

# ATTACHMENT \_\_\_\_\_

## DRAFT CONDITIONS

SEPTEMBER 10, 2015

### **SIGNIFICANT COMMUNITY BENEFITS CONDITIONS**

As per City Council Resolution No. 67,172-N.S.: All significant community benefits agreed to by the applicant and approved by the City shall be included as Conditions of Approval, and shall be reflected in a community benefits agreement and if necessary a notice of limitation, that shall be fully executed and recorded against the property on which the project is located prior to issuance of a building permit, provided that any payments required by the community benefits agreement would not be due prior to issuance of a building permit, but would be prior to the issuance of a Certificate of Occupancy.

1. Prior to issuance of any building permit, the applicant shall file a Notice of Limitation on Use of Property, and shall provide a recorded copy of this document to the City. The Notice of Limitation shall be filed for all Significant Community Benefits provided on the property, including the approximately 28,250 square foot, 10 screen movie theater use.

**The draft Community Benefits Agreement and associated Notice of Limitation will be provided in the September 30, 2015 ZAB packet. Elements for discussion at this meeting include:**

1. Project Labor Agreement (PLA). The applicant shall sign a PLA to require 100% of the project's construction workers to be union labor, with no trade or work exclusions. The PLA shall include provisions for apprentice programs and local hires. A copy of the PLA shall be provide to the City Attorney with the application for building permits.
2. Project Labor Agreement (PLA). Per City Council Resolution No. 67,172-N.S. a PLA shall entitle the applicant to a credit of 5% of the construction cost of the project against the total fee. Construction cost shall be verified at the time of building permit, to be reviewed by the City's Chief Building Official.
3. The applicant shall submit verification of a tenant for the movie theater in the form of an executed lease agreement between the property owner and the movie theater operator, to include initial rental rate in the amount of no more than \$2.04 per gross square foot and any increase in rent shall be by no more than 2% per year, for 20 years.
4. Prior to issuance of a building permit for any portion of the building that would be above 75 feet, the applicant shall submit building permit plans that include all tenant improvements necessary for occupancy of the 28,250 square foot, 10 screen movie theater complex, including, but not limited to: complete floor plans with all rooms and areas labeled, interior elevations and details, interior finish schedule, door/window schedule, complete restroom build-outs, complete mechanical, plumbing & electrical drawings including lighting plans and light fixture schedule, commercial energy compliance documentation, etc. No portion of the building above 75 feet may be occupied (i.e., no occupancy permit would be issued) until the construction of the 28,250 square foot, 10 screen movie theater space is complete, a lease is signed, and an occupancy permit for the movie theater is issued.

5. To ensure continued occupancy of the approximately 28,250 square foot, 10 screen movie theater complex with a community benefit use, the applicant shall:
- a) Notify the City in writing within 30-calendar days of any pending vacancy of the movie theater complex. Said notice to the City shall provide the following:
    - The date of vacancy;
    - A marketing plan to include the list of agencies/organizations to be contacted, rental amount and all promotional materials; and
    - Expected re-occupancy date.
  - b) In the event of vacancy, offer the movie theater complex to any theater use on a month-to-month basis pending finalization of a long-term lease. Such month-to-month tenancy shall be at a rate that is less than the amount paid by the theater operator, per the following schedule:
    - 6 months after vacancy, rent shall be reduced to 50% of the last monthly amount paid prior to vacancy; and
    - 12 to 18 months after vacancy, rent shall be reduced to 25% of the last monthly amount paid prior to vacancy.In no event shall short-term rentals take precedence over a long-term lease agreement. Replacement user is subject to review by the Zoning Officer.
  - c) Pay for needed improvements, if necessary, for subsequent tenants that cannot utilize the theater tenant improvements.
  - d) In the event that the owner cannot find a tenant for the theater space for over 18 consecutive months within 55 years of project construction (measured from final certificate of occupancy), the property owner shall reimburse the City of Berkeley the City's determined value of the theater benefit multiplied by (the numbers of years occupied divided by 55 years).
6. **Applicant's Offer of Additional Community Benefit Payment:** The applicant has offered to make a payment to the City of \$350,000. This money shall be distributed and paid as follows:
- a) Prior to issuance of a building permit, a minimum of \$250,000 shall be paid to Habitat Children's Museum. The applicant shall ensure that a letter from Habitat verifying the payment is submitted to the Zoning Officer for the project file.
  - b) Prior to issuance of the Certificate of Occupancy, a minimum of \$100,000 shall be paid into the City of Berkeley Housing Trust Fund.