

## CONDITIONS OF APPROVAL

(As modified by the City Planning Commission on 7-27-17)

Pursuant to Section 12.24-W,1, 12.24-W,27, 12.24-W,24, and 16.05 of the Los Angeles Municipal Code, the following conditions are hereby imposed upon the use of the subject property:

### Entitlement Conditions

1. **Site Plan.** The use and development of the property shall be in substantial conformance with the plot plan submitted with the application and marked Exhibit "A", dated June 2, 2017 (hereafter "Exhibit A"), except as may be revised as a result of this action.
2. **Averaging.**
  - a. The total floor area shall not exceed 142,607 square feet for the entirety of the site.
  - b. Residential density may be averaged between Lot Nos. 4 and 7 of VTT-74669.
3. **Automobile Parking.**
  - a. Automobile parking shall be provided in conformance with L.A.M.C. Section 12.21-A,4(x)(3).
  - b. A minimum of 20-percent of the total provided parking spaces shall be capable of supporting future electric vehicle supply equipment (EVSE). EVSE, infrastructure, and all devices related to EV charging shall be installed in accordance with California Electrical Code and to the satisfaction of the Department of Building and Safety.
  - c. A minimum of five-percent of provided spaces shall provide EV charging stations that are immediately capable of providing a charge.
4. **Bicycle Parking.** Bicycle parking shall be provided in conformance with L.A.M.C. Section 12.21-A,16.
5. **Signage.** On-site signs shall be limited to the maximum allowable under the Municipal Code and shall be in substantial conformance with those shown in Exhibit A, and subject to the following:
  - a. **Pole Sign.** Approved herein is the construction, use, and maintenance of a maximum 30-foot in-height, double-sided, internally illuminated pole sign to be located within a landscaped planter area along Lassen Street as shown in Exhibit A.
    - i. The pole sign shall only be illuminated to the minimum level required for nighttime readability.
    - ii. The pole sign shall be limited to six tenant panels per side.
  - b. No signage advertising the incidental "sundry" store located within the hotel lobby shall be permitted on the outside of the building, nor shall signs located in the interior of the building advertising the "sundry" story be visible from outside the building.
6. **Sustainability.**

- a. The project shall comply with the Los Angeles Municipal Green Building Code, Section 99.05.211, to the satisfaction of the Department of Building and Safety.
  - b. **Solar.** The project shall provide a minimum of 80 kilowatts of solar power. Solar panels may be installed on all rooftop areas of existing and new structures (hotel, restaurant) and/or surface parking lots with the exception of areas occupied by rooftop mechanical equipment.
7. **Trash/recycling.** Trash and Recycling pick-up and emptying or disposing of trash/recycling into outside containers is permitted to occur only between the hours of 7:00 a.m. and 8:00 p.m., Monday through Friday, and 10 a.m. to 4 p.m., Saturdays and Sundays.
- a. Trash/recycling containers shall be locked when not in use.
  - b. Trash/recycling containers shall not be placed in or block access to required parking.
8. **Outdoor Lighting.** Outdoor lighting shall be designed and installed with shielding, such that the light source does not directly illuminate adjacent residential properties, the public right-of-way, or the atmosphere above.
9. The applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control, including the sidewalk in front of the unified development.
10. No pay phone may be maintained on the exterior of the premises.
11. Prior to the issuance of a demolition, grading, or building permit, the applicant shall contact Metro Bus Operations Control Special Events Coordinator, or Metro's Stops and Zones for closures longer than six months, and coordinate the maintenance or relocation of the bus stop located at the corner of Mason Avenue and Lassen Street. Documentation of correspondence with Metro shall be submitted to the Department of City Planning.
12. **Hotel.**
- a. **Use.** Authorized herein is the operation of a hotel with a maximum of 124 guest rooms to be located within Lot 4 of VTT-74699, as shown on Exhibit A.
  - b. **Hours of Operation.** The hotel may operate 24 hours, daily.
  - c. **Floor Area.** The approved hotel shall be limited to a maximum Floor Area of 87,521 square feet.
  - d. **Sundry Store.** Use of the incidental "sundry" store shall be available to registered guests at the hotel only.
13. **Drive-Through Establishments.**
- a. A maximum of three drive-through establishments, identified as Buildings 6, 7, and 8, may be permitted within the unified mixed-use development as shown on Exhibit A.
  - b. The drive-through coffee shop identified in Exhibit A as Building 6 may operate 24 hours a day, daily.

**Alcohol Related Conditions of Approval (Hotel – Building 4 and Restaurant in Building 5)**

14. Approved herein is the following:
  - a. the on-site sale of beer and wine for an incidental “sundry” store located within the ground floor of the hotel lobby for consumption on the premise;
  - b. the sale and dispensing of a full line of alcoholic beverages for on-site consumption in conjunction with the operations of a proposed 4,000 square-foot restaurant located within Building 5, as shown on site plan stamped Exhibit A.
15. **Hours of Operations.**
  - a. The incidental “sundry” store may operate 24 hours a day in conjunction with the operations of the hotel.
  - b. The restaurant Tenant Space A in Building 5 may operate 24 hours, daily.
16. **Seating.** The bona fide restaurant within Tenant Space A in Building 5 may have a maximum of 104 interior seats and a maximum of 28 exterior seats within an outdoor patio.
17. There shall be no entertainment such as a piano bar, jukebox, dancing, live entertainment, movies, etc. There shall be no karaoke, disc jockey, male or female performers or fashion shows.
18. The applicant shall comply with all noise regulations in the Los Angeles Municipal Code.
19. There shall be no coin-operated game machines or video machines permitted on the premises at any time.
20. The conditions of this grant, a police permit, a copy of a business license, insurance information and an emergency contact phone number for the operator and valet service(s), if any, shall be retained on the premises at all times and be immediately produced upon request of the Los Angeles Police Department, the Department of City Planning, State Department of Alcoholic Beverage Control or other responsible agencies. The manager and all employees shall be knowledgeable of these Conditions.
21. Within six months of the effective date of this action, all employees involved with the sale of alcoholic beverages shall enroll in the Los Angeles Police Department “Standardized Training for Alcohol Retailers” (STAR). Upon completion of such training, the applicant shall request the Police Department to issue a letter identifying which employees completed the training. The applicant shall transmit a copy of the letter from the Police Department to the Zoning Administrator who acted on this case as evidence of compliance. In the event there is a change in the licensee, within one year of such change, this training program shall be required for all new staff. All employees who serve alcoholic beverages shall attend follow-up STAR classes every 24 months. The STAR training shall be conducted for all new hires within 2 months of their employment.
22. An electronic age verification device shall be utilized on the premises available for use during operational hours. This device shall be maintained in operational condition and all employees shall be instructed in its use.
23. The applicant/restaurant operator shall identify a contact person and provide a 24-hour “hot line” telephone number for any inquiries or complaints from the community regarding the

subject facility. Prior to the utilization of this grant, the phone number shall be posted on the site so that is readily visible to any interested party. The hot line shall be:

- a. Posted at the entry, and the cashier or customer service desk,
  - b. Provided to the immediate neighbors, schools, and the Neighborhood Council, and
  - c. Responded to within 24-hours of any complains/inquires received on this hotline.
24. The applicant shall document and maintain a log of complaints received, the date and time received and the disposition of the response and shall maintain this documentation for a period of 12 months. The log shall be made available for review by the Los Angeles Police Department and the Zoning Administrator upon request.
25. ***Prior to the beginning of operations***, the applicant shall notify the Condition Compliance Unit via email or U.S. Mail when operations are scheduled to begin and shall submit a copy of the Certificate of Occupancy for the Case File. The notification shall be submitted to [planning.ccu@lacity.org](mailto:planning.ccu@lacity.org), with the subject of the email to include the case number, "**CPC-2016-5001-VZC-HD-CU-CUB-SPR/Operation Notification**". The applicant shall also submit (attached or mailed) evidence of compliance with any conditions which require compliance "*prior to the beginning of operations*" as stated by these conditions.
26. **Prior to the beginning of operations**, the manager of the facility shall be made aware of the conditions and shall inform his/her employees of the same. A statement with the signature, printed name, position and date signed by the manager and his/her employees shall be provided to the Condition Compliance Unit within 30-days of the beginning day of operation of the establishment. The statement shall read as follows,

For the incidental hotel "sundry" store:

*We, the undersigned, have read and understand the conditions of approval to allow the sale and dispensing of beer and wine for on-site consumption, in conjunction with the "sundry" store within the hotel lobby, and agree to abide and comply with said conditions.*

For the restaurant:

*We, the undersigned, have read and understand the conditions of approval to allow the sale and dispensing of a full line of alcoholic beverages for on-site consumption, in conjunction with the restaurant, known as [to be determined], and agree to abide and comply with said conditions.*

27. Should there be a change in the ownership and/or the operator of the business, the property owner and the business owner or operator shall provide the prospective new property owner and the business owner/operator with a copy of the conditions of this action prior to the legal acquisition of the property and/or the business. Evidence that a copy of this determination has been provided to the prospective owner/operator, including the conditions required herewith, shall be submitted to the Condition Compliance Unit in a letter from the new operator indicating the date that the new operator/management began and attesting to the receipt of this approval and its conditions. The new operator shall submit this letter to the Condition Compliance Unit within 30-days of the beginning day of his/her new operation of the establishment along with the dimensioned floor plan, seating arrangement and number of seats of the new operation. This condition does not apply to a change of ownership to the overall development known at the time of this determination as The Hampton Inn.

28. Should there be a change in the ownership and/or the operator of the restaurant, the Zoning Administrator reserves the right to require that the new owner or operator file a Plan Approval application if it is determined that the new operation is not in substantial conformance with the approved floor plan, or the operation has changed in mode or character from the original approval, or If at any time during the period of validity of this grant, documented evidence is submitted showing continued violation of any condition(s) of this grant resulting in a disruption or interference with the peaceful enjoyment of the adjoining and neighboring properties. The application, in association with the appropriate fees, shall be submitted to the Department of Planning, Condition Compliance Unit within 30 days of the date of legal acquisition by the new owner or operator. The purpose of the plan approval will be to review the operation of the premise and establish conditions applicable to the use as conducted by the new owner or operator, consistent with the intent of the Conditions of this grant. Upon this review, the Zoning Administrator may modify, add or delete conditions, and if warranted, reserves the right to conduct a public hearing, that may also be conducted for nuisance abatement/revocation purposes.
29. **MViP – Monitoring, Verification and Inspection Program.** At any time, before, during, or after operating hours, a City inspector may conduct a site visit to assess compliance with, or violations of, any of the conditions of this grant. Observations and results of said inspection will be documented and used to rate the operator according to the level of compliance. If a violation exists, the owner/operator will be notified of the deficiency or violation and will be required to correct or eliminate the deficiency or violation. Multiple or continued documented violations or Orders to Comply issued by the Department of Building and Safety which are not addressed within the time prescribed therein, may result in denial of future requests to renew or extend this grant.
30. Within 30 days of the effective date of the Department of Alcoholic Beverage Control license, and within 30 days of the effective date of any modification or alteration of terms of said license, the applicant shall transmit a copy of the valid Department of Alcoholic Beverage Control license to the Zoning Administrator for attachment to the case file.
31. Within 30 days of the effective date of this grant, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Zoning Administrator for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Zoning Administrator for attachment to the subject case file.

**NOTE TO THE STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL (ABC)**

**CONDITIONS IDENTIFIED FOR CONSIDERATION BY THE STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL RELATIVE TO THE SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES**

In approving the instant grants, the City Planning Commission has not imposed Conditions specific to the sale or distribution of alcoholic beverages, even if such Conditions have been volunteered or negotiated by the applicant, in that the City Planning Commission has no direct authority to regulate or enforce Conditions assigned to alcohol sales or distribution.

The City Planning Commission has identified a set of Conditions related to alcohol sales and distribution for further consideration by the State of California Department of Alcoholic Beverage Control (ABC). In identifying these conditions, the City Planning Commission acknowledges the ABC as the responsible agency for establishing and enforcing Conditions specific to alcohol sales and distribution. The Conditions identified below are based on testimony and/or other evidence established in the administrative record, and provide the ABC an opportunity to address the specific conduct of alcohol sales and distribution in association with the Conditional Use granted herein by the City Planning Commission.

They may include those identified during hearing testimony, received as part of correspondence via stakeholder groups, city agency, other responsible agency, Council District, Mayor's office, etc.)

For the hotel:

- No alcohol shall be allowed to be consumed on any adjacent property under the control of the applicant.
- There shall be no exterior advertising of any kind or type, including advertising directly to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
- No signs are permitted on the outside of the building or directed from the inside to the outside which display or advertise the availability of alcoholic beverages.
- Electronic age verification device(s) which can be used to determine the age of any individual attempting to purchase alcoholic beverages and shall be installed on the premises at each point-of-sale location. The device(s) shall be maintained in an operational condition and all employees shall be instructed in their use prior to the sale of any alcoholic beverages.
- No sale of alcohol shall be permitted at any self-service, automated check-out station (checkout conducted primarily by the customer, with assistance by a store monitor) if such are available on the site. All sales of alcohol shall be conducted at a full-service checkout station directly attended by a cashier/check-out clerk specifically assigned solely to that station.

For the restaurant:

- No cocktail lounge shall be maintained on the premises separate from the dining area.
- No alcohol shall be allowed to be consumed on any adjacent property under the control of the applicant.
- There shall be no exterior advertising of any kind or type, including advertising directly to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
- The sale of alcoholic beverages for consumption off the premises is prohibited.
- The quarterly gross sales of alcohol shall not exceed the quarterly gross sales of food. The business operator shall maintain records which reflect these numbers and make them available to the Police Department upon request.
- There shall be no cocktail lounge or separate bar area.
- No signs are permitted on the outside of the building or directed from the inside to the outside which display or advertise the availability of alcoholic beverages.
- The off-site sale of alcoholic beverages as a secondary use (i.e., "take out") is not permitted.
- Electronic age verification device(s) which can be used to determine the age of any individual attempting to purchase alcoholic beverages and shall be installed on the premises at each point-of-sale location. The device(s) shall be maintained in an operational condition and all employees shall be instructed in their use prior to the sale of any alcoholic beverages.

- All service of alcoholic beverages shall be conducted by a waitress or waiter or bartender.
- The alcoholic beverage license shall not be exchanged for a public premises type license nor operated as a public premises.

### **Environmental Conditions**

#### **32. Non-Protected Trees.**

- a. Prior to issuance of any permit related to development of the Project, a plot plan shall be prepared for the Project, indicating the location, size, type, and general condition of all existing trees on the Project site and within the adjacent public right(s)-of-way.
- b. All significant (8-inch or greater trunk diameter, or cumulative trunk diameter if multi-trunked, as measured 54 inches above the ground) non-protected trees on the Project site proposed for removal shall be replaced at a 1:1 ratio with a minimum 24-inch box tree. Net new trees located within the parkway of the adjacent public-right(s)-of-way may be counted toward replacement tree requirements.
- c. Removal or planting of any tree in the public right-of-way shall require approval of the Board of Public Works. All trees in the public right-of-way shall be provided in the current standards of the Urban Forestry Division of the Department of Public Works, Bureau of Street Services.

**33. Street Restriping.** Mason Avenue/Lassen Street - Prior to issuance of a Certificate of Occupancy, the Project Applicant shall restripe the eastbound Lassen Street approach to the Mason Avenue intersection within the existing roadway width to provide one left--turn lane, two through lanes, and one right--turn lane and shall change the existing traffic signal equipment to accommodate the changed lane configuration.

**34. Transportation and Traffic.** Measure(s) detailed in LADOT's communication to the Department of City Planning (DOT Case No. SFV 16-104785 dated December 8, 2016) shall be complied with.

**35. In accordance with LADOT's requirements, the Project Applicant shall implement the following:**

- a. Prior to issuance of any construction-related permit, the Project Applicant shall submit a construction work site traffic control plan to LADOT for review and approval. The plan shall show the location(s) of any roadway or sidewalk closures, traffic detours, haul routes, hours of construction, protective devices, warning signs, and access to abutting properties. All construction-related traffic shall be restricted to off-peak hours.
- b. Prior to issuance of a building permit, the Project Applicant shall check with the City's Bureau of Engineering Land Development Group to determine the specific highway dedication, street widening, and/or sidewalk requirements for the Project.
- c. The Project Applicant shall check with the City's Department of Building and Safety to confirm the number of Code-required parking spaces for the Project.

- d. The southerly one-way ingress driveway on Mason Avenue shall require a covenant and agreement between the Project Applicant and the neighbor property owner.
  - e. Final LADOT approval of driveway dimensions, access, and circulation schemes shall be obtained from prior to issuance of any associated building permits.
  - f. In order to minimize and prevent last minute building design changes, the Project Applicant shall contact LADOT for driveway width and internal circulation requirements so that such traffic flow considerations are designed and incorporated early into the building and parking layout plans.
  - g. A minimum 40-foot reservoir space between the new property line and the first parking stall and/or security gate shall be provided or to the satisfaction of LADOT.
  - h. All truck loading and unloading shall take place onsite with no vehicles backing into the street. The loading/unloading areas shall be shown clearly on the Project site plans.
  - i. All proposed two-way driveways shall be 30 feet wide, exclusive of side slope or to the satisfaction of LADOT.
36. **Biological Resources.** To avoid potential significant impacts to nesting birds, including migratory birds and raptors, one of the following shall be implemented by the Project Applicant:
- a. Conduct vegetation removal associated with construction from September 1<sup>st</sup> through January 31<sup>st</sup>, when birds are not nesting. Initiate grading activities prior to the breeding season (which is generally February 1<sup>st</sup> through August 31<sup>st</sup>) and keep disturbance activities constant throughout the breeding season to prevent birds from establishing nests in surrounding habitat (in order to avoid possible nest abandonment); if there is a lapse in activities of more than five days, pre-construction surveys shall be necessary as described in the bullet below.
  - b. Conduct pre-construction surveys for nesting birds if vegetation removal or grading is initiated during the nesting season. A qualified wildlife biologist shall conduct weekly pre-construction bird surveys no more than 30 days prior to initiation of grading to provide confirmation on the presence or absence of active nests in the vicinity (at least 300 to 500 feet around the individual construction site, as access allows). The last survey should be conducted no more than three days prior to the initiation of clearance/construction work. If active nests are encountered, clearing and construction in the vicinity of the nests shall be deferred until the young birds have fledged and there is no evidence of a second attempt at nesting. A minimum buffer of 300 feet (500 feet for raptor nests) or as determined by a qualified biologist shall be maintained during construction depending on the species and location. The perimeter of the nest-setback zone shall be fenced or adequately demarcated with staked flagging at 20-foot intervals, and construction personnel and activities restricted from the area. Construction personnel should be instructed on the sensitivity of the area. A survey report by the qualified biologist documenting and verifying compliance with the mitigation and with applicable state and federal regulations protecting birds shall be submitted to the City and County, depending on within which jurisdiction the



construction activity is occurring. The qualified biologist shall serve as a construction monitor during those periods when construction activities

37. **Cultural Resources.** Prior to issuance of a Certificate of Occupancy, the Project Applicant shall coordinate with the Department of Building and Safety to ensure that the following features have been incorporated into the Project:
- a. Low-pitched gable roof: All enclosures for mechanical equipment that must be placed on the roof should avoid visibility from the primary façade or the main view from the northwest corner of the former Safeway building.
  - b. Exposed glulam roof beams, exposed at the gable ends, on the north façade eaves, and at the interior ceiling: Where unpainted, glulam beams shall remain unpainted in order to show the striations of the layers of wood. This applies chiefly to the interior, as the exterior beam ends have been painted.
  - c. Interior beams should remain exposed. If they are covered, the treatment should be reversible in accordance with Standard #2.
  - d. Unornamented buff-colored brick veneer with raked horizontal joints: The brick of the front façade that has been poorly patched in limited areas on the façade and planters shall be cleaned of excess mortar and the bricks re-set properly to match adjacent unaltered surfaces and mortar joints. Any new brick that is needed for repairs should be salvaged from the smaller buildings on the site that were built concurrently of the same materials but which were determined not to be historic resources.
  - e. Painted concrete wall panels: The essential character of the closed façade marked by concrete structural bays shall remain.
  - f. Floor-to-ceiling window arrangement at the entrance to the primary (east) façade: This area shall maintain the same configuration. The non-original fenestration shall be replaced. No changes to the arrangement of brick features on the primary façade shall occur.
  - g. Pattern of punched rectangular windows with obscure glass in multiple colors at the primary facades: Salvage and reuse the colored glass, which is an original feature. Source similar glass where panes may be broken. Remount original glass in original openings with a new sealant or putty as appropriate to maintain historic appearance of this feature.
38. **Hazards and Hazardous Materials.** Prior to issuance of a demolition permit for buildings located on OU2 and OU3 of the Project site, the Project Applicant shall submit a “No Further Action” letter issued by DTSC to the Department of Building and Safety.
39. **Noise.**
- a. All powered construction equipment shall be equipped with exhaust mufflers or other suitable noise reduction devices capable of achieving a sound attenuation of at least 3 dBA. On-site power generators shall either be plug-in electric or solar powered.

- b. Temporary sound barriers capable of achieving a sound attenuation of at least 5 dBA shall be erected along the Project's northern, eastern, and southern boundaries.
40. **Tribal Cultural Resources.** During the course of any ground disturbance activities, the applicant, or their agent, shall retain a professional Native American monitor(s). Ground disturbance activities shall include the following: excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling, removing peat, clearing, pounding posts, auguring, backfilling, blasting, stripping topsoil or a similar activity. Monitoring of the project site during ground disturbance activities shall comply with the following:
- a. All powered construction equipment shall be equipped with exhaust mufflers or other suitable noise reduction devices capable of achieving a sound attenuation of at least 3 dBA. On-site power generators shall either be plug-in electric or solar powered.
  - b. The Project Applicant, or their agent, shall obtain a professional Native American monitor, or monitors, by contacting the Gabrieleno Band of Mission Indians. Prior to the issuance of a grading permit, evidence shall be provided to the Department of City Planning that monitor(s) have been obtained;
  - c. A monitor shall be secured for each grading unit. In the event that there are simultaneous grading units operating at the same time, there shall be one monitor per grading unit;
  - d. In the event that subsurface archaeological resources, human remains, or other tribal cultural resources are encountered during the course of ground disturbance activities, all such activities shall temporarily cease on the project site until the archaeological or other tribal cultural resources are assessed and subsequent recommendations are determined by a qualified archaeologist. In the event that human remains are discovered, there shall be no disposition of such human remains, other than in accordance with the procedures and requirements set forth in California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98, including the required notification to the County Coroner and the Native American Heritage Commission;
  - e. In the event that subsurface resources are encountered during the course of ground disturbance activities, the qualified archaeologist on site shall specify a radius around where resources were encountered to protect such resources until the procedures and requirements set forth in California Health and Safety Code Section 7050.5 and Public Resources Code Section 5097.98 have been fulfilled. Project activities may continue outside of the designated radius area.
  - f. Copies of any subsequent prehistoric archaeological study, tribal cultural resources study or report, detailing the nature of any significant tribal cultural resources, remedial actions taken, and disposition of any significant tribal cultural resources shall be submitted to the South Central Coastal Information Center (SCCIC).

#### **Administrative Conditions of Approval**

41. **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.

42. **Code Compliance.** Area, height and use regulations of the C2, CM, and M1 zone classifications of the subject property shall be complied with, except where herein conditions are more restrictive.
43. **Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent property owners, heirs or assign. The agreement must be submitted to the Department of City Planning for approval before being recorded. After recordation, a copy bearing the Recorder's number and date shall be provided to the Department of City Planning for attachment to the file.
44. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public officials, legislation or their successors, designees or amendment to any legislation.
45. **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.
46. **Building Plans.** A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.
47. **Expediting Processing Section.** Prior to the clearance of any conditions, the applicant shall show that all fees have been paid to the Department of City Planning Expedited Processing Section.
48. **Indemnification and Reimbursement of Litigation Costs.**

Applicant shall do all of the following:

- a. 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.
- b. 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.
- c. 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 \$50,000. 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 (b).

- d. 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 (b).
- e. If the City determines it necessary to protect the City's interests, 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, commission, 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.