



Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.9200
213.922.9201
metro.net

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REVISION 2
PLANNING AND PROGRAMMING COMMITTEE
MARCH 19, 2008

SUBJECT: TAYLOR YARD JOINT DEVELOPMENT

ACTION: AUTHORIZE THE EXECUTION OF VARIOUS REAL ESTATE AND DEVELOPMENT AGREEMENTS NECESSARY FOR THE DEVELOPMENT OF A PORTION OF OUR TAYLOR YARD PROPERTY

RECOMMENDATION

- A. Find that it is in ~~the our~~ best interest of LACMTA to proceed with development of lease an approximately 20.2-acre portion of Taylor Yard Parcel C (the "Development Site") for residential and retail ~~development purposes in substantial accordance with the key terms and conditions set forth in Attachment A (the "Development").~~
- B. Authorize the Chief Executive Officer ("CEO") to: (a) enter into a Joint Development Agreement ("JDA") with McCormack Baron Salazar, Inc., or one or more development entities controlled and managed by McCormack Baron Salazar, Inc. and reasonably approved by us (individually and collectively, "MBS"), covering the ~~development of the Development Site; and~~ (b) extend the term of the JDA in accordance with the terms set forth in Attachment A; (c) enter into and execute ground leases and other related documents and agreements with MBS relating to the Development and the Development Site, (d) execute dedications and other grants of real property rights of portions of the Development Site for public utility and street purposes related to the Development, and (e) credit up to \$800,000 in rent payments or other amounts due from MBS to offset costs incurred by MBS to clean-up and remediate hazardous materials from the Development Site, all in substantial accordance with the key terms and conditions set forth on Attachment A and the terms and conditions of the JDA.

ISSUE

The recommended actions will allow MBS to move forward with ~~their plans to develop the Development Site.~~ Board authorization at this time is critical to MBS's efforts to secure \$17.5 million in Prop 1C Infill Infrastructure Grant funds. Applications for the first round of the State's grant fund allocation are due in April of this year. The State requires that all applicants have control of their development sites as a condition precedent to application for grant funds. The JDA will provide MBS with such site control. Board authorization is necessary for the CEO to execute the JDA and the related documents and agreements contemplated therein.

In April 2005, the Board authorized the CEO to enter into an Exclusive Negotiation Agreement with MBS for development of the Development Site. Staff has now negotiated

the key terms and conditions relating to the JDA, the related documents and agreements contemplated therein and the development of the Development Site by MBS. These key terms and conditions are detailed on Attachment A.

BACKGROUND

Previously, Taylor Yard served as a rail yard for Union Pacific and Southern Pacific railroads. In the early 1990's, we acquired a portion of Taylor Yard from Southern Pacific. Our purchase included Parcels B and C and the rail corridor running through the yard and connecting Glendale with Los Angeles, all as shown on Attachment B. Amtrak and Metrolink rail service now operate on the rail corridor and the Metrolink maintenance facility is located on Parcel B. Parcel C is currently undeveloped and totals approximately 23.83 acres. It is currently used by various construction related trades to store equipment and materials. The Development Site comprises approximately 20.2 acres of Parcel C and is adjacent to the rail corridor. The proposed transaction reserves approximately 3.83 acres of Parcel C from the Development Site, which will allow a rail station and park and ride facility to be added to Taylor Yard when regular, non-commuter rail service is established between Los Angeles Union Station and Glendale-Burbank Airport.

The proposed Ddevelopment will be constructed on the Development Site and will include approximately 295 for-sale condominiums (a third of which will be targeted for workforce housing), approximately 68 affordable family apartment units and approximately 108 affordable senior apartment units, as well as approximately 29,500 square feet of retail space, a community recreation center and pool, street improvements and open space.

In conjunction with us, MBS will subdivide the Development Site into multiple parcels to meet the needs of the Ddevelopment and construction phasing. This subdivision will be at the sole cost and expense of MBS.

The entire Ddevelopment, including the for-sale condominiums, will be constructed on premises ground leased from us. The ground leases covering the premises underlying the for sale condominiums, the community recreation center and pool, and certain open space improvements (the "99-Year Ground Leases") will have lease terms of 99 years and will cover approximately 10.2 acres, plus the area underlying certain private streets. The ground leases covering the premises underlying the affordable family units, affordable senior units, retail space and certain other open space improvements (the "68-Year Ground Leases") will have lease terms of 68 years and will cover approximately 5.2 acres, plus the area underlying certain private streets. It is estimated that street improvements, including new public and private streets within the proposed development Development and public right-of-way dedications along San Fernando Road, will total 4.8 acres.

The proposed Ddevelopment will be constructed in multiple phases over time, with each construction phase corresponding to one or more ground leases. Ground rent for the entire term of each 99-Year Ground Lease and for the first 57 years of the ground leases covering the affordable family and the affordable senior portions of the proposed Ddevelopment (the "Affordable Housing Ground Leases") will be equal to that portion of the Development Site's value attributable to the premises covered by such ground lease. The value of the

Development Site will equal the greater of (a) the fair market value of the Development Site, as determined by an appraisal now in progress, which value shall be increased (but not decreased) annually based on the increase in the Consumer Price Index, and (b) \$16,775,000, as increased (but not decreased) annually based on the increase in the Consumer Price Index. The forgoing rent under each applicable ground lease shall be due and payable, up front, upon execution of such ground lease. The \$16,775,000 amount is supported by an appraisal of the Development Site completed in May 2005. The appraisal now underway will provide a current value for the Development Site.

MBS will also pay us the following amounts:

- Annual ground rent under the Affordable Housing Ground Leases, commencing with the 58th year of the term of each such ground lease, equal to the fair market ground rent for the ground leased premises under each such ground lease. ~~The fair market rent shall be based on the improvements then in place on the applicable ground leased premises and covenants then affecting the same, subject to annual increases (but not decreases) adjustments based on increases in the Consumer Price Index.~~
- Annual holding rent during the term of the JDA equal to the greater of (a) 25% of the fair market rent for the Development Site, and (b) \$377,437.50. The fair market rent for the Development Site will equal 9% of the Development Site's fair market value, as determined by the appraisal now in progress. Annual holding rent under the JDA shall be increased (but not decreased) annually based on the increase in the Consumer Price Index, and shall be reduced on an equitable basis as each of the ground leases is executed and as each of the dedications or other grants of real property rights are made.
- Ground rent under the retail ground lease equal to 3% of the gross sales received by MBS from all retail and other economic activity conducted on the premises covered by the retail ground lease.
- ~~A resale transfer fee equal to 1.5% of the resale price of each for-sale condominium for all condominium sales occurring after MBS's initial sale to the original homeowner.~~
- ~~LACMTA-Our~~ support costs, including those reasonable costs relating to (i) review and approval of the Development's design, (ii) oversight and monitoring of the proposed construction and protection of ~~LACMTA-our~~ property, facilities and operations, and (iii) subdivision of the Development Site.

In addition, LACMTA will receive a resale transfer fee equal to 1.5% of the resale price of each for-sale condominium for all condominium sales occurring after MBS's initial sale to the original homeowner.

The Development Site contains known contaminants that will need to be remediated before the ground leases can be executed. For the most part, these ~~contaminants-hazardous~~

materials are contained in concrete and construction debris located on the surface of the Development Site and the soil exposed to the same. However, MBS's due diligence indicates that asbestos and lead based paint are present in an old railroad control tower situated on the Development Site and that underground tanks may also be present on the property. Also, ground water underlying the Ddevelopment Site and surrounding area is contaminated and may require some monitoring and action to proceed with development. MBS's current, rough estimate of the cost to clean-up and address these contaminants is between \$500,000 and \$800,000. MBS is working with us to fully characterize the scope of the contamination and to get more detailed estimates of the clean-up cost. In addition, staff is looking into the source of the concrete and construction debris and will require the responsible parties to clean-up their share of the contamination, if such parties are found. Nonetheless, the development proposal contemplated herein requires us to cover the actual cost of remediation and monitoring up to \$800,000. MBS has agreed to perform the clean-up and monitoring and to pay for the same, provided we credit such cost (up to \$800,000) against the holding rent under the JDA and the ground rent under the ground leases.

Parcel C was acquired with State funds and local bonds. Therefore, the proposed Ddevelopment, and and the ground lease transactions and dedications contemplated herein are subject to State approval. In addition, staff and bond counsel will need to confirm that the proposed transaction and Development do not violate the requirements and restrictions imposed on the Development Site by the bond funding before the contemplated ground lease transactions and dedications can be executed. clearance.

POLICY IMPLICATIONS

The recommended actions are consistent with the goals of our Joint Development Policies and Procedures. The proposed Development will: enhance and protect the transportation corridor and its environs, (b) enhance the land use and economic development goals of the surrounding community, (c) conform to local and regional development plans, and (d) generate value based on a fair market return on public investment.

OPTIONS

The Board could choose not to ~~authorize execution of the ground leases and other related documents with MB~~ take the recommended actions, reject the current terms and conditions and elect to offer the Development Site to other potential developers. Staff is not recommending this option because:

1. It would delay development of the Development Site and forego the opportunity for public financing opportunities that will become available in April of this year; and
2. It is not likely that a more appropriate development or a better development deal than that currently proposed would result.

The terms and conditions as listed in Attachment A provide us with a fair and reasonable financial return.

FINANCIAL IMPACT

Funding for joint development activities is included in the FY07-08 Budget under Project 610011 task 01.01 in cost center 2210. Revenues from ground lease rent, JDA holding rent and deposits to cover ~~LACMTA~~our support of the Development will offset continued staff and consultant related costs. Our financial returns under the JDA and the ground leases are detailed in Attachment A.

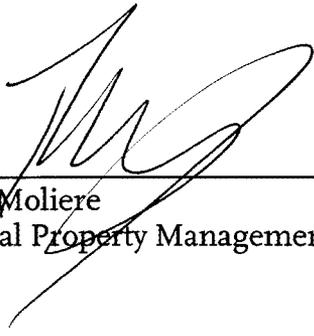
NEXT STEPS

Upon approval of the recommended actions, staff will complete and execute the JDA in substantial accordance with the terms and conditions set forth in Attachment A. ~~The ground~~The ground leases and related documents will be executed thereafter in substantial accordance with the terms and conditions set forth in the JDA and Attachment A. Upon execution of the JDA, MBS will complete the process of securing the appropriate entitlements from the City of Los Angeles necessary to construct the Development and will commence activities related to the further characterization and clean up of the contaminants present on the Development Site.

ATTACHMENTS

- A. Summary Terms and Conditions of the Joint Development Agreement and Ground Lease
- B. Taylor Yard Overview
- C. Plat of the Development Site Detailing the Proposed Development
- D. Conceptual Site Plan and Elevations for the Proposed Development

Prepared by: Greg Angelo, Director of Real Property Management & Development



Roger S. Moliere
Chief, Real Property Management and Development


for

Roger Snoble
Chief Executive Officer

**Summary of Key Terms and Conditions
Relating to the Taylor Yard Joint Development Project
with McCormack Baron Salazar, Inc.**

GENERAL DESCRIPTION:

- Developer:** McCormack Baron Salazar, Inc. ~~and/or one or more of their affiliates (, or one or more development entities controlled and managed by McCormack Baron Salazar, Inc. and reasonably approved by LACMTA (individually and collectively, "MBS").~~
- Development Site:** ~~Approximately 17~~ An approximately 20.2-acre ~~acre~~ portion of Taylor Yard Parcel C, owned by the Los Angeles County Metropolitan Transportation Authority ("LACMTA")-owned property located within Taylor Yard, as depicted on Attachment B (the "Development Site").
- Sale Property:** ~~An approximate 11.5-acre portion~~ Subdivision of the Site, as depicted on Attachment B (the "Sale Property").
- Premises A:** ~~An approximate 3.0 acre portion of the Site, as depicted on Attachment B ("Premises A").~~
- Premises B:** ~~An approximate 2.7 acre portion of the Site, as depicted on Attachment B ("Premises B").~~
- Site Value:** ~~A May 2005 appraisal confirmed a value of for the Site of \$16,775,000. Since the forgoing appraisal is approximately three (3) years old, staff and MBS have agreed to reappraise the Site to determine its current market value. The reappraisal has yet to be completed, but will be used to set the Sale Property Value, the Phase A Ground Lease Initial Capitalized Rent the Phase B Residential Ground Lease Initial Capitalized Rent (each as defined and described below).~~
- Proposed Development:** ~~The proposed development (the "Development") will be constructed by MBS at its sole cost and expense and is as follows:~~

Development Site: LACMTA agrees to allow the Development Site to be subdivided to accommodate the needs of the Development and its financiers. All work related to such subdivision will be performed by MBS at MBS's sole cost and expense, and will be subject to LACMTA's review and approval. MBS shall fund LACMTA's review and approval costs related to any such subdivision, including the cost of third-party civil engineers and land surveyors deemed necessary by LACMTA to review MBS's work.

Proposed Development: The proposed development (the "Development") will be constructed by MBS at its sole cost and expense on multiple parcels to be created via the subdivision of the Development Site noted above. In all, the Development will include:

- Between 280 and 300 for-sale condominiums (with a current target of 295 condominiums) to be constructed on the Sale Property, a third of which will be targeted for workforce housing;
- Between 64 and 70 affordable, family apartments (with a current target of 68 apartments) to be constructed on the Premises A;
- Between 100 and 110 affordable, senior apartments (with a current target of 108 apartments); and between
- Between 25,000 and 33,000 square feet of retail space (with a current target of 29,417 square feet) to be constructed on the Premises B.

The development will also include open space, street improvements and a community recreation center and pool.

The Development is subject to entitlement approvals from the City of Los Angeles.

Plans and renderings/elevations detailing the proposed development in concept/conceptual plan for the Development (the “Conceptual Plan”) are included in Attachment C–D and are subject to modification and revision as set forth in this Attachment A.

Phased Development: _____ The Development will be constructed in multiple phases.

LACMTA Support Costs: _____ MBS acknowledges and agrees that LACMTA will incur certain costs related to the design and construction of the Development (the “Support Costs”), which costs may include the cost of third-party services and LACMTA’s in-house staff that LACMTA deems necessary to (i) review and approve the design and construction of the Development, (ii) oversee and monitor the proposed construction and protect of LACMTA and other transit operator’s property, facilities and operations, and (iii) review and approve documents related to the subdivision of the Development Site. Such Support Costs may include costs related to: (a) construction safety, (b) construction management, (c) construction support, and (d) engineering and design review services.

LACMTA and MBS will agree on a budget (the “Oversight Budget”) for the Support Costs reasonably anticipated in connection with the Development and a reasonable payment schedule by which MBS will provide funds to LACMTA in advance of when such Support Costs are anticipated to be incurred (the “Advanced Funds”). The Advanced Funds shall be used by LACMTA to cover Support Costs as such costs are actually incurred.

MBS will not be required to reimburse LACMTA for Support Costs in excess of the Oversight Budget, except to the extent that LACMTA incurs additional Support Costs (“Additional Costs”) in connection with: (a) a Development design that is not a logical evolution of the Conceptual Plan attached hereto as Attachment D, or (b) is related to avoidance of possible adverse impacts on any LACMTA or other transit operator’s property, facilities or operations. In such event, the Oversight Budget will be increased by the amount of such Additional Costs and MBS shall

reimburse LACMTA for such Additional Costs upon receipt of a written invoice from LACMTA regarding the same.

Each Ground Lease will require LACMTA to promptly refund to MBS, upon completion of that portion of the Development contemplated in such Ground Lease, any Advanced Funds related to such portion of the Development which is in excess of the Support Costs incurred in connection with such portion of the Development, provided that LACMTA may withhold such reasonable amounts from such refund to cover invoices for Support Costs not yet received by LACMTA or to cover the cost to provide services and support related to “punch list” items.

Dedications:

MBS has indicated to LACMTA that the public street dedications indicated on Attachment C will be a City of Los Angeles condition precedent to approval of the entitlements for the Development and/or subdivision of the Development Site. As such, LACMTA will make such dedications to the City to the extent required to receive City approval of (i) the necessary entitlements for the Development or (ii) the subdivision of the Development Site. LACMTA will also make such other dedications and grants of LACMTA real property rights to the City or other public or quasi-public entities as are reasonably necessary to support the development, construction and operation of the Development. MBS, or the grantee under any dedication or grant of real property rights, shall pay LACMTA an amount equal to that portion of the “Value of the Development Site” attributable to that portion of the Development Site covered by such dedication or grant of real property rights, where the “Value of the Development Site” will equal the greater of (a) the fair market value of the Development Site, as determined by an appraisal now in progress and increased (but not decreased) annually based on the increase in the Consumer Price Index, and (b) \$16,775,000, as increased (but not decreased) annually based on the increase in the Consumer Price Index.

State Approval and

Bond Funding Restrictions:

Taylor Yard Parcel C, and thus, the Development Site, were acquired by LACMTA with State funds and

local bonds. Therefore, the proposed Development, and the ground lease transactions and dedications contemplated herein are subject to: (a) State approval, (b) LACMTA confirmation that the construction and operation of the Development and such ground lease transactions and grants of other property rights do not violate the requirements or restrictions imposed on the Development Site by any bond funding, and (c) approval of the bond trustee and the bond holders (as applicable).

CEQA, Development Entitlements and Other Legal Requirements:

MBS shall obtain all required CEQA clearances and entitlements for the Development at its sole cost and expense and shall comply with all legal requirements related to the development, construction and operation of the Development

JOINT DEVELOPMENT AGREEMENT:

JDA - Generally:

After staff and MBS reach agreement on the specific terms and conditions to be contained therein, LACMTA and ~~Developer~~MBS will enter into a joint development agreement (“JDA”) containing terms and conditions that are substantially consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the LACMTA Board. The JDA will contain certain escrow instructions related to the transactions contemplated herein, as well as certain conditions ~~(specific to each of the Closings defined and described below (the “Closing Conditions”) that)~~, which conditions must be metsatisfied or waived before LACMTA or MBS will ~~(1) enter into effectuate such Closing. The Closing Conditions will require, among other things, that MBS (a) obtain all necessary entitlements for the construction and operation of that portion of the Development covered by the Ground Leases (as defined and described below) with MBS, or (2) sell the Sale Property to MBS or exchange the Sale Property for other property to be acquired by MBS for LACMTA (as described below). The Closing Conditions for the sale/swap of the Sale Property and the ground lease of Premises A and Premises B will require, among other things, that MBS (a) obtain all necessary entitlements and~~

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~~permits for the construction and operation of that portion of the Development that is to be situated on the Sale Property, Premises A or Premises B (as applicable)(s) contemplated in such Closing;~~ (b) obtain construction financing sufficient to fund the construction of that portion of the -Development that is to be situated on the Sale Property, Premises A or Premises B (as applicable)covered by the Ground Lease(s) contemplated in such Closing; (c) receive LACMTA and City of Los Angeles approval of full, complete and final construction documents for the that portion of the -Development ~~that is to be situated on the Sale Property, Premises A or Premises B (as applicable)covered by the Ground Lease(s)~~ contemplated in such Closing; (d) receive a “Ready to Issue” letter from the City of Los Angeles for all building permits necessary for the construction of that portion of the -Development ~~that is to be situated on the Sale Property, Premises A or Premises B (as applicable)covered by the Ground Lease(s)~~ contemplated in such Closing; and (e) provide LACMTA with the Financial Assurances (defined and described below).

**JDA Term/
Predevelopment Period:**

The term of the JDA shall be ~~three (3)~~ five (5) years (the “**Predevelopment Period**”) commencing on the date that the JDA is mutually executed and delivered (the “**JDA Effective Date**”); provided that (a) such Predevelopment Period shall be extended automatically for ~~Unavoidable Delay~~ force majeure or unavoidable delay (as defined below) and may be extended by LACMTA’s Chief Executive Officer (“CEO”), if ~~LACMTA~~ the CEO determines ~~in its sole and absolute discretion~~ that MBS is making commercially reasonable efforts to promptly satisfy the Closing Conditions. Notwithstanding anything to the contrary set forth herein, no extension of the initial ~~three (3)~~ five (5) year Predevelopment Period shall singularly or cumulatively extend the Predevelopment Period more than two (2) years.

JDA Closing:

The JDA ~~may~~ will contemplate multiple closings (each a “**Closing**”), as follows: (1) one ~~Closing for the sale/swap of the Sale Property~~ or more Closings for the ground leasing of that portion of the Development to be covered by the 99-Year Ground

Leases (defined below), upon satisfaction or waiver by the appropriate party of all the Closing Conditions relative to such sale/swap Closing; (2) one Closing for the ground lease of Premises A to MBS, upon satisfaction or waiver by the appropriate party of all the Closing Conditions relative to leasing of that portion of the ground leasing of Premises A; and (3) one Closing for the ground leasing of Premises B to MBS Development containing the affordable, family apartments, upon satisfaction or waiver by the appropriate party of all the Closing Conditions relative to such Closing; and (3) one Closing for the ground leasing of that portion of Premises B. At the sale/swap Closing, LACMTA will sell Development containing the Sale Property to MBS or will swap affordable, senior apartments and the Sale Property for other property to be acquired for LACMTA by MBS (as detailed below). At either of the ground lease closings retail space, upon satisfaction or waiver by the appropriate party of all the Closing Conditions relative to such Closing. At each Closing, LACMTA will ground lease the applicable premises to MBS in exchange for the consideration to be paid in accordance with this Attachment A. Documents related to each of the Closings Closing, including deeds, ground leases, reciprocal easement agreements and other development and real estate related documents and agreements will be executed by the parties as is necessary to properly effectuate the Closing.

**JDA Consideration/
Holding Rent:**

During the Predevelopment Period, ~~Developer~~ MBS will pay annual holding rent (“**Holding Rent**”) to LACMTA under the JDA equal to the greater of (a) 25% of the following: (a) One Hundred Twenty Five Thousand Dollars (\$125,000) per year, or fair market rent for the Development Site, and (b) [_____]. Holding Rent shall commence to accrue on the earlier to occur of (i) the JDA Effective Date) or (b) October 1, 2008, and will continue until the JDA Closing. The Holding Rent shall be increased annually in accordance with increases \$377,437.50. For the purposes of computing Holding Rent, the fair market rent for the Development Site will equal 9% of the Development Site’s fair market value, as determined by an

appraisal now in progress. Annual holding rent under the JDA shall be increased (but not decreased) annually based on the increase in the Consumer Price Index.

Design Review:

The design of, and shall be reduced on an equitable basis as each portion of the proposed Development (i.e.; that portion of the Development that ground leases is to be situated on the Sale Property, that portion that is to be situated on Premises A and that portion that is to be situated on Premises B) will be advanced during the Predevelopment Period executed and, except as approved in writing by LACMTA in its sole and absolute discretion: (i) will be as each of the dedications or other grants of real property rights are made.. Holding Rent shall commence to accrue on the earlier to occur of (i) the JDA Effective Date or (b) October 1, 2008, and will continue until expiration or termination of the JDA Closing.

If MBS is "Ready to Close" a particular Ground Lease transaction under the JDA, except for the fact that the State DTSC or such other designated oversight agency has yet to issue a "No Further Action Letter" with respect to the Development Site or that portion of the Development Site to be covered by such Ground Lease, and MBS provides LACMTA with written notification of the same, then LACMTA will abate Holding Rent with respect to such portion of the Development Site until such time as the "No Further Action Letter" is issued. "Ready to Close" shall mean that all Closing Contingencies for the benefit of MBS with respect to the particular Ground Lease have been satisfied or waived by MBS, except for the issuance of the "No Further Action Letter."

Design Review:

The design of the proposed Development shall be substantially consistent with the initial Development concept set forth above in the "Proposed Development" section of this Summary of Key Terms and Conditions; and (ii) will shall be a logical evolution of the initial conceptual design for the proposed Development Conceptual Plans attached hereto as Attachment C. LACMTA's approval of final construction documents for the each portion of the Development will be a condition precedent to Closing relative to such portion of the Development.

subject to entitlement approvals by the City of Los Angeles.

Financial Assurances:

~~Prior to any Closing, and, as a condition to of such Closing, MBS shall provide, for the benefit of LACMTA, financial assurances that a completion guarantee, among other things, the completion of that portion of the Development contemplated by the Closing in the event of a default by Developer (“Financial Assurances”). The Financial Assurances shall (a) be from a McCormack Baron Salazar entity acceptable to LACMTA in all respects, and payment and performance bonds (collectively, the “Financial Assurances”) that (a) are acceptable to LACMTA, and (b) clearly demonstrate Developer’s and guarantee MBS’s ability to construct and operate complete the construction of that portion of the Development contemplated by their such Closing, (c) survive the Closing, and (d) if required by LACMTA, in its sole and absolute discretion, be included in the Premises A Ground Lease, the Premises B Ground Leases and a covenant affecting the Sale Property (as applicable) event of an MBS default.~~

Remediation of Development Site Contamination:

The Development Site contains known contaminants and hazardous materials as set forth in the following SCA Environmental, Inc. reports (the “Hazardous Materials”):

- Phase I Environmental Site Assessment, 2/8/06
- Soil & Groundwater Characterization, 6/15/06;
- Additional Groundwater Testing, Report Revised 9/11/06; and
- Survey for Asbestos and Lead (for Existing Tower), June, 2006.

Many of the Hazardous Materials must be removed from the Development Site before MBS can proceed with the Development. At present, MBS is performing further tests and analysis to (a) further characterize the nature and scope of the Hazardous

Materials on the Development Site and (b) clarify which Hazardous Materials must be removed from the Development Site in order to proceed with the Development (the “Further Hazardous Materials Reports”). The Hazardous Materials (or potential Hazardous Materials) that need to be removed from the Development Site include (a) contaminated concrete and construction debris located on the surface of the Development Site and the soil exposed to the same; (b) asbestos and lead based paint present in an old railroad control tower situated on the Development Site; (c) possible underground tanks; and (d) ground water contamination (which is likely a regional problem resulting from migration onto the Development Site from off site sources).

LACMTA shall have a reasonable amount of time to identify the source of some or all of the Hazardous Materials and to have such individuals or entities remove such Hazardous Materials from the Development Site.

MBS’s current, rough estimate of the cost to clean-up and remove the Hazardous Materials from the Development Site is between \$500,000 and \$800,000. Once the Further Hazardous Materials Reports are complete and approved by LACMTA and after LACMTA has had a reasonable period of time to remove whatever Hazardous Materials it desires to have other individuals or entities remove pursuant to the preceding paragraph, MBS will develop a more-precise cost estimate for the clean-up, remediation and removal of those Hazardous Materials impeding construction of the Development, including a reasonable cap on such costs (the “Cost Cap”), which Cost Cap shall not exceed \$800,000.

Upon agreement on (i) a scope of work, (ii) a clean-up/remediation/removal cost estimate, (iii) the Cost Cap, (iv) a work plan, and (v) a health and safety plan related to the clean-up, remediation and removal of those Hazardous Materials impeding construction of the Development, LACMTA will enter into a right of entry agreement with MBS providing for the clean-up, remediation and removal of such Hazardous Materials. Such clean-up, remediation and removal shall be at MBS’s sole cost and expense, provided

that LACMTA shall credit the total, reasonable, actual and verified cost of such clean-up, remediation and removal, up to the Cost Cap, against Holding Rent due LACMTA under the IDA and ground rent due LACMTA under the Ground Leases.

GROUND LEASES:

Ground Leases – Generally:

~~At each Closing covering the ground leasing of Premises A, MBS, as tenant, and LACMTA, as ground lessor, will enter into a ground lease covering Premises A that will provide for the construction and operation of that portion of the Development to be constructed and operated on Premises A (the “**Premises A** the premises covered by such ground lease (each such ground lease, a “**Ground Lease**”). At a Closing covering the ground leasing of Premises B, MBS, as tenant, and LACMTA, as ground lessor, will enter into two ground leases covering Premises B that will provide for the construction and operation of that portion of the Development to be constructed and operated on Premises B. These ground leases will be as follows: (1) a ground lease covering the affordable, senior apartments to be constructed on the Premises B (the “**Premises B Apartment Ground Lease**”), and (2) a ground lease covering~~
Each Ground Lease will contain terms and conditions that are substantially consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the LACMTA Board.

The Ground Leases underlying the for-sale condominiums and the community recreation center and pool shall be known as the “**99-Year Ground Leases.**” The Ground Leases underlying the affordable, family apartments and the affordable, senior apartments shall be known as the “**Affordable Housing Ground Leases.**” The Ground Lease underlying the retail space to shall be constructed on known as the Premises B (the “**Premises B “Retail Ground Lease”**”). The Premises A Affordable Housing Ground Lease, the Premises B Apartment Ground Leases and the the Premises B Retail Ground Lease shall collectively be referred to herein known as the “**68-Year Ground Leases**” and individually as a “**Ground Lease.**” Each Ground

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Lease will contain terms and conditions that are consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the LACMTA Board.”

Unsubordinated Ground Leases:

LACMTA’s interests under each Ground Lease will be *unsubordinated* to any ~~interests developer interest~~ MBS or its lenders will have in the Development Site.

Ground Lease

Commencement: Term: _____

The term ~~first~~ of the Premises A Ground Lease will commence on the date that the Closing covering the ground leasing of Premises A occurs (the “**Phase A Ground Lease Commencement Date**”). The term of the Premises B 68-Year Ground Leases will commence on the date that the Closing covering the ground leasing of Premises B occurs (the “**Phase B Ground Lease Commencement Date**”).

Ground Lease Term: _____

The first ~~Ground Lease~~ to be executed shall have a term of ~~Sixty~~ sixty-seven (67/68) years. Each of the other two ~~ground~~ 68-Year Ground Leases shall have a term that is coterminous with the first of the 68-Year Ground Lease ~~Leases~~ to be executed. The term of each 99-Year Ground Lease shall be 99 years.

Construction Period: _____

The portion of the development to be constructed under each **Ground Lease** shall take approximately ~~twenty four (24) months~~ to complete.

Capitalized Base Rent (For First 57 Years of the Residential

; _____

99-Year Ground Leases): Phase A: Upon execution of each 99-Year Ground Lease: ~~Developer will, MBS shall pay LACMTA, on the Phase A Ground Lease Commencement Date, a one-time capitalized rent payment (“Phase A Ground Lease Initial Capitalized Rent”) for the entire 99-year term of such Ground Lease in an amount equal to that portion of the greater “Value of the following: Development Site” attributable to that portion of the Development Site covered by such Ground Lease, where the “Value of the Development Site” will equal the greater of (a) Two Million Nine Hundred Twenty Five Thousand~~

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Eight Hundred Seventy Two Dollars (\$2,925,872), or the fair market value of the Development Site, as determined by an appraisal now in progress and increased (but not decreased) annually based on the increase in the Consumer Price Index, and (b) [_____]. Phase A Ground Lease Initial Capitalized Rent shall cover only the first fifty seven (57) years of the term of the Phase A Ground Lease \$16,775,000, as increased (but not decreased) annually based on the increase in the Consumer Price Index.

~~**Phase B Residential Ground Lease:** Developer will pay to LACMTA, on the Phase B Ground Lease Commencement Date, a one-time payment (“**Phase B Residential Ground Lease Initial Capitalized Rent**”) equal to the greater of the following: (a) Two Million Six Hundred Thirty Three Thousand Two Hundred Eighty Five Dollars (\$2,633,285), or (b) [_____]. Phase B Residential Ground Lease Initial Capitalized Rent shall cover only the first fifty seven (57) years of the term of the Phase B Residential Ground Lease.~~

~~**Capitalized Base Rent (End Term):** **Affordable Housing Ground Leases:** Upon execution of **Phase A** each Affordable Housing Ground Lease, MBS shall pay LACMTA, on a capitalized rent payment for the fifty eighth (58th) annual anniversary of the Phase A Ground Lease Commencement Date, a one-time payment (“**Phase A** first 57 years of the term of such Ground Lease **Terminal Capitalized Rent**”) in an amount equal to [_____] [such amount shall be based on the that portion of the “Market Value” of the Phase A Premises at of the Development Site covered by such timeGround Lease, where the term “Market “Value” is of the Development Site” will equal the greater of (a) the fair market value of the Development Site, as defined below.] determined by an appraisal now in progress and increased (but not decreased) annually based on the increase in the Consumer Price Index, and (b) \$16,775,000, as increased (but not decreased) annually based on the increase in the Consumer Price Index.~~

Phase B Residential Ground Lease: MBS shall pay LACMTA, Beginning with the 59th annual anniversary of the commencement of each Affordable Housing Ground Lease and on the fifty eighth (58th) each annual anniversary of the Phase B Ground Lease Commencement Date, a one-time payment (“**Phase B Residential Ground Lease Terminal Capitalized Rent**”) equal to [_____] {such amount shall be based on the “Market Value” of the Phase B Premises at commencement date occurring thereafter. MBS shall pay LACMTA annual rent in an amount equal to the “Fair Market Ground Rent” for the ground leased premises under each such timeground lease, where the term “Market Value” is as defined below.}

_____ The term “**Market Value**” means that value of the Phase A Premises or the Phase B Premises (as applicable) determined by an appraisal, “Fair Market Ground Rent” shall be based on an appraisal of the premises under ground lease assuming that such Phase A Premises or Phase B Premises premises are vacant and usable only for those uses permitted under the applicable Affordable Housing Ground Lease(s), consistent with the improvements then constructed on the Phase A Premises or the Phase B Premises (as applicable) such premises, provided that such improvements have been approved by LACMTA and have been properly maintained, each in accordance with the applicable Affordable Housing Ground Lease(s). Such rent is subject to annual increases (but not decreases) based on increases in the Consumer Price Index.

Phase B Commercial Retail Ground
Lease Percentage Rent: _____: MBS shall pay LACMTA, annually throughout the term of the Phase B Commercial Retail Ground Lease, percentage rent (“**Phase B Commercial Ground Lease Percentage Rent**”) in an amount equal to three percent (3%) of the gross sales received by MBS from all retail and other economic activity conducted on the Phase B Commercial Premises premises covered under the Retail Ground Lease.

Reversion: At the expiration of the Lease Term (including the Option Period, if exercised) and at LACMTA's election, Developer will be responsible, at its sole cost and expense, for the demolition and removal of the Development and any other improvements then located on the Premises and for returning the Premises to LACMTA in its original condition.

Demolition Reserves: At least five (5) years prior to the expiration of the Lease Term, Developer will demonstrate to LACMTA's reasonable satisfaction that the required demolition reserve (the funding schedule and the procedure for determining the amounts to be funded are to be set forth by LACMTA in the Ground Lease) is adequate to demolish and remove the Development, and any subsequent improvements, from the Premises at the end of the Lease Term, and Developer will be required to immediately fund any shortfall in such reserves.

Renovation Fund: Beginning on the sixth anniversary of the Completion Date and continuing annually each year thereafter, Developer shall deposit funds in an amount equal to one percent (1%) of gross revenues received by Developer during the preceding year into a renovation fund held by LACMTA or a third party escrow holder (the "Renovation Fund"). Funds may be withdrawn by Developer from the Renovation Fund for the purpose of performing capital improvements to the Development; provided, however, unless LACMTA informs Developer in writing that LACMTA will elect to have Developer demolish the Development at the end of the Lease Term, Developer must expend all funds remaining in the Renovation Fund by performing capital improvements prior to the expiration of the Lease Term (including the Option Period, if exercised).

Resale Transfer Fee: LACMTA shall receive a resale transfer fee equal to one and one-half percent (1.5%) of the resale price of each for-sale condominium. Such fee shall be due for all condominium sales occurring after MBS's initial sale to the original homeowner. LACMTA's right to such fee shall be set forth in a recorded document (or documents) in a manner acceptable to LACMTA.

Maintenance and Operation:

MBS shall maintain and operate all portions of the Development under Ground Lease at its sole cost and expense.

Demolition Reserve:

Each 68-Year Ground Lease shall require MBS, as the ground lessee thereunder, to fully fund a demolition reserve five (5) years prior to the expiration of each 68-Year Ground Lease. Such demolition reserve shall be in an amount sufficient to demolish those improvements LACMTA requests MBS remove from the premises under each 68-Year Ground Lease.

Demolition:

At the expiration of the 68-Year Ground Leases, MBS shall, at the request of LACMTA: (a) demolish all of the improvements situated on the premises under such Ground Leases; (b) demolish a portion of such improvements, leaving others in place (provided that such a demolition is technologically feasible and the cost of the same is commercially reasonable); or (c) leave all such improvements in place for LACMTA's use. All demolitions shall be at MBS's sole cost and expense.

Encumbrances:

Subject to LACMTA's reasonable approval, ~~Developer~~ MBS may encumber its leasehold estate with mortgages, deeds of trust or other financing instruments. ~~The~~Each Ground Lease will include mutually acceptable mortgagee protection provisions. In no event ~~will, however, shall~~ LACMTA's fee title or the rent payable to LACMTA under the JDA or any Ground Lease, or any portion thereof, be subordinated or subject to ~~Developer's~~MBS's financing or other claims or liens.

Assignment and Subletting:

~~With limited permitted exceptions, to be set forth in the Ground Lease, Developer's right to assign the Ground Lease (a) prior to the Completion Date will be subject to LACMTA's approval at its sole and absolute discretion and (b) after the Completion Date will be subject to LACMTA's approval at its reasonable discretion, including LACMTA's satisfaction as to any proposed assignee's creditworthiness, experience and moral standing. LACMTA will provide any of Developer's retail~~

subtenants, who have subleased space in excess of twenty-five hundred (2,500) square feet for a period of at least five (5) years, a non-disturbance agreement. Other: Other customary provisions contained in recent LACMTA ground leases (including provisions relating to (a) certain rights LACMTA will reserve over the ground leased premises (if any), (b) MBS assumption of risk related to the Development's proximity to rail and other transit operations, (c) insurance, and (d) indemnity) will be included in the Ground Lease.

~~Other: Other customary provisions contained in recent LACMTA ground leases (including provisions setting forth the Retained Rights, transit proximity waivers and signage liability indemnities) will be included in the Ground Lease.~~

CERTAIN DEFINITIONS:

~~“CEQA” means the California Environment Quality Act, California Public Resources Code §§ 21000 *et seq.*~~

~~“CEQA Documents” means (a) all final and unappealable environmental impact reports certified or approved by the LACMTA and/or the City of Los Angeles (each an “EIR”), (b) all mitigated negative declarations, (c) all supplemental EIRs, and (d) all other documents or instruments as may be required under CEQA for the construction of the Development.~~

~~“Force Majeure Event” means (a) a strike or labor dispute; (b) inclement weather (which causes a suspension of work) in excess of the ten (10) year average for metropolitan Los Angeles during the month or months when work was suspended; (c) an earthquake or other natural disaster resulting in suspension of work, (d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price or MBS's acts or failure to act), (e) acts of a public enemy, insurrections, riots, mob violence, sabotage, acts of terrorism, and malicious mischief, or (f) casualty (including earthquake) causing substantial damage to previously constructed portions of the Development.~~

~~“Governmental Approval” means any entitlement, license, permit, approval, declaration, certification, designation, or other ministerial or discretionary approval required from any Governmental Authority for the development, construction and operation of any portion of the Development, including any CEQA Document, development agreement, tract map, zone change, zoning variance, density bonus, or conditional use permit that may be required in connection with the Development.~~

~~“Governmental Authority” means any federal, state, county, municipal, and local governmental and quasi-governmental body or authority (excluding LACMTA) having or exercising jurisdiction over the MBS, LACMTA, the Site or the Development.~~

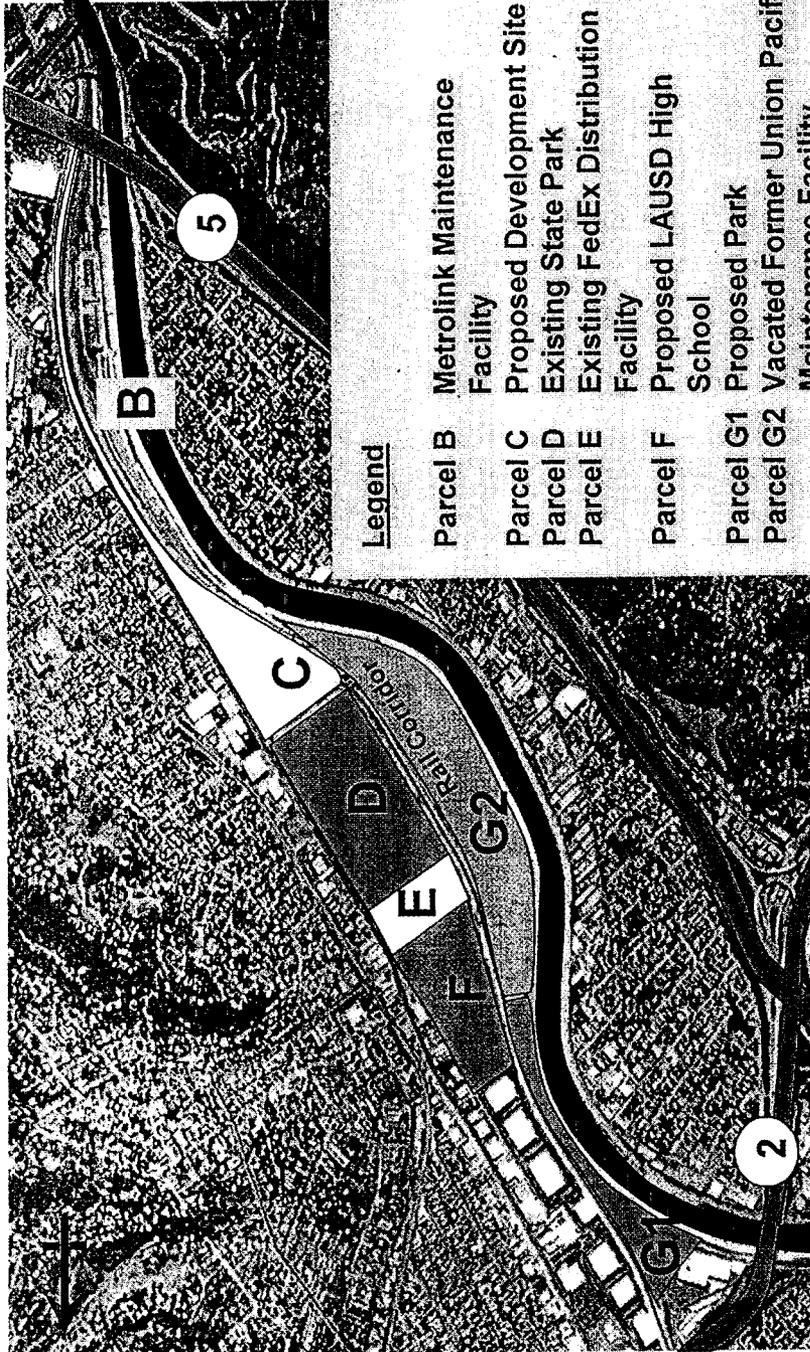
~~“Person” means and includes an individual, partnership, firm, association, limited liability company, government agency, joint venture, corporation, or any other form of entity, private or public.~~

~~“Unavoidable Delay” means a delay beyond the control of MBS, and must satisfy each of the following requirements:~~

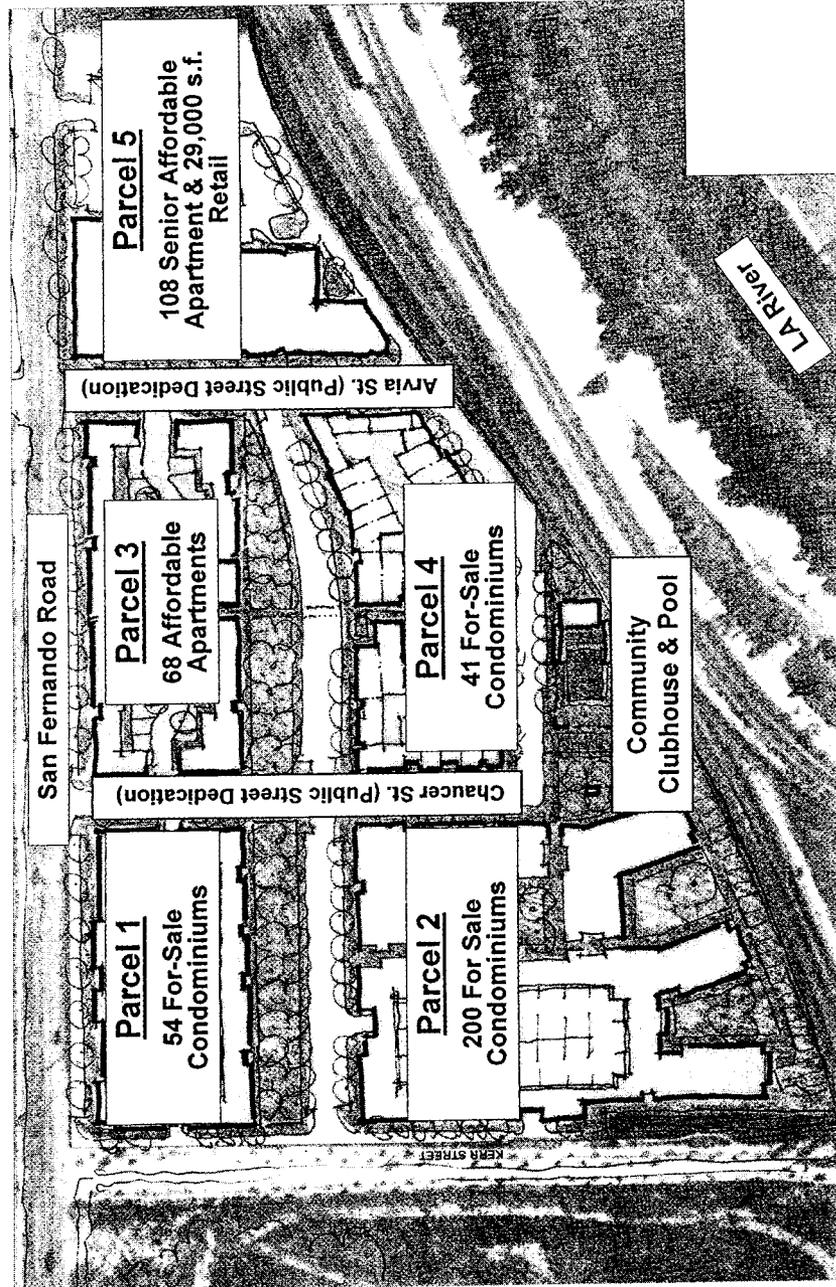
- ~~(a) — The delay would prevent or hinder the performance or satisfaction of a Closing Condition or any other obligation under the JDA by any reasonable Person similarly situated and shall not apply to a delay peculiar to MBS (such as the failure to order materials in a timely fashion).~~
- ~~(b) — The delay must arise out of:
 - ~~(i) — A Force Majeure Event;~~
 - ~~(ii) — Governmental restrictions or a delay in the issuance of any Governmental Approval that could not be reasonably anticipated (including without limitation any unusual or uncommon delay by the City of Los Angeles in processing or approving any application made by MBS in connection with the Development); provided, however, any delay in the issuance of a Governmental Approval pertaining to Development of a scope materially different than that described in the [Conceptual Plan] shall not constitute an Unavoidable Delay;~~
 - ~~(iii) — Delay in performance of any term, covenant, condition or obligation under the JDA as a result of a breach, default or delay of LACMTA under the JDA, whether in rendering approvals or otherwise; or~~
 - ~~(iv) — Any lawsuit, action or other proceeding by any Person (other than by or at the direction of MBS or any Affiliate of MBS) that is filed after the effective date of the JDA that challenges (1) any CEQA Document or other Governmental Approval or (2) any action taken by or the ability of MBS to take any action under or in connection with the JDA; provided, however, that any lawsuit, action or other proceeding pertaining to or arising out of a Governmental Approval pertaining to Development of a scope materially different than that described in the Conceptual Plan shall not constitute an Unavoidable Delay.~~~~

~~(c) — The delay is detailed in a written notice given by MBS to LACMTA within fifteen (15) days after MBS reasonably should have known of the event giving rise to the claim of delay, which notice shall, at a minimum, reasonably specify the (i) nature of the delay, (ii) the date the delay commenced and (if not ongoing) ended and (iii) the reason(s) such delay is an Unavoidable Delay.~~

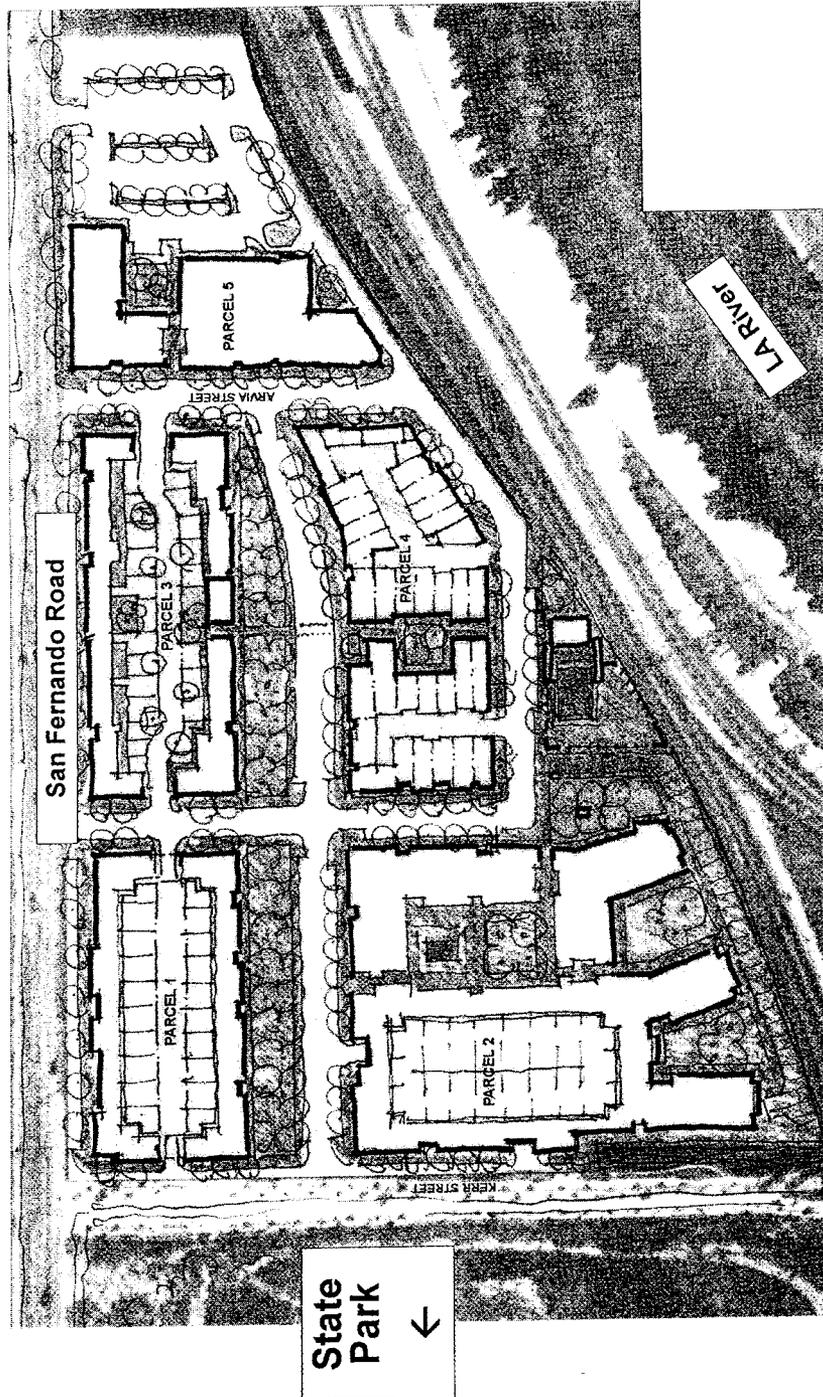
Taylor Yard Overview



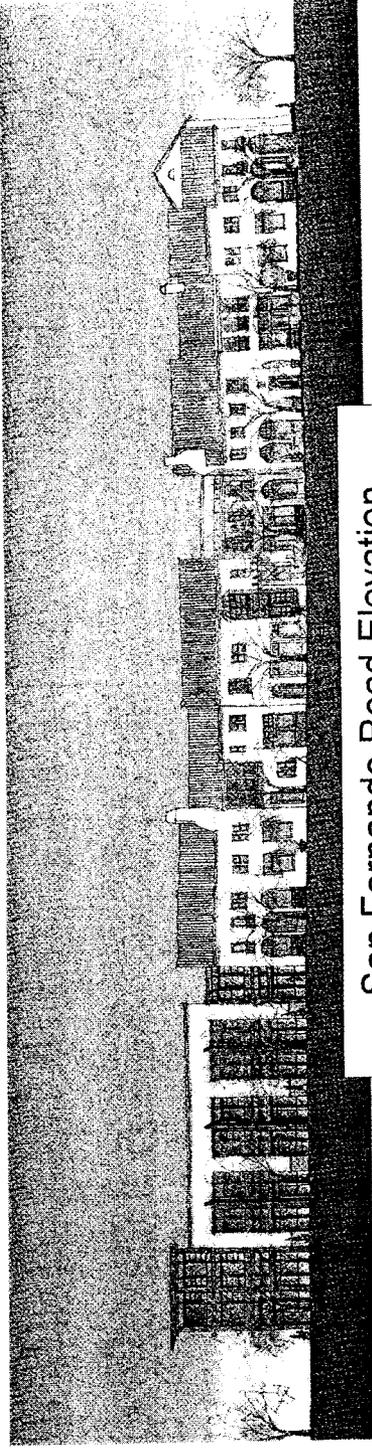
Plat of the Development Site Detailing the Proposed Development



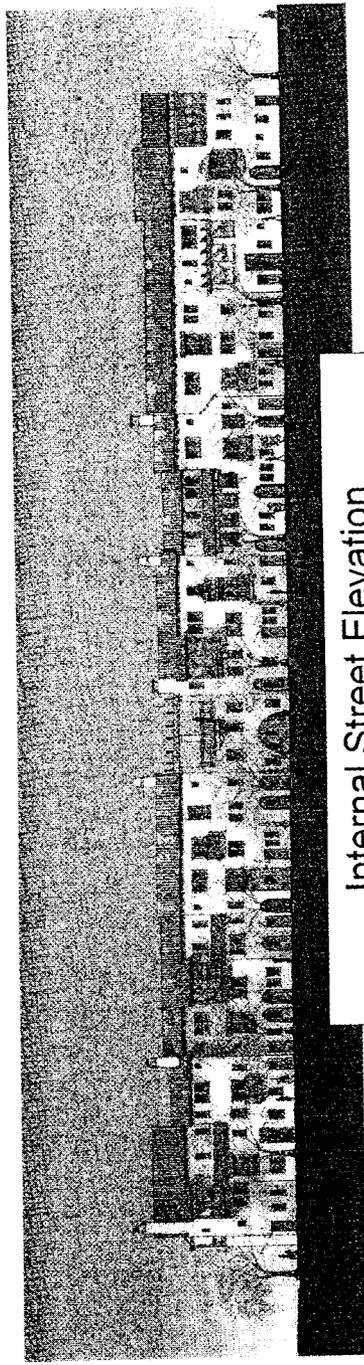
Conceptual Site Plan and Elevations for the Proposed Development



Taylor Yard Parcel C – Conceptual Elevations for Parcel 1

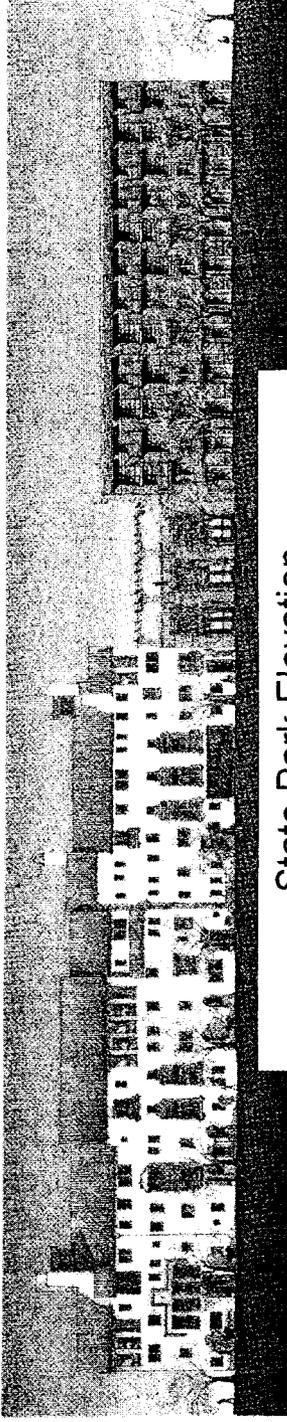


San Fernando Road Elevation

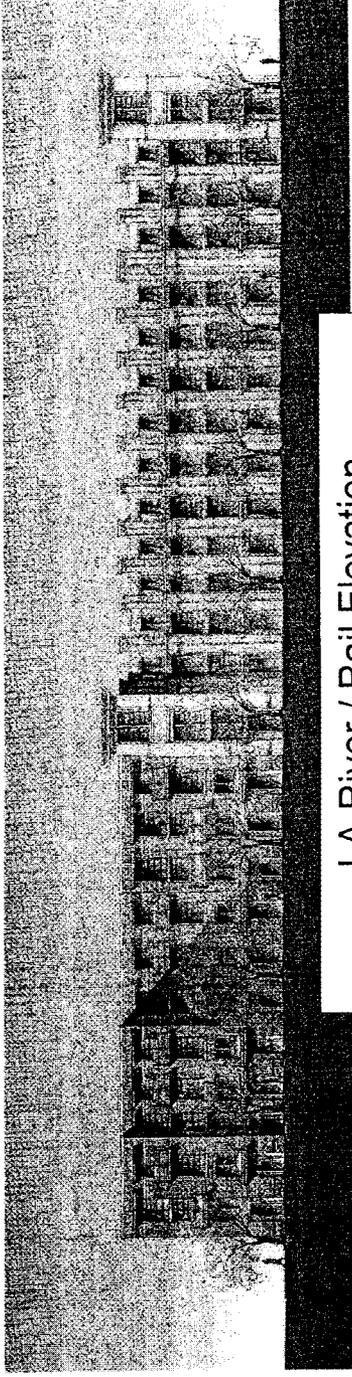


Internal Street Elevation

Taylor Yard Parcel C – Conceptual Elevations for Parcel 2

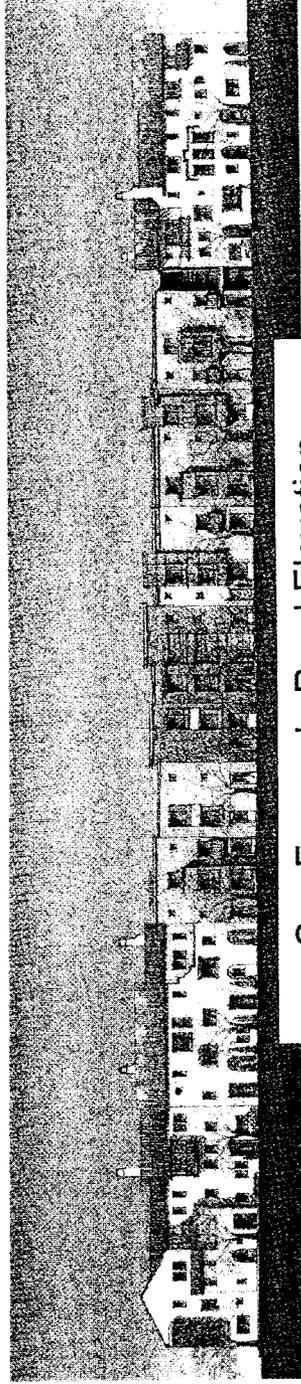


State Park Elevation

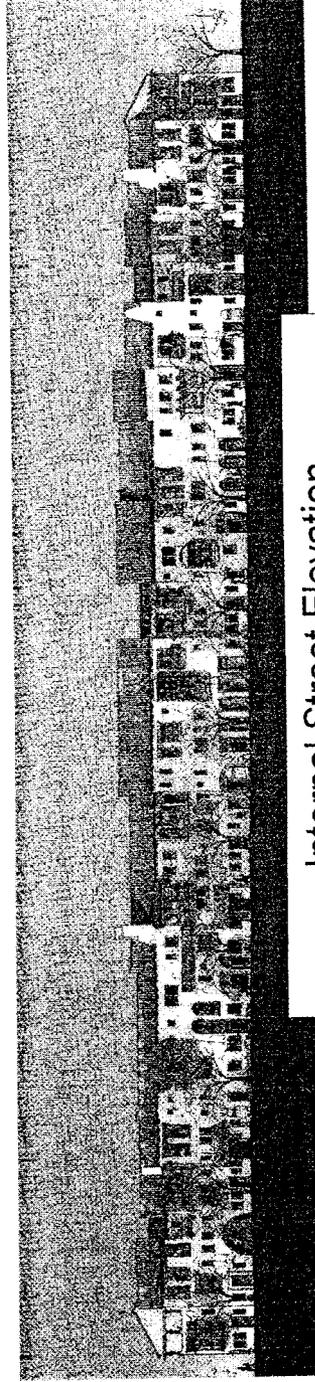


LA River / Rail Elevation

Taylor Yard Parcel C – Conceptual Elevations for Parcel 3

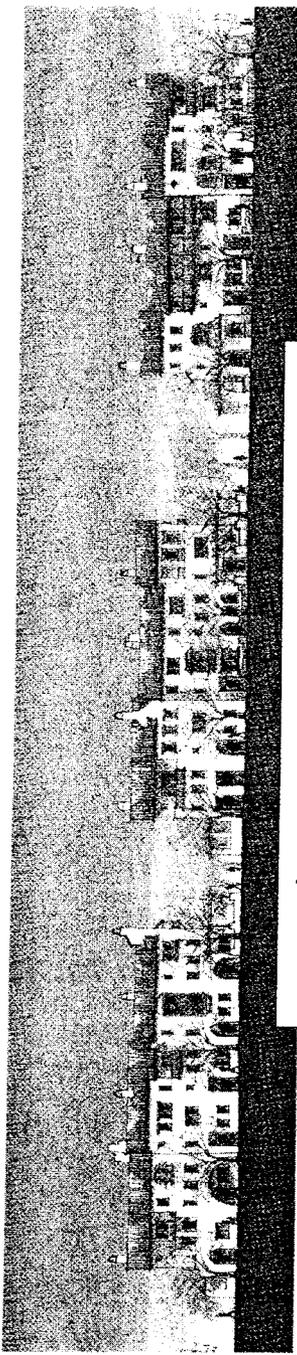


San Fernando Road Elevation

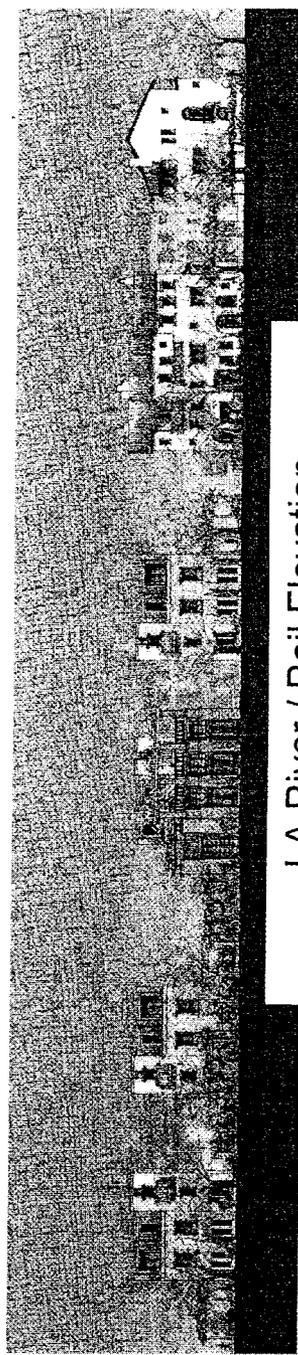


Internal Street Elevation

Taylor Yard Parcel C – Conceptual Elevations for Parcel 4

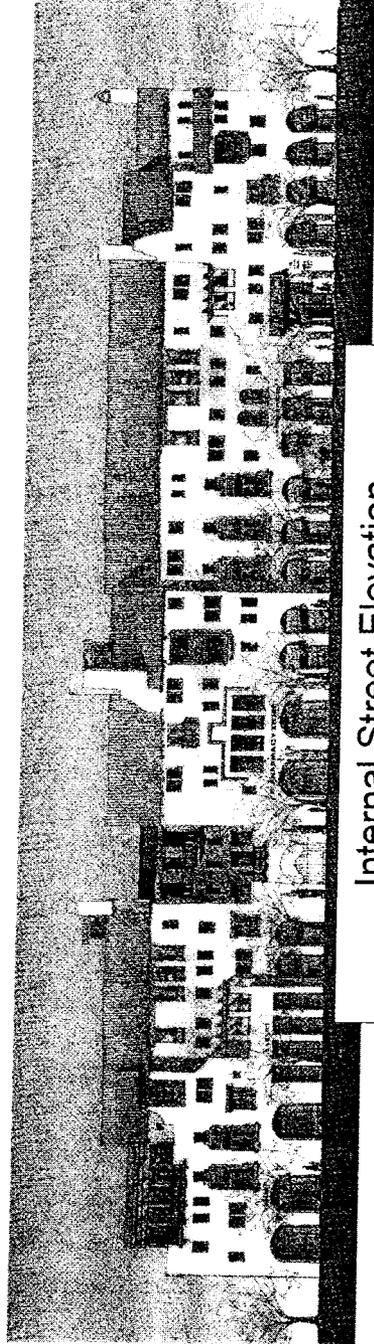


Internal Street Elevation

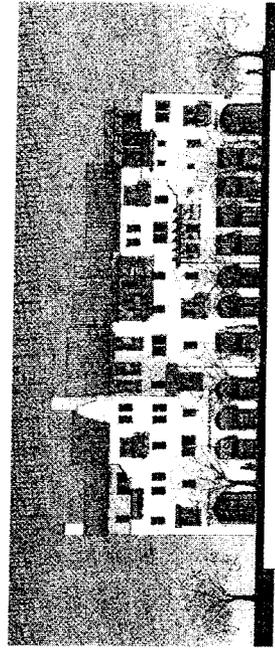


LA River / Rail Elevation

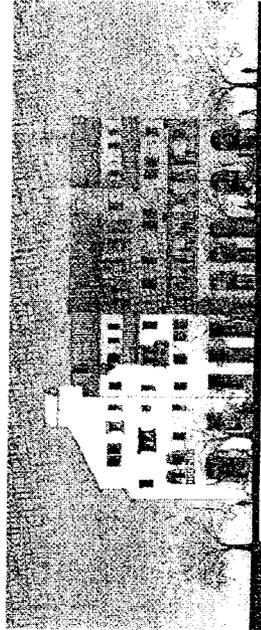
Taylor Yard Parcel C – Conceptual Elevations for Parcel 5



Internal Street Elevation



San Fernando Road
Elevation



LA River / Rail Elevation