

**CONDITIONS OF APPROVAL**  
**(As Modified by the City Planning Commission on June 14, 2018)**

Pursuant to Sections 12.24 W.1, 12.24 W.24, 12.27, 12.28, and 16.05 of the Los Angeles Municipal Code, the following conditions are hereby imposed upon the use of the subject property:

1. Site Plan. Except as modified herein, the use and development of the property shall be in substantial conformance with the plans and material stamped "Exhibit A" dated September 4, 2018, and attached to the subject file. No changes to the plans will be made without prior review by the Department of City Planning Project Planning Division and written approval by the Director of Planning. Each change shall be identified and justified in writing. Minor deviations may be allowed in order to comply with the provision of the Los Angeles Municipal Code or the project conditions.
2. All other use, height and area regulations of the Municipal Code and all other applicable government / regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.
3. All graffiti on-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.
4. Posting of Construction Activities. A visible and readable sign (at a distance of 50 feet) shall be posted on the construction site identifying a telephone number for inquiring about the construction process and to register complaints.
5. Truck Traffic Restricted Hours. Truck traffic directed to the project site for the purpose of delivering construction materials or construction-machinery shall be limited to the hours beginning at 7:00 a.m. and ending at 4:00 p.m., Monday through Friday. No truck deliveries for construction shall occur outside of that time period. No construction truck staging related to such deliveries to the project site shall occur on any adjacent streets.
6. Maintenance. The subject property (including any trash storage areas, associated parking facilities, sidewalks, driveways, yard areas, parkways, and exterior walls along the property lines) shall be maintained and kept free of trash and debris.
7. Residential Density. The project shall be limited to a maximum density of 120 hotel guest rooms.
8. Driveway. The site design shall be limited to two driveways along Kenmore Avenue.
9. Parking. Commercial parking spaces and parking for hotel uses shall be provided on-site and as required by the LAMC.
10. Bicycle Parking. Bicycle parking shall be provided consistent with LAMC Section 12.21.A.16.
11. Parking Screen. Any parking uses on the ground-floor shall be blocked from view by incorporating mesh screening with a 3-foot tall crash wall which will screen headlights from being visible from the street to the satisfaction of the Department of City Planning.
12. Decorative Wall. The masonry wall along the eastern property line shall feature a green screen of live plantings which will be replaced by artificial shrubbery in the event the live shrubbery proves to not be viable. A maintenance plan of the wall shall be submitted for review by the Director of Planning.

13. Landscaping. The final landscape plan shall be in substantial conformance with the submitted landscape plan as shown per Exhibit "A", stamp-dated September 4, 2018, and shall incorporate any modifications required as a result of this grant. All open areas not used for buildings, driveways, parking areas, recreational facilities or walks shall be attractively landscaped and maintained in accordance with a landscape plan, including an automatic irrigation plan, prepared by a licensed landscape architect to the satisfaction of the Department of City Planning.
- a. Tree Wells.
- (1) The minimum depth of tree wells on the rooftop shall be as follows:
    - Minimum depth for trees shall be 42 inches
    - Minimum depth for shrubs shall be 30 inches.
    - Minimum depth for herbaceous plantings and ground cover shall be 18 inches.
    - Minimum depth for an extensive green roof shall be 3 inches.
  - (2) Any trees that are required pursuant to LAMC Section 12.21 G and are planted on any podium or deck shall be planted in a minimum five (5) foot planter.
  - (3) New trees planted within the public right-of-way shall be spaced not more than an average of 30 feet on center, unless otherwise permitted by the Urban Forestry Division, Bureau of Public Works.
14. Tribal Cultural Resource Inadvertent Discovery. In the event that objects or artifacts that may be tribal cultural resources are encountered during the course of any ground disturbance activities (excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling, removing peat, clearing, pounding posts, auguring, backfilling, blasting, stripping topsoil or a similar activity), 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:
- 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.
  - 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.
  - 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.
  - 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.

- 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.
- 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.
- 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.

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.

### **ZONE VARIANCE**

15. Vehicular access to the less restrictive RAS4-1 Zone from the more restrictive R4-1 Zone is permitted. All parking spaces shall be accessible to hotel guests 24 hours a day, 7 days a week.
16. Accessory uses (parking) are allowed on the subject property in a more restrictive zone (R4-1) than that required for the main use located on a less restrictive zoned (RAS4-1) property.
17. A driveway and circulation plan of the parking lot shall be submitted to the Department of Transportation for review and stamped approval prior to the clearance by the Department of City Planning and Development Services Center.

### **SITE PLAN REVIEW**

18. Window Transparency. A note shall be added to the project elevations to indicate that all ground floor windows shall be comprised of non-reflective, transparent glass. Any on-grade parking uses shall not be visible from the exterior of the building. Architectural treatments, or other design features shall be used to ensure the parking is not visible from the exterior of the building and as shown in Exhibit A.
19. Pedestrian Walkways. Clearly marked pedestrian access-ways shall be integrated into the site design and connect to the commercial area along Olympic Boulevard. The entryway shall incorporate enhanced paving treatment to create a safety buffer between the driveway area and the pedestrian entrance to the building.
20. Building Materials. The project shall provide aesthetic and building materials/elements as depicted in Exhibit A that includes but is not limited to the following: window walls, composite metal panels, accent plaster materials, wood panels, perforated metal screens, and decorative paving. A note shall be added to the project Elevations to indicate that metal materials incorporated into the design shall be of a non-reflective material.

21. Ground Level Pedestrian Access. The doors for pedestrian access throughout the project site shall remain open during business hours and the hotel portion of the project shall be accessible 24 hours a day.
22. Fencing. All fencing/walls surrounding the subject site shall feature decorative architectural elements or landscaping.
23. Perimeter Wall. A minimum 6-foot-high slumpstone or decorative masonry wall shall be constructed adjacent to neighboring residences (east and south property lines).
24. Refuse/Recycling and Solid Waste. Details shall be provided on the method of enclosure for the refuse/recycling areas at the time of final plan sign off. The refuse/recycling area shall be secured with an enclosure that fully screens the view of the refuse/recycling area and shall be located on the subterranean level of the structure. The developer shall institute a recycling program to reduce the volume of solid waste going to landfills. Recycling receptacles shall be provided at appropriate locations through the building to promote recycling of paper, metal, glass, and other recyclable material. Recycling bins shall be picked up no less than once a week as a part of the project's regular trash pick-up program.
25. Pedestrian Entrances. Pedestrian entrances shall be accessible directly from Olympic Boulevard and Kenmore Avenue.
26. No Blank Wall. A consistent use of architectural and building materials shall be applied throughout all exterior facades of the buildings to avoid creating a "backside" to the site. Architectural projections shall be limited to a maximum of 30 inches.
27. Roof. Any structures on the roof, such as air conditioning units and other equipment, shall be fully screened from view of abutting properties built at an equal or lower elevation.
28. Signage. Signage shall comply with the RAS4 Zone, and all applicable state and local regulations. No advertising signage shall be allowed for the accessory restaurant located on the second floor.
  - a. Prior to the issuance of a building permit, the existing billboard shall be removed. No billboard shall be allowed on the property.
29. Live Entertainment. There shall be no live entertainment or amplified music permitted within any open space area nor on any rooftop deck.
30. Roof Structures. Any structures on the roof, such as air conditioning units and other equipment, shall be fully screened from the ground level view of any abutting properties and the public right-of-way. All screening shall be setback at least five feet from the edge of the building.
31. Lighting. All lighting for the Project shall be low-illumination safety lighting of a color similar to incandescent light which is shielded and directed onto the property on which the project is located.
32. LED Lighting. No LED lights shall be allowed on the property facing residential uses.
33. Parking Area Lighting. The parking area shall be illuminated in order to make easily discernible the appearance and conduct of all persons on or about the property. All lights used to illuminate the parking area shall be designed, located and arranged so as to reflect the light away from any street and any adjacent residences.

34. Loading. There shall be no loading or staging of goods within the public right-of-way.

#### **ZONING ADMINISTRATOR ADJUSTMENT**

35. The project is granted the following setback deviations for property located in the R4 Zone:

- a. A side yard of 1-foot 6-inches for levels one through two in lieu of the required 5 feet, and a side yard of 5 feet for levels three through six in lieu of the required 9 feet along the west property line; and,
- b. A side yard of 5 feet for levels three through six in lieu of the required 9 feet along the east property line, for property located in the R4 Zone.

#### **CONDITIONAL USE FOR ALCOHOLIC BEVERAGES**

36. Authorized herein is the sale and dispensing of a full line of alcoholic beverages for on-site consumption, in conjunction with a 6,862 square-foot second-floor restaurant and in-room controlled access cabinets (mini-bars) located within each of the 120 guest rooms, operating 24 hours a day, subject to the following limitations:

- a. Use shall be restricted to hotel guests only, service to the general public is strictly prohibited.
- b. No public promotional events or special events, excluding any activities which are issued film permits by the City.

37. The use and development of the property shall be in substantial conformance with the plot plan and floor plan submitted with the application and marked Exhibit "A", except as may be revised as a result of this action.

38. 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 Department of City Planning and the Department of Building and Safety for purposes of having a building permit issued at any time during the term of this grant.

39. Prior to the effectuation 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.

40. The operation of commercial uses including, but not limited to loading dock, trash compactor, elevator shaft and ancillary uses on RAS4 Zoned property shall be permitted 24 hours a day, 7 days a week.

41. Plan Approval. Prior to the utilization of the authorizations for the restaurant tenant space, the property owner or individual operator shall file a Plan Approval for review and approval by the Zoning Administrator pursuant to Section 12.24 M of the Los Angeles Municipal Code in order to implement and utilize the Conditional Use Permit authorized the establishment. The Plan Approval application shall be accompanied by the payment of appropriate fees and must be accepted as complete by the Department of City Planning. Mailing labels shall be provided by the applicant for all abutting owners, the Council Office, the Neighborhood Council, and the

Los Angeles Police Department. The purpose of the Plan Approval filing is to review each proposed venue in greater detail and tailor specific conditions for each premise including but not limited to hours of operation, seating capacity, size, security and/or any requirement for a subsequent Approval of Plans application to evaluate compliance and effectiveness of the conditions of approval. Conditions herein shall be incorporated into each Plan Approval unless in the opinion of the decision-maker the applicant has justified otherwise. Future operators may request beer and wine sales in lieu of a full line of alcoholic beverages when they file their Plan Approval.

42. If at any time during the period of the grant, should documented evidence be submitted showing continued violation(s) of any condition(s) of the grant, resulting in a disruption or interference with the peaceful enjoyment of the adjoining and neighboring properties, the Department of City Planning shall have the right to require the applicant to file a plan approval application together with the associated fees and to hold a public hearing to review the applicant's compliance with, and effectiveness of, the conditions of the grant. The applicant compliance with each condition of the grant has been attained. Upon review, the Zoning Administrator may modify, add or delete conditions and reserves the right to conduct the public hearing for nuisance abatement revocation purposes if so warranted by documentations.
43. The City Planning Commission or 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 is 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 list, 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 review, the City Planning Commission or Director of Planning may modify, add or delete conditions, and if warranted, reserves the right to conduct a public hearing including consideration for nuisance abatement/revocation purposes.
44. Prior to the utilization of this grant, a security plan for the establishment and any parking area serving the restaurant, shall be approved by the Los Angeles Police Department. The Applicant shall provide security measures both inside and outside the premises. Security provisions shall be reviewed by the Police Department Vice Unit and their recommendations submitted in writing shall be incorporated into the security plan for on and off-site security. A copy of the approved security plan shall be submitted to the Department of City Planning.
45. One year after the beginning of operations, the Applicant shall meet with LAPD to review the effectiveness of the security plan, and may modify any of the measures stated therein as approved by LAPD, Central Area Vice. A copy of any modified security plan approved by LAPD shall be submitted to the Department of City Planning.
46. Within the first six months of utilizing this grant at this establishment, all employees involved with the sale of full line of alcohol 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 referencing Case No. [CPC-2015-4703-VZC-ZV-SPR-ZAA-CU-CUB], from the Police Department to the Department of City Planning as evidence of compliance. In the event there is a change in the licensee, within six months of such change, this training program shall be required for all new

staff. The STAR training shall be conducted for all new hires within two months of their employment.

47. 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 point-of-sales location. This device shall be maintained in operational condition and all employees shall be instructed in its use.
48. Consumption of alcoholic beverages in the parking areas is not authorized.
49. The business operator shall comply with Section 6404.5(b) of the Labor Code which prohibits smoking within any place of employment. There shall be no ashtrays or other receptacles used for the purpose of collecting ash or cigarette/cigar butts inside the premises.
50. At least one on-duty manager with authority over the activities within the facility shall be on the premises at all times that the facility is open for business. The on-duty manager's responsibilities shall include the monitoring of the premises to ensure compliance with all applicable State laws, Municipal Code requirements and the conditions imposed by the Department of Alcoholic Beverage Control (ABC) and the conditional use herein. Every effort shall be undertaken in managing the facility to discourage illegal and criminal activity on the subject premises and any exterior area over which the building owner exercises control, in effort to ensure that no activities associated with such problems as narcotics sales, use or possession, gambling, prostitution, loitering, theft, vandalism and truancy occur.
51. The applicant shall be responsible for monitoring both patron and employee conduct on the premises and within the parking areas under his control to assure behavior that does not adversely affect or detract from the quality of life for adjoining residents, property owners, and businesses.
52. Loitering is prohibited in the area under the control of the applicant. "No Loitering or Public Drinking" signs shall be posted in and outside of the subject facility. Signs shall be in English and in the predominant language of the facility's clientele. Photographic evidence shall be provided to the Condition Compliance Unit prior to effectuation of the grant.
53. The exterior windows and glass doors of the restaurant shall be maintained substantially free of signs and other materials from the ground to at least six-feet in height above the ground so as to permit surveillance into the location by Police and/or private security.
54. Coin operated game machines, pool tables or similar game activities or equipment shall not be permitted. Official California State lottery games and machines are allowed.
55. The restaurant shall be maintained as a bona fide restaurant with a full-service kitchen to be used for the cooking and preparing of food.
56. There shall be no use of the restaurant or multi-purpose room for private events, including corporate events, birthday parties, anniversary parties, weddings or other private events which are open to the general public. The site is subject to the provisions of the RAS4 Zone, pursuant to LAMC Section 12.11.5.
57. A copy of the conditions of this letter of determination, business permit and insurance information shall be retained on the premises of each authorized facility and venue at all times and be produced upon request by the Police Department, the Department of Building and Safety or the State Department of Alcoholic Beverage Control investigators or by any other

City Agency. All licenses, permits and conditions shall be posted in a conspicuous location at the individual establishments.

58. The applicant shall provide the Department of City Planning a copy of each license, suspension thereof, or citation issued by the State Department of Alcoholic Beverage Control or the Los Angeles Police Department upon such instance.
59. The applicant/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 it is readily visible to any interested party. The hot line shall be posted at the entry and website of the premises; responded to within 24 hours of any complaints / inquiries received on this hot line; and the applicant shall document and maintain a log of complaints received, the date and time received and the disposition of the response. The log shall be made available for review by the Los Angeles Police Department and the Department of City Planning upon request.
60. Prior to the utilization of this grant, 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 Department of City Planning. The statement shall state:

*We, the undersigned, have read and understood the conditions of approval to allow the sale or dispensing of a full line of alcoholic beverages for on-site consumption, in conjunction with the restaurant, known as [Name] Restaurant, and agree to abide and comply with said conditions.*
61. Should there be a change in the ownership and/or the operator of the business and/or property, the prior owner / operator shall provide the prospective new 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.
62. **Monitoring Verification and Inspection Program (MViP).** Prior to the effectuation 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 City Planning Commission.

## **ENVIRONMENTAL CONDITIONS**

### **63. Habitat**

- a. The project will result in the removal of vegetation and disturbances to the ground and

therefore may result in take of nesting native bird species. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

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

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

- a. Construction and demolition shall be restricted to the hours of 7:00 am to 6:00 pm Monday through Friday, and 8:00 am to 6:00 pm on Saturday.
- b. Demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels.
- c. The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices.
- d. The construction contractor shall use on-site electrical sources or solar generators to power equipment rather than diesel generators where feasible.

**65. Increased Noise Levels (Parking Wall).** A 6-foot-high solid decorative masonry wall, measured from the lowest adjacent grade, adjacent to residential use and/or zones shall be constructed if no such wall exists.

**66. Increased Noise Levels (Parking Structure Ramps)**

- a. Concrete, not metal, shall be used for construction of parking ramps.
- b. The interior ramps shall be textured to prevent tire squeal at turning areas.
- c. Parking lots located adjacent to residential buildings shall have a solid decorative wall adjacent to the residential.

**67. Safety Hazards**

- a. The developer shall install appropriate traffic signs around the site to ensure pedestrian, bicycle, and vehicle safety.
- b. The applicant shall submit a parking and driveway plan that incorporates design features that reduce accidents, to the Bureau of Engineering and the Department of Transportation for approval.

**68. Inadequate Emergency Access.** The applicant shall submit a parking and driveway plan to the Bureau of Engineering and the Department of Transportation for approval that provides code-required emergency access.

**69. Transportation/Traffic**

- a. Applicant shall plan construction and construction staging as to maintain pedestrian access on adjacent sidewalks throughout all construction phases. This requires the applicant to maintain adequate and safe pedestrian protection, including physical separation (including utilization of barriers such as K-Rails or scaffolding, etc.) from work space and vehicular traffic and overhead protection, due to sidewalk closure or blockage, at all times.
- b. Temporary pedestrian facilities should be adjacent to the project site and provide safe, accessible routes that replicate as nearly as practical the most desirable characteristics of the existing facility.
- c. Covered walkways shall be provided where pedestrians are exposed to potential injury from falling objects.
- d. Applicant shall keep sidewalk open during construction until only when it is absolutely required to close or block sidewalk for construction staging. Sidewalk shall be reopened as soon as reasonably feasible taking construction and construction staging into account.

**ADMINISTRATIVE CONDITIONS**

**70. 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.

**71. 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.

**72. 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.

73. **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.
74. **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.
75. **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.
76. **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.

**77. Indemnification and Reimbursement of Litigation Costs**

Applicant shall do all of the following:

- (i) Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
- (ii) Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
- (iii) Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$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).
- (iv) Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).

- (v) If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

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

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

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

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

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

**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 or Director of Planning 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 or Director of Planning has no direct authority to regulate or enforce Conditions assigned to alcohol sales or distribution.

The City Planning Commission or Director of Planning 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 or Director of Planning 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 Zoning Administrator.