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AND WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF PASADENA
117 E. COLORADO BLVD. 6TH FLOOR
PASADENA, CALIFORNIA 91101

SPACE ABOVE THIS LINE FOR RECORDERS USE

**DRAFT DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF PASADENA AND
SMV TECHNOLOGY PARTNERS LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
MIXED-USE/THEATER-ARTS PROJECT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this ___ day of May, 2007, by and between SMV TECHNOLOGY PARTNERS LLC, a California limited liability company ("Developer"), and the CITY OF PASADENA, a municipal corporation, ("City"), pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of the State of California.

RECITALS:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 et seq. of the California Government Code (the "Development Agreement Statute").

B. The Development Agreement Statute authorizes the City to enter into a property development agreement with any person having a legal or equitable interest in real property for the development of such real property in order to establish certain development rights in the real property.

C. This Agreement is voluntarily entered into in consideration of the benefits to and the rights and obligations of the parties on the basis of the facts cited herein,

understanding and intentions of the parties and in reliance upon the various representations and warranties contained herein.

D. Developer is a limited liability company organized under the laws of the State of California and is in good standing thereunder.

E. Developer currently owns in fee that certain parcel of land (the "Current Land Parcel") as more specifically described in Exhibit "A", attached hereto. Additionally, Developer has entered into an agreement to acquire that certain contiguous parcel of land (the "Additional Land Parcel") as more specifically described in Exhibit "B", attached hereto. The Additional Land Parcel is intended to be added to the Current Land Parcel by means of a lot line adjustment (the "Stuart Lot Line Adjustment"). That certain parcel of land representing the collective Current Land Parcel as increased by the Additional Land Parcel is more specifically described in Exhibit "C", attached hereto, and referred to herein as the "Project Site." The Project Site will be subdivided into two separate parcels, the "Residential Parcel" and the Theater Parcel" (as described below) for the purpose of developing the "Project" (as described below).

F. Developer intends to subdivide and develop the Project Site as a mixed-use project (the "Project") which Project is intended to further the City's and Developer's desire to implement the goals and objectives of the East Pasadena Specific Plan. The Project is more specifically described in Exhibit "D", attached hereto, which exhibit contains the site plan showing the building envelope (showing heights of the various components), and all easements and dedications (the "Site Plan") describing the development of the Project. The Project is intended to be a mixed-use development that will redevelop currently substantially vacant properties. The Project is a private endeavor with the Developer (i) advancing a substantial portion of the funding of the total cost of the improvements to Walnut Street and Kinneloa Avenue and (ii) effectively contributing the "Theater Parcel" (as defined below) to a use that is beneficial to the City and its residents (currently development by a non-profit, public benefit corporation, of a performance and educational theater complex consisting of approximately 350 seats together with administration, educational, rehearsal, storage and other related back-of-the-house areas (the "Theater") is being pursued), and in exchange, the City of Pasadena intends to enter into this Development Agreement (the or this "Agreement") with the Developer which, when approved, will permit the Developer the right to develop a total of 212 housing units as provided in the East Pasadena Specific Plan. The total 212 housing units will include 32 units (15%) which will be constructed on-site and will satisfy the requirements of the Pasadena Inclusionary Housing Ordinance.

G. The Project Site is located in the City and consists of a total of approximately 3.823 acres (166,536.98 square feet) of land.

H. The Project Site is located at the southeast corner of the intersection of Sierra Madre Villa Avenue and Foothill Boulevard as shown on the Site Map attached

hereto as Attachment No. 1 (the "Site Map") and more particularly described as Parcel 1 in the Legal Description attached hereto as Attachment No. 2 (the "Legal Description"). Parcel 1 consists of two portions of undeveloped land, referred to herein as the "Residential Parcel" and the Theater Parcel." The Theater Parcel generally consists of the western portion of that structure formerly known as the Stuart Pharmaceutical Company building (the "Stuart Building") together with the area immediately north of the Stuart Building as well as such area adjacent to the Stuart Building as may be necessary to develop the "Theater" (as described herein below). The Residential Parcel consists of the remainder of the property immediately west and north of the Theater Parcel and is currently vacant land. The Residential Parcel and the Theater Parcel will be subdivided into two separate legal parcels and collectively constitute what is referred to herein as the Project Site.

I. The General Plan designates the area in which the Project Site is located as Specific Plan (East Pasadena Specific Plan/Sub-area d2). The General Plan permits the Project Site to be developed for multi-family residential use (permitted use) and theater use (subject to an Expressive Use Permit).

J. Developer seeks to comply with conditions of approval and develop the Project Site in accordance with the goals, policies, and objectives of the City's General Plan, with the purpose and intent of the applicable specific plan, the City's Zoning Code, and the terms and conditions of this Agreement.

K. Developer presently contemplates not to apply for density increases for the Project, and the City presently contemplates not to revise the maximum density and dwelling unit totals established by the Development Plan for the Project for the term of this Agreement, thus ensuring that appropriate facilities and services are planned and implemented.

L. Pursuant to Section 65865 of the Development Agreement Statute, a City may establish procedures and requirements for the consideration of development agreements. The City, by adopting Pasadena Municipal Code ("PMC") Chapter 17.66, ("City Enacting Ordinance") adopted such procedures and requirements and the parties hereto desire to enter into such a development agreement pursuant thereto.

M. The Application for this Agreement was considered by the City at duly noticed, public hearings in accordance with the Development Agreement Statute and the City Enacting Ordinance.

N. For the reasons recited herein, the City has determined that the Project is a development for which this Agreement is appropriate under the Development Agreement Statute and City Enacting Ordinance.

O. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project Site, assure progressive installation of necessary

improvements, provide public services appropriate to each stage of development of the Project Site, ensure attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

P. In exchange for the benefits to the City, contained herein, the City has taken or will take all actions required so that Developer may subdivide the Project Site, and begin and complete the development of the Project, including the approval, adoption or issuance of necessary development permits, and the future ministerial approval of building plans and ministerial issuance of final maps, appropriate building permits, lot line adjustments, and other necessary or desired approvals and entitlements which are consistent with the development of the Project (collectively, the "Ministerial Approvals").

Q. In exchange for the benefits to City, Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing specific plan and land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded Developer by Government Code Section 65865.3.

R. It is the intent of the parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with CEQA, the Development Agreement Statute and the City Enacting Ordinance.

S. The terms of this Agreement support the vital and best interests of the City by insuring the development of the Project which will provide: 1) Pedestrian circulation among parcels – the Site Plan is designed to provide for public access from the Light Rail Transit station and the parking garage to the Theater. This is consistent with the goal of the East Pasadena Specific Plan which states that a clear, direct pedestrian pathway system should be maintained which leads to the transit station from adjacent streets, major buildings, and areas between major buildings; 2) The East Pasadena Specific Plan allocated 400 residential units to Subarea d2. One hundred and eighty-eight units were approved for a multi-family residential project immediately adjacent to the proposed Project, with 212 units of the total allocation now remaining. The proposed Project will utilize all of the remaining 212 units; 3) complete the connection of Walnut and Kinneloa Streets under the 210 Freeway to Titley Avenue. This action is outlined in that MOU dated December 22, 2005 between the City of Pasadena and the Developer; and 4) the Project involves preservation and adaptive re-use of the portion of the Stuart Company Building located on the Theater Parcel.

T. The City has an expressed interest in ensuring the provisions of regional and community level infrastructure, and in pursuing the use of development agreements as a method whereby a level of assurance can be achieved concerning the service demands within planned communities so that long-range plans for needed infrastructure can be developed and implemented.

U. This Agreement is made and entered into in consideration of the mutual covenants and in reliance upon the various representations and warranties contained herein. The parties acknowledge that, in reliance on the agreements, representations, and warranties contained herein, Developer will take certain actions, including making substantial investments and expenditures of monies, relative to the Project Site and the development thereof.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

AGREEMENT:

SECTION 1. GENERAL ACKNOWLEDGMENTS.

The parties acknowledge that: (a) the City has entered into this Agreement pursuant to the Development Agreement Legislation and its police power in order to address public health and safety and general welfare concerns including those relating to the amount, density, intensity and timing of development within the Project Site and the need for public facilities and infrastructure in connection with the Project Site and other property in the area; (b) there is a certain authority under the police power to address public health and safety concerns that cannot be legally relinquished or restricted by this Agreement and that such authority intended to be reserved and hereby is reserved to City hereunder, provided that to the extent possible it shall be construed as to provide Developer with the assurances intended by this Agreement; and (c) nothing herein shall be construed to limit or restrict the exercise by the City of its power of eminent domain.

SECTION 2. GENERAL PROVISIONS.

2.01 Property Description. The legal description of the Project Site is specifically set forth on Exhibit "C" attached hereto and made a part hereof.

2.02 Location of Project Site. The Project Site is located in the City and consists of a total of approximately 3.823 acres.

2.03 Effective Date. This Agreement has been entered into by the parties as of the date and year first above-written, and shall be effective as of the "Effective Date" (as defined in Section 3.10 hereof); provided, however, that either party may terminate this Agreement pursuant to the provisions of Section 12.04 hereof.

2.04 Term. The term of this Agreement shall commence upon the Effective Date and shall extend seven (7) years thereafter, unless said term is otherwise

terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties. The City and Developer agree that the term of this Agreement is necessary in order to permit the orderly and planned development of the Project.

2.05 Expiration of Term. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect without the need of further documentation from the parties hereto.

2.06 Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

2.07 Enforceability of Agreement. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, the "Existing Rules" (as defined herein below) or any other land use ordinances or building ordinances, resolutions or ordinances or other regulations adopted by the City which changes, alters or amends the Existing Rules applicable to the development of the Project Site at the time of the approval of this Agreement as provided by Government Code Sections 65866 and 65867.5. This Agreement shall not prevent City from denying or conditionally approving any subsequent development project application by a third party not a successor-in-interest hereto on the basis of such existing or new rules, regulations and policies.

2.08 Further Assurances. Each party shall execute and deliver to the other all such other instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

2.09 Singular and Plural; Gender. As used herein, and except where the context requires otherwise, the singular of any word includes the plural and vice versa, and pronouns inferring the masculine gender shall include the feminine gender and vice versa.

2.10 Covenants Run With The Land. All of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assigns, and all other persons or entities acquiring all or any portion of the Project Site, or any interest therein, whether by operation of law or in any manner whatsoever, and the rights thereof shall inure to the benefit of such parties and their respective heirs, successors and assigns.

2.11 Enforcement of Covenants. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land

pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California.

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

SECTION 3. DEFINITIONS.

Reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term.

3.01 Approvals. Any and all permits or approvals of any kind or character required under the terms of this Agreement to subdivide and develop the Project Site in the manner as described herein.

3.02 Building Ordinances. Those building standards, of general application and not imposed solely with respect to the Project Site, in effect from time to time that govern building and construction standards, including, without limitation, the City's building, plumbing, electrical, mechanical, grading, swimming, pool, sign, and fire codes.

3.03 CEQA. CEQA means the California Environmental Quality Act, California Public Resources Code Section 21000, et seq., and the State CEQA Guidelines, (California Code of Regulations, title 14, Section 15000, et seq.), as each is amended from time to time.

3.04 Certificate of Exception. Certificate of Exception means that certificate, as described in PMC section 16.40.030, which would permit a lot line adjustment in lieu of a parcel map or a final map and which the parties agree is necessary to expand the property to the square footage necessary to achieve the desired residential density.

3.05 City. City of Pasadena, County of Los Angeles, State of California.

3.06 Date of Final Design Review Approval. The effective date of the Final Design Review Approval as defined in Pasadena Municipal Code Section 17.61.030 (l)(4).

3.07 Developer. Developer means SMV Technology Partners, LLC, or any combination of SMV Technology Partners LLC and one or more parties, each of which is a recipient of an Undivided Interest Contribution, whether such Undivided Interest Contribution is made before or after the Effective Date of this Agreement.

3.08 Development. The subdivision and improvement of the Project Site for purposes of constructing the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction and installation of infrastructure and public facilities related to the Project whether located within or outside the Project Site; the construction of structures and building; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.

3.09 Development Agreement Legislation. Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

3.10 Development Approval(s). Site-specific permits and other entitlements to use of every kind and nature approved or granted by the City in connection with the Development including, but not limited to: subdivision approvals (including tentative maps, vesting tentative maps, final maps, parcel maps and map waivers), development permits, conditional use permits, variances, oak tree permits, grading permits, building permits and occupancy permits.

3.11 Development Fees. All City adopted fees and monetary exactions that are designed to pay for new or expanded public facilities needed to serve, or to mitigate the adverse effects of, a given development project and that are imposed by the City as a condition of approval of discretionary or ministerial permits for, or in connection with the implementation of, that development project. The term "Development Fees" does not include processing fees and charges as described in this Agreement. The term "Development Fees" also does not include requirements that the Project be served by a public utility even if that public utility imposes a capital improvement fee or similar charge as a condition of providing service. All development fees shall be deposited in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, and expend those fees solely for the purpose for which the fee was collected, pursuant to California Government Code Section 66006.

3.12 Director. Director of Planning and Development Department of the City of Pasadena.

3.13 Effective Date. The date on which the City Council formally adopts the Enacting Ordinance.

3.14 Enacting Ordinance. Ordinance No. _____ adopted by the City Council on _____, approving this Agreement.

3.15 Exactions. All exactions, in-lieu fees or payments, dedication or reservation requirements, obligations for on-site or off-site improvements, construction requirements for public improvements, facilities, or services called for in connection with

the development of or construction on the Project Site, whether such requirements constitute subdivision improvements, mitigation measures in connection with environmental review of any project, or impositions made under any applicable ordinance or in order to make a project approval consistent with the anticipated land use policies of the City's future General Plan.

3.16 Existing Land Use Ordinances. The Land Use Ordinances in effect as of the Effective Date of this Agreement.

3.17 Final Design Review Approval. That approval of the design of the improvements to the Residential Parcel permitting their construction as described in the Site Plan which approval is issued pursuant to the provisions of PMC Section 17.61.030 (F).

3.18 General Plan. The Pasadena General Plan as duly adopted by the City Council.

3.19 Land Use Ordinances. The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the development of the Project Site, including but not limited to, the permitted uses of land, the density and intensity of use of land, exactions, and the timing of development, all as applicable to the development of the Project Site. Specifically, but without limiting the generality of the foregoing, Land Use Ordinances shall include the City's General Plan, the East Pasadena Specific Plan, the City's Zoning Code and the City's Subdivision Code. The term Land Use Ordinances does not include Regulations relating to the following: the conduct of business, professions and occupations generally; taxes and assessments; the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property; and any exercise of the power of eminent domain.

3.20 Ministerial Approvals. Those permits and approvals required under the Pasadena Municipal Code and/or State or Federal laws which are not discretionary and do not require the exercise of quasi-judicial decision making authority but rather are merely ministerial in nature requiring only the exercise of ministerial authority. Examples of ministerial approvals include but are not limited to, oak tree permits, grading permits, building permits and occupancy permits.

3.21 Persons. As used herein, any reference to or use of the word "person" shall mean, in addition to a natural person, any governmental entity and any partnership, corporation, joint venture or any other form of business entity.

3.22 Project. The mixed-use (residential/theater) development and associated amenities, and on-site and off-site improvements, contemplated by or embodied within the Site Plan and which are to be constructed on the Project Site, as the same may

hereafter be further refined, enhanced or modified pursuant to the provisions of this Agreement.

3.23 Project Site. That real property described in Exhibit "C" attached hereto and made a part hereof.

3.24 Regulations. Constitutions, statutes, City ordinances, and codes, City resolutions and official policies of the City.

3.25 Roadway Improvement Fee. That fee in the amount of one million dollars (\$1,000,000) to be paid by Developer to the City as its agreed-upon contribution to the construction of the improvements to Walnut Street and Kinneloa Avenue. The City shall contribute the remaining amount (currently estimated to be \$1.64 million) of the total cost of those improvements. The Roadway Improvement Fee is fixed at \$1,000,000 and is not subject to further adjustment, regardless of the actual total cost of the improvements to Walnut Street and Kinneloa Avenue.

3.26 Undivided Interest Contribution. A contribution (or contributions) of one or more undivided interest(s) in the Project Site by SMV Technology Partners LLC (i) to one or more wholly-owned subsidiaries of SMV Technology Partners LLC and/or (ii) to one or more of its affiliates which are wholly owned by Jeffrey B. Allen and/or David L. Worrell, which interest(s), when taken together with the interest (if any) retained by SMV Technology Partners LLC, equal one hundred percent (100%) of the ownership of the Project Site. A contribution by SMV Technology Partners LLC of an undivided 50% interest in the Project Site to each of SMV-A Technology Partners, LLC and SMV-W Technology Partners, LLC, each of which is wholly owned by SMV Technology Partners LLC, is an Undivided Interest Contribution and each of SMV-A Technology Partners, LLC and SMV-W Technology Partners, LLC is a recipient of an Undivided Interest Contribution.

3.27 Certain Other Terms. Certain other terms shall have the meanings set forth for such terms in the Pasadena Municipal Code, in this Agreement, and in common usage.

SECTION 4. GENERAL DEVELOPMENT OF THE PROPERTY.

4.01 Project. The Project is defined and described in the Site Plan which specifies the Residential Parcel and Theater Parcel and the following aspects of the Project: (i) proposed uses of the Project Site, (ii) height and size of buildings to be constructed on the Project Site, (iii) density and intensity of use of the property, and (iv) requirements for reservation or dedication of portions of the Project Site for public purposes.

4.02 General Development. Any development of the Project on the Project Site shall be conducted in accordance with the terms and conditions of this Agreement.

4.03 Permitted Uses. The permitted uses of the Project Site, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location of public improvements, and other terms and conditions of development applicable to the Project Site shall be those set forth in the East Pasadena Specific Plan relating to the Project Site and all other applicable laws and regulations, subject to the following:

- (a) The Project (as set forth in the Site Plan) collectively shall consist of:
 - (i) Development on the Residential Parcel of 212 residential units, 339 structured parking spaces; and 33 surface parking spaces.
 - (ii) Development on the Theater Parcel of the Theater, consisting of approximately 42,500 total square feet of performance and supporting space, including approximately 7,800 square feet of office space. Parking for the Theater shall be provided primarily in the adjacent Metropolitan Transit Authority parking structure, with 33 surface parking spaces reserved on the Residential Parcel by private parking easement for staff, delivery and handicap parking serving the Theater.
- (b) The 212 residential units shall be located generally on the footprint indicated on the Site Plan. The height of the residential portion shall be limited to 60 feet above Foothill Boulevard (exclusive of permitted architectural projections), all as set out in the East Pasadena Specific Plan, and the density shall be limited to a floor area ratio of 2, also as set out in the East Pasadena Specific Plan.
- (c) A Minor Conditional Use Permit is hereby approved and granted for the development of the Theater, all as may be required pursuant to the provisions of PMC Section 17.50.340. In entering into this Agreement, the City has made the findings set forth in Exhibit "E" attached hereto.
- (d) An Expressive Use Permit is hereby approved and granted to authorize the development and operation of the Theater, all as may be required pursuant to the provisions of PMC Section 17.61.060. In entering into this Agreement, the City has made the findings set forth in Exhibit "F" attached hereto.
- (e) A Conditional Use Permit is hereby approved and granted to authorize the development and operation of the Theater, all as may be required pursuant to the provisions of PMC Section 17.32.050. In entering into this Agreement, the City has made the findings set forth in Exhibit H attached hereto.
- (f) The Lot Line Adjustment is hereby approved. The Certificate of Exception is hereby granted by the City. In entering into this Agreement, the City has made the findings set forth in Exhibit "G" attached hereto.

(g) A parcel map subdividing the Project Site to create the Theater Parcel and Residential Parcel ("Parcel Map") necessary to permit the development of the Project as described in the Site Plan is intended to be approved subsequent to the execution of this Agreement.

(h) The City hereby determines that the appropriate standard for off-street loading spaces to be adopted related to the Theater shall be one (1) off-street loading space as shown on the Site Plan. It is intended that the standard adopted in this Section of this Agreement shall be controlling and supersede any requirements otherwise applicable to the Theater, including those set forth in Table 4-15 contained in PMC Section 17.46.260, all as provided in PMC Section 17.20.020(D)(2).

(i) The City is bound with respect to the uses permitted, and approvals granted, by this Agreement, insofar as this Agreement so provides or as otherwise set forth in applicable laws, ordinances, rules or regulations.

(j) Notwithstanding anything contained in this Agreement to the contrary, the provisions of this Agreement do not obligate the City to approve the Parcel Map, and any approval of the Parcel Map will be at the discretion of the City.

4.04 Future Approvals. Subject to the subsequent approval of the Parcel Map which approval shall be in accordance with the Land Use Ordinances, the City hereby agrees that the land use approvals necessary to subdivide and develop the Project as described in the Site Plan and in Section 4.03 hereof are approved or will be approved pursuant to the terms of this Agreement, provided that Developer satisfactorily complies with all preliminary procedures, actions, payments and criteria applicable as of the effective date of this Agreement and generally required of developers by the City for processing applications for developments at such time. City agrees to grant and implement the necessary land use, zoning, site plan and subdivision approvals and to grant other approvals and permits, to the extent all such approvals and permits are Ministerial Approvals, that will accomplish or facilitate development of the Project Site for the uses and to the density or intensity of development of the Project as described in this Agreement pursuant to those rules, regulation policies and conditions in force on the effective date of this Agreement.

4.05 Applicable Rules, Regulations and Official Policies. Except as otherwise provided in this Agreement, the rules, regulations, official policies, and conditions of approval governing the permitted uses of the Project Site, the density or intensity of use, and the design, improvement, construction, building and occupancy standards and specifications applicable to the Project and the Project Site shall be those in force on the Effective Date of this Agreement ("Existing Rules"). The City shall have the right to impose reasonable conditions in connection with such subsequent discretionary permit actions which are not deemed Ministerial Approvals, but such conditions and actions shall not prevent development of the Project as contemplated by

this Agreement and the Development Permits, or place burdensome or restrictive measures on Developer in connection with the development of the Project.

4.06 Amendment to Applicable Ordinances. In the event the City Zoning Code is amended by the City in a manner which provides more favorable site development standards than those in effect as of the Effective Date, Developer shall have the right to notify City in writing of its desire to be subject to the new standards for the remaining term of this Agreement. If City agrees, by resolution of the City Council or by action of a City official whom the City Council may designate, such new standards shall become applicable to the Project Site. Should City thereafter amend such new standards, upon the effective date of such amendment, the original new standards shall have no further application to the Project Site, but Developer may notify City and City may agree by resolution to apply such amended new standards to the Project Site.

4.07 Application of New Rules, Regulations and Policies. This Agreement shall not prevent City in subsequent actions applicable to the Project Site from applying new rules, regulations and policies which do not conflict with this Agreement or the Existing Rules; nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or non-conflicting new rules, regulations, and policies.

4.08 Approval of Subsequent Tentative and Final Maps. Although the Existing Land Use Ordinances shall determine the standards for granting or withholding approval of Tentative, Vesting Tentative and Final Tract Maps and vesting Tentative and Tentative Final Parcel Maps, the procedures for processing approval of all such Maps shall be governed by such ordinances and regulations as may then be applicable.

4.09 Changes in State and Federal Rules and Regulations. Nothing in this Agreement shall preclude the application to the development of the Project Site of changes in the City's laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code Section 65869.5.

4.10 Processing Fees. This Agreement shall not be construed to limit the authority of the City to charge processing fees for land use approvals, building permits or other similar permits or entitlements which are in force and effect on a City-wide basis at the time application is made for such permits or entitlements.

SECTION 5. PERIODIC REVIEW.

City shall conduct a review of this Agreement as set forth in the following subsections.

5.01 Annual Review. City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least once every 12-month period from the Effective Date of this Agreement.

5.02 Procedure. Such annual review shall be conducted in accordance with the City's duly adopted Development Agreement Procedures.

5.03 Notice. City shall notify Developer in writing of the date of review at least thirty (30) days prior thereto.

5.04 Good-faith Compliance. During each annual review, Developer is required to demonstrate good faith compliance with the terms of this Agreement.

5.05 Production of Documents and Other Evidence. Developer agrees to furnish such reasonable evidence and adequate documentation of good faith compliance as the City, in the exercise of its reasonable discretion, may require.

5.06 Cost of Annual Review. The costs incurred by City in connection with the annual review shall be borne by Developer.

SECTION 6. OBLIGATIONS OF, AND CONTRIBUTIONS BY, DEVELOPER.

6.01 Contributions. In consideration of the City entering into this Agreement, Developer has agreed to comply with the applicable provisions of the City's development entitlement process in developing the Project and to perform certain obligations and provide certain contributions set forth therein, which City acknowledges will have an overall benefit to the public and surrounding area; provided, however, that any obligations of, or restrictions imposed on, Developer in the course of the City's development entitlement process must be consistent with the provisions of this Agreement and must permit the development of the Project as described in the Site Plan and in Section 4.03 hereof. Developer's obligations and contributions will include, but not be limited to:

(a) Developer will provide the Roadway Improvement Fee in the amount of \$1,000,000 to support the improvements to Walnut Street and Kinneloa Avenue.

(b) Developer has informed and represented to the City that, to the best of its knowledge and belief, A Noise Within, a non-profit, public benefit corporation, which is a well known theater company, intends to relocate to the Theater Parcel and occupy the Theater and Developer has entered into a Memorandum of Understanding, effective October 11, 2005, with A Noise Within which sets forth the agreement between the parties regarding the disposition and development of the Theater Parcel.

(c) The Developer agrees and understands, and the City intends, that the Theater Parcel will be utilized for a Theater or, failing that, another purpose that is beneficial to the City and its residents. Developer agrees to reasonably cooperate with the City to achieve that goal.

(d) The Developer will comply with the City's Inclusionary Housing Ordinance and will provide any required housing units on site.

(f) The occupying theater company will be obligated under the terms of its Expressive Use Permit to provide opportunities for partnership with Pasadena Unified School District under terms reasonably acceptable to it.

(g) The Developer will work in cooperation with the City and shall use reasonable efforts as necessary and required to provide residents of the City with employment opportunities in the construction and operation of the Project, in conformance with Section 14.80.050 of the City's First Source Ordinance (Applicability to Private Construction Projects).

(h) The Developer will be responsible for securing all land use entitlements, paying applicable fees and securing permits for the Project.

(i) The Developer has submitted, and the City hereby approves, a Site Plan of the proposed development including the Residential and Theater Parcels. The Site Plan identifies the building footprint and building envelope for the proposed buildings, and is attached hereto as Exhibit "C".

(j) The fees to be paid shall be pursuant to the City's adopted fee schedule in effect on the date thereof. The Roadway Improvement Fee will be paid by the Developer within sixty (60) days following the Date of Final Design Review Approval; provided, however, that if the Date of Final Design Review Approval occurs after September 30, 2007, then the Roadway Improvement Fee shall be paid within ten (10) days thereafter. The Roadway Improvement Fee, once paid, shall be non-refundable.

6.02 Nexus/Reasonable Relationship Challenges. The Developer consents to, and waives any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Regulations or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

6.03 Cooperation By Developer. Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder, and cause Developer's planners, engineers, and

all other consultants to submit in a timely manner all required materials and documents therefore.

6.04 Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project Site as may be required for the development of, or provision of services to, the Project.

6.05 Reimbursement for City's Efforts on Behalf of Developer. To the extent that City, on behalf of Developer, attempts to enter into binding agreements with other entities in order to assure the availability of certain permits and approvals or services necessary for development of the Project as described in this Agreement, Developer shall reimburse City for all costs and expenses incurred in connection with seeking and entering into any such agreement. Any fees, assessments or other amounts payable by City pursuant to any such agreement described herein shall be borne by Developer except where Developer has notified City in writing, prior to City entering into such agreement, that it does not desire for City to execute such agreement. The City will give reasonable notice to Developer prior to entering into any such agreements.

SECTION 7. OBLIGATIONS OF CITY.

In consideration of Developer entering into this Agreement, City has agreed to the following with respect to the development of the Project Site:

7.01 Processing. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by Developer of the Project Site, including, but not limited to, the following:

(a) The City will hold all required public hearings.

(b) The City will process and approve all Ministerial Approvals and related matters as necessary for the completion of the subdivision of the Project Site and development of the Project. In this regard, Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder as required by the Existing Rules and shall cause Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore as required by the Existing Rules.

(c) The City will reserve exclusively to the Developer the remaining 212 housing units allocated to Subarea d2 as provided in the East Pasadena Specific Plan. The residential development will include the 15% inclusionary housing on site.

(d) In processing the development entitlements for the development of the Project, the City will recognize development standards and densities as set forth in the East Pasadena Specific Plan relating to the Project Site and all other applicable laws and regulations.

(e) The entitlement process will be consistent with the City's municipal code, including but not limited to review by Commissions that would customarily review projects of this nature. The Transportation Advisory Commission will be included in this process.

(f) The City will aggressively pursue the completion of the improvements to Kinneloa Street and Walnut Avenue to avoid a situation where the development would be completed prior to the completion of the Kinneloa/Walnut Street improvements which must be completed in order to exceed the East Pasadena Specific Plan interim development limits of 856,527 square feet of new non-residential development and 188 residential units. The City has advised Developer (i) its total schedule to complete these improvements will be approximately twelve (12) months and (ii) it does not intend to begin the process until it has received payment of the Roadway Improvement Fee. Developer and City agree that if the City has not completed the improvements, then starting eighteen (18) months following receipt of the Roadway Improvement Fee, to the extent that all or portions of the residential development are completed and ready for occupancy, the City will issue one or more temporary Certificates of Occupancy permitting occupancy until the improvements are completed, at which time the final Certificate of Occupancy will be issued. The City agrees that, so long as Developer has paid the Roadway Improvement Fee, a failure to complete the improvements within the described time frame will not prohibit the use and occupancy of any portion of the improvements to the Residential Parcel.

It is understood and agreed that completion of the Kinneloa/Walnut Street Improvements will require the cooperation and coordination of the County of Los Angeles and the State of California for certain bridge and culvert improvements to be completed. In the event the City has completed all of the improvements contemplated by the Kinneloa/Walnut Street Improvements but for those improvements requiring the cooperation and coordination of the County and the State, then such shall be considered "substantial completion." In the event of substantial completion, following a report to the City Council and the approval of said report by the City Council, the Kinneloa/Walnut Street Improvements may be considered substantially completed and the final Certificate of Occupancy for the Project may be issued permitting occupancy of the residential units.

7.02 Standard of Review. The rules, regulations and policies that apply to any Ministerial Approvals which must be secured prior to the construction of any portion of the Project shall be the Existing Rules. Any Ministerial Approval, including without

limitation a building permit, shall be approved by the City within a reasonable period of time after application is made therefore.

7.03 Contract Services. If requested by Developer, at Developer's expense, City shall obtain outside contractual services as necessary to ensure prompt processing of all development approvals, including without limitation, expedited plan check services and building inspection services.

SECTION 8. AMENDMENTS.

8.01 Amendment by Mutual Consent. This Agreement may be amended from time to time by mutual consent of the original parties or their successors in interest to the Project Site, with City's costs payable by amendment applicants, in accordance with the provisions of Government Code Section 65867 and 65868 and provided that: (i) any amendment to this Agreement which does not relate to the term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developer or any conditions or covenants relating to the use of the Project Site, shall not require notice or public hearing before the parties may execute an amendment hereto; and (ii) any other amendment of this Agreement shall follow the City's adopted procedures and requirements for the consideration of development agreements. The Director is authorized to approve modifications to any Exhibits to this Agreement that are substantially consistent with the intent of this Agreement.

8.02 Amendment Exemptions. Any amendment of the City's land use regulations that, pursuant to this Agreement, is applicable to the property, including, but not limited to, an amendment to the General Plan and zoning ordinances, shall not require an amendment to this Agreement. Instead, any such amendment shall be deemed to be incorporated into this Agreement at the time that such amendment is approved.

8.03 Amendment of Development Permits. Upon the written request of Developer, any permits issued by the City relating to the development of the Project (including City building permits, Expressive Use Permit, etc.) may from time to time be amended or modified in the manner set forth in this Agreement and applicable State and City laws.

SECTION 9. TRANSFERS AND ASSIGNMENTS.

9.01 City's Intent. Developer has demonstrated, and the City finds that Developer possesses, the experience, reputation and financial resources to develop and maintain the Project Site in the manner contemplated by this Agreement. It is because of such qualifications, which assure the development of the Project Site to a high quality standard contemplated by the General Plan that the City is entering into this

Agreement. Accordingly, restrictions on the right of Developer to assign or transfer the rights and privileges contained in this Agreement are necessary in order to assure the achievement of the objectives of the City's anticipated General Plan and this Agreement.

9.02 Developer's Right to Assign or Transfer. Developer may assign or transfer any of its rights or interests under this Agreement subject to consent of City which shall not be unreasonably withheld; provided, however, Minor Assignments as described in Section 9.09 hereof are hereby approved without any such consents.

9.03 Restriction on Assignment Does Not Constitute an Unreasonable Restraint on Alienation. Developer agrees that the restriction on its right to transfer any of its rights or interests under this Agreement is not repugnant or unreasonable in that such a restriction is a material inducement to the City to enter into this Agreement since the restriction reserves for the City the power to prevent the transfer of any of the rights and obligations hereunder to an unreliable developer.

9.04 Restriction on Assignment Shall Not Prevent Developer From Conveying the Project Site. The parties agree that the restriction on assignment without consent is limited solely to those certain vested rights created under this Agreement and such restriction shall not affect Developer's right to convey the Project Site itself.

9.05 Request Procedure. City shall administer the provisions of this Section through its Director of Planning and Development. Developer shall notify the Director and the City Manager in writing of its request for City's consent to an assignment or transfer under this Section, together with a statement that if the Director does not notify Developer within forty-five (45) days of receipt of the request, the request will be deemed approved.

9.06 45-Day Period. If, within such 45-day period the Director does not so notify Developer, the request for consent shall automatically be deemed approved and no further action by Developer or the City shall be necessary. If, within the first 15 days of such 45-day period, the Director notifies Developer that the request will be considered and acted upon by City, Developer shall furnish such additional information as the Director may reasonably request at the time of such notice, and City shall proceed to consider and act upon the Developer's request for City's consent to the proposed assignment or transfer. Failure by the City to act within thirty (30) days of giving such notice or of receiving the additional requested information shall automatically be deemed an approval of the request.

9.07 City Council Approval. In the event the Director determines that the assignment or transfer should be acted upon by the City Council, and the Director so notifies Developer within fifteen (15) days of giving the notice or receiving the information described herein, the matter shall be referred to the City Council. The City

Council shall have forty-five (45) days from the date of such notice to approve or deny the requested transfer or assignment. Failure of City to act within the forty-five (45) day period shall automatically be deemed an approval of the request.

9.08 Assignment. The management control and responsibility of Developer and the expertise, competence, and financial strength of Developer are integral components of the consideration for City entering into this Agreement. In order to preserve such consideration for City and for City to receive full value, the parties hereto agree that the occurrence of any of the following events constitute, for purposes of this provision, an assignment:

(i) A change in the composition of ownership interests in and control of Developer, the result of which diminishes Developer's ownership interest to less than twenty percent (20%).

(ii) A change in the composition of ownership interests in and control of the Project Site such that Developer's equity in the Project Site is reduced to less than fifty-one percent (51%), other than a sale or other conveyance to an approved transferee identified in Sections 9.09(i) or 9.09(ii) below.

9.09 Minor Assignments. The following assignments or other transfers (each, a "Transfer") shall be considered "Minor Assignments" that are permitted pursuant to the provisions of Section 9.02:

(i) any Transfer to any of the following entities, or affiliates thereof: BRE Properties, Inc., Equity Residential, Archstone-Smith, Camden Property Trust (all NYSE listed real estate investment trusts) and,

(ii) for purposes of the Theater Parcel only, any Transfer to A Noise Within.

(iii) In addition to the Minor Assignments previously described in Sections 9.09 (i) and (ii) above, an Undivided Interest Contribution shall also be considered a Minor Assignment and shall be permitted pursuant to the provisions of Section 9.02.

9.10 Notice of Proposed Assignment. Developer must provide City with adequate evidence that the proposed assignee, buyer or transferee is qualified using the standards and conditions described in this Section, and ability to comply with these standards and conditions will be the test of reasonableness.

9.11 Conditions and Standards. The conditions and standards referred to above are as follows:

(a) Such assignee or transferee possesses the experience, reputation and financial resources to cause the Project Site to be developed and maintained in the manner contemplated by the City's General Plan and this Agreement;

(b) Such assignee or transferee enters into a written assumption agreement, in form and content satisfactory to the City Attorney, expressly assuming and agreeing to be bound by the provisions of this Agreement;

(c) Such assignment or transfer will not impair the ability of City to achieve the objectives of its General Plan and this Agreement;

(d) Good cause exists for Developer to make such assignment or transfer. For purposes of this subsection, good cause shall include but is not limited to such causes as business reorganizations, financing arrangements for the development of the Project Site, and exigent circumstances creating the need to generate capital to offset material business losses.

9.12 Financing Exemption. Mortgages, deeds of trust, sales and lease-backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Project Site are permitted without the consent of the City, provided the City receives prior notice of such financing (including the name and address of the lender and the person or entities acquiring any such secured interest) and Developer retains the legal and equitable interest in the Project Site and remains fully responsible hereunder. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

9.13 Notice of Assignment. Upon receiving approval of an assignment, Developer shall provide City with written notice of such assignment and as part of such notice the assignee must execute and deliver to City an assumption agreement in which the name and address of the assignee is set forth and the assignee expressly and unconditionally assumes the obligations of all the provisions set forth in the Agreement.

9.14 Unapproved Assignments. If City reasonably makes the determination not to consent to the assignment or transfer of the rights and privileges contained in this Agreement, and Developer conveys the Project Site to a third party, in whole or in part, Developer shall remain liable and responsible for all of the duties and obligations of this Agreement.

9.15 Notice of Sale of Project Site. Developer shall give written notice to the City, within ten (10) days after close of escrow, of any sale or transfer of any portion of the Project Site, specifying the name or names of the purchaser, the purchaser's mailing address, the amount and location of the land sold or transferred, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given.

9.16 Theater Parcel Transfer. The City and Developer understand and agree that Developer (pursuant to the Parcel Map) intends to subdivide the Project Site to

create the Theater Parcel and Residential Parcel (all as described elsewhere herein), with the Theater Parcel consisting of such areas (land and air rights), boundaries, and benefiting easements as are necessary to make the Theater Parcel a legal parcel pursuant to the provisions of the Pasadena Municipal Code and the Subdivision Map Act. If the Theater Parcel is so created, Developer and the City further agree that any transfer of the Theater Parcel to a third party, other than a Minor Assignment as described in paragraph 9.09 hereof, will require the consent of the City, all as provided in this Section 9.

SECTION 10. DELAYS IN PERFORMANCE.

10.01 Permitted Delays. In addition to any other provisions of this Agreement with respect to delay, Developer and City shall be excused for performance of their obligations hereunder during any period of delay caused by acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to or prevention of work in process by reason of fire, floods, earthquake, or other casualties, litigation, acts or neglect of the other party, or restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting provisions of the Constitution or laws of the United States of America or the State of California or any codes, statutes, regulations or executive mandates promulgated thereunder.

10.02 Third Party Actions. Any court action or proceeding brought by any third party to challenge this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of all or any portion of the Project, whether or not Developer is a party to or real party in interest in such action or proceeding, shall constitute a Permitted Delay under this Section.

10.03 Notice of Permitted Delays. If written notice of such delay is given to either party within (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

SECTION 11. DEFAULT.

11.01 Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of the Section regarding Permitted Delays, the failure or unreasonable delay by either party to perform any material term or provision of this Agreement for a period of thirty (30) days after the dispatch of a written notice of default from the other party shall constitute a default under this Agreement. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

11.02 Notice of Default. Any Notice of Default given hereunder shall specify in detail the nature of the alleged Event of Default and the manner in which such Event of Default may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

11.03 Cure Period. During the time periods herein specified for cure of an Event of Default, the party charged therewith shall not be considered to be in default for purposes of termination of this Agreement, institution of legal proceedings with respect thereto, or issuance of any building permit with respect to the Project.

11.04 General Default Remedies. After notice and expiration of the 30-day period without cure, the non-defaulting party shall have such rights and remedies against the defaulting party as it may have at law or in equity, including, but not limited to, the right to terminate this Agreement pursuant to Government Code Section 65868 or seek mandamus, specific performance, injunctive or declaratory relief.

11.05 Remedies Cumulative. Any rights or remedies available to non-defaulting party under this Agreement and any other rights or remedies that such party may have at law or in equity upon a default by the other party under this Agreement shall be distinct, separate and cumulative rights and remedies available to such non-defaulting party and none of such rights or remedies, whether or not exercised by the non-defaulting party, shall be deemed to exclude any other rights or remedies available to the non-defaulting party. The non-defaulting party may, in its discretion, exercise any and all of its rights and remedies, at once or in succession, at such time or times as the non-defaulting party considers appropriate.

11.06 Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy a default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

11.07 No Damages Relief Against City. The parties acknowledge that City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that in no event shall Developer be entitled to recover damages against City for breach of this Agreement.

11.08 Developer Default. No building permit shall be issued or building permit application accepted for any structure after Developer is determined by City, to be in material default of the terms and conditions of this Agreement, and until such material default thereafter is cured by the Developer or is waived by City. After any permitted transfer of the Theater Parcel or Residential Parcel and the rights and obligations hereunder with respect to such parcel pursuant to Section 9.02 or 9.09, the foregoing provisions shall apply separately to each of the Theater Parcel and Residential Parcel, to the effect that (1) a default with respect to the Theater Parcel shall not prohibit issuance of a building permit for the Residential Parcel so long as the transferee of the

Residential Parcel is in compliance with this Development Agreement with respect to the Residential Parcel and (2) a default with respect to the Residential Parcel shall not prohibit issuance of a building permit for the Theater Parcel so long as the transferee of the Theater Parcel is in compliance with this Development Agreement with respect to the Theater Parcel.

11.09 Waiver. All waivers must be in writing to be effective or binding upon the waiving party, and no waiver shall be implied from any omission by a party to take any action with respect to such Event of Default. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party shall not constitute waiver of such party's right to demand strict compliance by such other party in the future.

11.10 Scope of Waiver. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time specified in such express waiver.

11.11 Attorneys' Fees. Should legal action be brought by either the City or Developer for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office shall be based on comparable fees or private attorneys practicing in Los Angeles County.

11.12 Venue. In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the State courts of the County of Los Angeles or, where appropriate, in the United States District Court, Southern District of California.

SECTION 12. TERMINATION.

12.01 Effect of Termination. Upon termination of this Agreement, the rights, duties and obligations of the parties hereunder shall, subject to the following provisions, cease as of the date of such termination.

12.02 Termination by City. If City terminates this Agreement because of Developer's default, then City shall retain any and all benefits, including money received by City hereunder.

12.03 Termination by Developer. Developer may terminate this Agreement at any time during the term hereof by delivering written notice of such termination to the City. Failure to pay the Roadway Improvement Fee within the time period set forth in Section 6.01(i) shall be deemed a termination of this Agreement by Developer.

12.04 Termination Following the Submittal of a §9237 Petition. If a petition protesting the adoption of the Enacting Ordinance is properly submitted to the City Clerk of the City of Pasadena within 30 days of the Effective Date (all in accordance with the provisions of California Elections Code §9237), then either party may terminate this Agreement by giving written notice to the other within 30 days following the date of final certification of that petition by the City Clerk.

SECTION 13. RELATIONSHIP OF PARTIES.

13.01 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project Site is a separately undertaken private development.

13.02 Separate Development. The City agrees that the Developer may transfer its interest in the Theater Parcel or Residential Parcel and its rights and obligations under this Agreement with respect to the Theater Parcel or Residential Parcel separately to a permitted transferee described in Section 9.09 (or other transferee with the City's consent pursuant to Section 9.02). For example, Developer may transfer the Theater Parcel and its rights and obligations with respect to the Theater Parcel under this Agreement to A Noise Within (or retain the Theater Parcel and its rights and obligations with respect to the Thereafter Parcel) and transfer the Residential Parcel and its rights and obligations under this Agreement with respect to the Residential Parcel to a permitted transferee listed in Section 9.09(i) above.

a. Upon receipt of the Roadway Improvement Fee, the processing of the development of the Theater Parcel and Residential Parcel by the respective owners of the Theater Parcel and Residential Parcel may proceed separately and the obligations with respect to each parcel shall apply independently. A default with respect to one parcel shall not affect the vested rights hereunder to develop the other parcel.

b. In the event of a permitted transfer of the ownership of the Theater Parcel or Residential Parcel to separate owners;

(i) the owner of the Theater Parcel shall be solely responsible for satisfaction of all obligations with respect to the Theater Parcel, including without limitation obtaining all approvals, permits, licenses or agreements required to use the Metropolitan Transit Authority parking structure for Theater parking;

(ii) the owner of the Theater Parcel shall remain bound by all of the terms and conditions of this Agreement with respect to the Theater Parcel, and

(iii) the City shall have all remedies available hereunder for a breach of this Agreement with respect to the Theater Parcel other than the remedies of

terminating this Agreement or the rights granted herein with respect to the Residential Parcel or denying any permits or approvals with respect to the Residential Parcel.

13.03 Independent Contractors. The parties agree that the Project is a private development and that neither party is acting as the agent of the other in any respect hereunder.

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

13.05 No Third Party Beneficiaries. The only parties to this Agreement are Developer and City. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit, or be enforceable by any other person whatsoever except, in the case of the Developer, by its permitted assigns.

13.06 Ambiguities or Uncertainties. The parties hereto have mutually negotiated the terms and conditions of this Development Agreement, and this Agreement is a product of the joint drafting efforts of both parties. Neither party is solely or independently responsible for the preparation or form of this Agreement. Therefore, any ambiguities or uncertainties are not to be construed against or in favor of either party.

SECTION 14. APPLICABLE LAW.

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

SECTION 15. SUPERSEDURE OF SUBSEQUENT LAWS OF JUDICIAL ACTION.

The provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with any new law or decision issued by a court of competent jurisdiction, enacted or made after the effective date which prevents or precludes compliance with one or more provisions of this Agreement. Immediately after enactment of any such new law, or issuance of such decision, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement.

SECTION 16. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.

In the event of any legal or equitable action or other proceeding instituted by any third party (including a governmental entity or official) challenging the validity of any provision of this Agreement, or any subsequent development approvals, should any be obtained, the parties hereby agree to cooperate in defending said action or proceeding.

SECTION 17. HOLD HARMLESS AGREEMENT.

Developer hereby agrees to, and shall defend, save and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from, any and all claims, costs and liability for any damages, personal injury or death, which may arise, directly or indirectly, from Developer's or Developer's contractors', subcontractors', agents or employees' operations under this Agreement, whether such negligent operations be by Developer or by any of Developer's contractors, subcontractors, agents or employees.

SECTION 18. NOTICES.

Any notice or communication required hereunder between City or Developer shall be in writing, and may be given either personally or by registered mail, return-receipt requested. Notice, whether given by registered mail or personal delivery, shall be deemed to have been given and received on the actual receipt by any of the addresses designated below as the party to whom notices are to be sent. Any party hereto may at any time, upon written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

To City:

City Manager
City of Pasadena
100 North Garfield Avenue
Pasadena, California 91109

To Developer:

SMV Technology Partners LLC
c/o David L. Worrell
1469 Rose Villa Street
Pasadena, CA 91106-3522

With a copy to:

SMV Technology Partners LLC
c/o Jeffrey B. Allen

30602 Hunt Club Drive
San Juan Capistrano, CA 92675

SECTION 19. EXHIBITS.

19.01 Designation of Exhibits. The reference to a specified Exhibit in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation.

<u>Exhibit Designation</u>	<u>Description</u>
<u>Exhibit "A"</u>	Current Land Parcel
<u>Exhibit "B"</u>	Additional Land Parcel
<u>Exhibit "C"</u>	Project Site
<u>Exhibit "D"</u>	Project Description; Site Plan
<u>Exhibit "E"</u>	Findings Related to Minor Conditional Use Permit (TOD)
<u>Exhibit "F"</u>	Findings Related to Expressive Use Permit
<u>Exhibit "G"</u>	Findings Related to Certificate of Exception
<u>Exhibit "H"</u>	Findings Related to Conditional Use Permit
<u>Exhibit "I"</u>	Findings Related to Minor Conditional Use Permit (shared parking)
<u>Exhibit "J"</u>	Findings Related to Variance

19.02 Incorporation by Reference. All exhibits are deemed incorporated by reference into this Agreement.

SECTION 20. SEVERABILITY.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

SECTION 21. RECORDATION.

In order to comply with Section 65868.5 of the Development Agreement Statute and Section of the City Enacting Ordinance, the parties do hereby direct the City Manager to cause a copy of this Agreement to be recorded with the County Recorder of the County, within ten (10) days after passage by the City of the ordinance approving this Agreement.

SECTION 22. ENTIRE AGREEMENT.

This Agreement and the Exhibits attached hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement and the Exhibits hereto, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits hereto.

SECTION 23. COUNTERPARTS.

This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

[THIS PORTION INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed at Pasadena, California as of the date first written above.

**The City of Pasadena
A public body, corporate and politic**

**SMV Technology Partners LLC
A California Limited Liability
Company ***

**By: _____
City Manager**

**By: _____
Jeffrey B. Allen
Managing Member**

APPROVED AS TO CONTENT:

The City of Pasadena

**By: _____
David L. Worrell
Managing Member**

By:

APPROVED AS TO FORM:

The City of Pasadena

**By: _____
Brad Fuller,
Assistant City Attorney**

ATTEST:

**By: _____
City Clerk**

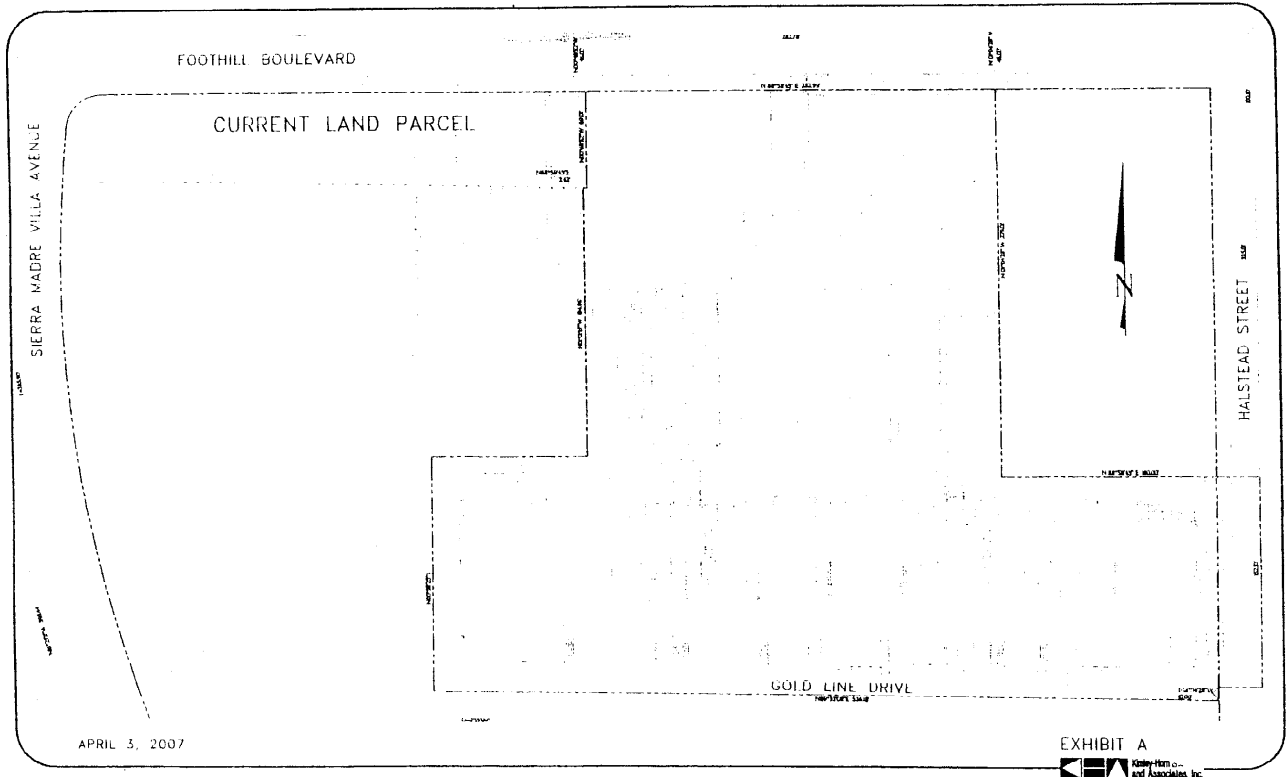
*Note: Developer's signature must be notarized.

RNCH\15-22\DOC\DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF PASADENA AND
SMV TECHNOLOGY PARTNERS LLC**

Exhibit "A"

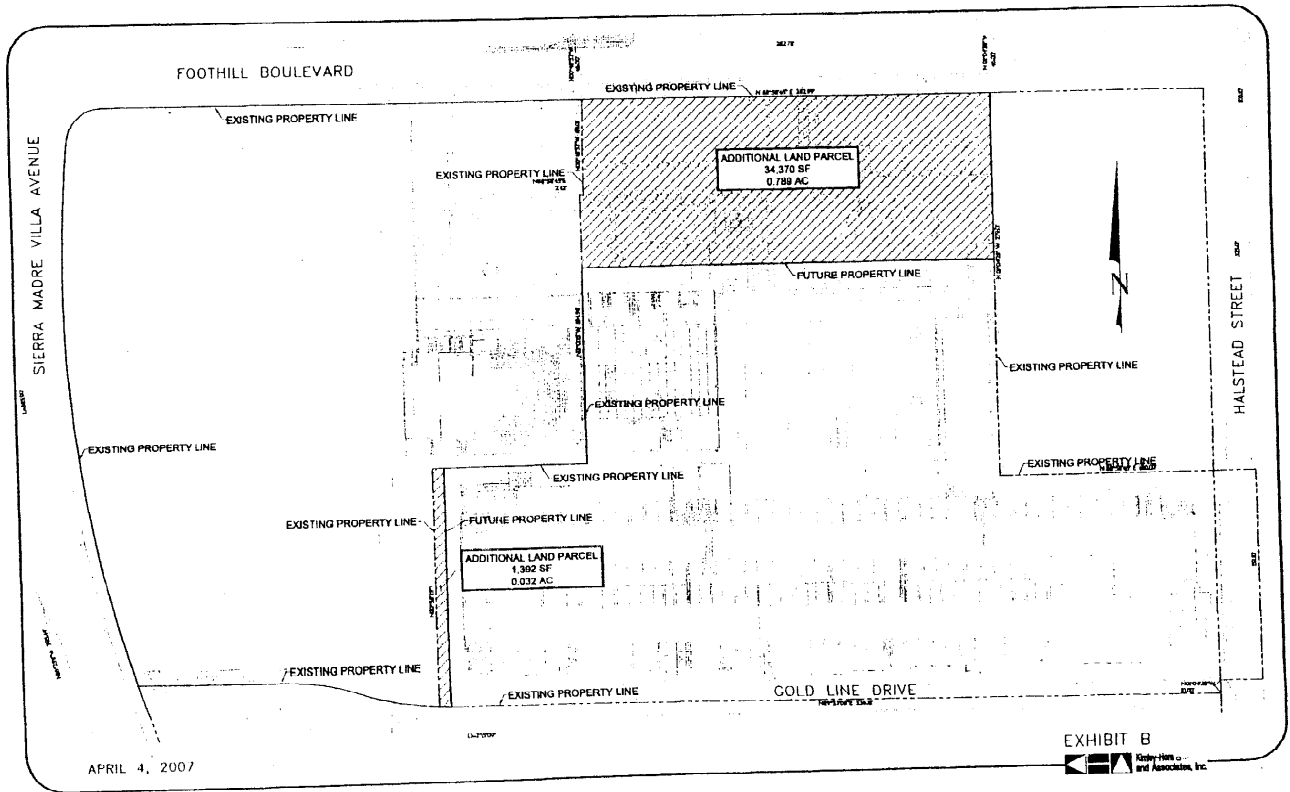
Current Land Parcel



DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF PASADENA AND
SMV TECHNOLOGY PARTNERS LLC

Exhibit "B"

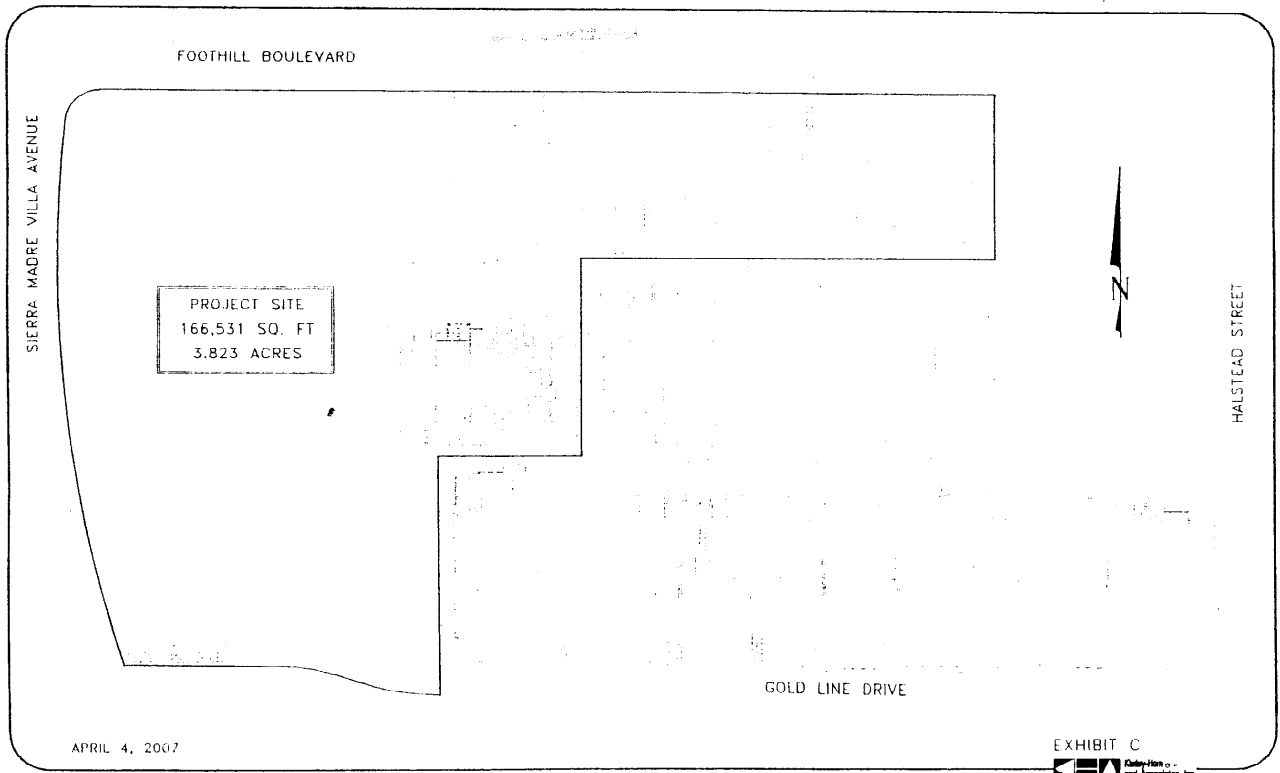
Additional Land Parcel



**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF PASADENA AND
SMV TECHNOLOGY PARTNERS LLC**

Exhibit "C"

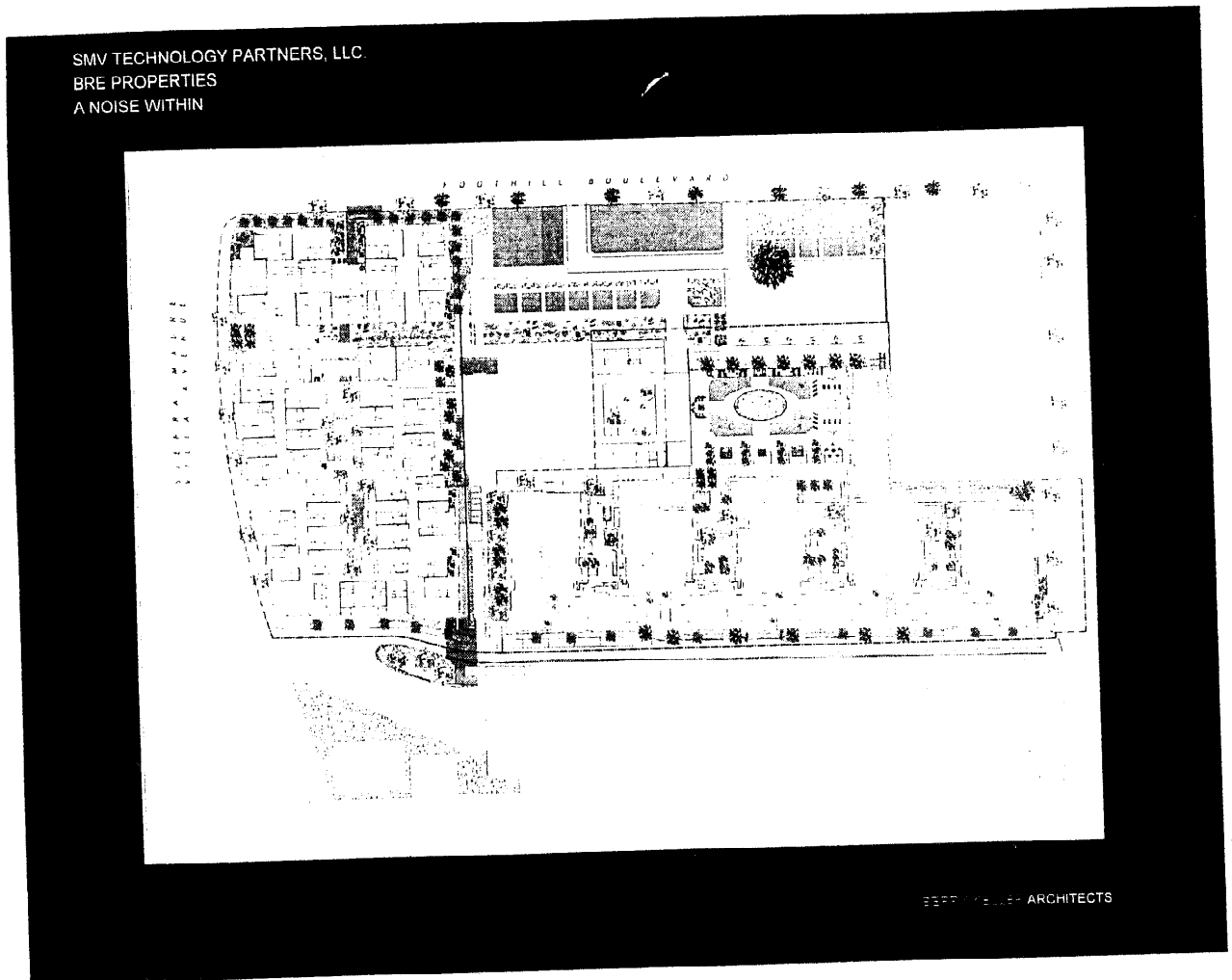
Project Site



DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF PASADENA AND
SMV TECHNOLOGY PARTNERS LLC

Exhibit "D"

Project Description; Site Plan



**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF PASADENA AND
SMV TECHNOLOGY PARTNERS LLC**

Exhibit "E"

Findings Related to Minor Conditional Use Permit (commercial use > than 15,000
located within a Transit Oriented District)

Findings Pursuant to PMC Section 17.50.340:

1. The Project consists of a use, or mix of uses, that encourage transit use and is oriented toward the transit user.
2. The Project is designed to enhance pedestrian access and/or other non-motor vehicle modes of transportation to public transit.
3. The Project encourages pedestrian activity and/or other non-motor vehicle modes of transportation and reduces dependency on motor vehicles.

Findings Pursuant to PMC Section 17.61.050:

1. The proposed use is allowed with a Minor Conditional Use Permit within the applicable zoning district and complies with all applicable provisions of the Zoning Code;
2. The location of the proposed use complies with the special purposes of the Zoning Code and the purposes of the applicable zoning district;
3. The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of the East Pasadena Specific Plan
4. The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use;
5. The use, as described and conditionally approved, would not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City; and
6. The design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity in terms of aesthetic values, character, scale, and view protection.

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
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Exhibit "F"

Findings Related to Expressive Use Permit (theater use)

Findings Pursuant to PMC Section 17.61.060:

1. The proposed use is allowed with an Expressive Use Permit within the subject zoning district (the East Pasadena Specific Plan area) and complies with the applicable development and design requirements of the subject zoning district and with all applicable provisions of the Zoning Code.
2. The proposed use will provide and maintain wastewater to establish and maintain an unrestricted flow in sanitary sewers during average and peak conditions as established by the City's approved sewer master plan, as amended from time to time.
3. The proposed use will provide and maintain solid waste services to establish and maintain a level of service consistent with the City's approved source reduction and recycling element.
4. The proposed use will provide and maintain fire prevention and suppression services as established by the Uniform Fire Code to establish and maintain minimum response time for fire and emergency medical calls as established by the City's approved general plan.
5. The proposed use will provide and maintain police services and crime prevention services to establish and maintain minimum response time for police calls for service as established by the City's approved general plan.

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Exhibit "G"

Findings Related to Certificate of Exception (Lot Line Adjustment)

Findings Pursuant to PMC Section 16.20.170:

1. The parcel resulting from the lot line adjustment (consolidation) will conform to local zoning and building ordinances.

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Exhibit "H"

Findings Related to Conditional Use Permit (Commercial building > 25,000 sq. ft.)

Findings Pursuant to PMC Section 16.20.170:

1. The proposed use is allowed with a Conditional Use Permit within the applicable zoning district and complies with all applicable provisions of the Zoning Code.
2. The location of the proposed use complies with the special purposes of the Zoning Code and the purposes of the applicable zoning district.
3. the proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of the East Pasadena Specific Plan.
4. The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.
5. The use, as described and conditionally approved, would not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the City; and
6. the design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity in terms of aesthetic values, character, scale, and view protection.

DEVELOPMENT AGREEMENT BY AND BETWEEN THE

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Exhibit "I"

Findings Related to Minor Conditional Use Permit (shared parking)

Findings Pursuant to PMC Section 17.46.050:

1. The spaces to be provided would be available as long as the uses requiring the spaces lawfully exist; and
2. The quality and efficiency of the parking or loading utilization would equal or exceed the level that is otherwise required.

Findings Pursuant to PMC Section 17.61.050

1. The proposed use is allowed with a Minor Conditional Use Permit within the applicable zoning district and complies with all applicable provisions of the Zoning Code.
2. The location of the proposed use complies with the special purposes of the Zoning Code and the purposes of the applicable zoning district.
3. The proposed use is in conformance with the goals, policies, and objectives of the General Plan and the purpose and intent of the East Pasadena Specific Plan.
4. The establishment, maintenance, or operation of the use would not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.
5. The use, as described and conditionally approved, would not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the City; and
6. The design, location, operating characteristics, and size of the proposed use would be compatible with the existing and future land uses in the vicinity in terms of aesthetic values, character, scale, and view protection.

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Exhibit "J"

Findings Related to Variance (reduction of required loading spaces)

Findings Pursuant to PMC Section 17.61.050:

1. There are exceptional or extraordinary circumstances or conditions applicable to the subject site that do not apply generally to sites in the same zoning district.
2. Granting the application is necessary for the preservation and enjoyment of a substantial property right of the applicant and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application would not be detrimental or injurious to property or improvements in the vicinity of the subject site, or to the public health, safety, or general welfare.
4. Granting the application is in conformance with the goals, policies, and objectives of the General Plan, and the purpose and intent of any applicable specific plan and the purposes of this Zoning Code, and would not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and the same zone district.
5. Cost to the applicant of strict compliance with a regulation shall not be the primary reason for granting the Variance.