

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Barry K. Hogan, Community Development Director *BKH*  
Prepared By: Laura Stringer, Administrative Services Manager *LS*

**DATE:** September 26, 2006 (CC Meeting of 10/18/06)

**SUBJECT:** Consider Report of Annual Development Agreement Review, Established in Connection with Industrial Planned Development No. 1995-02 and Tract No. 5004 (Special Devices, Incorporated (SDI), Warehouse Discount Centers and Moorpark Hospitality, Inc.)

**BACKGROUND**

Government Code Section 65864 and Section 15.40.150 of the Municipal Code provide for Development Agreements between the City and property owners in connection with proposed plans for development of specific properties. Development Agreements are designed to strengthen the planning process, to provide developers some certainty in the development process and to assure development in accordance with the terms and conditions of the agreement. The Municipal Code also requires the Developer to file an application with the Community Development Director requesting the annual review of the Agreement.

On August 21, 1996, the City Council adopted Resolution No. 96-1222 approving General Plan Amendment No. 95-01, Vesting Tentative Tract Map No. 5004, and Industrial Planned Development Permit No. 1995-02 (Lot 3) and on August 28, 1996, the Development Agreement between the City of Moorpark (the "City") and Special Devices, Incorporated ("SDI" or the "Developer") was executed. The two (2) undeveloped parcels (Lots 1 and 2) just east of the SR 23 Freeway have subsequently been acquired by Tom Schlender/Warehouse Discount Center (Lot 1) and Moorpark Hospitality, Inc, (Lot 2). NLA 118, LLC (Tom Schlender/Warehouse Discount Center, Lot 1) has entered into a separate Development Agreement and will not be a part of this review. Moorpark Hospitality, Inc. is responsible for adherence to the terms of the Development Agreement relating to Lot 2. The previous review of the Development Agreement was completed September 21, 2005. The term of the agreement expires November 27, 2006, so this will be the final annual review presented to City Council.

## **DISCUSSION:**

### Project Status

- During 2002 and 2003 staff spent considerable effort to review SDI's remaining requirements under the Development Agreement, the Conditions of Approval and the Mitigation Monitoring Program. In response to staff's review, SDI:
  - ✓ installed additional trees along the west facing SR-23 slope;
  - ✓ installed additional trees along the north facing (Campus Park) top of slope;
  - ✓ replanted the lower north facing slope along the paved access road; and
  - ✓ planted additional landscaping to screen SCE equipment and enhance the entry roadway.

The City's landscape consultant reviewed and approved all plans and inspected the installed landscaping and irrigation. On October 15, 2003, City Council reviewed the status of SDI's compliance and by minute action, approved the landscaping for the on-ramp and off-ramp for SR-23/New Los Angeles Avenue interchange and accepted \$15,000 for riparian habitat replacement and authorized the release of the remaining bonds (Attachment No. 2). SDI's responsibilities for compliance with project Development Agreement, Conditions of Approval and Mitigation Monitoring Program related to recordation of Tract No. 5004 and Industrial Planned Development Permit No. 1995-02 have been completed.

- General Plan Amendment No. 2004-04, Commercial Planned Development Permit No. 2004-03, Conditional Use Permit No. 2005-04 and Development Agreement No. 2005-02 were approved to permit a retail center with a one-story (with Mezzanine Level) 115,000 sq. ft. single tenant building over thirty-five (35') feet in height and a 17,500 sq. ft. one-story commercial building on the 8.15 acre site. The Development Agreement for Lot 1 will be reviewed separately in November 2006.
- Lot 2 remains undeveloped; however, a Pre-Application submittal has been received for development of a hotel on the property. Staff is currently reviewing the application.

### Developer Compliance with Terms of Agreement

SDI and Moorpark Hospitality, Inc. responsibilities are included in Section 6 of the Development Agreement and include 14 specific requirements (a. through n.) as listed below, along with the status of each:

#	REQUIREMENT	STATUS
a.	The terms and conditions for the payments required by Subdivisions (l) and (m) Section 6 shall be those contained in a promissory note. SDI has executed the Promissory Note and Deed of Trust which have been recorded.	Reported complete in the 1998 Report.
b.	Grant a conservation easement to retain Lot A of VTTM No. 5004 in a predominantly open space condition consistent with Civil Code Section 815. The conservation easement shall be recorded concurrently with the recordation of the final subdivision map for VTTM No. 5004, execution of the early grading agreement by the City Manager, or recordation of this Agreement, whichever occurs first.	Completed.
c.	Payment of all outstanding City processing and environmental impact report costs related to VTTM No. 5004, IPD No. 95-02, GPA 95-01, and Zone Change No. 95-03 and for preparation of this Agreement.	A new Development Agreement has been entered into for Lot 1, Lot 2 has submitted a Pre-Application review for a proposed hotel. SDI to provide any required payments for IPD 95-02.
d.	Process an application for annexation of the approximate 56.84 acres of Lot A of VTTM No. 5004, which acreage is currently not in the City, to the City, so that a LAFCO decision is rendered prior to October 1, 1997.	Reported complete in the 1998 Report.
e.	Provide irrevocable offer of dedication to City for public street purposes of that portion of Lot 3 of VTTM No. 5004 containing the private road prior to approval of the Final Map for VTTM No. 5004.	Reported complete in the 2001 Report.
f.	Annex all of the property within VTTM No. 5004, that is within the City, to Ventura County Waterworks District No. 1 (the "District") prior to occupancy of the first building within the Project or approval of the Final Map for VTTM No. 5004, whichever occurs first.	Reported complete in the 1998 Report, via the annexation of the property.
g.	Agrees to not oppose creation of a redevelopment project area (as defined by applicable State law) encompassing any part of the Property provided that the project area is consistent with the rights of Developer under this Agreement.	To date SDI/Moorpark Hospitality have complied with this condition. Warehouse Discount has entered into a separate Development Agreement for Lot 1.
h.	Agrees to dedicate Lot 4 and Lot D, as described in Condition No. 16 of VTTM No. 5004, in fee simple interest to City concurrently with the recordation of the Final Map for VTTM Map No. 5004. These lots are to be used for public benefit as determined by City in its sole discretion.	These lots were transferred to the City of Moorpark (unencumbered by the previous lien) on May 29, 2002. This item is complete.

#	REQUIREMENT	STATUS															
i.	Agrees not to request any concession, waiver, modification or reduction of any fee, regulation, requirement, policy or standard condition for development of Lots 1 and 2 of VTTM No. 5004, and further agrees to pay all fees imposed by City for future buildings, so long as, said fees are also imposed in a similar manner on similar projects.	A Development Agreement has been entered into for Lot 1, and owner of Lot 2 has submitted a Pre-Application review for a hotel.															
j.	Modification to Caltrans rights-of-way adjacent to the Property and signalization of SR 23 interchange with New Los Angeles Avenue.	Reported complete in the 2001 Report.															
k.	Maximum building square footage for Lot 1 of VTTM No. 5004 shall not exceed 132,183 and for Lot 2 of VTTM No. 5004 shall not exceed 37,200 and limitations to conditionally permitted uses of Lots 1 and 2.	A Development Agreement has been entered into for Lot 1, and owner of Lot 2 has submitted a Pre-Application review for a hotel.															
l.	<p>Payment to the City in accordance with the provisions of the agreement if, for any reason, Developer does not employ the number of full-time employees required by the agreement at the Project facilities described in IPD No. 95-02. Beginning with the initial occupancy date of April 1, 1999, the full-time employment count for the SDI, Inc. is described below:</p> <table border="1"> <thead> <tr> <th>DATE</th> <th>Actual FTE</th> <th>Min. FTE</th> </tr> </thead> <tbody> <tr> <td>6/29/99</td> <td>645</td> <td>490</td> </tr> <tr> <td>6/29/00</td> <td>687</td> <td>565</td> </tr> <tr> <td>6/29/01</td> <td>682</td> <td>640</td> </tr> <tr> <td>6/29/02</td> <td>385</td> <td>715</td> </tr> </tbody> </table>	DATE	Actual FTE	Min. FTE	6/29/99	645	490	6/29/00	687	565	6/29/01	682	640	6/29/02	385	715	Payment in the amount of \$29,970 was received by the City on May 24, 2002. That payment concluded SDI's obligation under this section of the Development Agreement.
DATE	Actual FTE	Min. FTE															
6/29/99	645	490															
6/29/00	687	565															
6/29/01	682	640															
6/29/02	385	715															
m.	Build the Project described in IPD No. 95-02 and any City-approved minor modification thereto and relocate the Los Angeles County operations of Special Devices, Incorporated to the Project facilities within three (3) years after the effective date of the Agreement or pay the City the sum of Four Hundred Ninety-Two Thousand, Three Hundred and Fifty-One Dollars (\$492,351.00) plus Seventy-Five Thousand Dollars (\$75,000.00) per year for four (4) consecutive years.	SDI has complied with this condition through occupying the property within the timeframe originally contemplated. Thus, no additional fees are payable pursuant to this provision.															
n.	Pay for City costs at the applicable rate, then in effect, for review and plan check monitoring and inspection of work performed by consultants retained by Developer and City, pursuant to the agreement.	To date SDI /Moorpark Hospitality have complied with this condition. Warehouse Discount has entered into a separate Development Agreement for Lot 1.															

City Compliance with Terms of Agreement

The City's responsibilities are included in Section 7 of the agreement and include 16 specific provisions (a. through p.) as summarized below.

#	REQUIREMENT	STATUS
a.	The Property shall be exempt from the provisions of Chapter 17.38 (Hillside Management) of the Moorpark Municipal Code.	Fulfilled
b.	The Property shall be exempt from any growth management ordinance that is adopted by the City Council or by initiative of the electorate.	Fulfilled
c.	Acquire, at the request of the Developer and at Developer's sole cost and expense, easements or fee title to land in which Developer does not have title or interest, in order to allow construction of public improvements required of Developer.	Fulfilled
d.	City shall use its best efforts to process plan checking and early grading agreement for the Project in an expedited manner.	Fulfilled
e.	Approve an early grading agreement on behalf of the City to allow rough grading of the Project, prior to City Council approval of the Final Map for VTTM No. 5004.	Fulfilled
f.	Defer payment by the developer of applicable fees for the Los Angeles Avenue Area of Contribution (the "AOC fees") until the time of issuance of a zone clearance for the first building permit for the Project or approval of the Final Map for VTTM No. 5004, whichever occurs first.	Fulfilled
g.	Defer payment by the Developer of the Citywide Traffic Mitigation Fee until the time of issuance of a zone clearance for the first building permit for each lot within the boundaries of the Property.	Fulfilled
h.	Defer payment of fees, except as otherwise provided in this Agreement, other than fees for plan checking, permits, processing and other services controlled by the City until the time of issuance of a zone clearance for the first building permit for each lot within the boundaries of the Property, unless the fee is otherwise due at a later time.	Fulfilled
i.	Upon the effective date of the Agreement, the period required for use inauguration of IPD No. 95-02 shall be extended from one (1) year to three (3) years.	Fulfilled
j.	Accept Lots 4 and D as satisfaction of the requirements imposed by Condition No. 16 of VTTM No. 5004 and Condition No. 88 of IPD 95-02.	Fulfilled
k.	Exempt the Project from the Art in Public Places fee.	Fulfilled
l.	Exempt the Property from the landscape fee of five cents (\$.05) per square foot for the Property given the large percentage of the site retained in natural open space.	Fulfilled
m.	Agree that the contribution requirements of Condition No. 127 of VTTM No. 5004 shall be satisfied upon completion of installation of the two (2) traffic signals at the SR 23/New Los Angeles interchange to the satisfaction of the City.	Fulfilled
n.	Agree not to require Developer to remove noxious plants from the Arroyo Simi.	Fulfilled
o.	Agree that, in implementation of Condition No. 26 of VTTM No. 5004, the City Engineer and Community Development Director may jointly approve elevation changes, not to exceed five (5') feet, for the purpose of providing contour grading of the ridgeline.	Fulfilled

#	REQUIREMENT	STATUS
p.	Agree that, in implementation of the condition of VTTM No. 5004 and IPD No. 95-02 relating to an Environmental Quality Assurance Program, Habitat Restoration Plan, Oak Woodland Restoration and Reforestation Plan and other conditions outlined in the section, work required to be performed by the City Engineer, the City Attorney, City's designated geologist, City's designated geotechnical engineer, and public agencies not under the jurisdiction of the City shall not be deemed consultants for purposes of this subsection.	Fulfilled

Evaluation of Good Faith Compliance

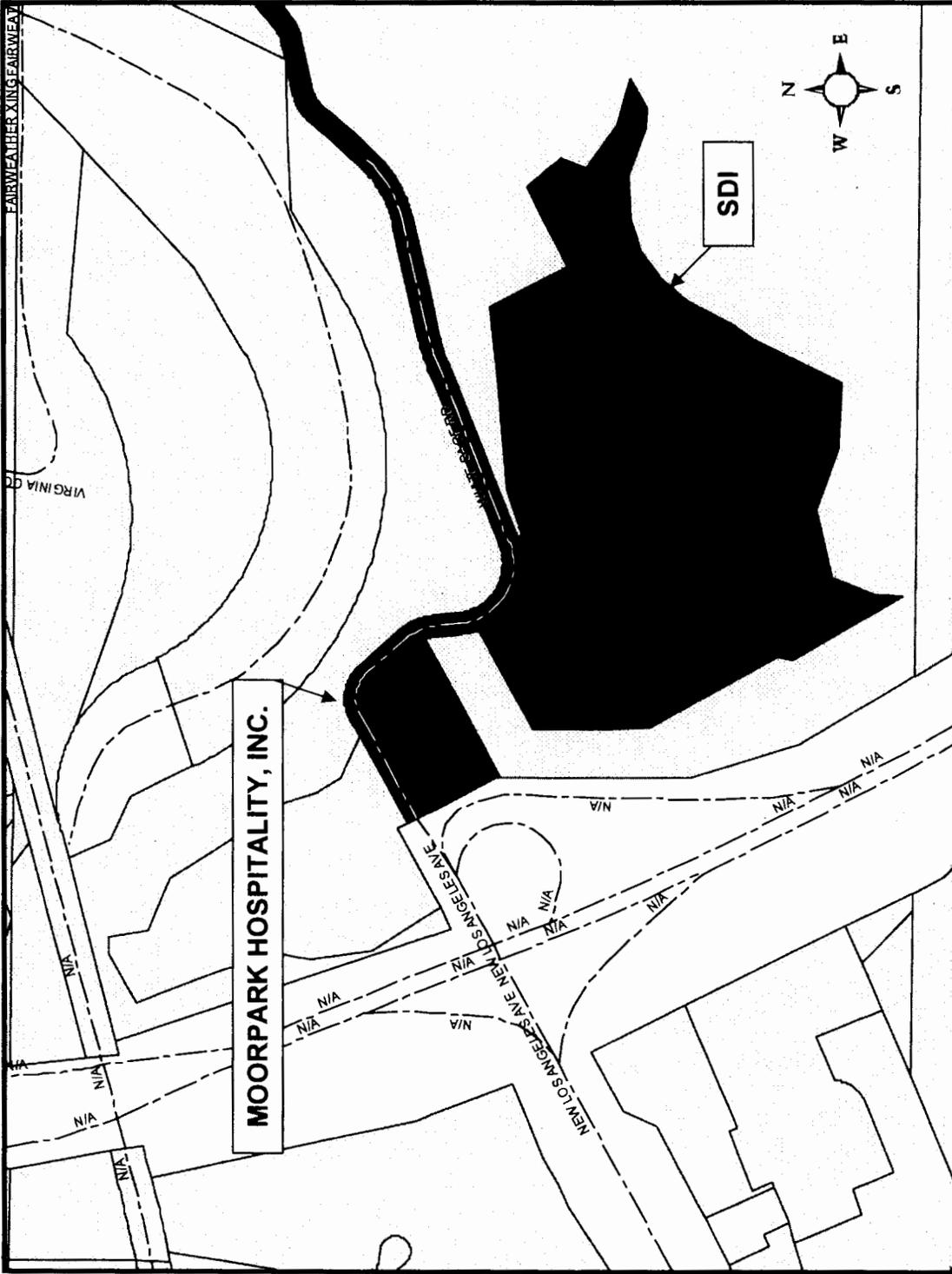
Based on a review of the Development Agreement Annual Review Application, the current status of the projects and pending applications, the Community Development Director has, on the basis of substantial evidence, determined that SDI and Moorpark Hospitality, Inc. have to date complied in good faith with the terms and conditions of the agreement.

STAFF RECOMMENDATION

1. Accept the Community Development Director's Report and recommendation, and find, on the basis of substantial evidence, that SDI and Moorpark Hospitality, Inc. have complied in good faith with the terms and conditions of the agreement.
2. Deem the annual review process complete.

ATTACHMENT:

1. Location Map
2. October 15, 2003, City Council Agenda Report



LOCATION MAP

CC ATTACHMENT 1

↑  
NORTH

of 10-15-2003

MOORPARK CITY COUNCIL  
AGENDA REPORT

ACTION: Approved Staff  
recommendation, as modified  
to correct contribution to be  
\$15,000 for riparian habitat.  
(4-1, Mayor dissenting)  
By: Margaret Blason

TO: Honorable City Council  
FROM: Barry K. Hogan, Community Development Director  
DATE: October 3, 2003 (CC Meeting of 10/15/03)

SUBJECT: Consider Approval of Caltrans Landscaping for the SR-23 Southbound Off-Ramp and On-Ramp at New Los Angeles Avenue for Condition Compliance and Authorize the Release of the Cash Bond for Special Devices, Incorporated (SDI) (Industrial Planned Development No. 1995-02)

**BACKGROUND**

Since late 2002, Community Development Department staff has been working with Special Devices, Incorporated (SDI) to resolve non-compliance with Conditions of Approval of Vesting Tentative Tract Map (VTTM) No. 5004 and Industrial Planned Development (IPD) No. 95-02. The applicant has achieved compliance with the six (6) outstanding conditions and has been very cooperative in working toward a mutually acceptable agreement to satisfy the intent of the City's Tree Preservation Ordinance. Two (2) bonds are still held by the City pending satisfaction of all Conditions of Approval. All improvements, except for those offered by the applicant as part of this request, have been satisfied. The only remaining issue is compliance with the City's Tree Preservation Ordinance.

**DISCUSSION**

Tree Preservation Ordinance/Landscaping: Staff and representatives from SDI met in order to bring closure to the City's concerns relative to the project. It is SDI's desire to complete all of the Conditions of Approval so that its outstanding bonds can be released and Final Occupancy can be issued. In order to meet the outstanding Conditions of Approval SDI has:

1. Installed additional trees along the top of the west facing (SR 23) slope to better screen the buildings from New Los Angeles Avenue.
2. Installed additional trees along the north facing (Campus Park) top of slope to screen the view of the buildings and campus from the Campus Hills area.
3. Replanted the lower north facing slope along the paved access road due to the large percentage of plants which had not survived.
4. Planted additional landscaping to screen Southern California Edison (SCE) equipment and further enhance the entry roadway.

The remaining issue is compliance with the City's Tree Preservation Ordinance. An appraisal of the trees which were removed as a result of this project was prepared by a city consultant using approved industry standards. The appraised value of the sixty (60) trees which were removed came to \$892,800. The intent of the City's Tree Ordinance is that the value; i.e. \$892,800, of the lost trees would be used to upgrade the on-site landscaping, at the time of installation, so that a more mature appearance would result upon occupancy of the project. This did not occur and the previous Community Development Director allowed temporary occupancy. In an effort to meet the intent of the City's Tree Preservation Ordinance, SDI has offered to:

1. Contribute \$15,000 to the City for riparian habitat replacement based upon the area of the Arroyo Simi which was disturbed during construction. The estimated cost includes plant materials, grading and installation which has been verified by the City's Landscape Architect. This contribution would be given to the City for use in the riparian area as the City sees fit. This item would be accomplished by keeping that portion of the current cash bond. This contribution, if accepted, would be in lieu of the installation of the riparian habitat.
2. Plant the SR-23/New Los Angeles Avenue interchange southbound off-ramp and southbound on-ramp, and maintain the planting in perpetuity. The planting suggested is

similar to what the applicant was required to do on the northbound off-ramp of the SR-23 at New Los Angeles Avenue. Staff and Caltrans have reviewed and approved the proposed landscape plans. Caltrans has issued the encroachment permit for the work on the interchange on-ramp and off-ramp. The estimated cost of this improvement installation is \$150,000 to \$175,000, not including the on-going cost of maintenance at a current annual cost of \$40,800. This work has yet to be accomplished and would have to be bonded for prior to the start of work. The applicant has entered into a maintenance agreement with Caltrans, identical to that which was entered into for the eastern off ramp. This agreement runs with the ownership of the land and is in perpetuity (see attached).

It is staff's opinion that the contribution to a riparian habitat fund and the ramp landscaping and maintenance would meet the intent of the Tree Preservation Ordinance for mature landscaping in the project area in addition to the work already done on the freeway ramp and items 1 and 2 above.

Sureties: To ensure the completion of any other outstanding issues on the SDI project site, the City also holds a cash deposit in the amount of \$300,000. These outstanding issues are specifically related to compliance with the intent of the City's Tree Preservation Ordinance and onsite landscaping. The applicant is requesting the release of the cash bond, minus the \$9,010, so that it can be used to pay for the purchase and installation of the landscaping at the freeway on and off ramps.

The City also holds a bond in the amount of \$684,415.60 for the completion of grading, paving, and drainage improvements of Tract No. 5004. The City Engineer has verified that all of these improvement guaranteed by the bond have been completed to his satisfaction.

#### **STAFF RECOMMENDATIONS**

1. Approve the proposed landscaping for the on-ramp and off-ramp for SR-23/New Los Angeles Avenue interchange and maintenance in perpetuity;
2. Accept the contribution of \$9,010 as riparian habitat replacement to be used as the City deems necessary;

Honorable City Council  
October 15, 2003  
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3. Authorize staff to release the two (2) remaining sureties of \$300,000 cash (minus the riparian habitat contribution) and the \$684,415.60 for Tract No. 5004, upon the posting of a surety, in an amount determined to be sufficient by the City Engineer and Community Development Director for the installation of the on-ramp and off-ramp landscaping.

Attachment:

Caltrans Agreement for Maintenance

**DEPARTMENT OF TRANSPORTATION**  
DISTRICT 7, 120 SOUTH SPRING STREET, ROOM 118  
LOS ANGELES, CA 90012



## MAINTENANCE AGREEMENT

*Permit No. 701-6LF-2820*

*Location: 07-VEN-23-11.23/11.410*

**This Maintenance Agreement is made and entered into this 25th day of March, 2002 by and between the State of California, acting by and through the Department of Transportation, District 7, located at 120 South Spring Street, Los Angeles, California 90012, hereinafter referred to as "STATE" or "CALTRANS", and AUTOSAFE AIRBAG 12 (CA) LP, a Delaware limited partnership, and AUTOSAFE AIRBAG 14 (CA) LP, a limited partnership, tenants-in-common, located at 14370 White Sage Road, Moorpark, California 93021, hereinafter referred to as "PERMITTEE" with reference to the following facts:**

Permittee desires State Highway improvements consisting of planting, irrigation, and maintenance along the northbound Route 23 at the on and off-ramps for New Los Angeles Avenue in the City of Moorpark, referred to herein as "PROJECT". Permittee is willing to fund one hundred (100%) of all design, capital outlay, maintenance, and staffing costs.

1. Permittee is responsible to apply for necessary encroachment permit in accordance with State's standard permit procedures. Permittee shall obtain aforesaid encroachment permit through the Caltrans, District 7, Office of Permits at (213) 897-3631. In addition, and after construction of Project, Permittee shall apply for a maintenance permit on an annual basis one (1) month prior to expiration of said encroachment permit.
2. Upon completion of work, Permittee shall assume maintenance and the expense thereof for Project, at its own expense in perpetuity. Permittee shall notify State Permit Inspector a minimum of two (2) working days prior to the start of any landscape maintenance work for Project.
3. Damage to Project resulting from accident, storm, neglect or other causes beyond the control of the State are the responsibility of the Permittee.
4. Caltrans shall maintain all highway signs, paved drainage structures and other non-landscape highway appurtenance.
5. All planting shall be maintained by the Permittee in such condition that it does not interfere with the free flow of traffic, including maintaining adequate site distances and visibility of signs. Trees would be maintained to avoid falling branches and to avoid obscuring advertising signs. Trees shall be pruned on a regular basis using only the highest

**DEPARTMENT OF TRANSPORTATION**DISTRICT 7, 120 SOUTH SPRING STREET, ROOM 118  
LOS ANGELES, CA 90012

professionally accepted standards in a manner that will encourage good development while preserving their health, structure, and natural appearance.

6. A monthly schedule of landscape maintenance stating the dates and approximate times when work is to be performed including names and telephone numbers for 24-hour emergency contact shall be provided to the State Permit Inspector.
7. Permittee shall provide and maintain all water and irrigation systems including utility costs for Project. Irrigation systems will be maintained and operated to avoid slope damage and water run-off or spray onto the pavement.
8. Landscaping, paving or other unplanted areas along the roadside within the limits shown on the attached plans, exclusive of paved drainage facilities, will be maintained so as not to obstruct the flow of water. Caltrans will be responsible for maintaining paved drainage structures.
9. By execution of this agreement, it is understood that Permittee shall not remove existing plants, install new plants, and/or modify irrigation system(s) without Caltrans' approval firsthand.
10. Future Caltrans projects may be implemented which will require removal and/or modification to all or a portion of Project. Any replacement landscaping including irrigation facilities shall be Permittee's responsibility. Upon completion of work, which affects the limits of maintenance, a revised Exhibit will be prepared and delivered to Caltrans for approval. Exhibit will supersede the original limits shown on the original permit plans.
11. Changes to Project affecting public safety or public convenience, all design and specification changes, and all major changes including removal, pruning, or addition of either planting or irrigation shall be approved by State in advance of performing work. Unless otherwise directed by the State Permit Inspector, changes authorized will require an encroachment permit. Failure to notify Caltrans of such changes shall result in the immediate removal of Project or portions of Project at Permittee's expense.
12. Upon notice of completion of all work under this Project, ownership and title to material, equipment and such appurtenances installed within State's right-of-way will automatically be vested in State. No further agreement will be necessary to transfer ownership.
13. Neither Caltrans and State nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Permittee under or in connection with any work, authority or jurisdiction delegated to Permittee under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, Permittee shall defend, indemnify and hold harmless the State of California and Caltrans, all officers and employees from all claims, suits or actions brought for or on account of injury

DEPARTMENT OF TRANSPORTATION  
DISTRICT 7, 120 SOUTH SPRING STREET, ROOM 118  
LOS ANGELES, CA 90012



(as defined in Government Code Section 810.8) occurring by reason of any action taken or omission of an act required by this agreement by Permittee or in connection with any work, authority or jurisdiction delegated to Permittee under this Agreement.

- 14. It is understood that if Permittee at some future date decides not to renew its maintenance permit required herein, or if the planting is not maintained at a reasonable level subject to Caltrans' consent, Caltrans shall provide Permittee with written notice of failure to renew its annual permit and/or Caltrans' decision that subject Project is not maintained at a reasonable level. Permittee shall respond within thirty (30) days of receipt of said notice. Said response shall describe the action to be taken by Permittee to bring the affected areas back into compliance or to remove the Project improvements and restore said areas to the pre-landscaped condition. In the event Permittee does not provide such response and take any action, Caltrans will take the necessary action(s) to remove the Project and restore the affected areas to their pre-landscaped condition at Permittee's expense including any legal cost(s).

IN WITNESS WHEREOF, the parties have executed this Maintenance Agreement in duplicate as of the day and year stated above.

Permittee:  
AUTOSAFE AIRBAG 12 (CA) LP,  
a Delaware limited partnership

Signature: Edward V. LaPoma  
By: Initiator (CA) QRS 12-53, Inc.,  
a Delaware corporation, general partner  
Print Name: \_\_\_\_\_

Caltrans

Paul Y. Matsuyama

Paul Y. Matsuyama

Title: \_\_\_\_\_

Landscape Architect

Phone: \_\_\_\_\_

(562) 795-7084

Date: \_\_\_\_\_

January 5, 2002

AUTOSAFE AIRBAG 14 (CA) LP,  
a Delaware limited partnership  
By: Initiator (CA) QRS 14-64, Inc.,  
a Delaware corporation, general partner

Signature: Edward V. LaPoma

Print Name: Edward V. LaPoma

Title: Managing Director

Phone: (212) 492-1100

Date: \_\_\_\_\_

**CONSENT AND AGREEMENT**

The undersigned hereby consents to the terms of this Maintenance Agreement and agrees to perform all of the obligations of Permittee thereunder in accordance with the terms of the Lease Agreement by and between the undersigned, as Tenant, and Permittee, as Landlord, including, without limitation, Paragraph 37(a) thereof.

**SPECIAL DEVICES, INCORPORATED,**  
a Delaware corporation

By: James E. Beeler  
Title: Vice President, Finance

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