



# AGENDA

Special Meeting of the  
**CAPITOLA CITY COUNCIL/  
REDEVELOPMENT AGENCY**  
Friday, April 1, 2011 – 8:00 a.m.  
**City Hall Council Chambers**

## **A. ROLL CALL AND PLEDGE OF ALLEGIANCE**

Council Members/Directors Harlan, Termini, Nicol, Storey, and Mayor/  
Chairperson Norton

## **B. ORAL COMMUNICATIONS**

*Oral Communications allows time for members of the Public to address the City Council on any item not on the Agenda. Presentations will be limited to three minutes per speaker. All speakers must address the entire City Council and will not be permitted to engage in dialogue. All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the Minutes.*

## **C. PUBLIC HEARING**

*Public Hearings are intended to provide an opportunity for public discussion of each item listed as a Public Hearing. The following procedure is followed for each Public Hearing listed: 1) Staff Explanation; 2) Public Discussion; 3) Council Comments; 4) Close public portion of the Hearing; 5) City Council discussion; and 6) Decision.*

NOTE: Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes “final.” Please be advised that in most instances the decision becomes “final” upon the City Council’s announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

1. Public Hearing to Consider a Public Infrastructure Agreement between the City of Capitola, the Redevelopment Agency of the City of Capitola, and The Macerich Partnership to fund pedestrian access improvements, landscaping, and public transit facilities as part of redevelopment of the Capitola Mall. Presentation: City Manager.

## **D. ADJOURNMENT**

Adjourn to a Joint Regular Meeting of the City Council/Redevelopment Agency to be held on Thursday, April 14, 2011, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

If you require special assistance in order to attend the meeting, including needs addressed by ADA, please notify the City at 831-475-7300 at least 3 days prior to meeting.

**This meeting will be televised “live” on  
Charter Communications Cable Community Channel 8**



Item #: C.1.

## CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA REPORT

**SPECIAL MEETING OF APRIL 1, 2011**

FROM: OFFICE OF THE CITY MANAGER/EXECUTIVE DIRECTOR

DATE: MARCH 31, 2011

SUBJECT: CONSIDERATION OF A PUBLIC INFRASTRUCTURE AGREEMENT BETWEEN THE CITY OF CAPITOLA, THE REDEVELOPMENT AGENCY OF THE CITY OF CAPITOLA, AND THE MACERICH PARTNERSHIP TO FUND PEDESTRIAN ACCESS IMPROVEMENTS, LANDSCAPING, AND PUBLIC TRANSIT FACILITIES AS PART OF REDEVELOPMENT OF THE CAPITOLA MALL

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**Recommended Action:** By motion and roll call vote, that the City Council and Redevelopment Agency Directors take the following actions:

1. That the City Council direct the City Manager to authorize the Public Infrastructure Agreement between the City of Capitola, the Redevelopment Agency of the City of Capitola, and The Macerich Partnership in a form substantially similar to the attached Agreement;
2. That the Redevelopment Agency Board of Directors direct the Executive Director to authorize the Public Infrastructure Agreement between the City of Capitola, the Redevelopment Agency of the City of Capitola, and The Macerich Partnership in a form substantially similar to the attached Agreement; and
3. Determine that the project is exempt pursuant to Sections 15301 and 15302 of the California Environmental Quality Act.

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### **BACKGROUND**

On April 8, 2011, the Capitola City Council and the Capitola Redevelopment Agency approved an amended Cooperation Agreement contracting the Agency to provide funds in support of specified programs and projects. That agreement requires the Agency provide the City with \$1.03 million for Mall Redevelopment.

### **DISCUSSION**

The attached Agreement would obligate the City and Agency to fund public improvements associated with Mall redevelopment including: widening sidewalks within public right of way; installing landscaping, street trees, and street furniture within public right-of-way; assisting with the reconstruction of the existing public transit center currently located within the Capitola Mall to improve public access and circulation; and improving bicycle access.

Agency funding is predicated on The Macerich Partnership (hereafter "Macerich") commencing Mall redevelopment, which includes construction of frontage improvements along the 41<sup>st</sup> Avenue frontage and updating existing architectural features, and various other site improvements. If the redevelopment project is not built, the Agency is under no obligation to fund public improvements under this Agreement. Design details and actual construction will be reviewed by the City with appropriate performance and surety bonds required to ensure completion.

The Agreement stipulates construction will be completed within three years of the City's adoption of its General Plan update, with two potential one-year extensions. The redevelopment project details will be developed consistent with the General Plan update.

Pursuant to the agreement, Macerich will develop plans and specs for the project, which the City must consider and approve prior to project initiation. Should Agency funds be unavailable, the City is under no obligation to provide these funds. However, in that unlikely event, staff would propose working cooperatively with Macerich to develop other creative financing options for this important project.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The project constitutes an agreement between the City of Capitola, the Redevelopment Agency of the City of Capitola, and Macerich to fund pedestrian access improvements, landscaping, and public transit facilities as part of redevelopment of the Capitola Mall. Pursuant to State CEQA Guidelines Section 15301(c), the widening of sidewalks within public right of way, installation of landscaping, street trees, and street furniture within public right-of-way, and improving bicycle access would involve negligible or no expansion of existing uses.

Pursuant to State CEQA Guidelines Section 15302(c), reconstructing the existing public transit center, currently located within the Capitola Mall, would qualify as replacement or reconstruction of an existing facility involving negligible or no expansion of capacity. Therefore, the agreement and the improvements associated with the city funding would be considered categorically exempt per the California Environmental Quality Act ("CEQA").

### **FISCAL IMPACT**

The amended Cooperation Agreement pledges \$1.03 million in Redevelopment Agency funds to the City for Mall Redevelopment from future tax increment receipts. This Agreement would further obligate the Agency and City to provide these funds to Macerich for public improvements associated.

### **ATTACHMENTS**

1. Draft City Council Resolution
2. Draft Agency Resolution
3. Public Infrastructure Agreement
4. Cooperative Agreement Project List
5. Notice of Exemption

**Report Prepared By:** Jamie Goldstein  
City Manager/Executive Director

**Reviewed and forwarded by City  
Manager/Executive Director:** \_\_\_\_\_

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
AUTHORIZING THE CITY MANAGER TO EXECUTE A PUBLIC  
INFRASTRUCTURE AGREEMENT AND MAKING REQUIRED STATUTORY  
FINDINGS IN CONNECTION THEREWITH**

**WHEREAS**, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.: the "Redevelopment Law"), the City Council (the "City Council") of the City of Capitola (the "City") has adopted, and the Capitola Redevelopment Agency (the "Agency") is responsible for implementing, the Redevelopment Plan (the "Redevelopment Plan") for the Capitola Redevelopment Project Area (the "Project Area"); and

**WHEREAS**, to assist in implementing the Redevelopment Plan, the Agency has adopted an implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law; and

**WHEREAS**, on February 24, 2011, City and Agency entered into that certain Cooperation Agreement, as further amended by the City and Agency on March 8, 2011 (the "Cooperation Agreement"), whereby the City agreed to carry out certain projects for the Agency, including but not limited to the expenditure of funds to further the redevelopment of the Capitola Mall; and

**WHEREAS**, the Redevelopment Plan and Implementation Plan include public improvements to 41<sup>st</sup> Avenue adjacent to and fronting on the Capitola Mall, and further include improved and relocated public transit facilities on the Property; and

**WHEREAS**, Macerich Property Management Company, LLC ("Macerich") is the managing agent for the current owner of certain improved real property comprising portions of the shopping center called the Capitola Mall, which fronts on 41<sup>st</sup> Avenue in the City (the "Property"). The Property is improved with commercial retail buildings, associated parking facilities, and various site improvements. Macerich intends to construct frontage improvements along the 41<sup>st</sup> Avenue frontage, including but not limited to pedestrian access improvements, landscaping, and updating to existing architectural features, and various site improvements (the "Private Developer Project"); and

**WHEREAS**, in keeping with the goals of the Agency to eliminate blight in accordance with the Redevelopment Plan and Implementation Plan, the City, the Agency, and Macerich desire to enter into a Public Infrastructure Agreement (the "Agreement"), a copy of which is on file with the City Clerk, through which Macerich shall install certain public improvements (the "Public Infrastructure") in accordance with City standards to alleviate blighting conditions in the Project Area and shall be reimbursed with Agency funds held by the City as set forth in the Agreement; and

**WHEREAS**, it is impractical from an architectural, engineering and construction standpoint to separately construct the Public Infrastructure improvements because of their physical interrelationship with Private Developer Project, and the construction of the Public Infrastructure pursuant to this Agreement would result in a lower public cost and greater benefit than if such Public Infrastructure were separately bid and constructed by the Agency or the City; and

**WHEREAS**, pursuant to Health and Safety Code Section 33220(b) and (c), the City is authorized to enter into this Agreement to assist the Agency in causing public improvements to be installed in the Project Area; and

**WHEREAS**, the Public Infrastructure will be located within the Project Area; and

**WHEREAS**, under the Redevelopment Law, before the Agency can expend money for public improvements, the Agency and the City Council must make specified findings pursuant to Health and Safety Code Sections 33421.1 and 33445; and

**WHEREAS**, the Public Infrastructure improvements are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15301 and 15302; and

**WHEREAS**, the Agreement accompanying this resolution, the staff report, and all information presented at the Council and Agency meeting provide additional background and information upon which the findings and actions set forth in this Resolution are based.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Capitola, as follows:

**Section 1. Recitals Correct.** The City Council finds that the above Recitals are true and correct and have served, together with the other supporting documents, as the basis for the finding set forth below.

**Section 2. Section 33421.1.** The City hereby finds and determines that provision of the Public Infrastructure is necessary to effectuate the purposes of the Redevelopment Plan and therefore, pursuant to 33421.1 of the Redevelopment Law, approves the Agency's provision of public improvements associated with a commercial site.

**Section 3. Section 33445.** In compliance with Section 33445 of the Redevelopment Law, the City hereby finds and determines that: (a) the installation or construction of the Public Infrastructure is of benefit to the Project Area by helping to eliminate blight within the Project Area; (b) no other reasonable means of financing the installation or construction of the Public Infrastructure are available to the community; and (c) the appropriation and payment of funds by the Agency for the cost of the Public Infrastructure is consistent with the Agency's current Implementation Plan. These findings are based on the information contained in the staff report and other information provided to the Agency and the City Council.

**Section 4. Integrated Project.** Implementing the Public Infrastructure concurrently with the Private Developer Project would avoid disruption to the public due to multiple construction projects, costly duplication of activities that are necessary to construct the Public Infrastructure and the Private Developer Project, and possible inconsistencies between projects that may result if the Private Developer Project and Public Infrastructure are constructed separately. Further, the Agency and City have determined that it is impractical from an architectural, engineering and construction standpoint to separately construct the Public Infrastructure improvements because of their physical interrelationship with the Private Developer Project improvements to be constructed by the Developer; that timely completion of the Public Infrastructure is essential to the elimination of blight at the Capitola Mall and to the successful redevelopment of the Property; that the Public Infrastructure would be a complementary enhancement to the Private Development Project; and that the construction of the Public Infrastructure pursuant to this Agreement would result in a lower public cost and greater benefit than if such Public Infrastructure were separately bid and constructed by the Agency or City.

**Section 5. CEQA Findings and Actions.** The Public Infrastructure improvements are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15301, "Existing Facilities," in that the improvements related to 41<sup>st</sup> Avenue consist of improvements to existing streets, sidewalks, and similar facilities; and pursuant to CEQA Guidelines Section 15302, in that the relocation and modifications to the transit center consist of the replacement of the existing facility, which will be located on the same site as the center being replaced, and will have the same purpose and capacity as any structure being replaced. The City Manager is hereby authorized and directed to file a Notice of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

**Section 6. Approval of Agreement and Grant to City.** The City Council hereby approves execution of the Agreement by the City Manager in substantially the form on file with the City Clerk.

**Section 7. Appropriation of Funds.** The City hereby appropriates the funds necessary to fund the City's obligations under the Agreement as a lawful expenditure of Agency funds and amends the Agency's budget to the extent necessary to implement such appropriation.

**Section 8. Delegation of Powers and Functions.** Pursuant to Section 33205 of the Redevelopment Law, the City Council hereby accepts the Agency's delegation of all of its powers and functions with respect to the planning or undertaking of activities necessary to effectuate the Agreement. and the City hereby agrees to carry out and perform such powers and functions for the Agency; and

**Section 9. No Effect on Land Use Entitlements.** Nothing in this Resolution shall affect the City's policy discretion in granting or denying the land use entitlements, or any other City approvals necessary for the Public Infrastructure or the Private Developer Project; and

**Section 10. Effective Date.** This Resolution shall take immediate effect upon adoption.

**PASSED AND ADOPTED** by the City Council of the City of Capitola at a special meeting of the City Council held on the 1st day of April, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Dennis R. Norton, Mayor

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Pamela Greeninger, City Clerk

## AGENCY RESOLUTION NO. 2011-\_\_\_

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF THE CITY OF CAPITOLA AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A PUBLIC INFRASTRUCTURE AGREEMENT AND MAKING REQUIRED STATUTORY FINDINGS IN CONNECTION THEREWITH**

**WHEREAS**, pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.: the "Redevelopment Law"), the City Council (the "City Council") of the City of Capitola (the "City") has adopted, and the Capitola Redevelopment Agency (the "Agency") is responsible for implementing, the Redevelopment Plan (the "Redevelopment Plan") for the Capitola Redevelopment Project Area (the "Project Area"); and

**WHEREAS**, to assist in implementing the Redevelopment Plan, the Agency has adopted an implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law; and

**WHEREAS**, on February 24, 2011, City and Agency entered into that certain Cooperation Agreement, as further amended by the City and Agency on March 8, 2011 (the "Cooperation Agreement"), whereby the City agreed to carry out certain projects for the Agency, including but not limited to the expenditure of funds to further the redevelopment of the Capitola Mall; and

**WHEREAS**, the Redevelopment Plan and Implementation Plan include public improvements to 41<sup>st</sup> Avenue adjacent to and fronting on the Capitola Mall, and further include improved and relocated public transit facilities on the Property; and

**WHEREAS**, Macerich Property Management Company, LLC ("Macerich") is the managing agent for the current owner of certain improved real property comprising portions of the shopping center called the Capitola Mall, which fronts on 41<sup>st</sup> Avenue in the City (the "Property"). The Property is improved with commercial retail buildings, associated parking facilities, and various site improvements. Macerich intends to construct frontage improvements along the 41<sup>st</sup> Avenue frontage, including but not limited to pedestrian access improvements, landscaping, and updating to existing architectural features, and various site improvements (the "Private Developer Project"); and

**WHEREAS**, in keeping with the goals of the Agency to eliminate blight in accordance with the Redevelopment Plan and Implementation Plan, the City, the Agency, and Macerich desire to enter into a Public Infrastructure Agreement (the "Agreement"), a copy of which is on file with the Agency Secretary, through which Macerich shall install certain public improvements (the "Public Infrastructure") in accordance with City standards to alleviate blighting conditions in the Project Area and shall be reimbursed with Agency funds held by the City as set forth in the Agreement; and

**WHEREAS**, it is impractical from an architectural, engineering and construction standpoint to separately construct the Public Infrastructure improvements because of their physical interrelationship with Private Developer Project, and the construction of the Public Infrastructure pursuant to this Agreement would result in a lower public cost and greater benefit than if such Public Infrastructure were separately bid and constructed by the Agency or the City; and

**WHEREAS**, pursuant to Health and Safety Code Section 33220(b) and (c), the City is authorized to enter into this Agreement to assist the Agency in causing public improvements to be installed in the Project Area; and

**WHEREAS**, the Public Infrastructure will be located within the Project Area; and

**WHEREAS**, under the Redevelopment Law, before the Agency can expend money for public improvements, the Agency and the City Council must make specified findings pursuant to Health and Safety Code Sections 33421.1 and 33445; and

**WHEREAS**, the Public Infrastructure improvements are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15301 and 15302; and

**WHEREAS**, the Agreement accompanying this resolution, the staff report, and all information presented at the Council and Agency meeting provide additional background and information upon which the findings and actions set forth in this Resolution are based.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of the Redevelopment Agency of the City of Capitola, as follows:

**Section 1. Recitals Correct.** The Agency Board finds that the above Recitals are true and correct and have served, together with the other supporting documents, as the basis for the finding set forth below.

**Section 2. Section 33421.1.** The Agency hereby finds and determines that provision of the Public Infrastructure is necessary to effectuate the purposes of the Redevelopment Plan and therefore, pursuant to 33421.1 of the Redevelopment Law, approves the Agency's provision of public improvements associated with a commercial site.

**Section 3. Section 33445.** In compliance with Section 33445 of the Redevelopment Law, the Agency hereby finds and determines that: (a) the installation or construction of the Public Infrastructure is of benefit to the Project Area by helping to eliminate blight within the Project Area; (b) no other reasonable means of financing the installation or construction of the Public Infrastructure are available to the community; and (c) the appropriation and payment of funds by the Agency for the cost of the Public Infrastructure is consistent with the Agency's current Implementation Plan. These findings are based on the information contained in the staff report and other information provided to the Agency and the City Council.

**Section 4. Integrated Project.** Implementing the Public Infrastructure concurrently with the Private Developer Project would avoid disruption to the public due to multiple construction projects, costly duplication of activities that are necessary to construct the Public Infrastructure and the Private Developer Project, and possible inconsistencies between projects that may result if the Private Developer Project and Public Infrastructure are constructed separately. Further, the Agency and City have determined that it is impractical from an architectural, engineering and construction standpoint to separately construct the Public Infrastructure improvements because of their physical interrelationship with the Private Developer Project improvements to be constructed by the Developer; that timely completion of the Public Infrastructure is essential to the elimination of blight at the Capitola Mall and to the successful redevelopment of the Property; that the Public Infrastructure would be a complementary enhancement to the Private Development Project; and that the construction of the Public Infrastructure pursuant to this Agreement would result in a lower public cost and



greater benefit than if such Public Infrastructure were separately bid and constructed by the Agency or City.

**Section 5. CEQA Findings and Actions.** The Public Infrastructure improvements are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15301, "Existing Facilities," in that the improvements related to 41<sup>st</sup> Avenue consist of improvements to existing streets, sidewalks, and similar facilities; and pursuant to CEQA Guidelines Section 15302, in that the relocation and modifications to the transit center consist of the replacement of the existing facility, which will be located on the same site as the center being replaced, and will have the same purpose and capacity as any structure being replaced. The Executive Director is hereby authorized and directed to file a Notice of Exemption with respect to the Agreement in accordance with the applicable provisions of CEQA.

**Section 6. Approval of Agreement and Grant to City.** The Agency Board hereby approves execution of the Agreement by the Executive Director in substantially the form on file with the Agency Secretary.

**Section 7. Appropriation of Funds.** The Agency hereby appropriates the funds necessary to fund the Agency's obligations under the Agreement as a lawful expenditure of Agency funds and amends the Agency's budget to the extent necessary to implement such appropriation.

**Section 8. Delegation of Powers and Functions.** Pursuant to Section 33205 of the Redevelopment Law, the Agency Board hereby delegates to the City all of its powers and functions with respect to the planning or undertaking of activities necessary to effectuate the Agreement. and the City is hereby authorized to carry out and perform such powers and functions for the Agency; and

**Section 9. No Effect on Land Use Entitlements.** Nothing in this Resolution shall affect the City's policy discretion in granting or denying the land use entitlements, or any other City approvals necessary for the Public Infrastructure or the Private Developer Project; and

**Section 10. Effective Date.** This Resolution shall take immediate effect upon adoption.

**PASSED AND ADOPTED** by the Board of Directors of the Redevelopment Agency of the City of Capitola at a special meeting held on the 1st day of April, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Dennis R. Norton, Chairperson

ATTEST:

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Pamela Greeninger, Secretary

**PUBLIC INFRASTRUCTURE AGREEMENT**

This Public Infrastructure Agreement, dated as of \_\_\_\_\_, 2011 (the "Effective Date") is entered into by and among the Redevelopment Agency of the City of Capitola, a public body, corporate and politic (the "Agency"), the City of Capitola, a municipal corporation (the "City"), and Macerich Property Management Company, LLC, a Delaware limited liability company (the "Developer"), with reference to the following recitals.

**RECITALS**

A. Pursuant to the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.; the "Redevelopment Law"), the City Council of the City has adopted and the Agency is responsible for implementing the Redevelopment Plan (the "Redevelopment Plan") for the Capitola Redevelopment Project Area (the "Project Area").

B. To assist in implementing the Redevelopment Plan, the Agency has adopted an implementation plan (the "Implementation Plan") pursuant to Section 33490 of the Redevelopment Law.

C. Pursuant to Health and Safety Code Section 33220(b) and (c), the City is authorized to enter into this Agreement to assist the Agency in causing public infrastructure to be installed in the Project Area.

D. On February 24, 2011, City and Agency entered into that certain Cooperation Agreement, as further amended by the City and Agency on March 8, 2011 (the "Cooperation Agreement"), whereby the City agreed to carry out certain projects for the Agency, including but not limited to the expenditure of funds to further the redevelopment of the Capitola Mall.

E. Developer is the managing agent for the current owner of certain improved real property comprising portions of the shopping center called the Capitola Mall, which fronts on 41<sup>st</sup> Avenue in the City (the "Property"). The Property is improved with commercial retail buildings, associated parking facilities, and various site improvements. The Developer intends to construct frontage improvements along the 41<sup>st</sup> Avenue frontage, including but not limited to pedestrian access improvements, landscaping, and updating to existing architectural features, and various site improvements (the "Private Developer Project").

F. The Redevelopment Plan and Implementation Plan include public improvements to 41<sup>st</sup> Avenue adjacent to and fronting on the Capitola Mall, and further include improved and relocated public transit facilities on the Property. These public improvements are described in Exhibit A to this Agreement (the "Public Infrastructure").

G. Implementing the Public Infrastructure concurrently with the Private Developer Project would avoid disruption to the public due to multiple construction projects, costly duplication of activities that are necessary to construct the Public Infrastructure and the Private Developer Project, and possible inconsistencies between projects that may result if the Private Developer Project and Public Infrastructure are constructed separately. Further, the Agency and City have determined that it is impractical from an architectural, engineering and construction standpoint to separately construct the Public Infrastructure improvements because of their physical interrelationship with the Private Developer Project improvements to be constructed by the Developer; that timely completion of the Public Infrastructure is essential to the elimination of blight at the Capitola Mall and to the successful redevelopment of the Property; that the Public Infrastructure would be a complementary enhancement to the Private Development Project; and that the construction of the Public Infrastructure pursuant to this Agreement would result in a lower public cost and greater benefit than if such Public Infrastructure were separately bid and constructed by the Agency or City.

H. Based on the above finding, the parties desire that the Developer will undertake the construction of the Public Infrastructure. The City and Agency have requested and the Developer has agreed that the Developer will perform the Public Infrastructure work in accordance with City standards and the City will reimburse the Developer from Agency funds for the costs associated with such work.

I. The Private Developer Project and the Public Infrastructure improvements are located within the Project Area.

J. The Public Infrastructure improvements and the Private Developer Project are consistent with the Implementation Plan, the Redevelopment Plan, and the City's adopted General Plan and will promote the goals and objectives of the Redevelopment Plan to revitalize the Project Area. The City is currently considering the adoption of modifications to the City's General Plan (the "General Plan Update") which will include policies for the development of the Property and the Capitola Mall.

K. The Developer has represented that it has the necessary experience, skill, and ability to carry out the commitments contained in this Agreement.

L. Prior to execution of this Agreement, the City found that the Public Infrastructure improvements are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15301, "Existing Facilities," in that the improvements related to 41<sup>st</sup> Avenue consist of improvements to existing streets, sidewalks, and similar facilities; and pursuant to CEQA Guidelines Section 15302, in that the relocation and modifications to the transit center consist of the replacement of the existing facility, which will be located on the same site as the center being replaced, and will have the same purpose and capacity as any structure being replaced.

M. Pursuant to Health and Safety Code Sections 33421.1 and 33445, the Agency and the City Council have found that the Public Infrastructure improvements are of benefit to the Project Area, that the Public Infrastructure improvements are consistent

with the Redevelopment Plan and the Agency's Implementation Plan, that there are no other reasonable means of financing the Public Infrastructure available to the community and that the public financial assistance for the Public Infrastructure will assist in the elimination of blight conditions in the Project Area. These findings are based on the information contained in the staff report and other information provided to the Agency and the City Council.

N. Pursuant to California Health & Safety Code Section 33205, and to assist the City in carrying out projects pursuant to the Cooperation Agreement, the Agency desires to delegate to the City all of its powers and functions with respect to the Public Infrastructure included in this Agreement and to authorize the City to carry out and perform such powers and functions for the Agency in connection with such activities.

O. As more fully set forth below, this Agreement does not authorize or guarantee the granting of any governmental approvals related to the Private Developer Project or to the Public Infrastructure, and in no way limits the discretion of the City and Agency in any permit or approval process.

NOW, THEREFORE, for good and valuable consideration as set forth herein, the parties agree as follows:

## AGREEMENT

### ARTICLE 1. CONSTRUCTION REQUIREMENTS

#### Section 1.1 Public Infrastructure.

The Developer agrees to commence construction of the Public Infrastructure shown on the attached Exhibit A, as required by the terms and conditions of this Agreement, no later than three years following City Council approval of the General Plan Update or six years after the Effective Date of this Agreement, whichever is earlier. The City Manager may grant a maximum of two (2) one-year extensions at the City Manager's sole discretion. After commencing construction of the Public Infrastructure, Developer agrees to diligently prosecute construction of the Public Infrastructure to completion in accordance with a construction schedule to be approved by the City. Should the Public Infrastructure not be completed within the time established in this Section 1.1, this Agreement shall be terminated.

#### Section 1.2 Construction Contract.

Prior to commencement of construction, the Developer shall enter into contracts for the construction of the Public Infrastructure with reputable general contractors. Those contracts shall provide for the Public Infrastructure work to be performed for fixed and specified maximum amounts pursuant to final construction plans and specifications (the "Final Construction Plans") approved by the City Public Works Director. Prior to starting construction, the Developer shall make available for review by the City and the

Agency on a confidential basis, to the extent allowed by the Public Records Act, a copy of each construction contract for the Public Infrastructure for purposes of determining the following: (a) that the scope and cost of work have been clearly fixed and determined and are consistent with the scope and cost set forth in the Final Construction Plans and this Agreement; (b) that the contract conforms or will conform to the requirements of this Agreement, including without limitation the prevailing wages requirements in Section 1.10; and (c) that no changes to the contract that would cause the contract to be out of compliance with this Agreement may be made without the prior written consent of the City and the Agency. Unless the Agency and City notify the Developer in writing within seven (7) days of review of a contract that the contract has been disapproved, it shall be deemed approved.

### Section 1.3 Surety and Improvement Agreement; Guarantee.

Prior to commencement of construction, the Developer shall deliver labor and material bonds and performance bonds issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction of the Public Infrastructure, or as otherwise reasonably required by the Public Works Director. The bonds shall name the City and Agency as co-obligees. The Developer shall cause the Public Infrastructure contractor to guarantee all labor, materials, and workmanship to be free from all defects for a period of one (1) year after acceptance by the City, and the Public Works Director may require customary security for such guarantee.

### Section 1.4 Evidence of Availability of Funds; Redevelopment of Mall.

(a) Before Developer commences construction of the Public Infrastructure or expends funds in expectation of reimbursement pursuant to this Agreement, Developer may request Agency and City to verify to the Developer in writing that the Maximum Reimbursement Amount, as described in Section 1.11, does not exceed the Maximum Grant Amount, as described in Section 1.12. If the Maximum Reimbursement Amount exceeds the Maximum Grant Amount, then the scope of the Public Infrastructure may be reduced by mutual agreement of City, Agency, and Developer so as not to exceed the Maximum Grant Amount; or Developer may agree to accept a lower Maximum Reimbursement Amount for construction of the Public Infrastructure.

(b) Prior to commencing construction of the Public Infrastructure, the Developer shall submit to the Agency a budget for completion of the Public Infrastructure, including all costs for which Developer intends to seek reimbursement, and evidence reasonably satisfactory to the Agency that sufficient funds will be available for constructing the Public Infrastructure.

(c) Prior to commencing construction of the Public Infrastructure or expending funds in expectation of reimbursement pursuant to this Agreement, Developer shall have received all permits necessary to complete the Private Developer Project, including but not limited to all discretionary permits, all building permits, and all

other permits required for construction; shall submit to the Public Works Director for approval a schedule for completion of the Public Infrastructure; and shall have provided evidence satisfactory to the City and Agency that Developer will construct the Private Developer Project.

Section 1.5 Insurance.

Prior to starting construction, the Developer shall submit to the Agency evidence that the insurance requirements of Section 3.8 have been satisfied.

Section 1.6 Completion of the Construction.

Subject to extension of time for enforced delay pursuant to Section 3.3, once Developer commences construction of the Public Infrastructure, the Developer shall diligently prosecute to completion the construction of the Public Infrastructure as provided in Section 1.1 of this Agreement.

Section 1.7 Construction Pursuant to Plans.

Unless modified by operation of Section 1.8, all work of construction of the Public Infrastructure shall be done in accordance with the approved Final Construction Plans.

Section 1.8 Material Change in Plans.

(a) If the Developer desires to make any material change in the Final Construction Plans for the Public Infrastructure, the Developer shall submit the proposed change to the City for its approval. A change is "material" if it, by itself, has a cost consequence of greater than Ten Thousand Dollars (\$10,000), or if it, cumulatively with previous changes, has a cost consequence of greater than Ten Thousand Dollars (\$10,000), or if it alters the Final Construction Plans, or if it is reasonably likely to shorten the useful life of the Public Infrastructure or increase the maintenance cost of the Public Infrastructure.

(b) Unless such proposed change is rejected by the City within ten (10) business days, it shall be deemed approved. If rejected within such time period, the previously approved Final Construction Plans shall continue to remain in full force and effect.

Section 1.9 Development In Compliance With Law.

(a) The Developer shall cause all construction of the Public Infrastructure to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be

responsible to the City and the Agency for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Public Infrastructure.

(b) The City and Agency approve the Developer's construction of the Public Infrastructure without undertaking a competitive bidding process, based on the findings incorporated into the recitals to this Agreement.

#### Section 1.10 Prevailing Wages.

The Developer shall cause its contractors and subcontractors to pay prevailing wages as those wages are determined pursuant to Labor Code Section 1720 et seq. and implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices pursuant to Labor Code Section 1777.5 et seq. and implementing regulations of the DIR, and to comply with other applicable provisions of Labor Code Section 1720 et seq. and the implementing regulations of the DIR, with respect to construction of the construction of the Public Infrastructure. The Developer shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Section 1720 et seq. and that apprentices have been employed as required by Labor Code Section 1777.5. During the construction of the Public Infrastructure, the Developer shall or shall cause the contractor to post at the Public Infrastructure construction site the applicable prevailing rates of per diem wages. The Developer shall indemnify, hold harmless and defend (with counsel reasonably selected by the City) the Agency and the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the DIR, to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., and the implementing regulations of the DIR in connection with the construction of the Public Infrastructure. The Developer's obligation to indemnify under this Section 1.10 shall be interpreted broadly to apply to any legal or administrative proceeding, arbitrations, or enforcement action.

#### Section 1.11 Reimbursement.

(a) The City, within thirty (30) days after completion and City acceptance of all the Public Infrastructure by the City, shall reimburse the Developer for all costs incurred by the Developer in constructing the Public Infrastructure, including construction costs and normal and customary soft costs including without limitation design, bonds, construction, project management, and permit fees, in an amount not to exceed One Million Thirty Thousand Dollars (\$1,030,000) (the "Maximum Reimbursement Amount") from Agency funds the City is holding for payment for this work. Developer shall provide the City with copies of invoices and payment records as well as lien releases from all contractors and subcontractors prior to the City disbursing any funds to the Developer.

(b) Notwithstanding any other provision of this Agreement, in no event shall the Maximum Reimbursement Amount exceed the Maximum Grant Amount.

Section 1.12 Maximum Grant Amount.

The Agency hereby grants to the City, and the City hereby grants to the Developer, the "Grant" for use by the City and Developer to fulfill the obligations of this Agreement. The sources of the Grant from the Agency to the City and Developer consist of:

(a) All funds currently held by the Agency, except the funds held in the Low and Moderate Income Housing Fund, and not previously encumbered by binding contract for other activities, projects, or programs (the "Available Funds"); and

(b) All future tax increment revenue allocated to, made available to, or otherwise received by the Agency or any Successor, to the extent such tax increment revenue (1) is or would be required pursuant to the Redevelopment Plan and the Redevelopment Law in effect as of the date of this Agreement to be provided to the Agency, and (2) is available to the Agency or Successor after the Agency or Successor makes all necessary annual payments required to be made with Agency monies with respect to then existing debt obligations of the Agency with respect to debt obligations existing as of the date of this Agreement, including, without limitation, bonded indebtedness, written agreements with other persons or entities, and all obligations of the City and Agency included in the Cooperation Agreement (the "Pledged Funds"); and

(c) All program income received from any source by the Agency or Successor that is required by the Redevelopment Law in effect as of the date of this Agreement to be provided to the Agency, including, without limitation, land sale proceeds, lease revenues, and loan repayments (the "Program Income").

The Available Funds, Pledged Funds, and Program Income together constitute the Maximum Grant Amount.

In no event shall the Grant or the Maximum Reimbursement Amount exceed the Maximum Grant Amount.

As used in this Agreement, "tax increment revenue" means and includes taxes allocated to, or made available to, or otherwise received by the Agency or a Successor pursuant to Health and Safety Code Section 33670 et seq. or other provision of the Redevelopment Law, or pursuant to any applicable constitutional provision, statute, or other provision of law now existing or adopted in the future to pay the debts and obligations of the Agency.

As used in this Agreement, "Successor" includes any lawful successor of the Agency, and/or any lawful successor to any powers and rights of the Agency, pursuant to any applicable constitutional provision, statute or other provision of law now existing or adopted in the future.



Section 1.13 Indebtedness of the Agency. The obligation of the Agency to pay the Grant funds from the sources set forth in Section 1.12 to the City, and the obligation of the City to pay the Maximum Reimbursement Amount to the Developer, pursuant to this Agreement shall constitute an indebtedness of the Agency incurred in carrying out this Agreement and a pledge of tax increment revenue received by the Agency or Successor from the Project Area to repay such indebtedness under the provisions of Article XVI, Section 16 of the Constitution of the State of California, the Redevelopment Law, and the Redevelopment Plan, or under any applicable constitutional provision, statute, or other provision of law now existing or adopted in the future.

## ARTICLE 2. DEFAULTS AND REMEDIES

### Section 2.1 Defaults and Remedies.

(a) Default. Failure by a party to observe any material provision of this Agreement shall constitute a default hereunder. Failure of Developer to commence construction of the Public Infrastructure within the time specified in Section 1.1. shall not constitute a default by Developer; and a reduction in the Maximum Reimbursement Amount to equal the Maximum Grant Amount shall not constitute a default by City or by Agency.

(b) Notice and Cure. The non-defaulting party or parties shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, or within such further time as the non-defaulting party or parties determine is reasonable to cure such default, such default shall be deemed to constitute an "Event of Default" by the defaulting party, and the non-defaulting party may exercise the remedies set forth in Section 2.1(c).

(c) Limitation of Remedies. City, Agency, and Developer acknowledge that the purpose of this Agreement is to carry out the parties' objectives as set forth in the recitals. City, Agency, and Developer agree that to determine a sum of money which would adequately compensate any party for choices they have made which would be foreclosed should the Public Infrastructure not be installed as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City, Agency, and Developer agree that in the event of a breach of this Agreement, the only remedies available to the non-breaching party shall be: (1) suits for specific performance to remedy a specific breach, (2) suits for declaratory or injunctive relief, (3) suits for mandamus under Code of Civil Procedure Section 1085, or special writs, and (4) termination or cancellation of this Agreement. Except for attorney's fees and associated costs as set forth herein, monetary damages shall not be awarded to either Party. This exclusion on damages is limited to a breach of this Agreement and shall not preclude actions by a Party to enforce payments of monies due or the performance of obligations requiring the expenditures

of money under the terms of this Agreement or applicable laws. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

Section 2.2 Survival.

Upon termination of this Agreement, the indemnification obligation in Section 3.7 shall survive (along with all other sections whose survival is reasonably necessary to carry out the sections' clear intent). This Section 2.2 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 3.  
GENERAL PROVISIONS

Section 3.1 Notices, Demands and Communications.

Formal notices, demands, and communications among the Agency, the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, secured personally, or dispatched by certified mail, return receipt requested, or by facsimile transmission or reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the Agency, the City and the Developer as follows:

Agency:	Redevelopment Agency of the City of Capitola 420 Capitola Ave. Capitola, CA 95010 Attn: Executive Director
City:	City of Capitola 420 Capitola Ave. Capitola, CA 95010 Attn: City Manager
Developer:	Macerich Property Management Company, LLC 401 Wilshire Blvd., Suite 700 Santa Monica, CA 90401 Attn: Charles W. Davis, Jr., Vice-President, Development
With a copy to:	Macerich Property Management Company, LLC 401 Wilshire Blvd., Suite 700 Santa Monica, CA 90401 Attn: Chief Legal Officer

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail

as provided in this Section 3.1. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

### Section 3.2 Non-Liability of Officials, Employees and Agents.

No member, official, employee or agent of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or the City or for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

### Section 3.3 Enforced Delay.

In addition to specific provisions of this Agreement, performance by any party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds or the Developer's inability to finance the construction of the Public Infrastructure) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. In no event shall the City and Agency be required to agree to cumulative delays prior to commencement of construction of the Public Infrastructure in excess of one hundred eighty (180) days, or to cumulative delays in excess of one year after commencement of construction of the Public Infrastructure. Times of performance under this Agreement may also be extended by written agreement of the Agency, the City and the Developer.

### Section 3.4 Time of the Essence.

Time is of the essence in this Agreement.

### Section 3.5 Inspection of Books and Records.

The Agency and the City have the right at all reasonable times to inspect on a confidential basis the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement.

### Section 3.6 Title of Parts and Sections.

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any of its provisions.

### Section 3.7 Indemnity.

The Developer shall indemnify, defend and hold the City and Agency harmless against any and all claims, suits, actions, losses and liability of every kind, nature and

description made against it and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to Developer's construction of the Public Infrastructure, except to the extent such claim arises from the gross negligence or willful misconduct of the City, the Agency, or any of their respective agents or employees. The provisions of this section shall survive the expiration of this Agreement.

Section 3.8 Liability Insurance.

The Developer shall cause to have in full force and effect during the construction of the Public Infrastructure insurance under the terms and conditions as required by the Public Works Director; provided that, at a minimum, Developer and its general contractor shall have liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) combined, which insurance shall name the Agency and City as additional insureds.

Section 3.9 Rights and Remedies Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by any party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by another party.

Section 3.10 Applicable Law.

This Agreement shall be interpreted under the laws of the State of California.

Section 3.11 Severability.

If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, then the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such holding of invalidity.

Section 3.12 Legal Actions.

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power and ability of the Agency and the City to enter into this Agreement or perform their obligations hereunder, any of the City, the Agency or the Developer may (but shall have no obligation to) defend such action. Upon commencement of any such action, the Agency, the City and the Developer shall meet in good faith to seek to establish a mutually acceptable method of defending such action. If, thirty (30) days after the commencement of any such action, a mutually acceptable method of defense has not been established, the Developer may (but shall have no obligation to) provide written notice of its intention to defend such action.

### Section 3.13 Equal Opportunity.

For purposes of this Agreement and Developer's obligations hereunder regarding the Public Infrastructure, the Developer and its successors, assigns, contractors and subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, veteran's status or physical or mental disability. Such action will include and apply to the employment of contractors, subcontractors, and applicants for employment. During construction of the Public Infrastructure by the Developer, the Developer agrees to post and to cause its contractors and subcontractors to post, in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

### Section 3.14 Identity and Authority.

The person executing this Agreement on behalf of the Developer does hereby covenant and warrant that the Developer is a duly authorized and existing Delaware limited liability company; that the Developer has, is and shall remain in good standing and qualified to do business in the State of California; that the Developer has full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Developer and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions on the Developer's part contemplated by this Agreement, except as have been obtained and are in full force and effect; that the persons executing this Agreement on behalf of the Developer have full authority to do so; and that this Agreement constitutes the valid, binding and enforceable obligation of the Developer.

### Section 3.15 Assignment

(a) City and Agency are entering into this Agreement based on the experience, skill, and ability to perform of Developer. This Agreement shall not be assigned by the Developer without first obtaining the express written consent of the City and Agency, which consent shall not be unreasonably withheld. Any disapproval shall specify the City's or Agency's objections in reasonable detail; such objections may reasonably include a request for additional information regarding the experience, skill, and ability to perform of the proposed assignee. Failure of the City or Agency to disapprove any assignment by written notice to Developer within thirty (30) days after receipt of Developer's written request for consent shall be deemed to be the consent of the City or the Agency to the assignment.

(b) Notwithstanding anything to the contrary herein, neither the City's nor the Agency's consent shall be required for any assignment of this Agreement by Developer to any of the following entities: (a) an entity in which The Macerich Company, a Maryland corporation ("Macerich"), or The Macerich Partnership, L.P., a Delaware limited partnership ("Macerich LP"), owns fifty percent (50%) or more of the ownership interests; (b) an entity in which Macerich or Macerich LP has the right, under

the governing agreements or documents of the controlled entity, to manage and operate the entity; or (c) any entity that acquires an ownership interest in Capitola Mall any time after commencement of construction of the Public Infrastructure has occurred in conformance with this Agreement, provided that all bonds and guarantees stipulated in Section 1.3, and elsewhere in this Agreement, are binding with respect to the obligations of the assignee. City and Agency shall be provided with written notice of any assignment pursuant to this subsection within ten (10) days after such assignment.

#### Section 3.16 Assignment Between Agency and City; Delegation of Powers

(a) Pursuant to California Health & Safety Code Section 33205, the Agency delegates to the City all of its powers and functions with respect to the planning and undertaking of activities necessary to effectuate the implementation of this Agreement, and authorizes the City to carry out and perform such powers and functions for the Agency in connection with such development. The City hereby accepts such delegation from the Agency.

(b) The City may assign to the Agency any power delegated to the City by this Agreement; and the Agency may assign to the City any power delegated to the Agency by this Agreement. Should any enacted statute or voter initiative temporarily or permanently prohibit the Agency from taking any action required by this Agreement, then those actions may be taken by the City without need for Agency action.

#### Section 3.17 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of each of the parties. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor or assign of such party who has acquired an interest in compliance with the terms of this Agreement or under law, provided that any assignment must be consistent with the provisions of Section 3.15 of this Agreement.

#### Section 3.18 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the parties as partners or co-venturers.

#### Section 3.19 Interpretation.

Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

### Section 3.20 Entire Understanding of the Parties.

This Agreement (including the exhibits) constitutes the entire understanding and agreement of the parties with respect to the construction and use of the Public Infrastructure.

### Section 3.21 Approvals.

(a) Whenever this Agreement calls for Agency approval, consent, or waiver, the written approval, consent, or waiver of the Agency Executive Director shall constitute the approval, consent, or waiver of the Agency, without further authorization required from the Agency Board. The Agency hereby authorizes the Agency's Executive Director to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the Agency.

(b) Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City.

(c) All approvals under this Agreement shall be subject to a reasonableness standard, except where a sole discretion standard is specifically provided.

(d) Developer acknowledges that execution of this Agreement by the City and Agency does not constitute approval by the City or Agency of any required additional governmental approvals for the Private Developer Project or for the Public Infrastructure, including but not limited to any discretionary planning approvals, construction permits, and operating permits, and that this Agreement in no way limits the discretion of the City and Agency in any permit or approval process..

### Section 3.22 Amendments.

The parties can amend this Agreement only by means of a writing signed by all parties.

### Section 3.23 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY OF  
CAPITOLA, a public body, corporate and politic

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

CITY:

CITY OF CAPITOLA, a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DEVELOPER:

Macerich Property Management Company, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



## EXHIBIT A

### PUBLIC INFRASTRUCTURE

The Public Infrastructure to be installed under this Agreement includes the following:

#### **Reconstruct existing public improvements adjacent to the Private Developer Project**

- Widen sidewalks within public right of way
- Install landscaping, street trees, and street furniture within public right-of-way
- Reconstruct existing public transit center currently located within the Capitola Mall to improve public access and circulation
- Improve bicycle access

If the total costs for the above improvements that are eligible for reimbursement pursuant to Section 1.11 are less than the Maximum Reimbursement Amount, Agency, City, and Developer may agree to increase the scope of the Public Infrastructure to incorporate curbs, gutters, drainage, and similar improvements.

# ATTACHMENT 4

## EXHIBIT A PROJECTS/PROGRAMS

(From Cooperation Agreement Amendment dated March 8, 2011)

Redevelopment Agency of the City of Capitola			
Committed obligations			
Contract with	Amount	Notes	Funding Source
<b>Debt</b>			
1 Santa Cruz County	\$ 2,490,000	Capitola Library Construction Contract	Projected RDA operating tax increment
2 City of Capitola	\$ 1,350,000	Rispin Land Purchase Cooperative Agreement	Operating Reserves
3 Chase NYC	\$ 1,178,100	Tax Allocation Note	Projected RDA operating tax increment
4 City of Capitola	\$ 618,028	1997-2001 Pass Through Cooperative Agreement Loan	Operating Reserves
5 Santa Cruz County	\$ 91,820	Yrs 1-20 Pass Through Loan - Library	Projected RDA operating tax increment
6 Santa Cruz County	\$ 40,231	Yrs 1-20 Pass Through Loan - Special Districts	Projected RDA operating tax increment
<b>Pass-through agreements</b>			
7 Santa Cruz County	\$ 7,014,220	Pass Through Agreement	Projected RDA operating tax increment
8 Central Fire Protection District	\$ 3,970,100	Pass Through Agreement	Projected RDA operating tax increment
9 Library District	\$ 763,100	Pass Through Agreement	Projected RDA operating tax increment
10 Special Districts	\$ 335,100	Pass Through Agreement	Projected RDA operating tax increment
11 State of California/Santa Cruz County	\$ 289,232	Supplemental Educational Relief Augmentation Fund(SERAF) 2008-09, 2010-11	Projected RDA operating tax increment
12 City of Capitola	\$ 1,223,455	Pass Through Agreement	Projected RDA operating tax increment
<b>Capital projects</b>			
13 Rispin Property Preservation	\$ 655,000	Secure structure and site prep	Operating Reserves
14 Rispin Rehabilitation	\$ 345,000	Rispin Rehabilitation	Projected RDA operating tax increment
15 Clares & Wharf Traffic Calming	\$ 300,000	RDPs Received	Projected RDA operating tax increment
16 Misc Capitol Projects	\$ 107,100	CIP In ProjectArea	Projected RDA operating tax increment
17 Clares & 41st Overlay	\$ 550,000	2009-2014 Implementation Plan	Projected RDA operating tax increment
18 Library Site Improvements	\$ 1,500,000	Site Improvements & FF&E	Projected RDA operating tax increment
19 Clares//Wharf Road Improvements, Library Parking	\$ 297,039	Additional Library Funding for Clares/Wharf Road Improvements and Library Parking, Property Acquisition	Projected RDA operating tax increment
20 Mall Redevelopment	\$ 1,030,000	CDBG 41st Avenue study improvements	Projected RDA operating tax increment
<b>Project planning</b>			
21 Library	\$ 550,000	EIR, Architechtural Plans, Special Studies	Projected RDA operating tax increment
22 General Plan Update	\$ 186,270	RDA Contribution to General Plan Update	Projected RDA operating tax increment
<b>Operating administration</b>			
23 Audit and Attorney fees	\$ 378,141	Administration Costs	Projected RDA operating tax increment
24 Contract Services fees	\$ 334,901	Administration Costs	Projected RDA operating tax increment
25 RDA Board	\$ 48,000	Administration Costs	Projected RDA operating tax increment
<b>Affordable housing obligations - 20% housing set aside projects</b>			
26 Administrative	\$ 2,371,100	Implementation Plan, RDA cashflow budget	Projected 20% Housing Set Aside
27 Professional services	\$ 560,000	Implementation Plan, RDA cashflow budget	Projected 20% Housing Set Aside
28 Ongoing programs	\$ 2,100,000	Implementation Plan, RDA cashflow budget	Projected 20% Housing Set Aside
29 Other projects and loans	\$ 600,000	Implementation Plan, RDA cashflow budget	Projected 20% Housing Set Aside
30 Affordable Housing Acquistiion	\$ 808,200	Implementation Plan, RDA cashflow budget	Low-Mod Housing Reserves
<b>Total project/program commitments</b>			
	\$ 32,084,137		



### NOTICE OF EXEMPTION

DATE: MARCH 31, 2011  
 TO: COUNTY CLERK, COUNTY OF SANTA CRUZ  
 FROM: COMMUNITY DEVELOPMENT DEPARTMENT

Based on a preliminary review of the project the following activity is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State Guidelines for the implementation of CEQA.

**Case No.:** N/A

**Location:** Capitola Mall area

**Project Title:** Public Infrastructure Agreement between the City of Capitola, the Redevelopment Agency of the City of Capitola, and The Macerich Partnership to fund pedestrian access improvements, landscaping, and public transit facilities as part of redevelopment of the Capitola Mall.

**Project Description:** The City of Capitola, the Redevelopment Agency of the City of Capitola, and The Macerich Partnership are entering into an agreement for the purposes of funding pedestrian access improvements, landscaping, and public transit facilities as part of redevelopment of the Capitola Mall. This would include widening sidewalks within public right of way; installing landscaping, street trees, and street furniture within public right-of-way; reconstructing the existing public transit center currently located within the Capitola Mall to improve public access and circulation; and improving bicycle access.

**Exempt Status: (Check one)**

Ministerial

Statutory

Categorical Exemption XX

Emergency Project

No Possibility of Significant Effect [§15301 & 15302]

**Cite specific CEQA Guideline Section:** Section 15301(c) & 15302(c)

**Reasons to support exemption findings:**

Please see the attached impact discussion for the proposed project on the following pages.

---

Department Representative

Date

Note: A copy must be filed with the County Clerk of the Board after project approval and posted by the Clerk of the Board for a period of 30 days to begin a 35 day statute of limitations on legal challenges.

Date File of County Clerk

## **Impact Discussion**

The project constitutes an agreement between the City of Capitola, the Redevelopment Agency of the City of Capitola, and The Macerich Partnership to fund pedestrian access improvements, landscaping, and public transit facilities as part of redevelopment of the Capitola Mall. Pursuant to State CEQA Guidelines Section 15301(c), the widening of sidewalks within public right of way, installation of landscaping, street trees, and street furniture within public right-of-way, and improving bicycle access would involve negligible or no expansion of existing uses.

Pursuant to State CEQA Guidelines Section 15302(c), reconstructing the existing public transit center, currently located within the Capitola Mall, would qualify as replacement or reconstruction of an existing facility involving negligible or no expansion of capacity.

Therefore, the agreement and the improvements associated with the city funding would be considered categorically exempt per the California Environmental Quality Act ("CEQA").