

# CORRECTED COPY

(R-95-931 REV.1)

RESOLUTION NUMBER R-284942

ADOPTED ON NOVEMBER 15, 1994

WHEREAS, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, Owner/Permittee, and THE YARMOUTH GROUP, INC. (as its Agent), filed an application for a Mission Valley Development Permit and Conditional Use Permit to allow the construction of a 440,000-square-foot addition to the existing Fashion Valley Shopping Center pursuant to San Diego Municipal Code Sections 101.0510 and 103.2100; and

WHEREAS, the Fashion Valley Shopping Center is located on the south side of Friars Road between Fashion Valley Road and State Route 163 and on the north side of the San Diego river channel; and

WHEREAS, the 81.6-acre Fashion Valley Shopping Center site is Zoned MV-CR (Mission Valley Planned District Commercial Retail) and is located in the Mission Valley community planning area; and

WHEREAS, on October 13, 1994, the Planning Commission of the City of San Diego approved Mission Valley Development Permit/ Conditional Use Permit No. 93-0437 with conditions pursuant to Sections 101.0510 and 103.2100 of the Municipal Code of The City of San Diego; and

WHEREAS, MATTHEW A. PETERSON (attorney for applicant), PAUL E. ROBINSON (attorney for Hazard Center); and DONALD WORLEY

(attorney for Mission Valley Partnership), appealed the decision of the Planning Commission in approving Mission Valley Development Permit/Conditional Use Permit No. 93-0437; and

WHEREAS, on November 15, 1994, the City Council of the City of San Diego considered Mission Valley Development Permit/Conditional Use Permit No. 93-0437 pursuant to Sections 101.0510 and 103.2100 of the Municipal Code of the City of San Diego; and

WHEREAS, on November 15, 1994, the City Council approved the Mission Valley Development Permit/Conditional Use Permit with the conditions contained in the Mission Valley Development Permit/Conditional Use Permit No. 93-0437; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this Council adopts the following findings with respect to Mission Valley Development Permit/Conditional Use Permit No. 93-0437:

**MISSION VALLEY DEVELOPMENT PERMIT**

- A. THE PROPOSED DEVELOPMENT IS CONSISTENT WITH THE MISSION VALLEY COMMUNITY PLAN AND THE PROGRESS GUIDE AND GENERAL PLAN.

The proposed shopping center expansion, which includes additional retail shops, restaurants, and movie theaters, is consistent with the Commercial Retail land use designations in the Mission Valley Community Plan and the City of San Diego Progress Guide and General Plan. Due to the existing site constraints and economic benefits to the City of San Diego, modifications to the community plan's urban design guidelines have been made. The proposed development will reduce flood impacts to existing structures on the site and will incorporate additional design features to comply with the Urban Design element of the Mission Valley Community Plan including pedestrian amenities, outdoor activity areas, and additional shopping opportunities.

- B. THE PROPOSED DEVELOPMENT PROVIDES THE REQUIRED PUBLIC FACILITIES AND IS COMPATIBLE WITH ADJACENT OPEN SPACE AREAS.

The proposed development will provide required public improvements to support the increased traffic to the site. In addition, the property owner will be required to pay Development Impact Fees (DIF) prior to the issuance of building permits for the proposed project. The fees collected will be used to finance additional improvements in the Mission Valley Community in accordance with the Mission Valley facilities financing plan or as otherwise established by the City Council.

The proposed development is compatible with adjacent open space areas through the modified implementation of the Mission Valley Community Plan's urban design guidelines. Design treatment of structures adjacent to the river will be landscaped, incorporate building off-sets, and provide visual and physical access to open space areas through corridors in adjacent building walls. In addition, the project will provide pedestrian amenities and an interim river enhancement project to provide improved access along the river. Modification to the urban design guidelines are justified because of the significant economic benefit received in additional sales tax revenue to the City of San Diego.

- C. THE PROPOSED DEVELOPMENT MEETS THE PURPOSE, INTENT AND CRITERIA OF THIS PLANNED DISTRICT INCLUDING THE APPLICABLE "GUIDELINES FOR DISCRETIONARY REVIEW" ADOPTED AS A PART OF THIS PLANNED DISTRICT.

The proposed project meets the purpose and intent of the Mission Valley Planned District Ordinance. The project will enhance the river area, improve the vehicular, pedestrian, and public circulation network, and contribute to the aesthetic and functional well-being of the community. The project will provide a pedestrian and bike path along the river, pedestrian and vehicular connections to the LRT and bus transit station, and will contribute to economic development in the community.

- D. THE PROPOSED DEVELOPMENT WILL COMPLY WITH ALL OTHER RELEVANT REGULATIONS IN THE SAN DIEGO MUNICIPAL CODE. THE PROPOSED USE WILL NOT ADVERSELY AFFECT THE NEIGHBORHOOD, THE GENERAL PLAN, OR THE COMMUNITY PLAN, AND, IF CONDUCTED IN CONFORMITY WITH THE CONDITIONS PROVIDED BY THE PERMIT, WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS RESIDING OR WORKING IN THE AREA.

It has been determined that the proposed project meets the intent of the underlying MV-CR Zone and qualifies for exceptions to the strict regulations due to unusual site constraints. Additionally, it has been determined that modified implementation of the urban design requirements in the Mission Valley Community Plan are justified due to the unique site constraints and the significant economic benefit of the project to the City. The Environmental Impact Report for the project identified a significant impact to aesthetics which could only be mitigated through a reduction in the project. The EIR determined that the proposed project would not have a significant effect on the health, safety, and general welfare of persons residing or working within the area.

#### CONDITIONAL USE PERMIT FINDINGS

- A. THE PROPOSED USE WILL NOT ADVERSELY AFFECT THE NEIGHBORHOOD, THE GENERAL PLAN, OR THE COMMUNITY PLAN, AND, IF CONDUCTED IN CONFORMITY WITH THE CONDITIONS PROVIDED BY THE PERMIT, WILL NOT BE DETRIMENTAL TO THE HEALTH, SAFETY AND GENERAL WELFARE OF PERSONS RESIDING OR WORKING IN THE AREA.

See Findings A and D above of the Mission Valley Development Permit.

- B. THE PROPOSED USE WILL COMPLY WITH ALL THE RELEVANT REGULATIONS IN THIS CODE.

See Finding D above of the Mission Valley Development Permit.

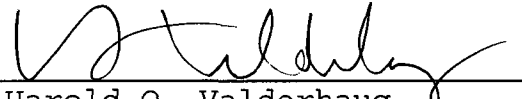
The above findings are supported by minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that based on the findings hereinbefore adopted by the Council, the appeals of Matthew A. Peterson, Paul E. Robinson, and Donald Worley are hereby denied, the decision of the Planning Commission is sustained, and Mission Valley Development Permit/Conditional Use Permit No. 93-0437 is hereby granted to Owner/Permittee, as modified by the City Council, in the form and with the terms and conditions set forth

in Mission Development Permit/Conditional Use Permit No. 93-0437,  
a copy of which is attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By

  
Harold O. Valderhaug  
Chief Deputy City Attorney

HOV:ps  
06/22/95 REV.1  
Or.Dept:Clerk  
R-95-931

RECORDING REQUESTED BY  
CITY OF SAN DIEGO  
DEVELOPMENT SERVICES DEPARTMENT

AND WHEN RECORDED MAIL TO  
PERMIT INTAKE  
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MISSION VALLEY DEVELOPMENT/CONDITIONAL USE PERMIT NO. 93-0437  
FASHION VALLEY SHOPPING CENTER  
CITY COUNCIL

This Mission Valley Development Permit is granted by the Council of The City of San Diego to THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES (Owner/Permittee) and THE YARMOUTH GROUP (its Agent), pursuant to Sections 103.2100 and 101.0510 of the Municipal Code of The City of San Diego.

1. Permission is hereby granted to Owner/Permittee, to construct a 440,000-gross-leasable-square-foot addition to the existing Fashion Valley Shopping Center located between Fashion Valley Road and State Route 163, on the south side of Friars Road and on the north side of the San Diego River. The 81.6-acre site is described as Lots 1-7 of Map No. 10282 and is located in the MV-CR Zone and the River Subdistrict of the Mission Valley Planned District.

2. The Project shall consist of the following existing and proposed facilities:

Existing:

- a. Six major department stores and a number of smaller specialty retail shops and restaurants totalling 1,376,251 square-feet;
- b. Three Parking Structures and surface parking totalling 6,881 parking spaces;
- c. Landscape at the perimeter of the site, in the parking areas and throughout the shopping center.

Proposed:

- a. A 440,000-gross-leasable-square-foot addition to include one new major tenant and/or expansion of existing major tenants, a variety of retail shops, restaurants, and a multi-screen movie cinema;

- b. New Parking Structures and expansion of the three existing Parking Structures to accommodate 4,466 parking spaces;
  - c. Surface Parking area to accommodate 3,707 parking spaces, 50 of which are available for use by transit users, 365 days per year;
  - d. Relocation of the existing MTDB Bus Transfer Station from the northern edge of the property along Friars Road to the southwestern edge of the property adjacent to the proposed LRT station at Fashion Valley Road;
  - e. A pedestrian bridge to connect the proposed LRT station to the shopping center and to the bus transfer station.
  - f. Pedestrian accessways will be provided from all public rights-of-way to the parking areas and to the building entrances.
  - g. River enhancements to include a pedestrian walkway and bicycle path with landscape and benches along the river frontage.
  - h. One restaurant of not less than 5,000 square feet will be constructed on the third level of the parking structure adjacent to the pedestrian bridge from the LRT station;
  - i. Landscape in accordance with the Mission Valley Planned District Ordinance and as described in Condition 5 of this permit;
  - j. Other uses considered to be accessory and incidental to the predominant retail use as determined by the Director of the Development Services Department.
3. Not more than 8,200 off-street parking spaces for the shopping center and a minimum of 50 off-street parking spaces for the LRT shall be maintained on the property to accommodate existing facilities and build out of the 440,000-square-foot addition. Parking required shall be calculated at a rate of 4.5 spaces for each 1,000 square feet of building area. Parking shall be provided in the approximate location shown on Exhibit "A," dated November 15, 1994, on file in the office of the Development Services Department, DEP Division. Parking spaces shall be landscaped and be consistent with San Diego Municipal Code Chapter X, Article 1, Division 8, and shall be permanently maintained and not converted for any other use.
4. Before issuance of any building permits, complete grading and building plans shall be submitted to the Development

Services Director, DEP Division, for approval. Plans shall be in substantial conformity to Exhibit "A," dated November 15, 1994, on file in the office of the Development Services Department, DEP Division. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

5. Before issuance of any grading or building permits, a complete landscape plan, including a permanent irrigation system, shall be submitted to the Development Services Director, DEP Division, for approval. Plans shall be in substantial conformity to Exhibit "A," dated November 15, 1994, on file in the office of the Development Services Department, DEP Division, and shall comply with the following conditions. Approved plantings shall be installed before issuance of any occupancy permit on any building. Such plantings shall not be modified or altered unless this permit has been amended.
  - a. Necessary landscape area shall be provided on the parking structures in conformance with the Mission Valley PDO: "The upper floor of parking facilities, shall be landscaped in accordance with the City-wide landscape standards for vehicular use areas, or covered with architectural trellis work over 30 percent of the deck area, or designed to accommodate recreational facilities over 30 percent of the deck area or treated with a combination of architectural/landscape elements to achieve a screening effect comparable to the options listed above."
  - b. Provide perimeter parking structure trees per the PDO: "The perimeter of all parking structures at ground level shall be landscaped with trees." If trees cannot be provided entirely around the perimeter, due to hydrological constraints, then the report specifically describing those constraints shall be submitted by a qualified engineer.
  - c. Parking lots and structures shall provide a 30" high screen around their perimeters to screen parked vehicles. This can be accomplished with planting, berming, walls or a combination of these screening methods. If screening cannot be provided as required, due to hydrological constraints, then the report specifically describing those constraints shall be submitted by a qualified engineer.
  - d. Fashion Valley Center is responsible for maintaining clear and safe accessways along the river corridor and connections to adjacent public rights of way.



6. Prior to the issuance of any building permits, complete plans showing the river enhancement must be submitted to the Development Services Department for approval. The river enhancements must be constructed in the first phase of development and completely constructed prior to the issuance of any occupancy permits for the proposed development. River enhancement plans must be in substantial conformance with the plans stamped Exhibit "A," dated November 15, 1994, on file in the office of the Development Services Department. The river enhancements shall include a pedestrian walkway and bikeway connecting with Camino de la Reina on the south side of the San Diego River Channel, then north across the channel and west along the channel to Fashion Valley Road. The walkway shall be enhanced with native landscape, permanent seating and rest areas, as well as directional and educational signage.
7. As a condition of this permit, the applicant agrees to fund a City initiated project to provide an interim pedestrian/bike path connection on the south side of the San Diego River and under SR 163. Fashion Valley's obligation to fund this project shall not exceed \$100,000. Any overages shall be paid for by the City.
8. Prior to the issuance of any building permits for the proposed parking structures adjacent to the proposed LRT station, the applicant shall submit plans for the development of a pedestrian bridge at the edge of the parking structure leading from the proposed LRT station to the shopping center. The connection between the parking structure and the LRT station must be constructed by the time that the LRT station and parking structures are constructed at Fashion Valley. The proposed bridge shall contain both seating and shade areas and shall accommodate outdoor vendors and pedestrian activity areas.
9. Prior to the issuance of any building permits for the proposed development, the applicant shall submit plans for the development of an at-grade pedestrian walkway from the LRT/bus station into the mall. The at-grade pedestrian walkway shall contain both seating and shade areas and shall accommodate outdoor vendors and pedestrian activity areas. Construction of the at-grade pedestrian walkway must be complete prior to the issuance of any occupancy permits for the proposed structures.
10. As a condition of this permit, the applicant shall agree to provide 50 non-exclusive year-round, parking spaces to serve transit riders directly adjacent to the transit center.
11. As a condition of this permit, the applicant is responsible for working with MTDB to ensure protection of the LRT support columns and construction of the raised median along

Camino de la Reina from Fashion Valley Road to the easterly property line.

12. As a condition of this permit, Fashion Valley shall submit to MTDB for its sole approval, an alternate Bus Transit Center location and circulation plan for implementation during flooding conditions which render the permanent Bus Transit Center inoperable. Fashion Valley shall bear the costs associated with the heavy duty pavement sections required for the bus traffic.
13. All outdoor lighting shall be so shaded and adjusted that the light is directed to fall only on the same premises as light sources are located.
14. This project proposal shall conform with all special regulations contained in Section 103.2112 as follows:
  - a. Pedestrian sidewalks separated from the street and curb by a landscaped parkway, shall be provided along Friars Road and the proposed Hazard Center Drive and Camino de La Reina. Sidewalks may meander along Friars Road and Fashion Valley Road to accommodate existing trees and public facilities.
  - b. Reflective material on any building shall not be permitted in a way which causes traffic hazard or diminishes the quality of the riparian habitat.
15. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the developer to provide the right-of-way free and clear of all encumbrances and prior easements. The subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
16. Prior to the issuance of building permits, the property owner shall align the centerline and lane lines of the new main entrance with the centerline and lane lines of the future north/south Camino de la Reina, satisfactory to the City Engineer. This shall be reflected on the approved grade and alignment study for Camino de la Reina.
17. Prior to the recordation of Mission Valley Permit No. 93-0437, the property owners and applicable major tenants shall, by irrevocable offer of dedication, and at no cost to the City, provide all right-of-way necessary for the Light Rail Transit (LRT) facility and station and a bus transfer facility within the project site, in accordance with design criteria in the Metropolitan Transit Development Board (MTDB) standards. The City Engineer shall advise the Director of the Development Services Department of the completion of the aforementioned condition, upon which Mission Valley Permit No. 93-0437 may be recorded in the

Office of the County Recorder. Also, prior to recordation, since MTDB has filed condemnation action to acquire property for LRT and bus facilities and has deposited probable compensation with the Court, in the event that Fashion Valley has withdrawn that deposit, Fashion Valley must return all withdrawn funds to MTDB.

18. Prior to the issuance of building permits, the property owner shall provide a grade and alignment study that is consistent with the LRT and related facilities, and adjacent specific plans (FSDRIP, Atlas, and Levi-Cushman), for the future construction of 1) Hazard Center Drive, and 2) Camino de la Reina, (including the north/south section referred to in Condition 15) from its intersection with Hazard Center Drive to Fashion Valley Road.
19. Prior to the issuance of any building permits, the Owner/Permittee shall either, as determined by the City Engineer, dedicate, or provide an irrevocable offer of dedication of, on-site right-of-way for Camino de la Reina/Hazard Center Drive and assure by permit and secured by irrevocable letter of credit, or other security acceptable to the City Engineer, the northern two lanes of Camino de la Reina/Hazard Center Drive with the required sidewalk and landscaped parkway, as a continuous public roadway from Fashion Valley Road on the west to the westerly right-of-way line of the SR 163 Freeway at the eastern property limit. Camino de la Reina at Fashion Valley Road may require additional on-site right-of-way to accommodate LRT support columns and medians; satisfactory to the City Engineer.
20. Prior to the issuance of building permits, the property owner shall enter into an agreement with the City waiving the right to oppose the formation of any special assessment district initiated for the purpose of providing "fair share" of funds for the following:
  - a. The construction of Hazard Center Drive and/or Camino de la Reina (other than what is constructed as a condition of this permit) immediately adjacent to the subject property. As an alternative, the property owner may contribute his/her fair share of the design and construction costs as determined by the City Engineer; and
  - b. The design, construction, and maintenance of any immediately adjacent river-improvement-type projects including, but not limited to, flood-protection facilities, biological mitigation, and a pedestrian pathway. As an alternative, the property owner may contribute his/her fair share of the design and construction costs as determined by the City Engineer and the Director of the Development Services

Department. The property shall receive appropriate credit, if any, for right-of-way contributions and/or other special on-site design considerations as determined by the Assessment Engineer.

21. Prior to the issuance of any building permits, the property owner shall enter into an agreement with the City waiving the right to oppose the formation of a reimbursement district to recover construction costs incurred by any public agency for the LRT at the earlier of either of the following: at least 50 percent of the increased development authorized by the PDO permit has not been completed and opened to public use by December 1, 1999, or if at least 90 percent of the increased development authorized by the PDO permit has not been completed and opened to public use by December 1, 2003, except that if at least 80 percent of the increased development authorized by the PDO permit has been completed and opened to public use by December 1, 2003, the reimbursement shall be limited to 50 percent of the amount eligible for reimbursement.
22. Prior to the issuance of building permits, the property owner shall be required to provide the recommended facilities identified in the traffic study and said facilities shall be conditions of permit approval and shall be provided in a manner satisfactory to the City Engineer. The requirements, as identified by the traffic study, are as follows:
  - a. The developer is responsible for installing a traffic signal at the intersection of Fashion Valley Road and Camino de la Reina. The developer may seek 50 percent reimbursement of the cost of the signal from the Metropolitan Transit Development Board (MTDB). If MTDB installs the signal, then MTDB can seek a 50 percent reimbursement for the cost from the Owner/Permittee.
  - b. Owner/Permittee shall conduct a base line study of pass-by and diverted trip links, a minimum of 60 days (but not more than 6 months) prior to the start of construction. Such date to be established no later than 30 days after recordation of this Permit to the satisfaction of the City Manager. Within one year of completion of the proposed development, the developer is required to conduct a survey of the site to verify pass-by and diverted link trip percentages that were used in estimating the trip generation for this project and to determine the traffic impacts from Fashion Valley on the Mission Valley Community. If these impacts create unacceptable traffic conditions, the City Manager is directed to work with Fashion Valley to provide for mitigation of those impacts which are directly related to the project.

- c. When Hazard Center Drive is constructed by others westerly from its existing terminus easterly of SR 163 to the easterly property line of Fashion Valley Center, the Fashion Valley developer will be responsible for providing the connection to the section of Hazard Center Drive to be constructed by the Fashion Valley Developer. This connection may occur prior to or following issuance of building permits depending on the construction schedule of Hazard Center Drive under SR 163 by others and the construction schedule of the LRT.
23. When the future north/south portion of Camino de la Reina is completed and open to traffic, the property owner shall close Avenida del Rio to vehicular traffic, satisfactory to the City Engineer.
24. Water Requirements:
- a. The developer shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two (2) fire hydrants and/or thirty (30) Equivalent Dwelling Units (EDUs) are located on a dead-end main, then a dual-fed system shall be installed.
  - b. In conjunction with development of the project, the property owner shall relocate all water mains conflicting with the proposed development, or necessary to serve this development, satisfactory to the Water Utilities Director.
25. Sewer Requirements:
- a. Prior to the issuance of building permits, the developer shall provide structural building plans and calculations to the Water Utilities Department for any structures to be located over the existing North Mission Valley Trunk Sewer, in a manner to ensure its safe operation, repair and replacement within the criteria established by the Water Utilities Director and the City Engineer. The City shall abandon the existing sewer and vacate the existing easement when the new north Mission Valley trunk sewer is in operation.
  - b. The developer shall grant adequate sewer easements (including working easements) with vehicular access over the future alignments of the North Mission Valley Interceptor Sewer and the East Linda Vista Trunk Sewer, satisfactory to the Water Utilities Director.
  - c. The developer shall enter into an encroachment removal agreement(s) for any structures located within any

sewer easements, satisfactory to the Water Utilities Director. The construction, including all working easements, shall be staged in such a manner so as to minimize impact to the existing shopping center operations.

26. Water and Sewer Requirements:

- a. No structures of any kind shall be built in or over any water and/or sewer easements prior to the developer entering into an encroachment removal agreement.
  - b. All common and/or open spaces that require irrigation shall be irrigated with reclaimed water as specified in City Council Ordinance O-17327. The developer shall design and install a reclaimed water distribution system within the subdivision in accordance with "Rules and Regulations for Reclaimed Water Use and Distribution within the City of San Diego" satisfactory to the Metropolitan Wastewater Director. The irrigation system shall initially be supplied from the potable water system until reclaimed water is available. The system shall be designed to allow the conversion from potable to reclaimed water service and avoid any cross connections between the two systems.
27. The drainage system proposed for this development, as shown on the approved site plan, is subject to approval by the City Engineer.
28. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 92-08-DWQ (NPDES General Permit No. CAS000002), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be developed and implemented concurrently with the commencement of grading activities, and a complete and accurate Notice of Intent (NOI) shall be filed with the SWRCB. A copy of the acknowledgement from the SWRCB that a NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received.
29. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 92-08-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 92-08-DWQ.
30. A portion of this project has been identified as being within a floodway or floodplain fringe area of the San Diego

River, as shown on Panel 133 of the Flood Insurance Rate Map (FIRM) for the City of San Diego. These maps are prepared by the Federal Emergency Management Agency (FEMA). In connection with approval of the permit:

- a. The developer shall submit a Hydraulic and Hydrologic Study of the area within the floodway for approval by the City Engineer.
- b. Any proposed habitable development within the floodplain fringe area will require either the proposed finished floors to be graded to an elevation one-foot above the 100-year frequency flood elevation or provide flood-proofing of all proposed structures to that same elevation. The 100-year flood elevations will be based upon the approved FEMA 100-year discharge or a discharge of 49,000 cubic feet per second, whichever is greater.
- c. The developer shall grant a flowage easement, satisfactory to the City Engineer, over the property within the floodway.
- d. The developer shall denote on the improvement plans "Subject to Inundation" for those areas at an elevation lower than the 100-year frequency flood elevation plus one-foot. The 100-year flood elevations will be based upon the approved FEMA 100-year discharge or a discharge of 49,000 cubic feet per second, whichever is greater.
- e. The developer shall provide slope protection, as required by the City Engineer, where the flow velocity exceeds five (5) FPS within the limits of development. Flow velocity outside the limits of the development are to remain at or below existing velocities, otherwise slope protection would also be required to the satisfaction of the City Engineer.
- f. All required permits must be obtained from the California Department of Fish and Game and U.S. Army Corps of Engineers before City permits will be issued for work within the floodway or the floodplain fringe areas.
- g. No permits shall be issued for grading or other work in the floodplain of the San Diego River until the developer obtains a Conditional Letter of Map Amendment (Conditional LOMA) or Conditional Letter of Map Revision (Conditional LOMR) from FEMA.
- h. The request for the Conditional LOMA or Conditional LOMR must be submitted through the Floodplain Management Section of the City of San Diego Engineering

Department. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.

- i. When as-built grading and public improvement plans are available, the developer must submit a request for a Final LOMA or Final LOMR to FEMA via the Floodplain Management Section of the City of San Diego Engineering Department. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.
31. As a condition of this permit and in accordance with the California Environmental Quality Act, the Owner/Permittee shall comply with the following Mitigation Monitoring and Reporting Program:

The California Environmental Quality Act (CEQA) requires that a mitigation monitoring and reporting program be adopted on certification of an environmental impact report (EIR) to assure that the mitigation measures are implemented (Public Resources Code Section 21081.6). The mitigation monitoring and reporting program for the Fashion Valley Center Expansion Project is under the jurisdiction of the City of San Diego and is described below.

**A. Land Use, Urban Design, and Aesthetics**

The applicant has agreed to include mitigation for significant visual quality impacts. These measures are listed below and would partially mitigate the significant impact. For the proposed project, the following mitigation measures shall be included as conditions of approval of the Mission Valley Development Permit.

- 1) At least four open view and pedestrian access corridors shall be provided along the river frontage between the trolley station and the eastern property line. One corridor shall be a minimum of 120 feet in width. The remaining three corridors shall be at least 100 feet in width. Corridors shall contain non-contiguous five-foot sidewalks with eight-foot landscaped parkways on both sides on the drive aisle in locations between the parking structures. In addition, each corridor must be open to the sky for the entire distance between the



proposed street right-of-way and  
mall entrances except for bridges  
connecting the parking structures.

- 2) A 5,000-square-foot restaurant pad with 500 square feet of outdoor seating area for the restaurant will be located in the southwesterly corner of the parking structure nearest the LRT station.
- 3) Landscaping and/or trellis screening shall be provided on the parking structures in accordance with the requirements of the Mission Valley Planned District Ordinance. In addition, additional planting areas shall be required to compensate for deficient tree planting along the structure at the river edge to the satisfaction of the Development and Environmental Planning Section of the Development Services Department. Planting in this area shall be consistent with allowing proper flow conditions for floodwaters.

**B. Biological Resources**

The proposed project would have no direct impacts on biological resources and no mitigation for direct impacts is recommended. The mitigation recommended below is intended to reduce potential indirect impacts. The measures shall be assured prior to the issuance of the grading permit and/or building permit.

- 1) Night lighting of the construction area, if necessary, must be directed toward the construction area itself and away from the riparian habitat to the south. Direction of lighting shall be specified in the construction contract.
- 2) No trees on the southern border of the project site shall be removed or disturbed until surveyed by the consulting biologist, in consultation with the applicant, the construction contractor, and the Environmental Analysis Section of the City of San Diego Development Services Department,

for the presence of nesting raptors or other sensitive species. If nesting species are identified, appropriate measures to avoid disturbance must be implemented. These measures include leaving the nesting site undisturbed and possibly avoiding the area until the nestlings fledge, as determined by the consulting biologist.

- 3) The applicant must retain a qualified wildlife biologist to survey the adjacent riparian habitat no earlier than two weeks prior to the initiation of construction activities to determine the presence of nesting sensitive avian species or other sensitive wildlife. This survey will include not only the riparian area but also the trees on the southern border of the project site that could serve as nest sites. If no such species are detected, construction may commence and continue without further mitigation requirements.
- 4) If sensitive species, especially nesting raptors, are discovered during the survey, appropriate measures for the particular species and location shall be implemented. The construction contract for the project must stipulate this requirement. Appropriate mitigation shall be developed by the consulting biologist in consultation with the applicant, the construction contractor, and the Environmental Analysis Section of the City of San Diego Development Services Department. Mitigation shall be designed to reduce project impacts to a level which is less than significant, while allowing construction of temporary noise barriers, use of electric tools in place of internal combustion-powered tools, limitation of hours for construction, and redirection of construction to other parts of the

project site during the nesting season.

- 5) At the completion of mitigation, the consulting biologist shall prepare and file a report with the Environmental Analysis Section of the Development Services Department stating the results of surveys, the mitigation measures employed and their completion.

**C. Air Quality**

While the project incorporates a number of features that conform to regional strategies to reduce cumulative air quality impacts, the contribution to significant cumulative impacts identified for the Mission Valley Community Plan cannot be mitigated. Only adoption of the no project alternative would avoid the project's contribution to cumulative air quality impacts. However, adoption of the no project alternative would not eliminate the cumulative impact on a regional level. As previously stated, the City Council, when it adopted the Mission Valley Community Plan and Planned District Ordinance (PDO), adopted findings and a statement of overriding considerations for the significant cumulative impacts to traffic and air quality.

32. Prior to the issuance of any building permits, the applicant shall comply with City Fire Department regulations in a manner satisfactory to the City Engineer.
33. This project shall be subject to the payment of Development Impact Fees (DIF) for all proposed gross leasable floor area in accordance with the Mission Valley Interim Public Facilities Financing Facilities Plan and Development Impact Fee (January, 1988) adopted by City Council Resolution R-270310 on February 8, 1988, or as it may be subsequently revised by the City Council. For purposes of calculating the Transportation Impact Fee payment due, and solely for that purpose, trip generation shall be assumed at the rate of 25 trips per 1000 square feet of gross leasable floor area added. It is the intent of the City that all such funds collected shall be deposited in the Mission Valley Development Impact Fund until building permits have been issued for 317,000 square feet of additional gross leasable building area. Any additional funds collected in accordance with the requirement shall be used only for transportation

projects in Mission Valley, and only as deemed appropriate by the City Council.

34. This Mission Valley Development Permit must be used within 36 months after the date of final City approval or this permit shall be void.
35. Construction and operation of the approved use shall comply at all times with the regulations of this or any other governmental agencies.
36. The approval of this development by the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
37. This Mission Valley Development Permit may be revoked by the City if there is a material breach or default in any of the conditions of this permit. Cancellation or revocation may be instituted by the City of San Diego or the current owner. Such cancellation shall not revise any irrevocable offers of dedication as required as a condition of this permit or subsequent City Council revision or revisions to this permit.
38. All signs shall be approved by the Development Services Director, DEP Division, and shall be consistent with the criteria established by the sign plan, part of Exhibit "A," dated November 15, 1994. Unless otherwise provided within this permit, all signs requested and proposed for this project shall conform to Citywide Sign Regulations and be administered by the Sign Code Administration of the Development Services Department, DEP Division.
39. This Mission Valley Development Permit/Conditional Use Permit is a covenant running with the land and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out.
40. Permission for the movie theater use shall expire fifty-five (55) years from the date of City approval.
41. The proposed project shall comply with all requirements of the Citywide Noise Ordinance.
42. The final phase of approximately 120,000 square feet, roughly the equivalent of the density bonus from the LRT, shall not be permitted until the LRT construction contract is awarded for the Mission Valley West Extension to the Fashion Valley station site. The Applicant may request a transfer of intensity rights as permitted by the Mission Valley Planned District Ordinance if the final 120,000

square feet must proceed in advance of the LRT construction contract being awarded.

43. The City Manager is directed to work with Fashion Valley to provide traffic improvements at the highway 163-Friars Road interchange based on any traffic generated at that location from the project in excess of the traffic which was evaluated by the traffic study as contained within Environmental Impact Report DEP No. 93-0437.
44. After completion of the project the City will conduct an annual analysis of the flood control impacts through Fashion Valley to determine if the hydraulogy functions properly and if not that Fashion Valley will be required to mitigate said flood impacts to a state not worse than the conditions which existed prior to the expansion.
45. No permit for the development of any facility shall be granted nor shall any activity authorized by this permit be conducted on the premises until:
  - a. The Permittee signs and returns the permit to the Development Services Department; and
  - b. The Mission Valley Permit is recorded in the office of the County Recorder.

APPROVED by the Council of The City of San Diego on November 15, 1994, by Resolution No. R-284942.

AUTHENTICATED BY CITY MANAGER:

By \_\_\_\_\_

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The undersigned Permittee, by execution hereof, agrees to each and every condition of this permit and promises to perform each and every obligation of Permittee hereunder.

Owner/Permittee

By \_\_\_\_\_

By \_\_\_\_\_

NOTE: Notary acknowledgments  
must be attached per Civil  
Code Section 1180, et seq.  
Form=p.ack