

## CONDITIONS OF APPROVAL

As modified by the City Planning Commission May 10, 2018

Pursuant to Section 12.22 A.25, 12.24 W.1, and 16.05 of the Los Angeles Municipal Code, the following conditions are hereby imposed upon the use of the subject property:

### Development Conditions

1. **Site Development.** The use and development of the property shall be in substantial conformance with the plans submitted with the application and marked Exhibit "A", except as may be revised as a result of this action.
2. **Residential Density.**
  - a. The project shall be limited to a maximum density of 122 dwelling units, of which 11 percent shall be set aside as Restricted Affordable Units. The Restricted Affordable Units shall be in compliance with Condition No. 18.
  - b. Live/Work Residential Units. All dwelling units shall comply with the live/work requirements of Section 419 of the Building Code and provide a minimum average size of 750 square feet per unit. Each unit shall provide a minimum 150 square-foot open workspace area.
3. **Non-Residential Space.**
  - a. A maximum of 9,500 square feet of commercial space, including a maximum of 3,555 square feet of restaurant floor area and 3,245 square feet of retail space may be permitted. Changes of use which adjust the maximum permitted square-footage may be permitted provided that the combination of commercial uses comply with a memo dated July 14, 2016, from the Department of Transportation. Compliance with the memo dated July 14, 2016, shall be determined by the Department of Transportation.
  - b. A minimum of 5,885 square feet of floor area shall be utilized as a Resident Arts Production / Gallery space, as shown on plans stamped Exhibit A.
4. **Floor Area.** The total floor area shall not exceed 129,440 square feet of floor area, as shown on Exhibit "A".
5. **Height.** The building shall not exceed a height of 85 feet.
6. **Parking.** The number of automobile parking spaces shall be provided in compliance with LAMC Section 12.21 A.4, 12.22 A.25, and/or applicable state law(s).
  - a. Residential automobile parking may be provided consistent with AB 744, which permits a maximum of 0.5 parking spaces per bedroom, provided that 11 percent of the dwelling units are set aside for Very-Low Income Households; otherwise, parking shall be provided consistent with LAMC Section 12.22 A,25(d).
  - b. **Unbundled Parking Spaces.**
    - i. The project shall provide unbundled parking leases for residential units and commercial tenants. Tenants shall have the option to lease parking spaces separately from the residential dwelling units or commercial tenant space, or to opt out of leasing parking spaces.

- ii. Unbundled parking leases for those units set aside as Restricted Affordable Units shall be provided in compliance with LAMC Section 12.22 A.25(d).
  - c. **Electric Vehicle Parking.** The project shall include at least twenty percent (20%) of total parking spaces provided for all types of parking facilities as capable of supporting future electric vehicle supply equipment (EVSE). Plans shall indicate the proposed type and location(s) of EVSE and also include raceway method(s), wiring schematics and electrical calculations to verify that the electrical system has sufficient capacity to simultaneously charge all electric vehicles at all designated EV charging locations at their full rated amperage. Plan design shall be based upon Level 2 or greater EVSE at its maximum operating capacity. Five (5) percent of the total parking spaces shall be further provided with EV chargers to immediately accommodate electric vehicles within the parking areas. When the application of either the 20% or 5% results in a fractional space, round up to the next whole number. A label stating "EVCAPABLE" shall be posted in a conspicuous place at the service panel or subpanel and next to the raceway termination point.
  - d. **Future Reuse of Parking Areas.** The project shall be designed such that the parking areas on the ground level may be converted to non-residential uses if, due to changed circumstances, such areas are not needed to meet the project's parking demand. Any such conversion shall be subject to any required entitlement approval and applicable environmental clearance under the California Environmental Quality Act.
  - e. **Bicycle Parking.** Bicycle parking spaces shall be provided in compliance with LAMC Section 12.21 A.4 and 16, as in effect on May 9, 2018 (Ord. No. 185,480). A minimum of 105 bicycle parking spaces shall be provided. Short-term bicycle parking spaces may be provided within the public right-of-way, subject to the approval of the Bureau of Public Works.
  - f. **Driveways.** Driveways shall be limited to two on Decatur Street. Driveway widths shall be the minimum permitted by the Los Angeles Department of Transportation.
7. **Sustainability.**
- a. The project shall comply with the Los Angeles Municipal Green Building Code, Section 95.05.211, to the satisfaction of the Department of Building and Safety.
  - b. Prior to the issuance of Certificate of Occupancy, the applicant shall install rooftop solar panels. Total solar panel area shall be equivalent to ten percent of the existing rooftop area of the building or more.
8. **Mechanical Equipment.** All mechanical equipment shall be fully screened from view of any abutting properties and the public right-of-way.
9. **Trash/Storage.** All trash collecting and storage areas shall be located on-site and not visible from the public right-of-way.
- a. Trash receptacles shall be enclosed and/or covered at all times.
  - b. Trash/recycling containers shall be locked when not in use.

10. **River Implementation Overlay (LA-RIO).** Prior to the issuance of building permits, the applicant shall obtain approval of a LA-RIO Administrative Clearance from the Department of City Planning.
11. **Materials and Glazing.** Materials, surfaces, and glazing shall be in substantial conformance with Exhibit "A". Window dimensions shall be in substantial conformance with Sheets A200, A201, A202, and A203 of Exhibit "A". The art wall on the western façade shall be limited to painted geometric shapes, as shown on Exhibit "A", and shall include colored glass.
12. **Ground Floor Transparency.** The ground floor shall allow visibility from sidewalk areas into the interior of all commercial uses. Windows shall be free of signs or other obstructions. Clear and non-reflective glass allowing a minimum of 90 percent light transmission shall be used, unless considered a safety hazard.
13. **Signage.** No signage has been approved as part of this action. Any proposed signage shall be pedestrian scaled and comply with the applicable regulations of the Municipal Code.
14. **Landscaping.**
  - a. Landscaping shall be in substantial conformance with Exhibit "A". The south and east façades on the ground floor of the building shall include vines or other vegetation to cover the blank walls.
  - b. A minimum of 31 trees shall be provided, in accordance with Exhibit "A". A minimum of six street trees shall be provided, subject to approval by the Urban Forestry Division of the Bureau of Street Services. Additionally, the trees in the second-floor courtyard and seventh-floor outdoor garden shall be subject to the following requirements:
    - i. The minimum depth of tree wells shall be as follows:
      1. Minimum depth for trees shall be 42 inches
      2. Minimum depth for shrubs shall be 30 inches.
      3. Minimum depth for herbaceous plantings and ground cover shall be 18 inches.
      4. Minimum depth for an extensive green roof shall be 3 inches.
    - ii. The minimum amount of soil volume for tree wells shall be based on the size of the tree at maturity:
      1. 600 cubic feet for a small tree (less than 25 feet tall at maturity).
      2. 900 cubic feet for a medium tree (25-40 feet tall at maturity).
      3. 1,200 cubic feet for a large tree (more than 40 feet tall at maturity).
  - c. The project shall be constructed with an operable recycled water pipe system for onsite greywater use, to be served from onsite non-potable water sources such as showers, washbasins, or laundry and to be used as untreated subsurface irrigation for vegetation or for cooling equipment. The system specifics shall be required as determined feasible by DWP in consultation with DCP.
15. **School Notification.** The developer and contractors shall maintain ongoing contact with the administrator(s) of Metropolitan Continuation High School. The administrative offices shall be contacted when demolition, grading, and construction activities begin on the project site so that students and their parents will know when such activities are to occur. The developer shall obtain school walk and bus routes to the schools from either the administrators or from the LAUSD's Transportation Branch (323) 342-1400 and guarantee that safe and convenient pedestrian and bus routes to the school be maintained.

### **Density Bonus Conditions**

16. **Affordable Units.** A minimum of 14 units, that is 11 percent of the base dwelling units, shall be reserved as affordable units, as defined by the State Density Bonus Law 65915 (c)(1) or (c)(2).
17. **Changes in Restricted Units.** Deviations that increase the number of restricted affordable units or that change the composition of units or change parking numbers shall be consistent with LAMC Section 12.22 A.25 (9a-d).
18. **Housing Requirements.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of the Los Angeles Housing and Community Investment Department (HCIDLA) to make 14 units available to Very Low Income Households, for rental as determined to be affordable to such households by HCIDLA for a period of 55 years. Enforcement of the terms of said covenant shall be the responsibility of HCIDLA. The applicant will present a copy of the recorded covenant to the Department of City Planning for inclusion in this file. The project shall comply with any monitoring requirements established by the HCIDLA. Refer to the Density Bonus Legislation Background section of this determination.
19. **Incentives and Waivers of Development Standards.**
  - a. **Open Space.** The project may provide a minimum of 10,393 square feet of open space, as defined by LAMC Section 12.21 G.

All open areas not used for buildings, driveways, parking areas, recreational facilities or walks shall be attractively landscaped, including an automatic irrigation system, and maintained in accordance with a landscape plan prepared by a licensed landscape architect or licensed architect, and submitted for approval to the Department of City Planning. The landscape plan shall indicate landscape points for the project equivalent to 10% more than otherwise required by LAMC 12.40 and Landscape Ordinance Guidelines "O".
  - b. **Side Yard.** The easterly side yard along may have a minimum width of 5 feet as shown on Exhibit "A", in lieu of 10 feet.
  - c. **Rear Yard.** The rear yard may have a minimum width of 5 feet as shown on Exhibit "A", in lieu of 19 feet.

### **Conditional Use for the Sale and Dispensing of On-Site Alcoholic Beverages**

20. Authorized herein is the sale and dispensing of a full line of alcoholic beverages for on-site consumption, in conjunction with a proposed 3,555 square-foot restaurant with 1,050 square-foot outdoor patio, subject to the following limitations:
  - a. The hours of operation shall be limited to 7 a.m. to 2 a.m., daily.
  - b. Indoor seating shall be limited to a maximum of 80 seats provided that number of seats does not exceed the maximum allowable occupant load as determined by the Department of Building and Safety and Fire Department.
  - c. Outdoor seating shall be limited to a maximum of 42 seats. A Revocable Permit from the Bureau of Engineering, Department of Public Works is required for any outdoor dining located in the public right-of-way.
  - d. No after-hour use is permitted, except routine clean-up. This includes but is not limited

to private or promotional events, special events, excluding any activities which are issued film permits by the City.

21. MViP – Monitoring Verification and Inspection Program. Prior to the utilization of this grant, fees required per L.A.M.C section 19.01 E (3) for Monitoring of Conditional Use Permits and Inspection and Field Compliance Review of Operations shall be paid to the City. Within 12 to 18 months from the beginning of operations or issuance of a Certificate of Occupancy, a City inspector will 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 included in the administrative file. The owner/operator shall be notified of the deficiency or violation and 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, may result in additional corrective conditions imposed by the Director of Planning.
22. Prior to the utilization 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 Department of City Planning for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided for inclusion in case file. Fees required per L.A.M.C section 19.01 E (3) for Monitoring of Conditional Use Permits and Inspection and Field Compliance Review of Operations shall be paid to the City prior to the final clearance of this condition.
23. 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 including the conditions required herewith has been provided to the prospective owner/operator shall be submitted to the Department of City Planning 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 Department of City Planning within 30-days of the beginning day of his/her new operation of the establishment along with any proposed modifications to the existing the floor plan, seating arrangement or number of seats of the new operation.
24. The Director of Planning 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 documented evidence be submitted showing a continued violation(s) 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, and a 500-foot notification radius, shall be submitted to the Department of City Planning 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 Director of Planning may modify, add or delete conditions, and if warranted, reserves the right to conduct this public hearing for nuisance abatement/revocation purposes.

25. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
26. Prior to the utilization of this grant, the applicant shall prepare a security plan which shall be submitted to the Police Department's Central Area's Vice Section for review and approval. The security plan shall address security measures applicable to the restaurant.
27. Prior to the utilization of this grant, surveillance cameras shall be installed which cover all common areas of the venues, including all high-risk areas, entrances and exits to each tenant space, including cameras that provide a view of the street.
28. Prior to the utilization of this grant, an electronic age verification device shall be purchased and retained on the premises to determine the age of any individual attempting to purchase alcoholic beverages and shall be installed on at each point-of-sales location. This device shall be maintained in operational condition and all employees shall be instructed in its use.
29. No conditional use for dancing has been requested or approved herein. Dancing is prohibited.
30. There shall be no use of the subject premises which involves Section 12.70 of the Los Angeles Municipal Code uses (Adult Entertainment).
31. The applicant shall maintain on the premises and present upon request to the Police or other enforcement agency, a copy of the Business Permit, Insurance Information, and valid emergency contact phone number for any Valet Service utilized and for any Security Company Service employed.
32. The applicant shall be responsible for maintaining the area adjacent to the premises over his/her control free of litter.
33. The applicant and tenant(s) shall monitor the areas under their control to prevent loitering of persons around their venues.
34. The property owner/operator shall keep a log of complaints received, the date and time received, and the disposition of the response. This shall be available for inspection by the Department.

### **Environmental Conditions**

35. **Air Quality (Construction Equipment).** All off-road construction equipment greater than 50 hp shall meet U.S. EPA Tier 4 emission standards, where commercially available, to reduce NO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub> emissions at the Project site. In addition, all construction equipment shall be outfitted with Best Available Control Technology devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations. At the time of mobilization of each applicable unit of equipment, a copy of each unit's certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided.
36. **Air Quality (Haul Trucks).** The use of 2010 and newer diesel haul trucks (e.g., material delivery trucks and soil import/export) shall be required during Project construction and, if the City determines that 2010 model year or newer diesel trucks cannot be obtained, trucks

that meet U.S. EPA 2007 model year NO<sub>x</sub> emissions requirements shall be required. Haul trucks during the grading and excavation phase shall have a minimum capacity of 15 cubic yards per truck.

37. **Noise (Construction Staging).** The construction staging shall be as far from sensitive receptors as possible.
38. **Noise (Construction Power Equipment).** The Project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices capable of attenuating sound by 3 dBA or more. The power contractor shall use either plug-in electric or solar powered on-site generators to the extent feasible.
39. **Noise (Construction Sound Barriers).** Temporary sound barriers, capable of achieving a sound attenuation of at least 12 dBA (e.g., construction sound wall with sound blankets) and blocking the line-of-sight shall be installed between the Project Site and the Metropolitan Continuation High School classroom buildings and outdoor eating area to the south of the Project Site as well as between the Project Site and the Metropolitan Continuation High School trailer buildings to the east of the Project Site.
40. **Noise (Construction Notification).** Two weeks prior to commencement of construction, notification shall be provided to the off-site residential and school uses within 500 feet of the Project Site that discloses the construction schedule, including the types of activities and equipment that would be used throughout the duration of the construction period.
41. **Public Services.** The following recommendations of the Fire Department relative to fire safety shall be incorporated into the building plans, which includes the submittal of a plot plan for approval by the Fire Department either prior to the recordation of a final map or the approval of a building permit. The plot plan shall include the following minimum design features:
  - Fire lanes, where required, shall be a minimum of 20 feet in width;
  - All structures must be within 300 feet of an approved fire hydrant; and
  - Entrances to any dwelling unit or guest room shall not be more than 150 feet in distance in horizontal travel from the edge of the roadway of an improved street or approved fire lane.
42. **Public Services.** Prior to plan check review, the Project Applicant shall consult with the Los Angeles Fire Department regarding the installation of public and/or private fire hydrants, sprinklers, access, and/or other fire protection features within the Project. All required fire protection features shall be installed to the satisfaction of the Los Angeles Fire Department.
43. **Public Services (Police – Demolition/Construction Sites).** Fences shall be constructed around the site to minimize trespassing, vandalism, short-cut attractions and attractive nuisances.
44. **Public Services (Police – Demolition/Construction Sites).** The plans shall incorporate the design guidelines relative to security, semi-public and private spaces, which may include but not be limited to access control to building, secured parking facilities, walls/fences with key systems, well-illuminated public and semi-public space designed with a minimum of dead space to eliminate areas of concealment, location of toilet facilities or building entrances in high-foot traffic areas, and provision of security guard patrol throughout the project site if needed. Please refer to “Design Out Crime Guidelines: Crime Prevention Through Environmental Design”, published by the Los Angeles Police Department. Contact

the Community Relations Division, located at 100 W. 1st Street, #250, Los Angeles, CA 90012; (213) 486-6000. These measures shall be approved by the Police Department prior to the issuance of building permits.

#### 45. **Transportation/Traffic.**

- A Construction work site traffic control plan shall be submitted to DOT for review and approval in accordance with the LAMC prior to the start of any construction work. The plans shall show the location of any roadway or sidewalk closures, traffic detours, haul routes, hours of operation, protective devices, warning signs and access to abutting properties. All construction related traffic shall be restricted to off-peak hours.
- All delivery truck loading and unloading shall take place on site.
- The Applicant shall plan construction and construction staging as to maintain pedestrian access on adjacent streets 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.
- Temporary pedestrian facilities shall 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.
- Covered walkways shall be provided where pedestrians are exposed to potential injury from falling objects.
- 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.

#### 46. **Tribal Cultural Resources.**

In the event that objects or artifacts that may be tribal cultural resources are encountered during the course of any ground disturbance activities<sup>1</sup>, all such activities shall temporarily cease on the project site until the potential tribal cultural resources are properly assessed and addressed pursuant to the process set forth below:

- a. Upon a discovery of a potential tribal cultural resource, the project Permittee shall immediately stop all ground disturbance activities and contact the following: (1) all California Native American tribes that have informed the City they are traditionally and culturally affiliated with the geographic area of the proposed project; (2) and the Department of City Planning at (213) 978-1454.
- b. If the City determines, pursuant to Public Resources Code Section 21074 (a)(2), that the object or artifact appears to be tribal cultural resource, the City shall provide any effected tribe a reasonable period of time, not less than 14 days, to conduct a site visit and make recommendations to the Project Permittee and the City regarding the monitoring of future ground disturbance activities, as well as the treatment and disposition of any discovered tribal cultural resources.

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<sup>1</sup> Ground disturbance activities shall include the following: excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling, removing peat, clearing, pounding posts, augering, backfilling, blasting, stripping topsoil or a similar activity.



- c. The project Permittee shall implement the tribe's recommendations if a qualified archaeologist, retained by the City and paid for by the project Permittee, reasonably concludes that the tribe's recommendations are reasonable and feasible.
- d. The project Permittee shall submit a tribal cultural resource monitoring plan to the City that includes all recommendations from the City and any effected tribes that have been reviewed and determined by the qualified archaeologist to be reasonable and feasible. The project Permittee shall not be allowed to recommence ground disturbance activities until this plan is approved by the City.
- e. If the project Permittee does not accept a particular recommendation determined to be reasonable and feasible by the qualified archaeologist, the project Permittee may request mediation by a mediator agreed to by the Permittee and the City who has the requisite professional qualifications and experience to mediate such a dispute. The project Permittee shall pay any costs associated with the mediation.
- f. The project Permittee may recommence ground disturbance activities outside of a specified radius of the discovery site, so long as this radius has been reviewed by the qualified archaeologist and determined to be reasonable and appropriate.
- g. 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) at California State University, Fullerton.
- h. Notwithstanding the above, any information determined to be confidential in nature, by the City Attorney's office, shall be excluded from submission to the SCCIC or the general public under the applicable provisions of the California Public Records Act, California Public Resources Code, and shall comply with the City's AB 52 Confidentiality Protocols.

#### **47. Utilities (Local Water Supplies - Landscaping)**

In addition to the requirements of the Landscape Ordinance, the landscape plan shall incorporate the following:

- Weather-based irrigation controller with rain shutoff
- Matched precipitation (flow) rates for sprinkler heads
- Drip/microspray/subsurface irrigation where appropriate
- Minimum irrigation system distribution uniformity of 75 percent
- Proper hydro-zoning, turf minimization and use of native/drought tolerant plant materials
- Use of landscape contouring to minimize precipitation runoff
- A separate water meter of (submeter), flow sensor, and master valve shutoff shall be installed for existing and expanded irrigated landscape areas totaling 5,000 square feet and greater.

#### **48. Utilities (Local Water Supplies - All New Construction)**

- Install high-efficiency toilets (maximum 1.28 gpf), including dual-flush water closets, and high-efficiency urinals (maximum 0.5 gpf), including no-flush or waterless urinals, in all restrooms as appropriate.
- Install restroom faucets with a maximum flow rate of 1.5 gallons per minute.
- Single-pass cooling equipment shall be strictly prohibited from use. Prohibition of such equipment shall be indicated on the building plans and incorporated into tenant lease agreements. (Single-pass cooling refers to the use of potable water to extract heat from process equipment, e.g. vacuum pump, ice machines, by passing the water through equipment and discharging the heated water to the sanitary wastewater system.)

49. **Utilities (Local Water Supplies – New Commercial or Industrial).** All commercial restroom faucets shall be of a self-closing design.
50. **Utilities (Local Water Supplies – New Residential)**
- Install no more than one showerhead per shower stall, having a flow rate no greater than 2.0 gallons per minute.
  - Install and utilize only high-efficiency clothes washers (water factor of 6.0 or less) in the project, if proposed to be provided in either individual units and/or in a common laundry room(s). If such appliance is to be furnished by a tenant, this requirement shall be incorporated into the lease agreement, and the Applicant shall be responsible for ensuring compliance.

### **Administrative Conditions**

51. **Approvals, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, reviews 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
52. **Code Compliance.** All area, height and use regulations of the zone classification of the subject property shall be complied with, except wherein these conditions explicitly allow otherwise.
53. **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.
54. **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.
55. **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.
56. **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.
57. **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 pursuant to Section 12.27.1 of the Municipal Code, to impose additional corrective conditions, if, in the Commission's or Director's opinion, such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.

**58. 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 (ii).
- 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 in paragraph (ii).
- e. 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 include 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.

**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 grant, 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.

- There shall be no exterior window signs of any kind or type promoting alcoholic products.
- The alcoholic beverage license for the restaurants shall not be exchanged for “public premises” license unless approved through a new conditional use authorization. “Public Premises” is defined as a premise maintained and operated for sale or service of alcoholic beverages to the public for consumption on the premises, and in which food is not sold to the public as a bona fide eating place.
- Alcohol sales and dispensing for on-site consumption shall only be served by employees.
- No person under the age of 21 years shall sell or deliver alcoholic beverages.
- There shall not be a requirement to purchase a minimum number of drinks.