

CONDITIONS OF APPROVAL

As modified by the City Planning Commission on November 8, 2018

Entitlement Conditions

1. **Use.** Authorized herein is a 218,778 square-foot industrial/office development with museum, retail coffee shop and drive-thru.
 - a. **Commercial Office.** A maximum of 90,054 square feet of commercial office floor area shall be permitted.
 - b. **Warehouse.** A maximum of 50,775 square feet of warehouse floor area shall be permitted.
 - c. **Manufacturing.** A maximum of 53,762 square feet of manufacturing floor area shall be permitted.
 - d. **Coffee Shop/Retail:** A maximum of 2,200 square feet of coffee shop/retail shall be permitted.
2. **Automobile Parking.** Automobile parking shall be provided consistent with LAMC Section 12.21-A,4.
3. **Above-Grade Parking.** Above-grade parking levels shall have an external screen integrated into the architecture and be designed to improve the building's appearance and minimize light pollution while meeting code requirements for ventilation. In the event art mural(s) are installed on the building facade to screen parking, they shall be in compliance with all applicable City regulations, pursuant to Section 22.119 of the Los Angeles Administrative Code and including approval from the Department of Cultural Affairs.
4. **Electric Vehicle Parking.** The project shall include at least 20 percent of the total code-required parking spaces 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 ampacity. 5 percent of the total code required parking spaces shall be further provided with EV chargers to immediately accommodate electric vehicles within the parking areas. When the application of either the required 20 percent or 5 percent 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.
5. **Bicycle Parking.** Bicycle parking shall be provided consistent with LAMC Sections 12.21-A,4 and 12.21-A,16. All bicycle parking shall have delineated access separate and apart from vehicular activity to promote a safe path of travel.
6. **Bicycle Parking Signage.** Prominent directional signage shall be installed to direct bicyclists to the location of the project's short term and long term bicycle parking spaces.
7. **Pedestrian Path of Travel.** A dedicated pedestrian path of travel shall be maintained that connects Jefferson Boulevard to the entrance of Building A and Building B.

8. Department of Transportation.

- a. A minimum of 60-foot reservoir space be provided between any ingress security gate(s), ticket dispenser, and/or guard booth and the property line.
- b. A parking area and driveway plan be submitted to the Citywide Planning Coordination Section of the Department of Transportation for approval prior to submittal of building permit plans for plan check by the Department of Building and Safety. Transportation approvals are conducted at 201 N. Figueroa Street, Room 550. For an appointment, call 213-482-7024.

9. Fire Department. Prior to the issuance of building permit, a plot plan shall be submitted to the Fire Department for approval.**10. Solar Panels.** A minimum of 8,000 cumulative square feet of solar panels shall be installed on the project's rooftop space to be connected to the building's electrical system, in substantial conformance with the plans stamped "Exhibit A" and dated November 1, 2018.**11. Landscaping.** All open areas not used for buildings, driveways, parking areas, or walkways shall be attractively landscaped and maintained in accordance with a landscape plan and an automatic irrigation plan, prepared by a licensed Landscape Architect and to the satisfaction of the decision maker.**12. Mechanical Equipment.** All mechanical equipment on the roof shall be fully screened from view of any abutting properties and the public right-of-way.**13. Graffiti.** 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.**14. Trash/Storage.** All trash collection and storage areas shall be located on-site and not visible from the public right-of-way.

- a. Trash receptacles shall be stored in a fully enclosed building or structure, constructed with a solid roof, at all times.
- b. Trash/recycling containers shall be locked when not in use.

Environmental Conditions – Project Design Features**15. PDF-GHG-1: GHG Emissions Associated with Planning and Design.** The project must have measures to reduce storm water pollution, provide designated parking for bicycles and low-emission vehicles, have wiring for electric vehicles, reduce light pollution, and design grading and paving to keep surface water from entering buildings. These measures would include:

- a. Design features to maximize the capture and reuse of storm water during construction and operations.
- b. Inclusion of bicycle parking facilities on-site.
- c. Inclusion of electric conduits that provide the opportunity for electric vehicle charging facilities any time in the future.

- d. Implementation of best practices for managing storm water drainage and retention during construction (Green Building ordinance Section 99.04.106.2)
- e. Access to several public transportation lines. (Culver City Bus operates bus services on Jefferson Boulevard and Los Angeles County Metropolitan Transportation Authority operates several routes on La Cienega Boulevard and nearby arterials as well as a nearby Metro Expo Line station.)
- f. Located near residential neighborhoods. The project site's proximity to residential neighborhoods increases the likelihood that more travel to and from the development could be made by non-motorized modes that would reduce potential GHG emissions.

Enforcement Agency: Los Angeles Department of Building and Safety

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Pre-construction

Monitoring Frequency: Once, at plan check

Action Indicating Compliance: Plan approval

16. **PDF-GHG-2: GHG Emissions Associated with Energy Demand.** The project must meet Title 24 2013 standards and include Energy Star appliances, have pre-wiring for future solar facilities, and off-grid pre-wiring for future solar facilities. This includes: Use of low-emitting paints, adhesives, carpets, coating, and other materials.

- a. Equipment and fixtures will comply with the following where applicable:
 - a. All installed gas-fired space heating equipment will have an Annual Fuel Utilization Ratio of .90 or higher.
 - b. All installed electric heat pumps will have a Heating Seasonal Performance Factor of 8.0 or higher.
 - c. All installed cooling equipment will have a Seasonal Energy Efficiency Ratio higher than 13.0 and an Energy Efficiency Ratio of at least 11.5.
 - d. All installed tank type water heaters will have an Energy Factor higher than .6.
 - e. All installed tankless water heaters will have an Energy Factor higher than .80.
 - f. Perform duct leakage testing to verify a total leakage rate of less than 6 percent of the total fan flow.
 - g. Building lighting in the kitchen and bathrooms will consist of at least 90 percent ENERGY STAR qualified hard-wired fixtures (luminaires).
- b. An electrical conduit will be provided from the electrical service equipment to an accessible location in the attic or other location suitable for future connection to a solar system. The conduit shall be adequately sized by the designer but shall not be less than one inch. The conduit shall be labeled as per the Los Angeles Fire Department requirements. The electrical panel shall be sized to accommodate the installation of a future electrical solar system.
- c. A minimum of 250 square feet of contiguous unobstructed roof area will be provided for the installation of future photovoltaic or other electrical solar panels. The location shall be suitable for installing future solar panels as determined by the designer.
- d. All appliances will meet ENERGY STAR if an ENERGY STAR designation is applicable for that appliance.

Enforcement Agency: Los Angeles Department of Building and Safety

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Pre-construction
Monitoring Frequency: Once, at plan check
Action Indicating Compliance: Plan approval

17. **PDF-GHG-3: GHG Emissions Associated with Water Use.** The project would be required to provide a schedule of plumbing fixtures and fixture fittings that reduce potable water use within the development by at least 20 percent. It must also provide irrigation design and controllers that are weather- or soil moisture-based and automatically adjust in response to weather conditions and plants' needs. Wastewater reduction measures must be included that help reduce outdoor potable water use. This would include:
- a. A schedule of plumbing fixtures and fixture fittings that will reduce the overall use of potable water within the building by at least 20 percent shall be provided. The reduction shall be based on the maximum allowable water use per plumbing fixture and fitting as required by the California Building Standards Code. The 20 percent reduction in potable water use shall be demonstrated by one of the following methods:
 - a. Each plumbing fixture and fitting shall meet reduced flow rates specified on Table 4.303.2; or
 - b. A calculation demonstrating a 20 percent reduction in the building "water use" baseline will be provided.
 - b. When single shower fixtures are served by more than one showerhead, the combined flow rate of all the showerheads will not exceed specified flow rates.
 - c. When automatic irrigation system controllers for landscaping are provided and installed at the time of final inspection, the controllers shall comply with the following:
 - a. Controllers shall be weather- or soil moisture-based controllers that automatically adjust irrigation in response to changes in plants' needs as weather conditions change;
 - b. Weather-based controllers without integral rain sensors or communication systems that account for local rainfall shall have a separate wired or wireless rain sensor that connects or communicates with the controller(s).

Enforcement Agency: Los Angeles Department of Building and Safety
Monitoring Agency: Los Angeles Department of Building and Safety
Monitoring Phase: Pre-construction
Monitoring Frequency: Once, at plan check
Action Indicating Compliance: Plan approval

18. **PDF-GHG-4: GHG Emissions Associated with Solid Waste Generation.** The project is subject to construction waste reduction of at least 50 percent. In addition, project site operations are subject to AB 939 requirements to divert 50 percent of solid waste to landfills through source reduction, recycling, and composting. The project is required by the California Solid Waste Reuse and Recycling Access Act of 1991 to provide adequate storage areas for collection and storage of recyclable waste materials.

Enforcement Agency: Los Angeles Department of Building and Safety
Monitoring Agency: Los Angeles Department of Building and Safety
Monitoring Phase: Pre-construction
Monitoring Frequency: Once, at plan check
Action Indicating Compliance: Plan approval

19. **PDF-GHG-5: GHG Emissions Associated with Environmental Quality.** The project must meet strict standards for any fireplaces and woodstoves, covering of duct openings and protection of mechanical equipment during constructions, and meet other requirements for reducing emissions from flooring systems, any CFC and halon use, and other project amenities. This would include:
- Openings in the building envelope separating conditioned space from unconditioned space needed to accommodate gas, plumbing, electrical lines and other necessary penetrations must be sealed in compliance with the California Energy Code.
 - Provide flashing details on the building plans which comply with accepted industry standards or manufacturer's instructions around windows and doors, roof valley, and chimneys to roof intersections.

Enforcement Agency: Los Angeles Department of Building and Safety

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Pre-construction

Monitoring Frequency: Once, at plan check

Action Indicating Compliance: Plan approval

20. **PDF-NOI-1:** All HVAC units shall be mounted on the rooftop of the proposed buildings and shall be screened from view by parapets and/or walls, as well as being provided with proper shielding to reduce noise levels. The shielding to be installed around these systems shall reduce noise levels by a minimum of 15 dBA.

Enforcement Agency: Los Angeles Department of Building and Safety

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Pre-Construction and Operation

Monitoring Frequency: Once, at plan check, and once during field inspection

Action Indicating Compliance: Issuance of building permits, and issuance of Certificate of Occupancy

Environmental Conditions – Mitigation Measures

21. **MM-AQ-1: Air Quality.** The construction contractor shall use low-VOC architectural coatings of 50 grams per liter or less on both interior and exterior surfaces.

Enforcement Agency: Los Angeles Department of Building and Safety; SCAQMD

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Construction

Monitoring Frequency: Periodic field inspections during construction

22. **MM-CUL-1: Cultural Resources.** If any paleontological materials are encountered during the course of Project development, work in the area shall be halted. A qualified paleontologist shall be retained to perform periodic inspections of excavation and grading activities of the Project Site. The frequency of inspections shall be based on consultation with the paleontologist and shall depend on the rate of excavation and grading activities, the materials being excavated, and if found, the abundance and type of fossils encountered. If paleontological materials are encountered, the paleontologist shall be allowed to temporarily divert or redirect grading and excavation activities in the area of the exposed material to facilitate evaluation and, if appropriate, salvage. The paleontologist shall assess the discovered material(s) and prepare a survey, study, or report evaluating the impact. The Applicant shall comply with the recommendations of the evaluating paleontologist, as

contained in the survey, study or report, and a copy of the paleontological survey, study or report shall be submitted to the Los Angeles County Natural History Museum. Ground-disturbing activities may resume once the paleontologist's recommendations have been implemented to the satisfaction of the paleontologist.

Enforcement Agency: Los Angeles Department of Building and Safety

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Pre-construction and construction

Monitoring Frequency: During field inspection

Action Indicating Compliance: Plan approval

23. **MM-HAZ-1: Hazardous Materials.** Prior to the issuance of a building permit, a Remedial Action Plan (RAP) shall be prepared per DTSC guidelines and submitted to the DTSC for their review and approval. The RAP shall discuss various methods for site remediation (i.e., decontamination, removal, etc.) and include a Hazardous Waste Management Plan. On-site soil excavation personnel shall be licensed and trained to properly handle hazardous materials encountered at the site.

Enforcement Agency: Los Angeles Fire Department; Los Angeles Department of Building and Safety; California Department of Toxic Substances Control

Monitoring Agency: Los Angeles Fire Department; Los Angeles Department of Building and Safety; California Department of Toxic Substances Control

Monitoring Phase: Pre-operation

Monitoring Frequency: Once, for Plan approval prior to operation

Action Indicating Compliance: Plan approval prior to operation (Pre-operation)

24. **MM-NOI-1: Noise.** Prior to issuance of a grading permit, the construction contractor or its designees shall install temporary noise barriers at least 10 feet in height and capable of attenuating on-site construction noises by at least 6 dBA (e.g., 1" plywood with acoustical blankets). The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices. The construction contractor shall use on-site electrical sources or solar generators to power equipment rather than diesel generators where feasible.

Enforcement Agency: Los Angeles Department of Building and Safety

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Construction

Monitoring Frequency: Ongoing during field inspection

Action Indicating Compliance: Issuance of Certificate of Occupancy or Use of Land

25. **MM-NOI-2: Noise.** Trucks, including construction haul trucks and construction equipment and material delivery vehicles, shall avoid accessing residential streets and streets which pass by schools and other sensitive receptors identified above.

Enforcement Agency: Los Angeles Department of Building and Safety

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Construction

Monitoring Frequency: Ongoing during field inspection

Action Indicating Compliance: Issuance of Certificate of Occupancy or Use of Land

26. **MM-NOI-3: Noise.** Trucks, including construction haul trucks and construction equipment and material delivery vehicles, shall maintain a distance of no less than 50 feet from residences, parks, and other sensitive receptors identified above.

Enforcement Agency: Los Angeles Department of Building and Safety

Monitoring Agency: Los Angeles Department of Building and Safety

Monitoring Phase: Construction

Monitoring Frequency: Ongoing during field inspection

Action Indicating Compliance: Issuance of Certificate of Occupancy or Use of Land

27. **MM-TRA-1: Transportation and Traffic.** Measure(s) detailed in LADOT's communication to Department of City Planning (DOT Case No. CEN 18-46986, dated September 27, 2018) shall be complied with:

- a. Implement a Transportation Mitigation Program, consisting of a series of actions to reduce vehicle trips to and from the project site. For more detail on each of these actions, refer to Appendix G-1, Traffic Study of the Initial Study.
- b. **Transportation Demand Management (TDM).** The specific purpose of the project's TDM program would be to maximize the people - moving capability by increasing the number of persons in a vehicle, or by influencing the time of, or need to travel by motorized vehicle. To accomplish these types of changes in travel behavior, the TDM program must rely on incentives or disincentives to make these shifts in behavior attractive to employees.
- c. The goal of the project's TDM program would be to reduce the project's traffic by providing incentives to transit use, carpooling, vanpooling, ride – hailing and ride / bike sharing programs through TDM elements developed for project employees.
- d. A preliminary TDM program shall be prepared prior to the issuance of the building permits for the project with a final program prior to the issuance of the certificate of occupancy.
- e. **City Wide TDM Ordinance** The project would be required to comply with LAMC 12.26 - J to provide and maintain minimal TDM measures. In addition, as recommended by LADOT the final TDM program would include: a statement of measurable goals to be achieved; an estimate of trips to be reduced; key elements of the program; a schedule with responsibilities for funding and implementation; a method for program monitoring performance; and development of a contingency plan.
- f. **Advance the Complete Streets Concept** The concept of complete streets and its principles were advanced by California State Legislature by the adoption of the Complete Streets Act (AB 1358), which requires local jurisdictions to plan for a balanced and safe multimodal transportation network that meets the needs of all users of streets defined to include motorists, pedestrians and bicyclists.
- g. The Project Applicant would assist the City in establishing bicycle improvements to complement the nearby Expo Rail Line, the existing Jefferson Boulevard bike lanes and Ballona Creek Bike Path through (1) contributions to the City's Bicycle trust fund, or (2) development of a Bike Share System as part of the Metro Phase III Bike Share System expansion project.
- h. **Financial Contribution** – The Project Applicant could contribute a one-time fixed fee into the City's Bicycle Plan Trust fund to implement bicycle improvements within the area of

the proposed project. Amount of fee to be determined in consultation with LADOT and Council District 10 staff.

- i. **Bike Share System** - In May 2018, Metro Board approved the Phase III Bike Share expansion project which includes the project study area. Metro is currently seeking feedback as to locations to place Bike Share stations. The project site is a good location for a Bike Docking station because of its proximity to the Expo Rail Station, its adjacency to the Baldwin Hills Scenic Overlook State Park, the existing Jefferson bike lanes and Ballona Creek Bike Path.
- j. The City of Los Angeles is responsible for a 50% match of the capital costs for the system which would equate to approximately \$33,000 per bike station with 10 bikes (\$66,000 estimated cost per bike docking station). In-lieu of costly traffic signals or other similar vehicle enhancing infrastructure, the Project Applicant could participate in assisting the City by providing matching funds for a bike docking station.
- k. **Ride / Bike Sharing and Ride–Hailing Service** – Promoting and subsidizing ride sharing, bike sharing and ride-hailing services could provide the highest level of connection and flexibility between the project and the Expo Rail Station. Availability of shared mobility around major transit stations can allow transit riders to realize the last-mile first-mile connections quickly. Emerging application of smartphone technology in transportation is ride sharing apps such as Lyft and Uber. These apps match up vetted drivers with riders in an ad-hoc taxi-like system. Uber and Lyft now both offer carpooling services as well, and therefore have entered the “ride-sharing” space. The significant traffic impact at Jefferson Boulevard and National Boulevard could be mitigated by reducing single auto trips between the Expo Station and the project site using this multi-modal approach.
- l. **Street Improvements** – Street improvements are recommended at Rodeo Road at La Cienega Boulevard to address localized traffic congestion in the study area and the project’s morning traffic impacts. The Project Applicant would design and implement a restriping and signal modification to convert the existing Rodeo Road westbound right - turn lane at La Cienega Boulevard into a westbound through / right - turn lane. Should this mitigation measure be deemed infeasible or unacceptable - it should be noted that no on-street parking would be removed for this modification, the City may substitute an alternative measure of equivalent effectiveness, such as TSM measures described below.
- m. **Transportation System Management (TSM)** – Upgrade area-wide traffic signal equipment and hardware, e.g., newer Type 2070 traffic signal controllers for enhanced and real – time operation of the traffic signal timing, supplement vehicle detection with additional roadway system loops and closed - circuit television (CCTV) cameras; and lastly, upgrades to the ATSAC communications hub for the West Adams ATSAC system.
- n. These TSM upgrades provide a system-wide benefit by reducing vehicle delays. If found necessary, the project applicant will meet with LADOT staff to define the signal system package of upgrades that will serve as an effective substitute measure, in lieu of roadway striping and signal modifications to Rodeo Road and La Cienega Boulevard.

Enforcement Agency: Los Angeles Department of Building and Safety, Los Angeles
Department of Transportation

Monitoring Agency: Los Angeles Department of Building and Safety; Los Angeles
Department of Transportation

Monitoring Phase: Pre-Construction, Construction, Operation

Monitoring Frequency: Prior to issuance of a building permit; Ongoing during construction; Ongoing

Action Indicating Compliance: Issuance of Certificate of Occupancy or Land Use Permit

28. **MM-TCR-1: 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. 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;
- b. 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;
- c. 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;
- d. 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.
- e. 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).

Enforcement Agency: Department of City Planning, Los Angeles Department of Building and Safety

Monitoring Agency: Department of City Planning, Los Angeles Department of Building and Safety

Monitoring Phase: Pre-construction, Construction

Monitoring Frequency: Periodically during ground-disturbing activities

Action Indicating Compliance: Issuance of a building permit

Administrative Conditions of Approval

29. **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.
30. **Code Compliance.** Area, height and use regulations of the zone classification of the subject property shall be complied with, except where herein conditions are more restrictive.
31. **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.
32. **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.
33. **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.
34. **Building Plans.** Page 1 of the grants and all the conditions of approval shall be printed on the building plans submitted to the Department of City Planning and the Department of Building and Safety.
35. **Corrective Conditions.** The authorized use shall be conducted at all time with due regards to 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.
36. **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.
37. **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.