.79-424732 OF OFFICIAL RECORDS, AS TO THAT PORTION OF SAID LAND, ACQUIRED BY DEED RECORDED APRIL 2, 1923 IN BOOK 1993 PAGE 351, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM PARCEL 22 ABOVE ALL THAT PORTION OF THE REAL PROPERTY CONVEYED TO THE CITY OF MANHATTAN BEACH PER THAT CERTAIN INSTRUMENT ENTITLED "GRANT DEED-DEED OF DEDICATION" RECORDED JUNE 25, 2002 AS INSTRUMENT NO.02-1439469, OFFICIAL RECORDS.

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PARCEL 4:

THE NON-EXCLUSIVE EASEMENTS FOR, INGRESS, EGRESS, PARKING, UTILITIES AND MAINTENANCE IN, TO, OVER, UNDER AND ACROSS, THE "COMMON AREA" ALL AS DESCRIBED AND SHOWN IN THAT CERTAIN CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED NOVEMBER 1, 1980, EXECUTED BY MANHATTAN BEACH COMMERCIAL PROPERTIES, A GENERAL PARTNERSHIP, MANHATTAN HACIENDA PROPERTY CO., A GENERAL PARTNERSHIP AND FEDERATED DEPARTMENT STORES, INC., A DELAWARE CORPORATION, WITH ADDENDUM EXECUTED BY BUFFUMS, INC., A CALIFORNIA CORPORATION, RECORDED ON NOVEMBER 25, 1980 AS INSTRUMENT NO. 80-1188655 OF OFFICIAL RECORDS.

THE INTEREST OF MANHATTAN BEACH COMMERCIAL PROPERTIES, A CALIFORNIA GENERAL PARTNERSHIP UNDER SAID AGREEMENT HAS BEEN ASSIGNED TO BANK OF AMERICA NATIONAL TRUST AND SAVINGS TRUST AND SAVINGS ASSOCIATION, AS TRUSTEE OF THE MASTER PENSION TRUST OF THE PACIFIC TELESIS GROUP, BY ASSIGNMENT DATED DECEMBER 24, 1986 AND RECORDED DECEMBER 24, 1986 AS INSTRUMENT NO. 86-1800316, OFFICIAL RECORDS.

THE INTEREST OF BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, AS TRUSTEE OF THE MASTER PENSION TRUST OF THE PACIFIC TELESIS GROUP UNDER SAID AGREEMENT HAS BEEN ASSIGNED TO MANHATTAN ORE HOLDING COMPANY, INC. BY UNRECORDED ASSIGNMENTS NOT APPEARING IN THE PUBLIC RECORD .

THE INTEREST OF MANHATTAN ORE HOLDING COMPANY, INC. UNDER SAID AGREEMENT HAS BEEN ASSIGNED TO MANHATTAN VILLAGE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY BY ASSIGNMENT DATED AUGUST 19, 1997 AND RECORDED AUGUST 20, 1997 AS INSTRUMENT NO. 97-1291551 OF OFFICIAL RECORDS.

THE EASEMENT RIGHTS OF MANHATTAN VILLAGE, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY UNDER SAID AGREEMENT HAVE BEEN CONVEYED TO MADISON MANHATTAN VILLAGE L.P., A DELAWARE LIMITED PARTNERSHIP BY DEED RECORDED OCTOBER 30, 2000 AS INSTRUMENT NO. 00-1548302 OF OFFICIAL RECORDS.

THE INTEREST OF MADISON MANHATTAN VILLAGE L.P., A DELAWARE LIMITED PARTNERSHIP UNDER SAID AGREEMENT HAS BEEN ASSIGNED TO MADISON MANHATTAN VILLAGE, LLC, A DELAWARE LIMITED LIABILITY COMPANY BY ASSIGNMENT DATED JUNE 28, 2002 AND RECORDED JULY 8, 2002 AS INSTRUMENT NO. 02-1536001 OF OFFICIAL RECORDS.

THE INTEREST OF MADISON MANHATTAN VILLAGE, LLC HAS BEEN ASSIGNED OF RECORD TO RREEF . AMERICA REIT II CORP. BBB, A MARYLAND CORPORATION, BY AN ASSIGNMENT AND ASSUMPTION OF GROUND LEASE RECORDED MAY 5, 2004 AS INSTRUMENT NO. 04-1123082 OF OFFICIAL RECORDS.

PARCEL 5:

THAT PORTION OF PARCEL 3 OF PARCEL MAP NO. 13910, IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 145, PAGES 23, 24

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AND 25, INCLUSIVE, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE B.C. OF THAT CERTAIN CURVE ON THE CENTERLINE OF PARK VIEW AVENUE DESCRIBED AS C-2 ON SAID PARCEL MAP AND BEING CONCAVE SOUTHERLY HAVING A RADIUS OF 1400 FEET AND A LENGTH OF 424.58 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1° 28' 25" A DISTANCE OF 36.01 FEET;
THENCE ALONG SOUTHERLY RADIAL TO SAID CURVE SOUTH 15° 55' 23" EAST 25.00 FEET;
THENCE SOUTH 06° 08' 54" EAST 137.00 FEET;
THENCE SOUTH 10° 09' 19" EAST 97.57 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 80° 13' 52" WEST 127.21 FEET;
THENCE SOUTH 10° 24' 59" EAST 161.00 FEET;
THENCE NORTH 88° 14' 56" WEST 128.31 FEET;
THENCE NORTH 10° 47' 05" WEST 283.00 FEET;
THENCE NORTH 68° 14' 03" EAST 250.72 FEET;
THENCE SOUTH 12° 53' 22" EAST 200.00 FEET MORE OR LESS TO THE POINT OF BEGINNING.

SAID LAND IS NOW KNOWN AS BEING A PORTION OF PARCEL MAP NO. 23389, IN THE CITY OF MANHATTAN, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 260, PAGES 28 THROUGH 31 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID-COUNTY.

EXCEPT THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS, GEOTHERMAL RESOURCES, AS DEFINED IN SECTION 6903 OF THE CALIFORNIA PUBLIC RESOURCES CODE AND ALL OTHER MINERALS, WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM THE PROPERTY; PROVIDED, HOWEVER, THAT ALL RIGHTS AND INTEREST IN THE SURFACE OF THE PROPERTY HAVE BEEN CONVEYED TO GRANTEE, NO RIGHT OR INTEREST OF ANY KIND THEREIN, EXPRESS OR IMPLIED, BEING EXCEPTED OR RESERVED TO GRANTOR, EXCEPT AS THEREINAFTER EXPRESSLY SET FORTH.

ALSO EXCEPT THEREFROM THE SOLE AND EXCLUSIVE RIGHT FROM TIME TO TIME TO DRILL AND MAINTAIN WELLS OR OTHER WORKS INTO OR THROUGH THE PROPERTY BELOW A DEPTH OF 500 FEET AND TO PRODUCE, INJECT STORE AND REMOVE FROM OR THROUGH SUCH WELLS OR WORKS, OIL, GAS AND OTHER SUBSTANCES OR WHATEVER NATURE, INCLUDING THE RIGHT TO PERFORM ANY AND ALL OPERATIONS DEEMED BY GRANTOR NECESSARY OR CONVENIENT FOR THE EXERCISE OF SUCH RIGHTS, AS RESERVED IN DEED RECORDED APRIL 19, 1979 AS INSTRUMENT NO. 79-424731 OF OFFICIAL RECORDS.

PARCEL 6:

NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED PROPERTY AS PROVIDED IN EASEMENT AGREEMENT DATED AUGUST 3, 1984, REFERRED TO IN MEMORANDUM OF PARKING LOT LEASE AND EASEMENT AGREEMENT DATED SEPTEMBER 27, 2000 BETWEEN THE CITY OF MANHATTAN BEACH AND MANHATTAN VILLAGE, LLC, RECORDED ON OCTOBER 3, 2000 AS INSTRUMENT NO. 00-1548303 OF OFFICIAL RECORDS, AS ASSIGNED BY ASSIGNMENT AND ASSUMPTION OF GROUND LEASE, RECIPROCAL EASEMENT AGREEMENT AND

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EASEMENT AGREEMENT TO MADISON MANHATTAN VILLAGE, LLC, A DELAWARE LIMITED LIABILITY COMPANY BY INSTRUMENT RECORDED JULY 8, 2002, AS INSTRUMENT NO. 02-1536001 OF OFFICIAL RECORDS, AND THE INTEREST OF MADISON MANHATTAN VILLAGE, LLC HAS BEEN ASSIGNED OF RECORD TO RREEF AMERICA REIT II CORP. BBB, A MARYLAND CORPORATION, BY AN ASSIGNMENT AND ASSUMPTION OF GROUND LEASE RECORDED MAY 5, 2004 AS INSTRUMENT NO.04-1123082 OF OFFICIAL RECORDS.

THAT PORTION OF PARCEL 3 OF PARCEL MAP NO. 13910, IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 145 PAGES 23, 24 AND 25, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS :

BEGINNING AT THE B.C. OF THAT CERTAIN CURVE OF THE CENTERLINE OF "PARK VIEW AVENUE" DESCRIBED AS C-2 ON SAID PARCEL MAP AND BEING CONCAVE SOUTHERLY HAVING A RADIUS OF 1400 FEET AND A LENGTH OF 424.58 FEET;
THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1° 28' 25", A DISTANCE OF 36.01 FEET;
THENCE ALONG SAID SOUTHERLY RADIAL TO SAID CURVE SOUTH 15° 55' 23" EAST 25 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 06° 08' 54" EAST 137.00 FEET;
THENCE SOUTH 10° 09' 19" EAST 97.57 FEET;
THENCE SOUTH 80° 13' 52" WEST 127.21 FEET;
THENCE SOUTH 10° 24' 59" EAST 20 FEET;
THENCE NORTH 80° 13' 52" EAST 152.12 FEET;
THENCE NORTH 11° 09' 05" WEST 117.45 FEET;
THENCE NORTH 04° 39' 04" WEST 140.06 FEET TO THE SOUTHERLY SIDE OF SAID "PARK VIEW AVENUE", SAID SIDELINE BEING A CURVE CONCAVE TO THE SOUTH AND HAVING A RADIUS OF 1375 FEET;
THENCE WESTERLY ALONG SAID SIDELINE THROUGH A CENTRAL ANGLE OF 1° 07' 20", A DISTANCE OF 26.93 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

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SAID LAND IS NOW KNOWN AS BEING A PORTION OF PARCEL 1 OF PARCEL MAP NO.23389, IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 260, PAGES 28 THROUGH 31, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN(s): 4138-020-033; 4138-020-034; 4138-020-003; 4138-020-004; 4138-020-005; 4138-020-006; 4138-020-007; 4138-020-008; 4138-020-009; 4138-020-013; 4138-020-015; 4138-020-016; 4138-020-017; 4138-020-018; 4138-020-019; 4138-020-020; 4138-020-021; 4138-020-022; 4138-020-023; 4138-020-027; 4138-020-030; 4138-020-035; 4138-020-036

LEGAL DESCRIPTION

Real property in the City of Manhattan Beach, County of Los Angeles, State of California, described as follows:

PARCEL 1:

PARCEL 12, IN THE CITY OF MANHATTAN BEACH, AS SHOWN ON PARCEL MAP NO. 12219, FILED IN BOOK 122 PAGES 33 TO 35 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

AN EASEMENT FOR THE MAINTENANCE AND USE OF A GASOLINE DOCK AND UNDERGROUND GASOLINE STORAGE TANK OVER THAT PORTION OF PARCEL 23 IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 122 PAGE 33 THROUGH 35 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF PARCEL 12 AS SHOWN ON SAID PARCEL MAP, DISTANT THEREON SOUTH 00°03'57" EAST 90.35 FEET FROM THE NORTHWESTERLY CORNER OF SAID PARCEL; THENCE NORTH 89°56'03" EAST 49.29 FEET TO A NONTANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 240.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 70°09'15" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°46'11" AN ARC DISTANCE OF 78.62 FEET; THENCE ALONG THE NORTHWESTERLY PROLONGATION OF A LINE RADIAL TO SAID CURVE NORTH 51°23'04" WEST 43.89 FEET; THENCE SOUTH 52°39'30" WEST 67.02 FEET TO THE WESTERLY LINE OF SAID PARCEL 12; THENCE ALONG SAID WESTERLY LINE SOUTH 00°03'57" EAST 55.10 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBONS, GEOTHERMAL RESOURCES AS DEFINED IN SECTION 6903 OF THE CALIFORNIA PUBLIC RESOURCES CODE AND ALL OTHER MINERALS, WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR THAT MAY BE PRODUCED FROM THE PROPERTY; PROVIDED, HOWEVER, THAT ALL RIGHTS AND INTEREST IN THE SURFACE OF THE PROPERTY ARE HEREBY CONVEYED TO GRANTEE, NO RIGHTS OR INTEREST OF ANY KIND THEREIN, EXPRESS OR IMPLIED, BEING EXCEPTED OR RESERVED TO GRANTOR EXCEPT AS HEREINAFTER EXPRESSLY SET FORTH THEREIN.

ALSO EXCEPT, THE SOLE AND EXCLUSIVE RIGHT FROM TIME TO TIME TO DRILL AND MAINTAIN WELLS OR OTHER WORKS INTO OR THROUGH THE PROPERTY BELOW A DEPTH OF 500 FEET AND TO PRODUCE, INJECT, STORE AND REMOVE FROM OR THROUGH SUCH WELLS OR WORKS, OIL, GAS AND OTHER SUBSTANCES OF WHATEVER NATURE, INCLUDING THE RIGHT TO PERFORM ANY AND ALL OPERATIONS DEEMED BY GRANTOR NECESSARY OR CONVENIENT FOR THE EXERCISE OF SUCH RIGHTS, AS RESERVED BY CHEVRON U.S.A. INC., A CALIFORNIA CORPORATION, RECORDED APRIL 19, 1979 AS INSTRUMENT NO. 79-424732, AS TO THAT PORTION OF SAID LAND ACQUIRED BY DEED RECORDED APRIL 2, 1923 IN BOOK 1993 PAGE 351, OFFICIAL RECORDS.

PARCEL 3:

THE NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, PARKING, UTILITIES AND

CONSTRUCTION IN, TO, OVER, UNDER AND ACROSS THE "COMMON AREA" ALL AS DESCRIBED AND SHOWN IN THAT CERTAIN CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED NOVEMBER 1, 1980, EXECUTED BY MANHATTAN BEACH COMMERCIAL PROPERTIES, A GENERAL PARTNERSHIP, MANHATTAN HACIENDA PROPERTY CO., A GENERAL PARTNERSHIP AND FEDERATED DEPARTMENT STORES, INC., A DELAWARE CORPORATION, WITH ADDENDUM EXECUTED BY BUFFUMS, INC., A CALIFORNIA CORPORATION, RECORDED ON NOVEMBER 25, 1980 AS INSTRUMENT NO. 80-1188655.

PARCEL 4 :

THE NON-EXCLUSIVE EASEMENTS FOR VEHICULAR AND PEDESTRIAN ACCESS AND PARKING OVER THAT PORTION OF PARCEL 23 IN THE CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 122 PAGES 33 THROUGH 35 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY, CALIFORNIA, AS DESCRIBED IN THAT CERTAIN GRANT DEED AND GRANT OF EASEMENTS WITH COVENANTS RUNNING WITH THE LAND RECORDED NOVEMBER 25, 1980 AS INSTRUMENT NO. 80-1188654.

APN: 4138-020-014