



# City of Santa Barbara California

## CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 052-05

121 W. DE LA GUERRA STREET

TENTATIVE SUBDIVISION MAP, LOT AREA AND OPEN SPACE MODIFICATIONS

JULY 14, 2005

**APPLICATION OF BRIAN CEARNAL (ARCHITECT), AGENT FOR THE RAMETTO COMPANY (PROPERTY OWNER), 121 W. DE LA GUERRA STREET, APN: 037-082-002, C-2 COMMERCIAL ZONE, GENERAL PLAN DESIGNATION: GENERAL COMMERCE AND RESIDENTIAL, 12 UNITS PER ACRE (MST2004-00774)**

The proposed project involves construction of a mixed-use development containing 14 residential condominiums, 3 of which would be affordable to middle-income home buyers, and 3,310 square feet of commercial space. A total of 44 parking spaces would be provided in a semi-subterranean parking garage. Vehicular access would be provided via a two-way entry/exit from De la Guerra Street. The project site is a 22,500 square foot parcel located on West De la Guerra Street between Chapala and De la Vina Streets in downtown Santa Barbara. The existing 1,200 square foot office building and 65-car parking lot would be demolished.

The discretionary applications required for this project are:

1. A Modification of the lot area requirements to allow for three inclusionary housing (bonus density) units on a lot in the C-2 Zone (SBMC § 28.92.026.A.2);
2. A Modification to allow a portion of the required 10% open space area to be provided on the second level of the building (SBMC §28.92.026.A.2); and
3. A Tentative Subdivision Map (TSM) for a one lot subdivision with 14 residential condominiums and one commercial condominium (SBMC Chapters 27.07 and 27.13).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Guidelines Sections 15301, which allows for demolition of up to three commercial structures and 15332, which provides for in-fill development projects in urban areas where it is determined that there will be no significant effects on the environment.

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

**WHEREAS**, no one appeared to speak in favor of the application, and 1 person appeared and left before he was able to speak in opposition thereto as the Chair read his name and comment from the speaker slip he filled out, and the following exhibits were presented for the record:

1. Staff Report with Attachments, July 6, 2005

2. Site Plans

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

I. Approved the subject application making the following findings and determinations:

A. **Open Yard Area Modification (SBMC §28.92.026)**

The modification is consistent with the purposes and intent of the Zoning Ordinance and is necessary to secure an appropriate improvement on a lot, prevent unreasonable hardship, or promote uniformity of improvement. The proposed project would provide adequate open space area to meet the Zoning Ordinance requirement (at least 10% of the total lot area); however, because it is being provided on the second floor instead of the ground level, a modification is required. The requested modification is consistent with the purpose and intent of the Zoning Ordinance to provide open space areas in new development, and it is necessary to secure an appropriate improvement on a lot. Providing the open space area on the second floor is appropriate in urbanized areas, especially in the downtown core.

B. **Lot Area Modification (SBMC §28.92.026)**

The modification is consistent with the purposes and intent of the Zoning Ordinance and is necessary to provide three inclusionary housing units affordable to middle-income households.

C. **Tentative Map (SBMC §27.07.100)**

The Tentative Subdivision Map is consistent with the General Plan and the Zoning Ordinance of the City of Santa Barbara. The site is physically suitable for the proposed development, the project is consistent with the variable density provisions of the Municipal Code and the General Plan, and the proposed use is consistent with the Land Use Element and zoning designation for the site, and the vision for this neighborhood in the General Plan. The design of the project will not cause substantial environmental damage, and associated improvements will not cause serious public health problems or conflict with easements, acquired by the public at large, for access through or use of property within the proposed development.

D. **New Condominium Development (SBMC §27.13.080)**

1. The project complies with all provisions of the City's Condominium Ordinance.

The project complies with the density requirements subject to approval of the lot area modification, and each unit includes adequate covered parking with storage, laundry facilities, separate utility metering, adequate unit size and required private outdoor living space.

2. The proposed development is consistent with the General Plan of the City of Santa Barbara.

The project is consistent with policies of the City's General Plan including the Land Use Element, Housing Element, Conservation Element, Noise Element and Circulation Element. The proposed development is consistent with the principles of sound community planning and will not have an adverse impact upon the neighborhood's aesthetics, parks, streets, traffic, parking and other community

facilities and resources. The project will provide infill residential development in the downtown that is compatible with the surrounding neighborhood.

3. The proposed development is consistent with the principles of sound community planning and will not have an adverse impact upon the neighborhood's aesthetics, parks, streets, traffic, parking and other community facilities and resources.

The project is an infill mixed-use project proposed in an area where residential and commercial uses are permitted. The project is adequately served by public streets, will provide adequate parking to meet the demands of the project and will not result in traffic impacts. Adequate park facilities exist nearby, and the project would not adversely impact other community resources, such as water, sewer, police, fire, and schools. The design has been reviewed by the City's design review board, which found the architecture and site design appropriate.

II. Said approval is subject to the following conditions:

- A. **Recorded Agreement.** Prior to the issuance of any Public Works permit or building permit for the project on the Real Property, the following conditions shall be imposed on the use, possession and enjoyment of the Real Property and shall be recorded by the Owner with the Final Map on an "Agreement Relating to Subdivision Map Conditions Imposed on Real Property" which shall be reviewed as to form and content by the City Attorney, Community Development Director and/or Public Works Director, which shall be recorded in the Office of the County Recorder:
  1. **Uninterrupted Water Flow.** The Owner shall provide for the uninterrupted flow of water through the Real Property including, but not limited to, swales, natural water courses, conduits and any access road, as appropriate. The Owner is responsible for the adequacy of any project related drainage facilities and for the continued maintenance thereof in a manner that will preclude any hazard to life, health or damage to the Real Property or any adjoining property.
  2. **Recreational Vehicle Storage Prohibition.** No recreational vehicles, boats or trailers shall be stored on the Real Property.
  3. **Landscape Plan Compliance.** The Owner shall comply with the Landscape Plan as approved by the Historic Landmarks Commission (HLC). Such plan shall not be modified unless prior written approval is obtained from the HLC. The landscaping on the Real Property shall be provided and maintained in accordance with said landscape plan.
  4. **Middle-Income Unit Sale Restrictions.** One of the studio units, one of the one-bedroom dwelling units and one of the two-bedroom dwelling units on the Real Property shall be sold on initial sale at prices affordable to middle-income households; the maximum initial sale prices and the maximum household income of purchasers shall be determined as set forth in "Requirements for Middle-Income Sale Units." The resale prices shall be controlled through

recorded documents to assure continued affordability for at least forty-five (45) years from the initial sale of the dwelling unit. Any dwelling unit rented prior to the initial sale of the dwelling unit shall be affordable to middle-income households. The resident selection procedures, maximum income of the tenants and maximum rent to be charged for the dwelling units shall be determined as set forth in "Requirements for Middle-Income Rental Units."

5. **Approved Development.** The development of the Real Property approved by the Planning Commission on July 14, 2005 is limited to one commercial condominium of 3,310 sq. ft., 14 residential condominiums and the improvements shown on the Tentative Subdivision Map signed by the chairman of the Planning Commission on said date and on file at the City of Santa Barbara.
6. **Required Private Covenants.** The Owners shall record in the official records of Santa Barbara County either private covenants, a reciprocal easement agreement, or a similar agreement which, among other things, shall provide for all of the following:
  - a. **Common Area Maintenance.** An express method for the appropriate and regular maintenance of the common areas, common access ways, common utilities and other similar shared or common facilities or improvements of the development, which methodology shall also provide for an appropriate cost-sharing of such regular maintenance among the various owners of the condominium parcels.
  - b. **Garages Available for Parking.** A covenant that includes a requirement that all garages be kept open and available for the parking of vehicles owned by the residents of the property in the manner for which the garages were designed and permitted.
  - c. **Landscape Maintenance.** A covenant that provides that the landscaping shown on the approved Landscaping Plan shall be maintained and preserved at all times in accordance with the Plan.
  - d. **Norfolk Island Pine Maintenance and Replacement.** The large Norfolk Island Pine at the northwesterly corner of the parcel shall be maintained and protected. If, due to ill health or other catastrophe, the tree is removed, it shall be replaced with a minimum 24-inch box tree.
  - e. **Covenant Enforcement.** A covenant that permits each owner to contractually enforce the terms of the private covenants, reciprocal easement agreement, or similar agreement required by this condition.
7. **Lighting.** Exterior lighting, where provided, shall be consistent with the City's Lighting Ordinance. No floodlights shall be allowed. Exterior lighting shall be directed toward the ground.

8. **Tree Protection.** The existing Norfolk Island Pine tree shown on the Tentative Subdivision Map shall be preserved, protected and maintained. During construction, protection measures shall be provided, including but not limited to fencing of the area surrounding the tree.
  9. **Parking Permits.** Residents will not be eligible for on-street parking permits through the Residential Permit Program.
  10. **Storm Water Pollution Control Systems Maintenance.** The Owner(s) shall maintain drainage system, storm drain water interceptor and other storm water pollution control devices in accordance with the Operations and Maintenance Procedure Plan approved by the City Land Development Engineer.
- B. **Design Review.** The following is subject to the review and approval of the Historic Landmarks Commission (HLC):
1. **Tree Protection Measures.** The landscape and grading plans shall include the following tree protection measures for the Norfolk Island Pine, in accordance with the recommendations outlined in the Arborist's Report prepared by Westree and dated October 20, 2004:
    - a. All work within the dripline of the tree shall be supervised by the project Arborist.
    - b. All excavation within the dripline of the tree's root area shall be done by hand or with small light weight excavator for minimal impact on the root areas.
    - c. Leave the existing asphalt in place as long as possible to better protect the root zone during grading and construction activities.
    - d. Deep root fertilize prior to any construction activities to promote better health and vigor to compensate for some inevitable root loss. Some 1" holes will need to be drilled in the surrounding asphalt for this fertilizing process. Further applications will be necessary on at least an annual basis.
    - e. Interlocking pavers or equivalent shall be utilized in the new driveway areas surrounding this tree.
    - f. No major grade changes within the 15' radius of the trunk shall take place.
    - g. Exploratory digging shall be done to determine the best location of the caissons adjacent to the tree.
    - h. Fence off the tree from any other construction activities. No construction materials shall be stored within the root area.

2. **Lighting.** Exterior lighting, where provided, shall be consistent with the City's Lighting Ordinance. No floodlights shall be allowed. Lighting shall be directed toward the ground.
  3. **Trash Enclosure Provision.** A trash enclosure with an area for recycling containers shall be provided on the Real Property and screened from view from surrounding properties and the street. Such structure shall be located at least five (5) feet from any building unless protected with fire sprinklers.
  4. **Screened Check Valve/Backflow.** The check valve or anti-backflow devices for any sprinkler (and irrigation) systems shall be provided in a location screened from public view or included in the exterior wall of the building.
- C. **Final Map Submittal.** Prior to the recordation of the Final Map, issuance of any Public Works permit or Building Permit for the project on the Real Property, the Owner shall submit to the Public Works Department a Final Map prepared by a licensed land surveyor or registered Civil Engineer in conformance with the current Subdivision Map Act and in conformance with the requirements of the City Survey Control Ordinance.
- D. **Public Works Submittal Prior to Permit Issuance.** The Owner shall submit the following or evidence of completion of the following to the Public Works Department prior to recordation of the Final Map or issuance of a Building Permit or Public Works Permit for the project:
1. **Street Improvement Plans.** Building plans for construction of improvements along the subject property road frontage on De la Guerra Street. As determined by the Public Works Department, the improvements shall include repair/replacement of City standard sidewalk, driveway, curbs, gutters, curb drain outlets, drop inlet, detention, preserve and/or reset contractor stamp and/or survey monuments, drought-tolerant parkway landscaping, street trees, and provide adequate positive drainage. Where tree roots are the cause of the damage, the roots are to be pruned under the direction of the City Arborist. The building plans shall be prepared by a registered Civil Engineer or licensed architect and reviewed and signed by the City Engineer.
  2. **Public Improvement Securities.** The owner shall submit an executed Agreement for Land Development Improvements and an Engineer's Estimate, signed and stamped by a registered civil engineer, and securities for construction of improvements prior to execution of the agreement.
  3. **Hydrology Calculations.** Submit to the Land Development Engineer final hydrology calculations justifying that the proposed and existing drainage conveyance system adequately conveys a 25-year storm event.
  4. **Water Rights Assignment.** Owner shall assign to the City of Santa Barbara the exclusive right to extract ground water from under the Real Property. This assignment of rights shall not include a right of surface entry on or from the Real Property.

E. **Required Prior to Building Permit Issuance.** The following shall be finalized and specified in written form and submitted with the application for a building permit:

1. **Neighborhood Notification Prior to Construction.** At least twenty (20) days prior to commencement of construction, the contractor shall provide written notice to all property owners, businesses and residents within 450 feet of the project area. The notice shall contain a description of the project, the construction schedule, including days and hours of construction, the name and phone number of the Contractor(s), site rules and Conditions of Approval pertaining to construction activities and any additional information that will assist the Building Inspectors, Police Officers and the public in addressing problems that may arise during construction. The language of the notice shall be reviewed and approved by the City Planning Division prior to being distributed.
2. **Contractor and Subcontractor Notification.** All contractors and subcontractors shall be notified in writing of site rules, restrictions and Conditions of Approval.
3. **Archaeological Monitoring Contract.** As identified in the Phase 1 Archaeological Resources Report prepared for this site by Macfarlane Archaeological Consultants, dated February 2, 2005, contract with an archaeologist from the most current City Qualified Archaeologists List for monitoring during initial site preparation (i.e. after removal of existing pavements and prior to removal of foundations. The contract shall be subject to the review and approval of the Environmental Analyst.

At such time as the natural soil surface is exposed, the archaeologist shall conduct a formal resurvey of the project area. A report of this resurvey and recommendations shall be presented to the City of Santa Barbara.

The archaeologist shall remain onsite to monitor initial site preparation grading and/or trenching in order to examine subsurface soils for indications of an archaeological site, artifacts or other remains. The archaeologist need not be present during recompaction of excavated soils. Results of the monitoring during initial grading activities shall be reported to the City of Santa Barbara in the form of a formal report.

In the event that resurvey and monitoring of initial grading confirms that the project area is devoid of archaeological remains, no further work in the project area shall be required.

In the event that an archaeological site or artifacts are encountered during the resurvey, all work in the immediate vicinity shall be halted, the remains recorded in the field by a qualified archaeologist, and procedures set forth in the Cultural Resources Section of the Master Environmental Assessment (MEA) shall be implemented to evaluate the importance of those resources. These procedures may include a Phase 2 site evaluation and subsurface testing program.

In the event that prehistoric remains are encountered, a qualified Native American representative identified by the City of Santa Barbara shall be contacted to monitor all further site disturbance in the vicinity of the remains and remain present during any additional subsurface site evaluation.

4. **Building Documentation.** The applicant shall submit required documentation of the existing building, pursuant to the City's "Required Documentation of Buildings Prior to Demolition" handout, including large scale black and white photographs of the building, to the City for review and acceptance prior to building demolition.
  5. **Tree Designation.** Follow up with the City as to the appropriateness of designating the tree as an historic tree.
  6. **Arborist Monitoring.** Contract with a qualified arborist for monitoring of all work within the dripline of the Norfolk Island Pine tree during construction.
  7. **Recorded Affordability Document.** The Owner shall obtain from Housing and Redevelopment Staff an affordability document requiring that 3 units be affordable to households of middle-income for a period of at least 45 years from the initial sale of the dwelling unit., in accordance with the City's "Requirements for Middle-Income Rental Units." Said document shall be executed by the applicant and recorded prior to the issuance of the building permit for the project.
  8. **Letter of Commitment for Pre-Construction Conference.** The Owner shall submit to the Community Development Director a letter of commitment that states that, prior to disturbing any part of the project site for any reason and after the building permit has been issued, the General Contractor shall schedule a pre-construction conference. The conference shall include representatives from the Public Works Department Engineering and Transportation Divisions, the Building and Safety Division, the Planning Division, the Property Owner, the Architect, the Arborist, the archaeologist, the Contractor and subcontractors.
- F. **Building Permit Plan Requirements.** The following requirements shall be incorporated into the construction plans submitted to the Building and Safety Division with applications for building permits. All of these construction requirements shall be carried out in the field and completed prior to the issuance of a Certificate of Occupancy:
1. **Design Review Requirements Included on Plans:** Plan submitted for building permits shall show all design elements, as approved by Historic Landmarks Commission, outlined in Section B above.
  2. **Air Pollution Control District Notification.** Demolition of the office building requires notification to the Air Pollution Control District (APCD) and submittal of a "Notification for Renovation and Demolition" form prior to issuance of a

building permit to ensure that any discovery of asbestos is properly handled per APCD regulations.

3. **Pre-Construction Conference.** Prior to commencement of construction, a construction conference shall be scheduled by the General Contractor. The conference shall include representatives from the Public Works Department Engineering and Transportation Divisions, Building Division, Planning Division, the Property Owner, Architect, Arborist, archaeologist, Contractor and Subcontractor(s).
4. **Street Trees.** Trees within the City's right-of-way shall be preserved and protected.
5. **New Fire Hydrant.** Indicate that a new hydrant will be installed within 300' of the furthest exterior wall of the new structure of obtain a variance from the Fire Marshal.
6. **Best Management Practices.** Construction activities shall address water quality through the use of Best Management Practices (BMPs) as approved by the City Building Official.
7. **Demolition/Construction Materials Recycling.** Recycling and/or reuse of demolition/construction materials shall be carried out and containers shall be provided on site for that purpose in order to minimize construction-generated waste conveyed to the landfill.
8. **Parking Loss Requirements.** At least two (2) weeks prior to closure of the parking lot on the Real Property, the Owner shall notify all lot users, in writing, of the closure, and shall inform them of the availability of spaces in the City's commuter parking lots, and offer to pay the commuter parking lot permit cost for up to six months. A copy of such notification shall be sent to the City Transportation Planning Manager.
9. **Utilities.** Provide individual water, electricity, gas meter, and building sewer for each residential unit. Service lines for each unit shall be separate until a point five (5) feet outside the building. Each unit having individual meter(s) or heater(s) shall have access to its meter(s) and heater(s) which shall not require entry through another unit pursuant to Santa Barbara Municipal Code Section 27.13.060.
10. **Construction-Related Truck Trips.** Construction-related truck trips shall not be scheduled during peak hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) to help reduce truck traffic on adjacent streets and roadways.
11. **Construction Related Traffic Routes.** The route of construction-related traffic shall be established to minimize trips through surrounding residential neighborhoods, subject to approval by the Transportation Operations Manager.

12. **Haul Routes.** The haul route(s) for all construction-related trucks, three tons or more, entering or exiting the site, shall be approved by the Transportation Operations Manager.
13. **Construction Hours.** Construction (including preparation for construction work) is prohibited Monday through Friday before 8:00 a.m. and after 5:00 p.m., and all day on Saturdays, Sundays and holidays observed by the City of Santa Barbara as shown below:

New Year's Day	January 1 <sup>st</sup> *
Martin Luther King's Birthday	3 <sup>rd</sup> Monday in January
Presidents' Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 <sup>th</sup> *
Labor Day	1 <sup>st</sup> Monday in September
Thanksgiving Day	4 <sup>th</sup> Thursday in November
Following Thanksgiving Day	Friday following Thanksgiving Day
Christmas Day	December 25 <sup>th</sup> *

\*When a holiday falls on a Saturday or Sunday, the preceding Friday or following Monday, respectively, shall be observed as a legal holiday.

When, based on required construction type or other appropriate reasons, it is necessary to do work at night, contractor shall contact the Chief of Building and Safety to request a waiver from the above construction hours, using the procedure outlined in SBMC § 9.16.015 Construction Work at Night. Contractor shall notify all residents within 300 feet of the parcel of intent to carry out night construction a minimum of 48 hours prior to said construction. Said notification shall include what the work includes, the reason for the work, the duration of the proposed work and a contact number.

14. **Construction Parking/Storage.** Construction parking and storage shall be provided as follows:
  - a. During construction, free parking spaces for construction workers and construction shall be provided on-site or off-site in a location subject to the approval of the Streets, Parking, and Transportation Operations Manager.
  - b. Storage of construction materials within the public right-of-way is prohibited.
15. **Water Sprinkling During Grading.** During site grading and transportation of fill materials, regular water sprinkling shall occur using reclaimed water whenever the Public Works Director determines that it is reasonably available. During clearing, grading, earth moving or excavation, sufficient quantities of water, through use of either water trucks or sprinkler systems, shall be applied to

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

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

16. **Covered Truck Loads.** Trucks transporting fill material to and from the site shall be covered from the point of origin.
17. **Disturbed Soil Stabilization.** After clearing, grading, earth moving and/or excavation is completed, the entire area of disturbed soil shall be treated to prevent wind pickup of soil. This may be accomplished by:
  - a. Seeding and watering until grass cover is grown;
  - b. Spreading soil binders;
  - c. Sufficiently wetting the area down to form a crust on the surface with repeated soakings as necessary to maintain the crust and prevent dust pickup by the wind; or
  - d. Other methods approved in advance by the Air Pollution Control District.
18. **Expeditious Paving.** All roadways, driveways, sidewalks, etc., shall be paved as soon as possible. Additionally, building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
19. **Construction Contact Sign.** Immediately after building permit issuance, signage shall be posted at the points of entry to the site that list the contractor(s) name, contractor(s) telephone number, work hours and site rules to assist Building Inspectors and Police Officers in the enforcement of the conditions of approval.
20. **Arborist's Monitoring.** Schedule for the qualified Arborist's presence during grading and construction activities near the tree that is to be preserved pursuant to applicable conditions contained herein.
21. **Construction Equipment Maintenance.** All construction equipment, including trucks, shall be professionally maintained and fitted with standard manufacturers' muffler and silencing devices.
22. **Conditions on Plans/Signatures.** All Planning Commission Conditions of Approval shall be provided on a full size drawing sheet as part of the drawing sets. A statement shall also be placed on the above sheet as follows: The undersigned have read and understand the above conditions, and agree to abide

by any and all conditions which is their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

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

- G. **Prior to Certificate of Occupancy.** Prior to issuance of the Certificate of Occupancy, the Owner of the Real Property shall complete the following:
1. **Repair Damaged Public Improvements.** Repair any damaged public improvements (curbs, gutters, sidewalks, etc.) subject to the review and approval of the Public Works Department. Where tree roots are the cause of the damage, the roots shall be pruned under the direction of a qualified Arborist.
  2. **Complete Public Improvements.** Public improvements as shown in the improvement/building plans.
  3. **Check Valve/Anti-Backflow Device.** Provide an approved check valve or anti-backflow device placed on the property side of consumer's service pursuant to Santa Barbara Municipal Code Section 14.20.120 and Public Works Construction Standard Detail 5-009.0.
  4. **Affordability Provisions Approval.** Obtain from the Community Development Director, for all dwelling units subject to affordability conditions, written approval of the following: (a) the resident selection process; (b) the initial rent levels, or the initial sales prices and terms (including financing); (c) the eligibility of the initial residents; and (d) the recorded implementing documents which assure continued compliance with the affordability conditions.
  5. **Archaeological Monitoring Report.** A final report on the results of the archaeological monitoring shall be submitted to the Environmental Analyst within 180 days of completion of the monitoring and prior to the issuance of the Certificate of Occupancy, whichever is earlier.
  6. **New Construction Photographs.** Photographs of the new construction, taken from the same locations as those taken of the story poles prior to project

approval, shall be taken, attached to 8 ½ x 11" board and submitted to the Planning Division.

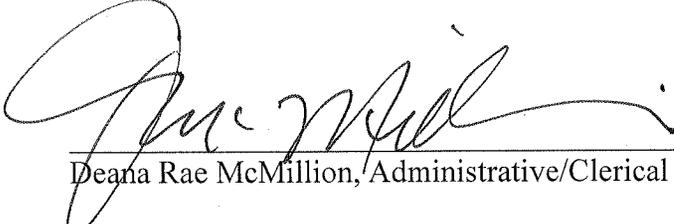
- H. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

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

This motion was passed and adopted on the 14th day of July, 2005 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 7 NOES: 0 ABSTAIN: 0 ABSENT: 0

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

  
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Deana Rae McMillion, Administrative/Clerical Supervisor

11-10-05  
\_\_\_\_\_  
Date

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