

## CONDITIONS OF APPROVAL

### Entitlement Conditions

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the plans and materials submitted by the Applicant, labeled Exhibit "A", dated May 9, 2023, and attached to the subject case file. No change to the plans shall be made without prior review by the Department of City Planning, Valley Project Planning Bureau, and written approval by the Director of Planning. Each change shall be identified and justified in writing. Minor deviations may be allowed in order to comply with the provisions of the Municipal Code, the project conditions, or the project permit authorization.
2. **Use.** The uses shall be limited to medical office (Lot 1) and eldercare facility with Alzheimer's/Dementia guest rooms (Lot 2).
3. **Floor Area.** The floor shall be limited to a 55,416 square feet of floor area for medical office building and 80,225 square feet of floor area for Eldercare Facility.
4. **Height.** The height of the Medical building on Lot 1 shall be limited to 48 feet, 2-inches in height, and the Eldercare building on Lot 2 shall be limited to 59 feet, six inches in height (65 feet to top of stairs) as shown on the project plans, Exhibit "A", attached to the subject case file.
5. **Landscape.**
  - a. A minimum of 15 percent (909 square feet) of the total area of a surface parking lot shall be landscaped.
  - b. The project shall provide six (6) 30-inch box trees on the surface parking lot. The trees shall be shade-producing trees, no less than 10 feet in height at maturity with a minimum tree canopy of 50 percent of the height of the tree. These trees shall be evenly distributed throughout the parking lot.
  - c. A 10 feet landscaped buffer shall be provided around the surface parking lots adjacent to any street, alley, residentially zoned lot, and existing residential use.
  - d. The project shall provide a minimum buffer zone of 30 inches for portions of parking lots not facing a street, alley, residentially zoned lot, and existing residential use.
  - e. At least 60 percent (700 square feet) of all Front Yards or front setbacks in excess of 18 inches, shall be landscaped. The remainder shall be finished to City standards for sidewalks or finished with other paving materials, including concrete pavers, brick masonry pavers.
  - f. The applicant shall install an automatic irrigation system to maintain all required landscaping.
6. **Parking.**
  - a. **Automobile Parking.** As shown on the submitted plans, the Project will provide a total of 364 parking spaces for both the Medical Office and Eldercare guest rooms located at grade and within three below-grade levels. At a minimum, automobile parking and bicycle parking shall be provided in accordance with the Ventura-

Cahuenga Boulevard Corridor Specific Plan, and LAMC Sections 12.22 A.25 (d), 12.21 A.4, and 12.21 A.16, respectively, and any amendments thereto.

- b. **Location of Parking Area.** The required automobile parking spaces shall be provided either on the same lot as the use for which they are intended to serve or on another lot not more than 750 feet distant therefrom; said distance to be measured horizontally along the streets between the two lots, except that where the parking area is located adjacent to an alley, public walk or private easement which is easily usable for pedestrian travel between the parking area and the use it is to serve, the 750-foot distance may be measured along said alley, walk or easement.
- c. Automobile parking spaces which are required for a building and are provided on a lot other than the one on which the building is located, the certificate of occupancy for said building shall be valid only while such parking spaces are being so maintained and shall bear a notation to that effect. Said certificate shall be kept posted in a conspicuous place in the building. The Superintendent of Building shall keep a record of each lot on which required automobile parking spaces are provided for a building located on another lot, and whenever he finds that such automobile parking spaces are no longer so maintained, he shall notify the persons having custody of the building of that fact. If at any time such automobile parking spaces are not being maintained, the certificate of occupancy shall automatically be cancelled and said building shall not thereafter be occupied or used until the required automobile parking spaces are again provided and a new certificate is issued.
- d. **Bicycle Parking.** Bicycle parking shall be provided in compliance with LAMC Section 12.21 A.16.
- e. **Electric Vehicle Parking.** All electric vehicle charging spaces (EV Spaces) and electric vehicle charging stations (EVCS) shall comply with the regulations outlined in Sections 99.04.106 and 99.05.106 of Article 9, Chapter IX of the LAMC, to the satisfaction of the Department of Building and Safety. The project shall include at least 20 percent of the total automobile parking spaces developed on the project site 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.

In addition, five (5) percent of the total automobile parking spaces developed on the project site, and all parking spaces in excess of code required for the use, 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 five (5) percent results in a fractional space, round up to the next whole number. A label stating "EV CAPABLE" shall be posted in a conspicuous place at the service panel or subpanel and next to the raceway termination point.

- 7. **Project Impact Assessment Fee.** Prior to Planning clearance, the applicant shall meet with the Department of Transportation (DOT) for assessment of this project. A "Project Impact Assessment" (PIA) fee may be required and paid to the satisfaction of DOT for the purpose

of funding the Specific Plan improvements and services, as well as pedestrian improvements which are intended to mitigate the cumulative impacts of new developments within the Specific Plan area.

NOTE: PIA fees to be paid are subject to change due to increases to the Annual Indexing as determined by the DOT.

8. **Solar-Ready Buildings.** The Project shall comply with the Los Angeles Municipal Green Building Code, Section 99.05.211, to the satisfaction of the Department of Building and Safety. The Project shall provide 2,360 square feet of future solar area.
9. **Solar Power.** The project shall provide Photovoltaic Collectors for a Solar Hot Water System or photovoltaic provisions as required to comply with the 2019 California Energy Code for Solar Ready Buildings (Section 110.10) to be maintained for the life of the project.
10. **Solar and Electric Generator.** Generators used during the construction process shall be electric or solar powered. Solar generator and electric generator equipment shall be located as far away from sensitive uses as feasible.
11. **Stormwater/irrigation.** The project shall implement on-site stormwater infiltration as feasible based on the site soils conditions, the geotechnical recommendations, and the City of Los Angeles Department of Building and Safety Guidelines for Storm Water Infiltration. If on-site infiltration is deemed infeasible, the project shall analyze the potential for stormwater capture and reuse for irrigation purposes based on the City Low Impact Development (LID) guidelines.
12. **Utility Connections.** New utility connections shall be undergrounded to the maximum extent feasible.

#### Site Plan Review Conditions

13. **Materials.** A variety of high-quality exterior building materials, consistent with the approved Exhibit "A" shall be used. Substitutes of an equal quality may be permitted to the satisfaction of the Department of City Planning.
14. **Landscape Plan.** All open areas not used for buildings, driveways, parking areas, recreational facilities or pedestrian pathways shall be attractively landscaped, including an automatic irrigation system, and maintained in accordance with a landscape plan prepared by a licensed landscape architect or architect and submitted for approval to the Department of City Planning, Development Services Center.
15. **Trees.** The applicant shall plant a minimum of (25) 30-inch box trees, or larger on-site, and six (6) trees in the public right-of-way along Ventura Boulevard, pursuant to LAMC Section 12.21 G.2. Street trees shall be provided to the satisfaction of the Urban Forestry Division. Street trees may be used to satisfy on-site tree requirements pursuant to LAMC Article Section 12.21.G.3 (Chapter 1, Open Space Requirement for Six or More Residential Units). Per Exhibit A and 12.21.G.3, Six (6) Street trees shall be provided. 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. Grape Myrtle shall not be considered appropriate in meeting this condition.
16. **Trash Storage.** Trash storages and collections shall be enclosed and no visible from the public right-of-way. Trash collection shall occur within the enclosed area, and shall not interfere with traffic on any public street.

17. **Mechanical Equipment.** All mechanical equipment on the roof shall be screened from view. All surface or ground mounted mechanical equipment shall be screened from public view and treated to match the materials and colors of the building which they serve.
18. **Lighting.** All outdoor and parking lighting shall be shielded and down-cast within the site in a manner that prevents the illumination of adjacent public rights-of-way, adjacent properties and the night sky unless otherwise required by the Federal Aviation Administration (FAA) or for other public safety purposes.
19. **Maintenance.** The project site (including all trash storage areas, associated parking facilities, sidewalks, yard areas, parkways, and exterior walls along the property lines) shall be maintained in an attractive condition and shall be kept free of trash and debris.
20. **Signage.** Any signage shall comply with the Municipal Code or other applicable laws. No sign rights are granted with this case. There shall be no off-site signage on construction fencing during construction.
21. **Streetscape Improvement.**
  - a. **Street Trees.** Street trees, to the extent feasible, will establish or maintain a planting pattern along this section of Ventura Boulevard of three deciduous trees, one Mexican Fan Palm (*Washingtonia robusta*), three deciduous trees, one Mexican Fan Palm (*Washingtonia robusta*), etc.
    - i. Deciduous trees shall be chosen among Chinese Flame (*Koelreuteria bipinnata*), Chinese Pistache (*Pistacia chinensis*), and London Plane (*Platanaceae orientalis*)
    - ii. The minimum tree planting standard for the palms is 15 feet from the deciduous trees.
    - iii. The deciduous trees shall be planted between 25- 35 feet apart.
    - iv. The minimum size is a 24 inch box.
    - v. The trees are to be planted staked, and are to be self-supporting for deciduous trees.
    - vi. The trees are to be untopped.
    - vii. The Mexican Fan Palm is to have 12 feet of brown trunk with a minimum 8 foot brown trunk at planting.
    - viii. The trees are to be planted according to the Los Angeles Department Public Works Standard for Street Tree Planting; actual tree species and spacing shall be determined by the Bureau of Street Services and its Urban Forestry Division.
  - b. **Street Fixtures, Furniture and Equipment.** Section 3.3 of the Encino Streetscape Plan identifies distinctive materials, finishes, and street furniture. Any improvements in the public right-of-way are to use these or similar materials, finishes, and street furniture as determined by the Bureau of Street Lighting and Bureau of Street Services.

- c. **Sidewalk Improvements.** Interlocking pavers or “unit pavers” shall be incorporated into the curb and sidewalk system to the extent feasible as determined by the Bureau of Street Services.
22. **Specific Plan Covenant and Agreement.** A Covenant and Agreement shall be recorded with the Los Angeles County Recorder acknowledging the contents and limitations of the Ventura/Cahuenga Boulevard Corridor Specific Plan, as well as the conditions of approval established herein. The Covenant and Agreement shall run with the land and shall be binding on any subsequent property owners, heirs or assigns and shall be submitted to the Department of City Planning for approval prior to being recorded. After recording, a copy bearing the County Recorder's number and date shall be provided to the Department of City Planning for attachment to the administrative file.
23. **Modifications.** Any modifications, change of use, or increase in floor area of the property shall be cause for separate discretionary review pursuant to the definition of a Project per the Specific Plan, and Section 11.5.7 of the LAMC and other applicable statutory requirements.
24. No other authorizations or deviations from the requirements of the Zoning Code are granted. The grant does not eliminate the need for compliance with the Building Code or other LAMC permit requirements.

### **Environmental Conditions**

25. **Mitigation Monitoring Program.** The project shall be in substantial conformance with the mitigation measures in the attached MMP and attached to the subject case file. The implementing and enforcing agencies may determine substantial conformance with mitigation measures in the MMP. If substantial conformance results in effectively deleting or modifying the mitigation measure, the Director of Planning shall provide a written justification supported by substantial evidence as to why the mitigation measure, in whole or in part, is no longer needed and its effective deletion or modification will not result in a new significant impact or a more severe impact to a previously identified significant impact. If the project is not in substantial conformance to the adopted mitigation measures or MMP, a modification or deletion shall be treated as a new discretionary action under CEQA Guidelines, Section 15162(c) and will require preparation of an addendum or subsequent CEQA clearance. Under this process, the modification or deletion of a mitigation measure shall not require a modification to any project discretionary approval unless the Director of Planning also finds that the change to the mitigation measures results in a substantial change to the project or the non-environmental conditions of approval.
26. **Mitigation Monitor.** During the construction phase and prior to the issuance of building permits, the applicant shall retain an independent Construction Monitor (either via the City or through a third-party consultant), approved by the Department of City Planning, who shall be responsible for monitoring implementation of project design features and mitigation measures during construction activities consistent with the monitoring phase and frequency set forth in this MMP. The Construction Monitor shall also prepare documentation of the applicant's compliance with the project design features and mitigation measures during construction every 90 days in a form satisfactory to the Department of City Planning. The documentation must be signed by the applicant and Construction Monitor and be included as part of the applicant's Compliance Report. The Construction Monitor shall be obligated to immediately report to the Enforcement Agency any non-compliance with the mitigation measures and project design features within two businesses days if the applicant does not correct the noncompliance within a reasonable time of notification to the applicant by the

monitor or if the non-compliance is repeated. Such non-compliance shall be appropriately addressed by the Enforcement Agency.

27. **NOI-MM-1.** The Project shall erect temporary noise barriers along the Project's west-, east-, and north-facing boundaries, and/or pre-build proposed permanent masonry walls in these locations prior to the commencement of major noise generating construction activities. These barriers shall have a transmission loss (TL) value of 25 dBA or greater, which would be capable of achieving a noise reduction of 15 dBA.
28. **NOI-MM-2.** The Project shall erect temporary noise barrier "penalty boxes" for truck-mounted cranes, concrete pumping trucks, concrete mixing trucks, and other construction vehicles that may be permitted to temporarily operate from adjacent on-street parking spaces or public right-of-way, outside the confines of the barriers proposed by NOI-MM-1. These barriers shall have a TL of 20 dBA or greater, which would be capable of achieving a noise reduction of 10 dBA.
29. **NOI-MM-3.** Any warming-up or equipment staging activities shall occur as far from the nearest sensitive receptor locations as practicable.
30. **NOI-MM-4.** Generators, compressors, and other noisy equipment shall be placed within acoustic enclosures or behind baffles or screens.
31. **NOI-MM-5.** Excavators and other large track-mounted equipment shall maintain a positional setback of at least 8 feet from 4949 Genesta Avenue, 17000-17015 Ventura Boulevard, and 17035-17039 Ventura Boulevard when engaging in demolition and grading activities.
32. **NOI-MM-6.** The warming-up and staging of large track-mounted equipment shall take place at least 8 feet from 4949 Genesta Avenue, 17000-17015 Ventura Boulevard, and 17035-17039 Ventura Boulevard. As feasible, these activities shall not take place on paved surfaces.
33. **NOI-MM-7.** Construction activities that generate groundborne vibration shall be sequenced so that track-mounted equipment and auger drilling sources within 8 feet of 4949 Genesta Avenue, 17000-17015 Ventura Boulevard, and 17035-17039 Ventura Boulevard do not operate simultaneously.
34. **NOI-MM-8.** Pre-construction surveys shall be performed to document the existing conditions at the boundaries of the Project site that are adjacent to the 4949 Genesta Avenue, 17000-17015 Ventura Boulevard, and 17035-17039 Ventura Boulevard properties. A groundborne vibration and structure monitoring program shall be implemented and recorded during the Project's demolition, site preparation, grading, shoring, and/or any other phases requiring the use of large track-mounted equipment and/or auger drilling to ensure that groundborne vibration levels at the boundary of the Project site adjacent to these receptors do not exceed the respective FTA recommended vibration damage criteria for these structures. The performance standards of the groundborne vibration and structure monitoring plan shall include the following:
  - a. Documentation, consisting of video and/or photographic documentation of accessible and visible areas on the exteriors of 4949 Genesta Avenue, 17000-17015 Ventura Boulevard, and 17035-17039 Ventura Boulevard.
  - b. A registered civil engineer, certified engineering geologist, or vibration control engineer shall review the appropriate vibration criteria for the identified vibration receptors, taking into consideration their age, construction, condition, and other

factors related to vibration sensitivity in order to develop additional recommendations for the groundborne vibration and structure monitoring program.

- c. Vibration sensors shall be installed on and/or around the identified vibration receptors to monitor for horizontal and vertical movement. These sensors shall remain in place for the duration of the Project's demolition, site preparation, grading, shoring, or any other phases requiring the use of large track-mounted equipment and/or auger drilling.
  - d. The vibration sensors shall be equipped with real-time warning system capabilities that can immediately alert construction supervisors when monitored vibration levels approach or exceed the threshold limit.
  - e. Should an exceedance of vibration thresholds occur, work in the vicinity of the affected area shall be halted and the respective vibration receptor shall be inspected for any damage. Results of the inspection shall be logged. In the event that damage occurs, the damage shall be repaired in consultation with a qualified preservation consultant. In the event of an exceedance, feasible steps to reduce groundborne vibration levels shall be undertaken, such as halting/staggering concurrent activities and utilizing less impactful techniques.
35. **MM-POLICE-1.** Prior to issuance of a Certificate of Occupancy, the Project Applicant shall provide the Central Area Commanding Area Officer with diagrams of each portion of the Project Site. The diagrams shall include access routes and additional information that might facilitate police response.
36. **TCR-1.** Prior to commencing any ground disturbance activities at the Project Site, the Applicant, or its successor, shall retain archeological monitors and tribal monitors that are qualified to identify subsurface tribal cultural resources. Ground disturbance activities shall include excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling, removing peat, clearing, driving posts, augering, backfilling, blasting, stripping topsoil or a similar activity at the Project Site. Any qualified tribal monitor(s) shall be approved by the Fernandeno Tataviam Band of Mission Indians. Any qualified archaeological monitor(s) shall be approved by the Department of City Planning, Office of Historic Resources (OHR).

The qualified archeological and tribal monitors shall observe all ground disturbance activities on the Project Site at all times the ground disturbance activities are taking place. If ground disturbance activities are simultaneously occurring at multiple locations on the Project Site, an archeological and tribal monitor shall be assigned to each location where the ground disturbance activities are occurring. The on-site monitoring shall end when the ground disturbing activities are completed, or when the archaeological and tribal monitor both indicate that the site has a low potential for impacting tribal cultural resources.

Prior to commencing any ground disturbance activities, the archaeological monitor in consultation with the tribal monitor, shall provide Worker Environmental Awareness Program (WEAP) training to construction crews involved in ground disturbance activities that provides information on regulatory requirements for the protection of tribal cultural resources. As part of the WEAP training, construction crews shall be briefed on proper procedures to follow should a crew member discover tribal cultural resources during ground disturbance activities. In addition, workers shall be shown examples of the types of resources that would require notification of the archaeological monitor and tribal monitor. The Applicant shall maintain on the Project Site, for City inspection, documentation

establishing the training was completed for all members of the construction crew involved in ground disturbance activities.

In the event that any subsurface objects or artifacts that may be tribal cultural resources are encountered during the course of any ground disturbance activities, all such activities shall temporarily cease within the area of discovery, the radius of which shall be determined by a qualified archeologist, in consultation with a qualified tribal monitor, 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 Applicant, or its successor, 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, and (2) OHR.
- b. If OHR determines, pursuant to Public Resources Code Section 21074 (a)(2), that the object or artifact appears to be a tribal cultural resource in its discretion and supported by substantial evidence, the City shall provide any affected tribe a reasonable period of time, not less than 14 days, to conduct a site visit and make recommendations to the Applicant, or its successor, and the City regarding the monitoring of future ground disturbance activities, as well as the treatment and disposition of any discovered tribal cultural resources.
- c. The Applicant, or its successor, shall implement the tribe's recommendations if a qualified archaeologist retained by the City and paid for by the Applicant, or its successor, in consultation with the tribal monitor, reasonably conclude that the tribe's recommendations are reasonable and feasible.
- d. In addition to any recommendations from the applicable tribe(s), a qualified archeologist shall develop a list of actions that shall be taken to avoid or minimize impacts to the identified tribal cultural resources substantially consistent with best practices identified by the Native American Heritage Commission and in compliance with any applicable federal, state or local law, rule or regulation.
- e. If the Applicant, or its successor, does not accept a particular recommendation determined to be reasonable and feasible by the qualified archaeologist or qualified tribal monitor, the Applicant, or its successor, may request mediation by a mediator agreed to by the Applicant, or its successor, and the City. The mediator must have the requisite professional qualifications and experience to mediate such a dispute. The City shall make the determination as to whether the mediator is at least minimally qualified to mediate the dispute. After making a reasonable effort to mediate this particular dispute, the City may: (1) require the recommendation be implemented as originally proposed by the archaeologist or tribal monitor; (2) require the recommendation, as modified by the City, be implemented as it is at least as equally effective to mitigate a potentially significant impact; (3) require a substitute recommendation be implemented that is at least as equally effective to mitigate a potentially significant impact to a tribal cultural resource; or (4) not require the recommendation be implemented because it is not necessary to mitigate an significant impacts to tribal cultural resources. The Applicant, or its successor, shall pay all costs and fees associated with the mediation.
- f. The Applicant, or its successor, may recommence ground disturbance activities outside of a specified radius of the discovery site, so long as this radius has been



reviewed by both the qualified archaeologist and qualified tribal monitor and determined to be reasonable and appropriate.

- g. The Applicant, or its successor, may recommence ground disturbance activities inside of the specified radius of the discovery site only after it has complied with all of the recommendations developed and approved pursuant to the process set forth in Items 2 through 5 above.
- h. 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 and to the Native American Heritage Commission for inclusion in its Sacred Lands File.
- i. Notwithstanding Item h above, any information that the Department of City Planning, in consultation with the City Attorney's Office, determines to be confidential in nature shall be excluded from submission to the SCCIC or provided to the public under the applicable provisions of the California Public Records Act, California Public Resources Code, section 6254(r), and handled in compliance with the City's AB 52 Confidentiality Protocols.

#### **Administrative Conditions**

- 37. **Final Plans.** Prior to the issuance of any building permits for the project by the Department of Building and Safety, the applicant shall submit all final construction plans that are awaiting issuance of a building permit by the Department of Building and Safety for final review and approval by the Department of City Planning. All plans that are awaiting issuance of a building permit by the Department of Building and Safety shall be stamped by Department of City Planning staff "Final Plans". A copy of the Final Plans, supplied by the applicant, shall be retained in the subject case file.
- 38. **Notations on Plans.** Plans submitted to the Department of Building and Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet, and shall include any modifications or notations required herein.
- 39. **Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review of approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning prior to clearance of any building permits, for placement in the subject file.
- 40. **Code Compliance.** Use, area, height, and yard regulations of the zone classification of the subject property shall be complied with, except where granted conditions differ herein.
- 41. **Department of Building and Safety.** The granting of this determination by the Director of Planning does not in any way indicate full compliance with applicable provisions of the Los Angeles Municipal Code Chapter IX (Building Code). Any corrections and/or modifications to plans made subsequent to this determination by a Department of Building and Safety Plan Check Engineer that affect any part of the exterior design or appearance of the project as approved by the Director, and which are deemed necessary by the Department of Building and Safety for Building Code compliance, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.

42. **Enforcement.** Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Department of City Planning.
43. **Expiration.** In the event that this grant is not utilized within three years of its effective date (the day following the last day that an appeal may be filed), the grant shall be considered null and void. Issuance of a building permit, and the initiation of, and diligent continuation of, construction activity shall constitute utilization for the purposes of this grant.
44. **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.