

## CONDITIONS OF APPROVAL

### General Entitlement Conditions

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the plans and materials submitted by the Applicant, stamped "Exhibit A," and attached to the subject case file. No change to the plans will be made without prior review by the Department of City Planning, Central Project Planning, and written approval by the Director of Planning. Each change shall be identified and justified in writing. Minor deviations may be allowed in order to comply with the provisions of the Municipal Code or the project conditions.
2. **Use.** The Project Site shall be limited to a maximum of 163 dwelling units and on the ground floor 6,406 square feet of commercial/retail use.
3. **Ground Floor.** Individual tenant spaces must be built with a depth not less than 25 feet and a floor-to-ceiling height of not less than 15 feet.
4. **Setbacks.** The penthouse units shall be set back a minimum of 30 feet from the edge of the building along the Broadway and Olympic Boulevard frontages.
5. **Height.** The building height shall not exceed an overall height to the top of penthouse units of 164-feet, 6-inches. The height to the top of the parapet shall not exceed 150 feet. Height shall be measured according to the Los Angeles Municipal Code (LAMC). Any structures on the roof, such as air conditioning units and other equipment shall be fully screened from view of any abutting properties and shall comply with height, location and screening requirements of [Q] Condition Number 15.
6. **Parking.** The project shall provide a minimum number of parking spaces as permitted by the LAMC, and a maximum number of 202 parking spaces. No parking spaces are required for the commercial use. The project shall provide unbundled parking leases for the residential units, giving residents and employees of the project the chance to opt out of their parking. Parking provided in excess of code requirements shall be available for public use or private lease.
7. **Electric Vehicle Parking.** The project shall include at least 20 percent of the total code-required parking spaces provided with Electric Vehicle (EV) chargers to immediately accommodate electric vehicles within the parking areas. When the application of the required 20 percent results in a fractional space, round up to the next whole number.
8. **Bicycle Parking.** The project shall provide bicycle parking spaces in compliance with LAMC Section 12.21 A.16. Elevators shall be capable of accommodating bicycles.
9. **Broadway Streetscape.** The applicant shall provide infrastructure, landscaping, and lighting along the Broadway frontage of the project consistent with the Broadway Streetscape Plan, if not already implemented.
  - a. The applicant shall execute a maintenance agreement with the City by which the developer agrees to maintain the streetscape and alley improvements and accepts liability for them.
10. **Alley Access.** Blackstone Court (alley) shall be kept open and free of gates at all times.

11. **Metro.** Metro Bus Operations Control shall be contacted regarding construction activities that may impact Metro bus lines.
12. **Broadway Community Design Overlay.** Final plans shall reflect that the Project is consistent with the following:
  - a. The building shall provide an open and unlocked pedestrian entrance open to the public at the front of the building on Broadway during business hours.
  - b. A minimum of 70 percent of the ground floor facades shall be transparent.
  - c. The front entries of the building shall be in conformance with the illustrations provided in Exhibit A. Windows and exterior doors shall use clear, non-reflective glass. The front windows shall be recessed a minimum of three inches from the building plane. Ground floor glass and materials shall, to the greatest extent practicable, be graffiti-resistant. The applicant shall provide glass specifications to the Department of City Planning, Central Project Planning Bureau for review and approval prior to the issuance of permits.
  - d. An 18-24 inch black granite bulkhead shall be provided at the base of the storefront and columns.
  - e. If included, all security grilles shall be transparent. The mechanical housing of exterior security grilles shall be appropriately screened. Final plans shall include details of security grilles, if proposed, and sections showing location and screening of mechanical housing.
  - f. The exterior materials and colors shall match the illustrations and materials in Exhibit A. Window and storefront systems shall be bronze anodized aluminum. Any new material proposed shall be in a color scheme consistent with Exhibit A. All metal cladding shall have a matte finish and shall not be shiny. All vents, gutters, downspouts, electrical conduits, etc. shall be painted to match the color of adjacent surfaces, unless being used expressly as a trim or accent element. Changes to material may be permitted with approval by the Department of City Planning, Central Project Planning Bureau.
  - g. The building frontage along Broadway shall be coplanar with the adjacent building, the Western Costume Building.
13. **Open Space.** The Project shall provide the following amounts of open space, landscaped common open space, and trees:
  - a. A minimum of 17,900 square feet of open space shall be provided. A maximum of 25 percent of the total open space shall be provided in recreation rooms.
  - b. In the event that the number of residential units is reduced, the minimum amount of open space shall be recalculated per LAMC requirements.
  - c. A minimum of 41 trees shall be provided on site. Street trees shall be spaced not more than an average of 25 feet on center and shall comply with Downtown Design Guide Section 9.F. Three street trees shall be provided along the Broadway frontage. At least 50 percent of the provided trees shall be canopy trees in conformance with Downtown Design Guide Section 7. If the number of street trees is reduced, the landscape plans shall be revised and the trees shall be located elsewhere on site to the satisfaction of the Department of City Planning.
  - d. Street trees shall be covered by tree grates. Tree grates along Broadway shall comply with the Broadway Streetscape Plan.
14. **Dedications and Improvements.** The applicant shall provide highway dedication, street widening and/or sidewalk requirements to the satisfaction of the City of Los Angeles Bureau of Engineering:

- a. Broadway has been re-designated to a Modified Avenue II, which requires a 28-foot half-width roadway within a 40-foot half-width right-of-way and a 12-foot sidewalk with a 5-foot sidewalk easement.
  - b. Olympic Boulevard has been re-designated to a Modified Avenue I, which requires a 40-foot half-width roadway within a 55-foot half-width right-of-way, and a 15-foot sidewalk and an 8-foot average sidewalk easement.
- 15. Olympic Boulevard Sidewalk Easement.** The required 8-foot average sidewalk easement along Olympic Boulevard shall be combined into a 50-foot by 24-foot open space as shown on Exhibit A. This area shall have a clear height of at least 40 feet and shall remain open to the public at all times.
- 16. Signage.** The approval of this application does not constitute approval of a signage plan. The applicant shall submit a detailed signage plan to the Department of City Planning for approval pursuant to the Historic Broadway Sign Supplemental Use District prior to the issuance of any signs for the project. No additional signs including, but not limited to, temporary banners or exterior merchandise displays shall be permitted on the street facing facades of the subject property unless otherwise permitted through subsequent approval. Final plans, pursuant to this action, shall not show signage. Signs approved through the Historic Broadway Sign Supplemental Use District shall be limited to information signs, ground floor tenant signs, and a maximum of two blade signs.
- 17. Exterior and Storefront Lighting.** The ground floor and other exterior lighting shall be detailed in the final plans. Any new exterior light fixtures shall be compatible with the architectural style of the building. The entryways shall be illuminated to distinguish the entrance, accent it and enhance pedestrian safety. The applicant shall illuminate the ground floor commercial space from within, both during and after business hours, to the greatest extent possible. The storefront and sidewalk shall provide down-cast or other lighting to illuminate both features to the greatest extent possible. The building's architectural features shall be illuminated to the greatest extent possible, by accent up-lights directed on ledges, lights on entry arches, or other highlighting illumination for architectural details. Exterior lighting shall be low-voltage and shielded such that the light source cannot be seen from adjacent residential properties, the public right-of-way, nor from above. Intense lighting that is used solely for advertising purposes or lighting that uses flashing, strobe, motion, or multi-color elements shall not be used.
- 18. Mechanical and Building Equipment.** No mechanical equipment, such as air conditioner units, window vents, fans, etc., shall project beyond any window facing Broadway. Any rooftop or other mechanical equipment such as HVAC, satellite dishes, exhaust fans, solar panels, etc., shall be screened from the view to the greatest extent possible. Any other equipment, such as rain gutters, spouts, electrical conduits, etc., shall also be screened to the greatest extent possible, painted to match building colors if necessary.
- 19. Construction Equipment.** The project contractor shall use either plug-in electric or solar powered on-site generators to the extent feasible.

### TFAR Conditions

- 20. Floor Area.** Development shall not exceed a 9.2:1 Floor Area Ratio (FAR) and a total floor area of 189,960 square feet. The Transfer Payment and Public Benefit Payment shall be pro-rated to the amount of TFAR being acquired in the event the maximum amount of TFAR approved is not required. The base lot area used to calculate the base floor area shall be

20,663 square feet at a 6:1 FAR. Changes to the Project that result in a twenty percent decrease in floor area, or more, shall require new entitlements.

- 21. TFAR Transfer Payment.** The Project is subject to and shall pay a TFAR Transfer Payment in conformance with Section 14.5.6 through 14.5.12 of the Code. Such payment shall be based on the actual amount of floor area transferred to the Project site.
- a. The total amount of floor area authorized to be transferred from the Los Angeles Convention Center by this action shall not exceed 65,982 square feet. The total floor area of the Project Site shall not exceed 189,960 square feet.
  - b. The Applicant shall provide a TFAR Transfer Payment consistent with LAMC Section 14.5.10. in the amount of \$5 per square foot, or \$329,910, for the transfer of 65,982 square feet from the Los Angeles Convention Center to the Project Site.
- 22. Public Benefit Payment.** The Project is subject to and shall pay a Public Benefit Payment in conformance with Section 14.5.6 through 14.5.12 of the Code.
- a. The Applicant shall provide a Public Benefit Payment consistent with LAMC Section 14.5.9. in the amount of \$1,275,168.76 provided that at least 50 percent (or \$637,584.38) of the Public Benefit Payment consist of cash payment by the applicant to the Public Benefit Trust Fund. Direct provision payments shall be paid directly to the recipients and not to the City of Los Angeles. Proof shall be provided in the form of a cleared check or bank statement and a letter signed by the Executive Director of each organization. Consistent with the TFAR Ordinance, the Project shall provide 50 percent (or \$637,584.38) of the Public Benefit Payment by directly providing the following public benefits:
    - i. The construction of off-site improvements adjacent to the property in Blackstone Court (alley) as described in Exhibit A landscape plans in the amount of \$132,158.74. Improvements shall include geometric scored concrete paving with three linear bands of turf block pavers, a green screen wall, planting and irrigation, and lighting. The parapet planter shall not be considered an off-site improvement. The applicant shall demonstrate that the proposed geometric scored concrete paving and turf block pavers are beyond the standard cost of alley improvements required by the Bureau of Engineering. If it is determined that alley improvements are required by the Bureau of Engineering, the Applicant shall provide a revised Public Benefits Cost Summary excluding the standard cost of the required public right-of-way improvements. The applicant shall obtain the necessary permits from the Bureau of Engineering and shall execute a maintenance agreement per Condition of Approval Number 9.a.
    - ii. A payment to the Los Angeles Neighborhood Initiative (LANI) in the amount of \$505,425.64 The funds shall be utilized to fund projects that support Bringing Back Broadway initiatives, such as streetscape and pedestrian improvements, façade lighting, historic preservation and public arts programs.
  - b. At the time of issuance of the Certificate of Occupancy for the project, the applicant shall provide an update to the file from each recipient of direct provisions detailing how the money has been spent thus far.
  - c. The Applicant shall pay the required Public Benefit Payment, less the cost of the Direct Provision of Public Benefits, in cash to the Public Benefit Trust Fund, pursuant to the terms of Transfer of Floor Area Rights Ordinance No. 181,574, Article 4.5 of the LAMC. The Public Benefit Payment proof of cash payment and direct provision of public benefits is required upon the earliest occurrence of either:
    - i. The issuance of the building permit for the Project; or

- ii. Twenty-four months after the final approval of the Transfer and the expiration of any appeals or appeal period; should the Applicant not make the required payments within the specified time, subject approval shall expire, unless extended by the Director in writing.
- iii. Payment of Direct Provision to LANI in the amount of \$505,425.64 shall be paid within 60 days of Council approval.

### **Environmental Conditions**

**23. Habitat Modification (Nesting Native Birds, Non-Hillside or Urban Areas).** The project will result in the removal of vegetation and disturbances to the ground and therefore may result in take of nesting native bird species. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

- a. Proposed project activities (including disturbances to native and non-native vegetation, structures and substrates) should take place outside of the breeding bird season which generally runs from March 1- August 31 (as early as February 1 for raptors) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). Take means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill (Fish and Game Code Section 86).
- b. If project activities cannot feasibly avoid the breeding bird season, beginning thirty days prior to the disturbance of suitable nesting habitat, the applicant shall:
  - i. Arrange for weekly bird surveys to detect any protected native birds in the habitat to be removed and any other such habitat within properties adjacent to the project site, as access to adjacent areas allows. The surveys shall be conducted by a qualified biologist with experience in conducting breeding bird surveys. The surveys shall continue on a weekly basis with the last survey being conducted no more than 3 days prior to the initiation of clearance/construction work.
  - ii. If a protected native bird is found, the applicant shall delay all clearance/construction disturbance activities within 300 feet of suitable nesting habitat for the observed protected bird species until August 31.
  - iii. Alternatively, the Qualified Biologist could continue the surveys in order to locate any nests. If an active nest is located, clearing and construction within 300 feet of the nest or as determined by a qualified biological monitor, shall be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting. The buffer zone from the nest shall be established in the field with flagging and stakes. Construction personnel shall be instructed on the sensitivity of the area.
- c. The applicant shall record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to the protection of native birds. Such record shall be submitted and received into the case file for the associated discretionary action permitting the project.

**24. Tree Removal (Public Right-of-Way).**

- a. Removal or planting of any tree in the public right-of-way requires approval of the Board of Public Works. Contact Urban Forestry Division at: 213-847-3077. All trees in the public right-of-way shall be provided per the current standards of the

Urban Forestry Division the Department of Public Works, Bureau of Street Services. Removal of trees in the public right-of-way requires approval by the Board of Public Works.

- b. The required Tree Report shall include the location, size, type, and condition of all existing trees in the adjacent public right-of-way and shall be submitted for review and approval by the Urban Forestry Division of the Bureau of Street Services, Department of Public Works (213-847-3077).
- c. The plan shall contain measures recommended by the tree expert for the preservation of as many trees as possible. Mitigation measures such as replacement by a minimum of 24-inch box trees in the parkway, and on the site, on a 1:1 basis, shall be required for the unavoidable loss of significant (8-inch or greater trunk diameter, or cumulative trunk diameter if multi-trunked, as measured 54 inches above the ground) trees in the public right-of-way.
- d. All trees in the public right-of-way shall be provided per the current Urban Forestry Division Standards.

**25. Cultural Resources/Historic Resources.**

- a. Balconies on the Broadway façade shall not project from the building face, except for the one row of balconies at the north end of the façade, which may project as long as the balcony material is mostly transparent metal railings.
- b. The balconies at the south end of the Broadway façade shall not project beyond the edge of the building towards Olympic Boulevard.
- c. Balconies along the Broadway façade shall be comprised of a solid material similar to adjacent facades.

**26. Land Use (Noise).** Environmental impacts to future occupants may result from this project's implementation due to mobile noise. However, these impacts will be mitigated to a less than significant level by the following measures: All exterior windows having a line of sight of a Boulevard or Avenue shall be constructed with double-pane glass and use exterior wall construction which provides a Sound Transmission Class (STC) value of 50, as determined in accordance with ASTM E90 and ASTM E413, or any amendment thereto. The applicant, as an alternative, may retain an acoustical engineer to submit evidence, along with the application for a building permit, any alternative means of sound insulation sufficient to mitigate interior noise levels below a CNEL of 45 dBA in any habitable room.

**27. Increased Noise Levels (Demolition, Grading, and Construction Activities).**

- a. Construction and demolition shall be restricted to the hours of 7:00 am to 6:00 pm Monday through Friday, and 8:00 am to 6:00 pm on Saturday.
- b. Demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels.
- c. The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices.
- d. The project contractor shall use either plug-in electric or solar powered on-site generators to the extent feasible.
- e. A temporary noise barrier such as, but not limited to, plywood structures or flexible sound control curtains extending eight feet in height and capable of sound attenuation of at least 10 dBA shall be erected around the perimeter of the construction site (excluding the northern property line where adequate space is not available) to minimize the amount of noise during construction on the nearby noise-sensitive uses.

- 28. Increased Noise Levels (Mixed-Use Development).** Wall and floor-ceiling assemblies separating commercial tenant spaces, residential units, and public places, shall have a Sound Transmission Coefficient (STC) value of at least 50, as determined in accordance with ASTM E90 and ASTM E413.
- 29. Increased Noise Levels.** Environmental impacts to the adjacent residential properties may result due to noise generated on the site. However, this potential impact will be mitigated to a less than significant level by the following measure:
- a. All new construction work shall be performed so as not to adversely affect the historic designations surrounding the Project Site. Specifically, this mitigation measure is provided to ensure vibration from construction of the proposed project does not adversely impact nearby buildings, which include the following structures: (a) the Western Costume Building, at 939 S. Broadway. Prior to commencement of construction, a qualified structural engineer shall survey the existing foundations and structures of the nearby buildings listed above, and provide a plan to protect them from potential damage. Pot holing or other destructive testing of below grade conditions on the project site and immediately adjacent historical resources may be necessary to establish baseline conditions and prepare the shoring design. If feasible, the project and shoring designs shall avoid pile driving within twenty-five feet of immediately adjacent historical resources. The shoring design shall specify threshold limits for vibration causing activities.
  - b. The monitoring program shall survey for vertical and horizontal movement, as well as vibration thresholds. If the thresholds are met or exceeded, or noticeable structural damage becomes evident to the project contractor, work shall stop in the area of the affected building until measures have been taken to stabilize the affected building to prevent construction related damage to historic resources.
  - c. The performance standards of the structure monitoring plan shall including the following:
    - i. The qualified structural engineer shall monitor vibration during the pile driving or other vibration-causing construction activities to ensure that the established impact threshold and shoring design is not exceeded. If feasible, alternative means of setting piles such as predrilled holes or hydraulic pile driving shall be employed to avoid exceeding the impact threshold established. At the conclusion of vibration causing activities, the qualified structural engineer shall issue a follow-on letter describing damage, if any, to immediately adjacent historical resources and recommendations for any repair, as may be necessary, in conformance with the Secretary's Standards. Repairs shall be undertaken and completed in conformance with all applicable codes including the California Historical Building Code (Part 8 of Title 24) prior to issuance of any temporary or permanent certificate of occupancy for the new building.
    - ii. The structure monitoring program shall be submitted to the Department of Building and Safety and received into the case file for the associated discretionary action permitting the project prior to initiating any construction activities.
  - d. To avoid or minimize potential construction vibration damage and annoyance to the adjacent Western Costume Building, the contractor shall install and maintain at least two continuously operational automated vibrational monitors on the adjacent Western Costume Building during construction. The monitors must be capable of being programmed with two predetermined vibratory velocities levels: a first-level alarm equivalent to a 0.45 inches per second at the face of the building and a regulatory alarm level equivalent to a 0.5 inches per second at the face of the building. The monitoring system must produce real-time specific alarms (via

text message and/or email to on-site personnel) when velocities exceed either of the predetermined levels. In the event of a first-level alarm, feasible steps to reduce vibratory levels shall be undertaken, including but not limited to staggering concurrent activities and utilizing lower-vibratory techniques. In the event of an exceedance of the regulatory level, feasible steps to reduce vibratory levels shall be undertaken, including but not limited to staggering concurrent activities and utilizing lower-vibratory techniques.

- e. The Applicant shall erect a temporary acoustic sound attenuation blanket along the south façade of the Western Costume Building covering all south facing windows and the light well. The acoustic blanket shall have a minimum 1-inch thickness and shall be capable of achieving a 20 dBA attenuation factor. The sound attenuation blanket(s) may be draped from the roof of the Western Costume building with adequate separation from the façade of the structure to allow for indirect light and air trespass, and/or can be mounted on poles positioned within the Project Site.
  - f. A construction noise monitoring program shall be instituted to field check the construction noise levels from within interior residential spaces of the Western Costume Building. The construction noise monitoring program shall demonstrate that the interior noise levels are 45 dBA or below during construction activities on the Project Site. The monitoring plan shall consist of periodic noise samples throughout the construction process and shall include a minimum of four 15-minute Leq measurements and at least one 24-hour CNEL measurement. Noise monitoring logs shall be submitted to the case file during and after construction.
- 30. Public Services (Police – Demolition/Construction Sites).** Temporary construction fencing shall be placed along the periphery of the active construction areas to screen as much of the construction activity from view at the local street level and to keep unpermitted persons from entering the construction area.
- 31. Transportation (Haul Route).**
- a. The developer shall install appropriate traffic signs around the site to ensure pedestrian and vehicle safety.
- 32. Safety Hazards.**
- a. The developer shall install appropriate traffic signs around the site to ensure pedestrian and vehicle safety.
  - b. The applicant shall submit a parking and driveway plan that incorporates design features that reduce accidents, to the Bureau of Engineering and the Department of Transportation for approval.
- 33. Transportation/Traffic.**
- a. Applicant shall plan construction and construction staging as to maintain pedestrian access on adjacent sidewalks throughout all construction phases. This requires the applicant to maintain adequate and safe pedestrian protection, including physical separation (including utilization of barriers such as K-Rails or scaffolding, etc.) from work space and vehicular traffic and overhead protection, due to sidewalk closure or blockage, at all times.
  - b. Temporary pedestrian facilities should be adjacent to the project site and provide safe, accessible routes that replicate as nearly as practical the most desirable characteristics of the existing facility.
  - c. Covered walkways shall be provided where pedestrians are exposed to potential injury from falling objects.



- d. Applicant shall keep sidewalk open during construction until only when it is absolutely required to close or block sidewalk for construction staging. Sidewalk shall be reopened as soon as reasonably feasible taking construction and construction staging into account.
- e. The existing Metro bus stop on Olympic Boulevard along the south side of the project site, shall be maintained or relocated during the construction and operation phase of the project, consistent with the needs of Metro Bus Operations. The applicant shall provide an approved relocation plan prior to issuance of permits.

### **Administrative Conditions**

- 34. Final Plans.** Prior to the issuance of any building permits for the project by the Department of Building and Safety, the applicant shall submit all final construction plans that are awaiting issuance of a building permit by the Department of Building and Safety for final review and approval by the Department of City Planning. All plans that are awaiting issuance of a building permit by the Department of Building and Safety shall be stamped by Department of City Planning staff "Final Plans". A copy of the Final Plans, supplied by the applicant, shall be retained in the subject case file.
- 35. Notations on Plans.** Plans submitted to the Department of Building and Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet, and shall include any modifications or notations required herein.
- 36. Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review or approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning for placement in the subject file.
- 37. Code Compliance.** Area, height and use regulations of the zone classification of the subject property shall be complied with, except where herein conditions may vary.
- 38. Department of Building and Safety.** The granting of this determination by the Director of Planning does not in any way indicate full compliance with applicable provisions of the Los Angeles Municipal Code Chapter IX (Building Code). Any corrections and/or modifications to plans made subsequent to this determination by a Department of Building and Safety Plan Check Engineer that affect any part of the exterior design or appearance of the project as approved by the Director, and which are deemed necessary by the Department of Building and Safety for Building Code compliance, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.
- 39. Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public offices, legislation or their successors, designees or amendment to any legislation.
- 40. Enforcement.** Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Department of City Planning and any designated agency, or the agency's successor and in accordance with any stated laws or regulations, or any amendments thereto.
- 41. Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all of the information contained in these conditions shall be recorded by the

property owners in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent owners, heir, or assigns. Further, the agreement must be submitted to the Planning Department for approval before being recorded. After recordation, a Certified Copy bearing the Recorder's number and date must be given to the City Planning Department for attachment to the subject case file.

- 42. Corrective Conditions.** The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the City Planning Commission, or the Director of Planning, pursuant to Section 12.27.1 of the Municipal Code, to impose additional corrective conditions, if in the decision makers opinion, such actions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
- 43. Indemnification and Reimbursement of Litigation Costs.** Applicant shall do all of the following:
- (i) Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
  - (ii) Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
  - (iii) Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$25,000. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
  - (iv) Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
  - (v) If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the Applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the Applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the Applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the Applicant of any obligation

imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

“City” shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

“Action” shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.