

APPLICANT'S MEMORANDUM IN OPPOSITION TO THE CEQA APPEAL AND REQUEST FOR REINSTATEMENT OF THE CONDITIONAL USE PERMIT GRANTED BY THE CENTRAL AREA PLANNING COMMISSION

I. INTRODUCTION

This memorandum is submitted on behalf of PTAG Properties, Inc. (Applicant) in opposition to the California Environmental Quality Act (CEQA) appeal filed by Ms. Seta Panosian concerning the project located at 5243–5245 West Santa Monica Boulevard (the "Project"). The appeal challenges the Class 1 Categorical Exemption granted by the City of Los Angeles, acting as the lead agency under CEQA in Case No. ENV-2021-10705-CE, in connection with the approval of a Conditional Use Permit (CUP) by the Central Area Planning Commission in Case No. ZA-2021-1-0704-CUB-1A, which approved the sale and on-site consumption of alcoholic beverages at a proposed restaurant within an existing mixed-use building.

The City's determination to grant a categorical exemption is consistent with CEQA statutes and guidelines, finding that the Project will not have a significant impact on the environment because it falls under a specific exemption category and no exceptions apply. The Appellant's arguments lack substantial evidence of significant environmental impacts that would necessitate further environmental review. Moreover, much of the Appellant's justification statement concerns issues with the mixed-use building itself, which has already been constructed and has completed all required environmental reviews. The Applicant will not be undertaking any construction other than the build-out of the restaurant space.

After the initial denial by the Zoning Administrator, the Applicant completely reimagined and substantially modified the Project to reduce its scope. These modifications were specifically designed to address community concerns and strike a balance between the business goals of the proposed restaurant and its impact on the surrounding community. The Appellant and the Los Angeles Police Department (LAPD) did not consider these significant changes due to their absence from the Central Area Planning Commission (APC) hearing and reliance on outdated information.

The delay resulting from this appeal has been costly for the Applicant, preventing the restaurant from opening, causing economic losses, delaying job opportunities, and postponing the provision of enhanced security measures that would benefit the neighborhood. The Project promises to bring not only economic revitalization but also increased safety and vibrancy to the area.

II. FACTUAL BACKGROUND

A. Original Project Proposal and Zoning Administrator's Denial

The Applicant initially proposed an 11,120-square-foot restaurant, brewpub, and banquet hall with live entertainment, operating from 6:00 a.m. to 2:00 a.m. daily, with a seating capacity for 376 patrons. The proposal included the sale and dispensing of a full line of alcoholic beverages for on-site consumption and beer and wine for off-site consumption.

On October 7, 2022, the Zoning Administrator denied the CUP application (Case No. ZA-2021-10704-CUB). The denial was based on concerns about the Project's potential adverse effects on the surrounding community, particularly its proximity to Kingsley Elementary School, issues related to public drunkenness, and the potential for increased crime and nuisance activities.

B. Applicant's Comprehensive Project Modifications

In response to the concerns raised during the initial hearing and in the Zoning Administrator's decision, the Applicant undertook a thorough reassessment and completely reimagined the Project, substantially modifying it to reduce its scope and directly address the issues identified by the community, the LAPD, and the Zoning Administrator.

Reduction in Scope: The brewpub and banquet hall components were entirely eliminated from the Project, significantly reducing its intensity and scale. All live entertainment, dancing, karaoke, and nightclub activities were removed. The restaurant space was reduced from 11,120 square feet to 9,988 square feet, lessening the impact on the neighborhood and decreasing potential occupancy.

Change in Operating Hours: Operating hours were adjusted to minimize late-night disruptions:

- **Monday to Thursday:** 11:30 a.m. to 11:00 p.m.
- **Friday:** 11:30 a.m. to 1:00 a.m.
- **Saturday:** 10:00 a.m. to 1:00 a.m.
- **Sunday:** 10:00 a.m. to 11:00 p.m.

Earlier closing times directly address concerns about noise and disturbances during late-night hours. Seating capacity was reduced to a maximum of 230 seats, with no more than 150 seats utilized before 5:00 p.m. on weekdays, thereby reducing potential impacts on traffic and noise.

Site Security: The Applicant implemented enhanced security measures, including the presence of at least two security guards during all operating hours and the installation of a

comprehensive surveillance system throughout the premises. These measures address safety concerns and help prevent loitering, public drunkenness, and other nuisances.

Withdrawal of Off-Site Alcohol Sales: The request for the sale of beer and wine for off-site consumption was withdrawn, addressing concerns about contributing to public drunkenness and alcohol-related crimes in the area.

Commitment to Community Engagement: The Applicant committed to working closely with Kingsley Elementary School and local residents, ensuring that regular meetings and open communication channels are maintained to address ongoing community concerns.

Together, these substantial modifications demonstrate the Applicant's commitment to addressing community concerns and ensuring that the Project is compatible with the surrounding neighborhood. The reimagined Project strikes a balance between providing a high-quality dining experience and minimizing potential negative impacts.

C. Procedural History Post-Modifications

Central Area Planning Commission Approval: On December 12, 2023, the APC overturned the Zoning Administrator's denial, granting the CUP and reaffirming the Class 1 categorical exemption (Case No. ENV-2021-10705-CE). The APC recognized the significant modifications made and adopted conditions of approval and amended findings that addressed community concerns. The Commission carefully considered all arguments raised by the Appellant and found that the modified Project adequately addressed the issues previously identified. A copy of the conditions of approval are set forth in Exhibit B.

CEQA Appeal by Ms. Panosian: On July 1, 2024, Ms. Seta Panosian filed a CEQA appeal, challenging the categorical exemption without knowledge of the substantial modifications to the Project. The Appellant did not attend the APC hearing and was unaware of the changes made to address the community's concerns. It appears that the Appellant is using CEQA to raise the same arguments against the CUP that were already considered and resolved by the APC. Under Los Angeles Municipal Code (LAMC) § 12.24 I.3, the APC's decision on the CUP is final and unappealable, and the Appellant cannot re-litigate these issues under the guise of a CEQA appeal.

D. LAPD Position Based on Outdated Information

The LAPD submitted a letter on July 1, 2022, opposing the original Project based on concerns about increased demand on police resources, potential negative impacts on Kingsley Elementary School, and existing quality-of-life issues in the neighborhood. However, the LAPD's opposition was based on the initial proposal, not the substantially modified Project.

Due to LAPD policy, their position was not updated to reflect the significant modifications made by the Applicant before the APC hearing. As a result, the concerns raised by the LAPD were based on outdated information and did not consider the modified, scaled-back version of the Project that directly addresses their initial concerns.

III. ANALYSIS

A. The Project Qualifies for a Categorical Exemption Under CEQA

Class 1 Categorical Exemption (Existing Facilities)

Under CEQA Guidelines § 15301, Class 1 categorical exemptions apply to the operation, repair, maintenance, permitting, licensing, or minor alteration of existing structures involving negligible or no expansion of existing or former use. The Project involves tenant improvements within an existing mixed-use building, with no expansion of the building footprint or significant alterations to the exterior. The mixed-use building has already been constructed and has completed all required environmental reviews. The Applicant will not undertake any construction other than the interior build-out of the restaurant space, which is consistent with the building's intended use and zoning regulations.

No Exceptions Apply

Under CEQA Guidelines § 15300.2, exceptions to categorical exemptions apply only under specific circumstances:

- **Significant Effect Due to Unusual Circumstances (§ 15300.2(c)):** The Project does not present unusual circumstances. The proposed restaurant use is typical for the C2 zoning and the commercial corridor along Santa Monica Boulevard. The modifications reduce potential impacts, and no substantial evidence demonstrates a reasonable possibility of significant environmental effects.
- **Cumulative Impact (§ 15300.2(b)):** There is no evidence of cumulative significant impacts from successive projects of the same type in the same place over time. The Project is an individual restaurant with conditions mitigating potential impacts.
- **Other Exceptions:** The Project is not located near a designated scenic highway, is not on a hazardous waste site, and does not involve historical resources.

C. The Appellant's Arguments Lack Substantial Evidence

Appellant's Lack of Awareness of Project Modifications

The Appellant's arguments are based on the original proposal and fail to consider the substantial modifications made to the Project. These modifications directly address the

concerns raised, including reducing operating hours, eliminating live entertainment, and enhancing security measures. The Appellant's justification statement focuses on issues with the mixed-use building, which are unrelated to the CUP for the restaurant. The building has already undergone environmental review, and the Applicant is only proposing interior improvements.

Repetition of Arguments Against the Conditional Use Permit

The Appellant is effectively attempting to re-litigate issues related to the CUP, which have already been considered and resolved by the APC. Under LAMC § 12.24 I.3, the APC's decision on the CUP is final and not subject to further appeal. The Appellant cannot use a CEQA appeal to circumvent this finality and raise the same arguments that have been addressed. This tactic undermines the integrity of the administrative process and burdens the Applicant with unnecessary delays.

LAPD's Opposition Based on Outdated Information

The LAPD's concerns are based on the initial proposal and do not reflect the significant modifications made. The Applicant's comprehensive changes directly respond to the LAPD's concerns:

- **Security Enhancements:** Mandatory presence of at least two security guards during all operating hours and comprehensive surveillance systems.
- **Adjusted Operating Hours:** Reduced hours to minimize late-night operations and potential disturbances.
- **Elimination of Live Entertainment:** Removal of live entertainment, dancing, and nightclub activities.
- **Withdrawal of Off-Site Alcohol Sales:** Eliminating beer and wine sales for off-site consumption.

Under CEQA Guidelines § 15384(a), substantial evidence does not include speculation or unsubstantiated opinion. The LAPD's outdated concerns are speculative and do not constitute substantial evidence of significant environmental impacts.

Public Controversy Does Not Constitute Substantial Evidence

In *Citizens' Committee to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171, the court held that mere public controversy or opposition does not mandate the preparation of an Environmental Impact Report (EIR). Without substantial evidence of significant environmental impacts, public opposition alone is insufficient to require further environmental review.

C. The Project Does Not Require Further Environmental Review

Under CEQA Guidelines § 15162(a), a subsequent EIR or Negative Declaration is required only if substantial changes to the Project or its circumstances would create new significant environmental effects. Here, the modifications reduce the Project's intensity and potential environmental impacts. The addition of alcohol sales in a controlled, full-service restaurant with enhanced mitigation measures does not constitute a substantial change requiring further scrutiny.

D. The Project Includes Adequate Mitigation Measures

The Project includes numerous conditions to mitigate potential impacts, ensuring that any environmental effects remain less than significant:

- **Noise Control:** Compliance with the City's noise ordinance; no amplified music audible beyond the premises.
- **Security Measures:** Mandatory security personnel and surveillance systems.
- **Operational Restrictions:** Prohibition of live entertainment, dancing, and adult entertainment.
- **Employee Training:** Participation in STAR/LEAD/RBS programs to ensure responsible alcohol service.
- **Monitoring and Enforcement:** Mandatory Plan Approval within three years to assess compliance and address any issues.

Compliance with the Monitoring Verification and Inspection Program (MViP) under LAMC § 19.01-E, 3, ensures ongoing monitoring of conditions.

E. The Appellant's Issues with the Mixed-Use Building Are Outside the Scope of This Appeal

Much of the Appellant's justification statement raises issues related to the mixed-use building itself, such as construction impacts, maintenance concerns, and existing conditions. These issues are unrelated to the CUP for the restaurant and have already been addressed in prior environmental reviews when the building was constructed. The Applicant is only proposing interior improvements for the restaurant, which do not involve new construction that could impact the environment.

F. Economic and Social Benefits of the Project

The delay caused by the appeal has prevented the restaurant from opening, resulting in lost job opportunities for local residents and foregone sales tax revenue that would benefit the

community. The establishment will contribute to the vibrancy of the commercial corridor, supporting other local businesses and bringing economic benefits to the neighborhood.

The Applicant's commitment to providing security personnel enhances neighborhood safety, addressing existing issues unrelated to the Project. A well-managed establishment can deter loitering, vandalism, and other nuisances through active monitoring and cooperation with law enforcement.

G. Consistency with General Plan and Community Plan Objectives

The Project aligns with objectives in the Hollywood Community Plan to promote economic well-being and public convenience by providing retail and service facilities. The restaurant use is permitted in the C2 Zone, and the Project complies with all applicable zoning regulations. By replacing an underutilized space with a vibrant establishment, the Project contributes positively to the area's revitalization.

IV. CONCLUSION

The City's determination that the Project is categorically exempt from CEQA is legally sound and supported by substantial evidence. The Appellant's arguments rely on outdated information, address issues outside the scope of the current appeal, and fail to demonstrate any significant environmental impacts that would necessitate further environmental review.

The Applicant's comprehensive modifications and the imposition of stringent conditions of approval adequately address potential concerns, ensuring that the Project will not have a significant effect on the environment. Denying the CEQA appeal and reinstating the Conditional Use Permit granted by the Central Area Planning Commission will allow the Project to proceed, bringing economic benefits, job opportunities, and enhanced security measures to the community.

The Applicant has demonstrated a genuine commitment to balancing business goals with community impact, reimagining the Project to address concerns and fostering a collaborative relationship with neighbors and local institutions. The Project promises not only economic revitalization but also a safer, more vibrant neighborhood.

For these reasons, the City Council should deny the CEQA appeal and uphold the Class 1 categorical exemption and Conditional Use Permit.

EXHIBIT A

C-1

CASE NO. ZA-2021-10704-CUB-1A

CONDITIONS OF APPROVAL

1. 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.
2. 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.
3. 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 Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
4. 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.
5. 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.
6. 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.
7. Authorized herein is the sale and dispensing of a full line of alcoholic beverage for on-site consumption, in conjunction with 9,988 square feet of restaurant space with outdoor patio, from the effective date of this grant. The grant shall be subject to the following limitations:
 - a. The hours of operation for the restaurant shall be limited to the following:

Monday through Thursday: 11:30 a.m. to 11:00 p.m.;
Friday: 11:30 a.m. to 1:00 a.m.;
Saturday: 10:00 a.m. to 1:00 a.m.; and
Sunday: 10:00 a.m. to 11:00 p.m..

- b. Interior seating shall be limited to a maximum of 186 seats. Maximum occupancy shall be as determined by the Department of Building and Safety and/or Fire Department.
 - c. Outdoor seating shall be limited to a maximum of 44 seats. Maximum occupancy shall be determined by the Department of Building and Safety and/or Fire Department.
 - d. A maximum 150 seats shall be utilized by the restaurant operation until 5 p.m., Monday through Friday.
8. No after-hours use is permitted, except routine clean-up. This includes, but is not limited to, private or promotional events, special events, excluding any activities which are issued film permits by the City.
9. **PLAN APPROVAL.** The applicant shall file a Plan Approval application within **THREE (3) YEARS** from the date of issuance of the ABC license, and no sooner than 60 days before the three years of operating with an ABC License. The operational date of this determination shall be identified and confirmed by the Planning Department's Conditional Compliance Unit (BESt). The Plan Approval Application should be subject to filing fees (and) shall be conducted subject to notification requirements established by the Los Angeles Municipal Code Section 12.24-D. The purpose of the Plan Approval is to review the effectiveness of, and compliance with the terms of this grant. Upon review of the effectiveness of and compliance with the conditions, the Zoning Administrator may modify such conditions, delete or add new ones, including adding security to the convenience store operation, as appropriate and require a subsequent Plan Approval, as necessary, and reserves the right to conduct this public hearing for nuisance abatement / revocation purposes.
10. The establishment shall be maintained as a bona fide restaurant with an operational kitchen and shall provide a menu containing an assortment of foods normally offered in restaurants. Food service shall be available at all times during operating hours. The establishment shall provide seating and dispense food and refreshments primarily for consumption on the premises and not solely for the purpose of food takeout or delivery.
11. A camera surveillance system shall be installed and operating at all times to monitor the interior, entrance, exits and exterior areas, in front of and around the premises. Recordings shall be maintained for a minimum period of 30 days and are intended for use by the Los Angeles Police Department.
12. All exterior portions of the site shall be adequately illuminated in the evening so as to make discernible the faces and clothing of persons utilizing the space. Lighting shall be directed onto the site without being disruptive to persons on adjacent properties.

13. **Private Events.** Any use of the restaurant for private events, including corporate events, birthday parties, anniversary parties, weddings or other private events which are not open to the general public, shall be subject to all the same provisions and hours of operation stated herein.
14. Parking shall be provided in compliance with the code and to the satisfaction of the Department of Building and Safety. No variance from the parking requirements has been requested or granted herein.
15. **Complaint Log.** A telephone number and email address shall be provided for complaints or concerns from the community regarding the operation. The phone number and email address shall be posted at the following locations:
 - a. Entry, visible to pedestrians.
 - b. Customer service desk, front desk or near the cash registers.

Complaints shall be responded to within 24-hours. The applicant shall maintain a log of all calls and emails, detailing: (1) date complaint received; (2) nature of complaint, and (3) the manner in which the complaint was resolved.

16. **STAR/LEAD/RBS Training.** Within the first six months of operation, all employees involved with the sale of alcohol shall enroll in the Los Angeles Police Department "Standardized Training for Alcohol Retailers" (STAR) or Department of Alcoholic Beverage Control "Licensee Education on Alcohol and Drugs" (LEAD) training program or the Responsible Beverage Service (RBS) Training Program. Upon completion of such training, the applicant shall request the Police Department or Department of Alcohol Beverage Control to issue a letter identifying which employees completed the training. STAR or LEAD or RBS training shall be conducted for all new hires within three months of their employment.
17. The applicant shall be responsible for monitoring both patron and employee conduct on the premises and within the parking areas under their control to assure behavior that does not adversely affect or detract from the quality of life for adjoining residents, property owners, and businesses.
18. Loitering is prohibited on or around these premises or the area under the control of the applicant. "No Loitering or Public Drinking" signs shall be posted in and outside of the subject facility.
19. At least one on-duty manager with authority over the activities within the facility shall be on the premises during business hours. 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 subject

premises and the facility to discourage illegal and criminal activities 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.

20. The approved conditions shall be retained on the premises at all times and produced immediately upon request of the Police Department, Department of Alcoholic Beverage Control, or the Department of Building and Safety. The on-site Manager and employees shall be knowledgeable of the conditions herein.
21. The applicant shall be responsible for maintaining free of debris or litter the area adjacent to the premises over which they have control, including the sidewalk in front of the establishment.
22. Pool tables or similar game activities or equipment shall not be permitted. Official California State lottery games and machines are allowed.
23. An electronic age verification device shall be retained on the premises available for use during operational hours. This device shall be maintained in operational condition and all employees shall be instructed in its use.
24. Any music, sound or noise which is under control of the applicant shall not constitute a violation of Sections 112.06 or 116.01 of the Los Angeles Municipal Code (Citywide Noise Ordinance) and shall not be audible beyond the subject premises. At any time during the term of the grant a City inspector may visit the site during operating hours to measure the noise levels using a calibrated decibel/sound level meter. If, upon inspection, it is found that the noise level exceeds those allowed by the Citywide Noise Ordinance, the owner/operator will be notified and will be required to modify or, eliminate the source of the noise or retain an acoustical engineer to recommend, design and implement noise control measures within property such as, noise barriers, sound absorbers or buffer zones.
25. There shall be no Adult Entertainment of any type pursuant to LAMC Section 12.70.
26. There shall be no live entertainment or dancing unless the business has a valid Café Entertainment/Show Permit granted by the City of Los Angeles Police Commission. No conditional use for dancing has been requested or approved herein. Dancing is prohibited. Background music to complement the dining experience is permitted.
27. There shall be no karaoke, disc jockey, topless entertainment, male or female performers or fashion shows.
28. There shall be a minimum two (2) security guards on the restaurant premises at all hours of the restaurant business. All security personnel shall be licensed

consistent with State law and Los Angeles Police Commission standards and maintain an active American Red Cross first-aid card. The security personnel shall be dressed in such a manner as to be readily identifiable to patrons and law enforcement personnel.

29. Smoking tobacco or any non-tobacco substance, including from electronic smoking devices, is prohibited in or within 10-feet of the outdoor dining areas in accordance with Los Angeles Municipal Code Section 41.50 B.2.C. This prohibition applies to all outdoor areas of the establishment if the outdoor area is used in conjunction with food service and/or the consumption, dispensing or sale of alcoholic or non-alcoholic beverages.
30. The applicant(s) shall comply with 6404.5(b) of the Labor Code, which prohibits smoking within any place of employment. The applicant shall not possess ashtrays or other receptacles used for the purpose of collecting trash or cigarettes/cigar butts within the interior of the subject establishment.

ADMINISTRATIVE CONDITIONS

31. **Expedited Processing Section.** Prior to the clearance of any conditions, the applicant shall show proof that all fees have been paid to the Department of City Planning, Expedited Processing Section.
32. **MViP – Monitoring Verification and Inspection Program.** Prior to the effectuation of this grant, fees required per LAMC 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.
 - a. Within 24 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.
 - b. The owner and 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 Zoning Administrator.
33. Should there be a change in the ownership and/or the operator of the business, the property owner and the business owner or operator shall provide the prospective new property owner and the business owner/operator with a copy of the conditions of this action prior to the legal acquisition of the property and/or the business. Evidence that a copy of this determination including the conditions

required herewith has been provided to the prospective owner/operator shall be submitted to the Department of City Planning in a letter from the new operator indicating the date that the new operator/management began and attesting to the receipt of this approval and its conditions. The new operator shall submit this letter to the Department of City Planning within 30 days of the beginning day of his/her new operation of the establishment along with any proposed modifications to the existing the floor plan, seating arrangement or number of seats of the new operation.

34. The Zoning Administrator reserves the right to require that the new owner or operator file a Plan Approval application, if it is determined that the new operation is not in substantial conformance with the approved floor plan, or the operation has changed in mode or character from the original approval, or if documented evidence be submitted showing a continued violation(s) of any condition(s) of this grant resulting in a disruption or interference with the peaceful enjoyment of the adjoining and neighboring properties. The application, in association with the appropriate fees, and a 500-foot notification radius, shall be submitted to the Department of City Planning within 30 days of the date of legal acquisition by the new owner or operator. The purpose of the plan approval will be to review the operation of the premise and establish conditions applicable to the use as conducted by the new owner or operator, consistent with the intent of the Conditions of this grant. Upon this review, the Zoning Administrator may modify, add or delete conditions, and if warranted, reserves the right to conduct this public hearing for nuisance abatement/revocation purposes.

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

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

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

For purposes of this condition, the following definitions apply:

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

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

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