

Community Development
Department
Planning Division

City of Arts & Innovation

April 3, 2014

Steven Walker Communities
Steve Berzansky
7111 Indiana Ave, Ste. 300
Riverside, CA 92504

SUBJECT: PLANNING CASES: P12-0799 AND P12-0800 (TM-36516) – WESTERLY SIDE OF PALM AVENUE BETWEEN BEECHWOOD AND HIGHLAND PLACES

Dear Mr. Berzansky:

The Riverside City Planning Commission, at its meeting of April 3, 2014, approved your development-related application which is referenced by the above-noted case number. Attached are the final conditions of approval. In conjunction with this approval the City Planning Commission, in accordance with the California Environmental Quality Act (CEQA), determined that this project would not have a significant effect on the environment and adopted a Negative Declaration.

A Notice of Determination has been filed with the County of Riverside Clerk's Office. The filing of the Notice of Determination formally deems the project approved and commences a 30-day period in which legal challenges to the environmental determination can be made. A copy of the Notice of Determination is enclosed.

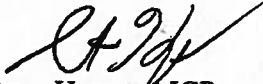
There is now a ten-day appeal period from the date of the Planning Commission's decision. Appeals are set for public hearing before the City Council. Appeals must be received in writing along with the required fee by 5:00 p.m. on April 14, 2014 in the Planning Division of the Community Development Department. If not appealed, the Planning Commission's decision is final.

There is an initial 36-month period in which to record this map. Prior to the expiration of the initial 36 months allowed for recordation, a timely written request may be submitted to the Zoning Administrator for a one-year time extension. Up to six additional one-year time extensions may be granted by the Zoning Administrator. Any request for a time extension must be submitted in writing, include the fee, and be received by the Community Development Department prior to the expiration date or the map will be void. Retroactive time extensions for a map are prohibited per State Law.

Finally, the conditions of approval require the applicant to execute an indemnification agreement within 30 days of map approval. Please complete the attached agreement and return to the case planner below within 30 days.

Should you have any questions concerning this notice please contact your case planner Brian Norton, Associate Planner, at (951) 826-2308.

Sincerely,



Steve Hayes, AICP
City Planner

c: Public Works, Rob Van Zanten

Andrew Walcker
3544 University Avenue
Riverside, CA 92501

**PLANNING COMMISSION
FINAL CONDITIONS**

Case No.: P12-0799 (TM-36516)

PLANNING COMMISSION HEARING DATE: ARIL 3, 2014

CONDITIONS *All mitigation measures are noted by an asterisk (*).*

Case Specific

• **Planning**

1. All conditions of Planning Case P12-0800 (Design Review) shall apply.
2. The City Planning Commission makes the necessary findings in the applicant's favor to grant the following variances. As justification, the applicant's written justifications as supplemented by staff are referenced:
 - a. To allow lots 2, 3 and 5 to have substandard property line street frontages, ranging from 25.33 feet and 41.20 feet, where the Subdivision Code requires lots fronting onto cul-de-sac streets to have a minimum street frontage of 45 feet;
 - b. To allow lots 1, 3 and 6 to have substandard lot widths between 50 and 54 feet, where the Zoning Code requires lot widths of 60 feet;
 - c. To allow lots 4 and 7 to have substandard lot depths of approximately 67 and 52 feet, respectively, where the Zoning Code requires lot depths of 100 feet;
3. The City Planning Commission makes the necessary findings in the applicant's favor to grant the following modification. As justification, the applicant's written justifications as supplemented by staff are referenced:
 - a. To allow the width of the parkway along the cul-de-sac to be a reduced width parkway from 12 feet to 7 feet.

Prior to Map Recordation:

4. Parcel 'B', as denoted on Tract Map 36516 shall be summarily vacated as excess right-of-way no longer needed for street purposes and shall become a portion of Lot 7.
5. A deed notice of "Airport in Vicinity" shall be recorded pursuant to Riverside County Airport Land use Compatibility Plan requirements.
6. Construction and habitation shall be in compliance with the adopted Riverside County Airport Land Use Compatibility Plan, including, but not limited to, dedication of an aviation easement, recording of a deed notice and completion of a disclosure statement upon the transfer of real estate.

7. **Advisory:** Any lighting other than the normally associated with a residential use, such as tennis court lighting, shall be hooded and directed downward to avoid off-site light spillage and shall be subject to Design Review staff approval.
8. **Advisory:** Pursuant to Section 13.06.090 of the Municipal Code, property owner's adjacent to any public right-of-way landscaping (i.e. "parkway landscaping"), including side frontage of Lots 1, 6 and 7 are responsible for the maintenance of landscaping.

Prior to Building Permit issuance:

9. Tract Map 36516 shall be recorded.

• **Public Works**

Prior to Map Recordation:

10. A "FINAL MAP" shall be processed with the Public Works Department and recorded with the County Recorder. The "FINAL MAP" shall be prepared by a Land Surveyor or Civil Engineer authorized to practice Land Surveying in the State of California and shall comply with the State Subdivision Map Act and Title 18 of the Riverside Municipal Code. All applicable checking and recording fees are the responsibility of the applicant.
11. Deed for widening Palm Avenue to 44 feet from monument centerline to Public Works specifications.
12. Installation of curb and gutter at 32 feet from monument centerline, sidewalk and matching paving on Palm Avenue to Public Works specifications.
13. Full improvement of interior street based on modified residential street standards. Minimum parkway width shall be 7 feet behind curb face to accommodate standard sidewalk width. Findings to support the modification to development standards must be made by the Approving Authority pursuant to RMC 18.230.
14. Installation of sewers and sewer laterals to serve this project to Public Works specifications.
15. Size, number and location of driveways to Public Works specifications. Shared driveway approaches are not allowed.

Off-site improvement plans to be approved by Public Works prior to map recordation

16. A surety prepared by Public Works to be posted to guarantee the required off-site improvements prior to map recordation.
17. Prior to final inspection for the development project, the applicant shall pay the Transportation Uniform Mitigation Fee (TUMF) in accordance with the fee schedule in effect at the time of payment. If the project improvements include qualifying right-of-way dedications and/or street improvements to a TUMF regional arterial roadway as identified on the Regional System of Highways and Arterials, the developer may have the option to enter

into a Credit/ Reimbursement Agreement with the City and Western Riverside Council of Governments (WRCOG) to recover costs for such work based on unit costs as determined by WRCOG.

The terms of the agreement shall be in accordance with the RMC Chapter 16.68 and the TUMF Administrative Plan requirements. Credit/reimbursement agreements must be fully executed prior to receiving any credit/reimbursement. An appraisal is required for credit/reimbursement of right of way dedications and credit/reimbursement of qualifying improvements requires the public bidding and payment of prevailing wages in accordance with State Law. For further assistance, please contact the Public Works Department.

18. Prior to issuance of a building or grading permit, the applicant shall submit to the City for review and approval, a project-specific WQMP that:

Addresses Site Design BMP's such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas and conserving natural areas;

Incorporates the applicable Source Control BMP's as described in the Santa Ana River Region WQMP and provides a detailed description of their implementation;

Incorporates Treatment Control BMP's as described in the Santa Ana River Region WQMP and provides information regarding design considerations;

Describes the long-term operation and maintenance requirements for BMP's requiring long-term maintenance; and

Describes the mechanism for funding the long-term operation and maintenance of the BMP's requiring long-term maintenance.

19. Prior to issuance of any building or grading permits, the property owner shall record a "Covenant and Agreement" with the County-Clerk Recorder or other instrument acceptable to the City Attorney to inform future property owners of the requirement to implement the approved project-specific WQMP. Other alternative instruments for requiring implementation of the approved project-specific WQMP include: requiring the implementation of the project-specific WQMP in the Home Owners Association or Property Owners Association Conditions, Covenants and Restrictions (C,C&R's); formation of Landscape, Lighting and Maintenance Districts, Assessment Districts or Community Service Areas responsible for implementing the project-specific WQMP; or equivalent may also be considered. Alternative instruments must be approved by the City prior to the issuance of any building or grading permits.
20. If the project will cause land disturbance of one acre or more, it must comply with the statewide General Permit for Storm Water Discharges Associated with Construction Activity. The project applicant shall cause the approved final project-specific WQMP to be incorporated by reference or attached to the project's Storm Water Pollution Prevention Plan as the Post-Construction Management Plan.

21. Prior to building or grading permit closeout or the issuance of a certificate of occupancy or certificate of use, the applicant shall:

Demonstrate that all structural BMP's described in the project-specific WQMP have been constructed and installed in conformance with approved plans and specifications;

Demonstrate that applicant is prepared to implement all non-structural BMP's described in the approved project-specific WQMP; and

Demonstrate that an adequate number of copies of the approved project-specific WQMP are available for the future owners/ occupants.

- **Fire Prevention**

Contact Margaret Albanese at 951-826-5825 for questions regarding fire conditions or corrections.

The following to be met prior to construction permit issuance:

22. A residential fire sprinkler system meeting National Fire Protection Association 13D is required. Plans shall be submitted to and approved by the Fire Department prior to installation. 2010 California Residential Code, Section R313. Riverside Municipal Code, Section 16.32.076.
23. One new public fire hydrant will be required for this development.

- **Public Utilities**

Contact Paul Baum at PBaum@RiversideCA.gov or (951) 826-5370 with any water questions regarding this project.

24. *Advisory:* The provision of water facilities in accordance with the City of Riverside Public Utilities Water Rules.
25. *Advisory:* The provision of utility fees and charges in accordance with the City of Riverside Public Utilities Water Rules.

Contact Summer Delgado at 951-826-2129 for questions regarding Public Utilities (Electric) conditions/corrections listed below.

26. All utilities shall be satisfactorily relocated, protected and/or replaced to the specifications of the affected departments and agencies, and easements for such facilities retained as necessary.
27. The provision of utility easements, water, street lights and electrical underground and/or overhead facilities and fees in accordance with the rules and regulations of the appropriate purveyor.

- **Parks, Recreation and Community Services**

Prior to building permit issuance:

28. Payment of all applicable park development fees (local, regional/reserve, trail and aquatic) as mitigation for the impacts of the project on the park development and open space needs of the City. For questions or concerns regarding this condition, contact Park Planning & Design, 951/826-2000.

Standard Conditions

- **Planning**

29. There is a thirty-six-month time limit in which to satisfy the conditions and record this map. Five subsequent one-year time extensions may be granted by the City Planning Commission upon request by the applicant. Application for a one-year time extension must be made prior to the expiration date of the map. No time extension may be granted for applications received after the expiration date of the map.
30. Within 30 days of the approval of the project by the City the developer/subdivider shall execute an agreement, approved by the City Attorney's Office, to defend, indemnify, including reimbursement, and hold harmless the City of Riverside, its agents, officers and employees from any claim, action, or proceeding against the City of Riverside, its agents, officers, or employees to attack, set aside, void, or annul, an approval by the City's advisory agency, appeal board, or legislative body concerning this subdivision, which action is brought within the time period provided for in Section 66499.37 of the Government Code. The City will promptly notify the Developer/subdivider of any such claim, action or proceeding and the City will cooperate in the defense of the proceeding.
31. The applicant shall continually comply with all applicable rules and regulations in effect at the time permit is approved and exercised and which may become effective and applicable thereafter.
32. This project shall fully and continually comply with all applicable conditions of approval, State, Federal and local laws in effect at the time the permit is approved and exercised and which may become effective and applicable thereafter, and in accordance with the terms contained within the staff report and all testimony regarding this case. Failure to do so will be grounds for Code Enforcement action, revocation or further legal action.

GENERAL INFORMATION NOTES

1. Appeal Information

- a. Actions by the City Planning Commission, including any environmental finding, may be appealed to the City Council within fifteen calendar days after the decision.**
- b. Appeal filing and processing information may be obtained from the Community Development Department, Planning Division, Public Information Section, 3rd Floor, City Hall.**

**PLANNING COMMISSION
FINAL CONDITIONS**

Case No.: P12-0800 (Design Review) PLANNING COMMISSION HEARING DATE: ARIL 3, 2014

CONDITIONS *All mitigation measures are noted by an asterisk (*).*

Case Specific

• **Planning**

1. All conditions of Planning Cases P12-0799 (Tentative Tract Map) shall apply.
2. The City Planning Commission makes the necessary findings in the applicant's favor to grant the following variances. As justification, the applicant's written justifications as supplemented by staff are referenced:
 - a. To permit a habitable portion of the residence on lot 7 to be situated 18 feet from the rear property line, where the Zoning Code requires habitable dwellings to be setback a minimum of 25 feet from the rear property line in the R-1-7000 Zone;
 - b. To permit non-habitable porches on lots 1 and 6 to be situated approximately 3 and 3.5 feet, respectively, from the side yard property line, where the Zoning Code requires a minimum setback of 7.5 feet from the side yard in the R-1-7000 Zone;
 - c. To permit non-habitable porches on lots 4 and 7 to be situated approximately 14 feet from the front yard property line, where the Zoning Code requires a minimum setback of 20 feet from the front yard property line in the R-1-7000 Zone;
 - d. To permit a non-habitable accessory structure, in the form of a detached garage, on lots 4 and 7 to be situated approximately 32 feet and 22 feet, respectively, from the front property line, where the Zoning Code requires a minimum setback from the front property line of at least 50 feet; and
 - e. To permit an over height wall, of 6 feet, within the front yard area of lot 7, where the Zoning Code requires solid walls in the front yard to not exceed 3 feet in height.
3. The side yard setback for the proposed single family residence on lot 5 shall be adjusted to meet the minimum 7.5-foot side ward setback from the westerly property line.
4. **All garages shall be relocated, to the extent possible, to the minimum 5 foot setback along the rear property line on each lot.**
5. Construction and habitation shall be in compliance with the adopted Riverside County Airport Land Use Compatibility Plan, including, but not limited to, dedication of an aviation easement, recording of a deed notice and completion of a disclosure statement upon the transfer of real estate.

Prior to Grading Permit Issuance

6. A 40-scale precise grading plan shall be submitted to the Planning Division and include the following:
 - a. Hours of construction and grading activity are limited to between 7:00 a.m. and 7:00 p.m. weekdays and 8:00 a.m. and 5:00 p.m. Saturdays. No construction noise is permitted on Sundays or Federal Holidays;
 - b. Compliance with City adopted interim erosion control measures;
 - c. Compliance with all recommendations of the required Project specific Water Quality Management Plan;
 - d. Compliance with any applicable recommendations of qualified soils engineer to minimize potential soil stability problems;
 - e. Include a note requiring the developer to contact Underground Service Alert at least 48 hours prior to any type of work within pipeline easement; and
 - f. The Project shall abide by the SCAQMD's Rule 403 concerning Best Management Practices for construction sites in order to reduce emissions during the construction phase. Measures may include:
 - i Development of a construction traffic management program that includes, but is not limited to, rerouting construction related traffic off congested streets, consolidating truck deliveries, and providing temporary dedicated turn lanes for movement of construction traffic to and from site;
 - ii Sweep streets at the end of the day if visible soil material is carried onto adjacent paved public roads;
 - iii Wash off trucks and other equipment leaving the site;
 - iv Replace ground cover in disturbed areas immediately after construction;
 - v Keep disturbed/loose soil moist at all times;
 - vi Suspend all grading activities when wind speeds exceed 25 miles per hour; and
 - vii Enforce a 15 mile per hour speed limit on unpaved portions of the construction site.

During Grading and Construction

7. To reduce diesel emissions associated with construction, construction contractors shall provide temporary electricity to the site to eliminate the need for diesel-powered electric generators, or provide evidence that electrical hook ups at construction sites are not cost effective or feasible.
8. To reduce construction related particulate matter air quality impacts of projects the following measures shall be required:
 - a. The generation of dust shall be controlled as required by the AQMD;
 - b. Grading activities shall cease during periods of high winds (greater than 25 mph);
 - c. Trucks hauling soil, dirt or other emissive materials shall have their loads covered with a tarp or other protective cover as determined by the City Engineer; and
 - d. The contractor shall prepare and maintain a traffic control plan, prepared, stamped and signed by either a licensed Traffic Engineer or a Civil Engineer. The preparation of the plan shall be in accordance with Chapter 5 of the latest edition of the Caltrans Traffic Manual and the State Standard Specifications. The plan shall be submitted for approval, by the engineer, at the preconstruction meeting. Work shall not commence without an approved traffic control plan.
9. The Construction Contractor shall time the construction activities so as to not interfere with peak-hour traffic and minimize obstruction of through traffic lanes adjacent to the site; if necessary, a flag person shall be retained to maintain safety adjacent to existing roadways.
10. Should cultural, historical or archeological items be found during grading and construction activity, the construction and grading of this project all activity shall be halted in the vicinity of the find and diverted until a qualified archeologist meeting the Secretary of the Interior standards can evaluate the nature and significance of the find. If human remains are uncovered, the applicant shall contact the County Coroner's Office.
11. The applicant shall be responsible for erosion and dust control during both the grading and construction phases of the project.
12. **Advisory:** State and Federal regulations require preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP). Compliance with this requirement is enforced by the Water Quality Control Board.

Prior to Building Permit Issuance

13. **Advisory:** Payment of Transportation Uniform Mitigation Fees (TUMF), School Fees and Multi-Species Habitat Conservation Plan (MSHCP) fees as applicable.

14. **Advisory:** Any applicable Riverside County Flood Control and Water Conservation District facilities must be constructed to District standards, and District plan check and inspection will be required. Separate plan check and inspection fees apply.
15. The developer shall be subject to the payment of school fees and local traffic and transportation fees in accordance with City Ordinances, as applicable.
16. Property Owner(s) shall submit Administrative Design Review applications for the development of new residences on each lot. The site plan and building elevations will be subject to review and approval of Design Review staff. Separate applications and fees will be required.
17. **Staff Required Building Elevation Conditions:** Revise the submitted building elevations such that the plans provided for building permit plan check incorporate the following changes:
 - a. Residences on lots 1, 6 and 7 shall include additional articulation on the elevations visible from Palm Avenue, including but not limited to, additional wood siding, a more significant wrap of the porches, to the satisfaction of Design Review staff;
 - b. Porches on lots 1, 6 and 7, including wrapped portions, shall include additional enhancements and include railings with decorative balusters.
 - c. Detached garage structures on lots 4 and 7 shall incorporate decorative molding around the garage door opening and decorative siding that is consistent with those found on the residences on all elevations that are visible to the public right-of-way;
 - d. Garage doors shall be period and style appropriate and manufactures cut sheets shall be submitted to staff for final approval.
18. **Staff Required Wall and Fence Plan Conditions:** A perimeter wall plan shall be submitted for review and approval of Design Review staff. The new interior walls for the entire site and reverse frontage and return walls shall consist of decorative material, to the satisfaction of Design Review staff. The applicant shall work cooperatively with the adjacent single family residential property owners along Kendall Street and Elmwood Court to remove all existing wood, chain link fences and concurrently construct a new decorative masonry wall along the shared property line.
19. Revise the submitted conceptual plan such that the plan provided for building permit plan check incorporates the following changes:
 - a. Detail segment of walls and columns shall be revised to include;
 - i. Main wall segments shall be of a decorative nature and finished in either stucco or a period appropriate decorative block,
 - ii. For the segments of walls facing Palm Avenue, columns shall be added every 20 feet and finished in a decorative material that is consistent with the elements of

the proposed development and shall be a different material than the main wall panels, and

- iii. A decorative cap shall be incorporated into the design of all masonry walls.
- b. "Return" walls shall consist of a decorative masonry material or a masonry material with a decorative exterior finish;
- c. All return walls shall be plotted at least 3 feet behind the adjacent front building wall plane; and
- a. Samples of proposed decorative pavers on residential driveways shall be submitted for review and approval of Design Review staff.

Staff Required Landscape Conditions:

- a. The applicable provisions of the Water Efficient Landscape Ordinance shall apply to this project.
- b. Vines shall be planted along all decorative masonry walls facing onto Palm Avenue, with a permanent automatic irrigation system.

• **Public Works**

- 20. Public Works conditions of approval for Planning case P12-0799 shall apply.

• **Fire Prevention**

Contact Margaret Albanese at 951-826-5455 for questions regarding fire conditions or corrections.

- 21. The following fire conditions are provided for your information and must be completed prior to scheduling your final fire inspection. No revisions to your plans are required.
- 22. A residential fire sprinkler system meeting National Fire Protection Association 13D is required. Plans shall be submitted to and approved by the Fire Department prior to installation. 2010 California Residential Code, Section R313. Riverside Municipal Code, Section 16.32.076.
- 23. One new public fire will be required for this development.

• **Public Utilities Electric**

Contact Summer Delgado at 951-826-2129 for questions regarding Public Utilities (Electric) conditions/corrections listed below;

24. The provision of utility easements, water, street lights and electrical underground and/or overhead facilities and fees in accordance with the rules and regulations of the appropriate purveyor.
25. All utilities shall be satisfactorily relocated, protected and/or replaced to the specifications of the affected departments and agencies, and easements for such facilities retained as necessary.

- **Parks and Recreation**

Prior to Building Permit Issuance:

26. Payment of all applicable park development fees (local, regional/reserve, trail and aquatic) as mitigation for the impacts of the project on the park development and open space needs of the City. For questions or concerns regarding this condition, contact Park Planning & Design, 951/826-2000.

GENERAL INFORMATION NOTES

Appeal Information

1. Actions by the City Planning Commission, including any environmental finding, may be appealed to the City Council within fifteen calendar days after the decision.
2. Appeal filing and processing information may be obtained from the Community Development Department, Planning Division, Public Information Section, 3rd Floor, City Hall.



City of Arts & Innovation

COMMUNITY DEVELOPMENT DEPARTMENT Planning Division

Notice of Determination

To: County of Riverside
County Clerk & Recorder
P.O. Box 751
2720 Gateway Drive
Riverside, Ca 92501-0751
(951) 486-7405
Office of Planning & Research
 P.O. Box 3044,
1400 Tenth Street, Room 222
Sacramento, Ca 95812-3044

From: City of Riverside
Community Development Department
Planning Division
3900 Main Street, 3rd floor
Riverside, CA 92522
(951) 826-5625

SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number: *(if submitted to State Clearinghouse) n/a*

Project Title: P12-0799 and P12-0800

Project Applicant: Steven Walker Communities

Project Location (include County): Situated on the westerly side of Palm Avenue between Beechwood Place and Highland Place, in the City and County of Riverside.

Project Description: **PLANNING CASES P12-0799 AND P12-0800:** Proposal by Steve Berzansky of Steven Walker Communities to consider Tentative Tract Map 36516 to subdivide a 1.26 acre parcel into 7 single family residential lots; and the Design Review of a plot plan and building elevations for the proposed single family residences with detached garages, situated on the westerly side of Palm Avenue between Beechwood and Highland Places, in Ward 1. It is recommended that the City Planning Commission recommend to the City Council adoption of a Negative Declaration in conjunction with these cases.

This is to advise that the Planning Commission has approved the above-described project on April 3, 2014 and has made the following determinations which reflect the independent judgment of the City of Riverside regarding the above described project.

1. The project [will will not] have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation Measures [were were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [was was not] adopted for this project.
5. A Statement of Overriding Considerations [was was not] adopted for this project.

6. Findings were were not] made pursuant to the provisions of CEQA.

This is to certify that the Negative Declaration is available to the General Public at the City of Riverside, Community Development Department, Planning Division, 3900 Main Street, Riverside.

Signature:  Title: City Planner
Steve Hayes, AICP

Date: 4/8/14 Date Received for filing at OPR: _____

**CITY OF RIVERSIDE DEVELOPMENT
INDEMNIFICATION AGREEMENT**

This INDEMNIFICATION AGREEMENT ("Agreement") is made this _____ day of _____, 2014, by a _____, a _____, ("Applicant"), in favor of the City of Riverside, a California charter city and municipal corporation ("City").

RECITALS

A. The Applicant is the owner or developer of that certain real property ("Property") located within the City of Riverside, County of Riverside, California. The Property is more particularly described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference.

B. The Applicant has applied to the City for certain development approvals for the Property under Planning Case Nos. P12-0799 and P12-0800, a proposal to _____, on the Property located at _____ (the "Project").

C. As a condition of approval to Planning Case Nos. P12-0799 and P12-0800, the City has required that the Applicant execute this Agreement, to defend, indemnify, including reimbursement, and hold harmless the City, its agents, officers and employees from any claim, action, or proceeding against the City, its agents, officers or employees, to attack, void or annul an approval by the City's advisory agency, appeal board, or legislative body concerning the Project.

NOW, THEREFORE, in accordance with the recitals set forth above and as consideration for the approval of development entitlements stated herein, the City and Applicant agree as follows:

1. **Incorporation of Recitals.** The parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have entered into this Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. **Term.** The term of this Agreement commences upon approval of Planning Case Nos. P12-0799 and P12-0800 and shall terminate one year after the satisfaction of all required conditions under said Planning Case.

3. Indemnification. The Applicant agrees to indemnify and hold harmless the City, its agents, officers, council members, employees, boards, commissions and their members and the City Council from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of such litigation being to attack, set aside, void or annul any approval of the Project or related decision, or the adoption of any environmental documents or negative declaration which relates to the Project. This indemnification shall include, but is not limited to, all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party, and costs of suit, attorneys' fees, and other costs, liabilities and expenses arising out of or in connection with the approval of the application or related decision, whether or not there is concurrent, passive or active negligence of the part of the City, its agents, officers, council members, employees, boards, commissions and their members and the City Council.

4. City Notification. City shall promptly notify the Applicant of any claim, action, or proceeding concerning the Project and the City shall cooperate fully in the defense of the matter. Applicant shall promptly retain counsel, at its own cost, to represent the City in any such action. Said counsel, if approved by the City, can jointly represent the City and Applicant. However, the City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees, and agents in the defense of the matter. Any costs and attorney's fees incurred by the City for its separate counsel shall be paid for by the Applicant.

5. Settlement. The Applicant shall not be required to pay or perform any settlement unless the settlement is approved by the Applicant.

6. Severability. If for any reason, any portion of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

7. Assignability Limitations. This Agreement may be assigned by the Applicant to any successor in interest for the Project, only after Applicant has first notified the City Planning Department and has provided to the City Planning Director a signed acceptance of the assignment by the assignee.

8. Nonwaiver of Rights or Remedies. The failure of the City to exercise any right or remedies available to it pursuant to this Agreement shall not constitute a waiver of that party's right to enforce that right or to seek that remedy in the future. No course of conduct or act of forbearance on any one or more occasions by any party to this Agreement shall preclude that party from asserting any right or remedy available to it in the future. No course of conduct or act of forbearance on any one or more occasions shall be deemed to be an implied modification of the terms of this Agreement.

9. City Authority. Notwithstanding anything in this Agreement to the contrary, the City retains all authority and discretion granted to it by law to either approve, disapprove or modify any of the proposed uses of the Property and/or Project in accordance with City ordinances and the approved General Plan.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, but only by a writing signed by both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Riverside.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of the Project, the environmental process, or the proposed uses of the Property. The City shall retain sole and absolute discretion on whether or not it will defend any action filed which challenges the Project, or whether it will take any other course of action on the Project. The Applicant may, however, in its sole and absolute discretion, appear as real party in interest in any third party action or proceeding, and in such event, the City may defend such action or proceedings at City's sole and absolute discretion. This City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate to represent its interests.

13. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by either the City or the Applicant against the other to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its actual attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in the City of Riverside, Riverside County, California, and any action or proceeding brought relative to this Agreement shall be heard in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

15. Headings. The headings of each Section of the Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

16. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

IN WITNESS WHEREOF, the Applicant has caused this Indemnification Agreement to be executed the date first written above.

APPLICANT:

By _____

Printed Name _____

Title _____

By _____

Printed Name _____

Title _____

APPROVED AS TO FORM:

Deputy City Attorney

Rev: 08/19/11