



Community & Economic Development
Department

City of Arts & Innovation

May 24, 2018

Pelican Merill Avenue LLC
Richard Hamm
1300 Quail Street #100
Newport Beach, CA 92660

Subject: PLANNING CASES: P17-0467 (GP), P17-0466 (SP), P17-0468 (RZ), P17-0469 (PPE), P17-0470 (TPMM), P17-0471 (VC) and P17-0472 (VR) – 3575-3661 Merrill Avenue, Ward 3

Dear Applicant:

The Riverside City Council, at its meeting of May 22, 2018, approved your development related application which is referenced by the above-noted case numbers. Attached are the final conditions of approval for your records. In conjunction with this approval the City Council, 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 Mitigated 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.

The conditions of approval require the applicant to execute an indemnification agreement within 30 days of approval. Please complete the attached agreement and return an original signed copy with the appropriate organizational documents to indicate proper signature authority and a current legal description of the project site to your case planner within 30 days.

Please call Brian Norton, Senior Planner, at (951) 826-2308 if you have any questions.

Sincerely,

Patricia Brenes
Principal Planner

**CITY COUNCIL
FINAL APPROVED CONDITIONS**

City Council Meeting Date: May 22, 2018

Case Numbers: **P17-0467** (General Plan Amendment)
P17-0466 (Specific Plan Amendment)
P17-0468 (Rezone)
P17-0469 (Site Plan Review)
P17-0470 (Traffic Pattern Modification)
P17-0471 (Street Vacation)
P17-0472 (Variance)

CONDITIONS

Case Specific

- **Planning**

1. Plans shall conform to the exhibits attached to this report. Proposed modifications to the approved design shall be submitted to the Planning Division and shall include revised exhibits and a narrative description of the proposed modifications. The applicant is advised that an additional application and fee may be required.
2. The applicant shall comply with conditions of approval of the Riverside County Airport Land Use Commission Development Review Number ZAP1091R117.

Prior to Grading Permit Issuance

3. *MM BIO-1: To avoid impacts on nesting birds, street trees shall be removed between September 1 and February 15 of the following year. If street tree removal will occur inside the peak nesting season (between February 16 and August 31), a pre-construction survey shall be conducted by a qualified Biologist to identify if there are any active nesting locations on the site and the construction areas. If the Biologist does not find any active nests within this area, then vegetation clearing and construction work will be allowed. If the Biologist finds an active nest within the area and determines that the nest may be impacted by demolition/construction activities, the Biologist will delineate an appropriate buffer zone around the nest depending on the species and the type of construction activity. Demolition/construction activities would be prohibited in the buffer zone until a qualified Biologist determines that the nest has been abandoned.
4. *MM CUL-1: Prior to the issuance of a grading permit, the Property Owner/Developer shall provide a letter from a County certified Archaeologist and Paleontologist stating that the Property Owner/Developer has retained these individuals, and that the Archaeologist and Paleontologist shall be on call during all grading and other significant ground-disturbing activities in native sediments.
5. *MM CUL-2: Cultural Sensitivity Training: The project Archaeologist and Native American Tribes consulting on the project shall attend the pre-grading meeting with

the developer/permit holder's contractors to provide Cultural Sensitivity Training for all construction personnel. This shall include the procedures to be followed during ground disturbance in sensitive areas and protocols that apply in the event that unanticipated resources are discovered. Only construction personnel who have received this training can conduct construction and disturbance activities in sensitive areas. A sign in sheet for attendees of this training shall be included and submitted to the Archeologist.

6. A 40-scale precise grading plan shall be submitted to the Planning Division and include the following:
 - a. Compliance with City adopted interim erosion control measures;
 - b. Compliance with any applicable recommendations of qualified soils engineer to minimize potential soil stability problems;
 - c. Include a note requiring the developer to contact Underground Service Alert at least 48 hours prior to any type of work within pipeline easement;
 - d. Note all drainage features will be color treated to match surrounding terrain; and
 - e. Final BMPs shall be finalized, subject to Public Work Department approval.

During Grading:

7. *MM CUL-3: Treatment and Disposition of Cultural Resources: In the event that Native American cultural resources are inadvertently discovered during the course of grading for this Project. The following procedures will be carried out for treatment and disposition of the discoveries:
 - a. Temporary Curation and Storage: During the course of construction, all discovered resources shall be temporarily curated in a secure location onsite or at the offices of the project archaeologist. The removal of any artifacts from the project site will need to be thoroughly inventoried with tribal monitor oversight of the process; and
 - b. Treatment and Final Disposition: The landowner(s) shall relinquish ownership of all cultural resources, including sacred items, burial goods, and all archaeological artifacts and non-human remains as part of the required mitigation for impacts to cultural resources. The applicant shall relinquish the artifacts through one or more of the following methods and provide the City of Riverside Community and Economic Development Department with evidence of same:
 - i. Accommodate the process for onsite reburial of the discovered items with the consulting Native American tribes or bands. This shall include measures and provisions to protect the future reburial area from any future impacts. Reburial shall not occur until all cataloguing and basic recordation have been completed;

- ii. A curation agreement with an appropriate qualified repository within Riverside County that meets federal standards per 36 CFR Part 79 and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within Riverside County, to be accompanied by payment of the fees necessary for permanent curation;
 - iii. If more than one Native American tribe or band is involved with the project and cannot come to an agreement as to the disposition of cultural materials, they shall be curated at the Western Science Center or Riverside Metropolitan Museum by default; and
 - iv. At the completion of grading, excavation and ground disturbing activities on the site a Phase IV Monitoring Report shall be submitted to the City documenting monitoring activities conducted by the project Archaeologist and Native Tribal Monitors within 60 days of completion of grading. This report shall document the impacts to the known resources on the property; describe how each mitigation measure was fulfilled; document the type of cultural resources recovered and the disposition of such resources; provide evidence of the required cultural sensitivity training for the construction staff held during the required pre-grade meeting; and, in a confidential appendix, include the daily/weekly monitoring notes from the archaeologist. All reports produced will be submitted to the City of Riverside, Eastern Information Center and interested tribes.
- 8. *MM CUL-4: In the event that any paleontological resources (e.g., plant or animal fossils) are encountered before or during grading, the Property Owner/Developer shall retain a qualified Paleontologist to evaluate unanticipated discoveries and to take appropriate measures to protect or preserve them for study. The Paleontologist shall submit a report of findings that will also provide specific recommendations regarding further mitigation measures (i.e., paleontological monitoring) that may be appropriate. Where mitigation monitoring is appropriate, the program must include, but not be limited to, the following measures:
 - Assign a Paleontological Monitor, trained and equipped to allow the rapid removal of fossils with minimal construction delay, to the site full time during earth-disturbing activities.
 - Divert earth-disturbing activities away from the immediate area of the discovery until the Paleontological Monitor has completed salvage. If construction personnel make the discovery, the Grading Contractor shall immediately divert construction and notify the Paleontological Monitor of the find.
 - Prepare, identify, and curate all recovered fossils for documentation in the summary report and transfer to an appropriate depository (e.g., Natural History Museum of Los Angeles County).

- Prepare and submit a technical report describing the identification, salvage, evaluation, and treatment of all fossils discovered during grading to the City of Riverside. Transfer collected specimens with a copy of the report to the depository.
9. To reduce construction related particulate matter air quality impacts of projects the following measures shall be required:
 - a. The generation of dust and fugitive dust shall be controlled as required by SCAQMD Rule 403;
 - b. Grading activities shall cease during period of high winds (greater than 25mph);
 - 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;
 - d. 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 to Public Works Department for review and approval. The Traffic Plan shall include, 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. Work shall not commence without an approval traffic control plan from the Public Works Department;
 - e. Sweep streets at the end of the day if visible soil material is carried onto adjacent paved public roads;
 - f. Wash off trucks and other equipment leaving the site;
 - g. Replace ground cover in disturbed areas immediately after construction;
 - h. Keep disturbed/loose soil moist at all times;
 - i. Enforce a 15 mile per hour speed limit on unpaved portions of the construction site.
 10. The applicant shall be responsible for erosion and dust control during both the grading and construction phases of the project.
 11. To reduce diesel emissions associated with construction, construction contractors shall provide temporary electricity to eliminate the need for diesel powered generators, or provide evidence that electrical hook ups at construction sites are not cost effective or feasible.
 12. In the event of an accidental discovery of any human remains in a location other than a dedicated cemetery, the steps and procedures specified in Health and Safety Code 7050.5, *State CEQA Guidelines* 15064.5(e), and Public Resources Code 5097.98 must be implemented. Specifically, in accordance with Public Resources Code (PRC)

Section 5097.98, the Riverside County Coroner must be notified within 24 hours of the discovery of potentially human remains. The Coroner will then determine within two working days of being notified if the remains are subject to his or her authority. If the Coroner recognizes the remains to be Native American, he or she shall contact the Native American Heritage Commission (NAHC) by phone within 24 hours, in accordance with PRC Section 5097.98. The NAHC will then designate a Most Likely Descendant (MLD) with respect to the human remains within 48 hours of notification. The MLD then has the opportunity to recommend to the property owner or the person responsible for the excavation work means for treating or disposing, with appropriate dignity, the human remains and associated grave goods within 24 hours of notification. Whenever the NAHC is unable to identify a MLD, or the MLD fails to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the MLD and the mediation provided for in subdivision (k) of PRC Section 5097.94 fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall re-inter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance.

13. Sweep all streets once per day if visible soil materials are carried to adjacent streets (recommend water sweepers with reclaimed water).

Prior to Issuance of Building Permit:

14. *MM NSE-1: Prior to issuance of building permits, if Federal Administration Quiet Zones have not been established at the UPRR crossings at Brockton Avenue and Panorama Road, the Property Owner/Developer shall demonstrate to the City that exposed residential exterior window/wall assemblies facing the railroad tracks provide a Sound Transmission Class (STC) rating of at least 30 dB. The building plans submitted to the City for review and approval shall identify the STC rating of the materials used to construct the northern exterior windows/wall assemblies to demonstrate that the proposed building construction would provide an interior noise level of 45 dBA CNEL, or less, in compliance with interior noise standards in Title 24 of the California Code of Regulations.
15. Submit three sets of plans depicting the preferred location for above ground utility transformer of capacity to accommodate the planned or speculative uses within the building(s) or subject site. These plans shall be reviewed and approved by the Planning Division and Public Utilities Department - Electric Division prior to the issuance of a building permit. The proposed location of the transformer shall be level, within 100 feet of the customer's service point, accessible to service trucks and in a location where the transformer can be adequately screened from public view, either by buildings or landscape screening. The applicant is advised to consult with the City of Riverside Public Utilities, Electrical Engineering Division, at (951)826-5489 prior to preparing these plans.
16. Plans submitted for Plan check review should specify the location, design and color of all domestic water meters, backflow preventers, and all on- and off-site utility cabinets subject to Planning Division and Public Utilities' review and approval.
17. **Photometric/lighting Plan:** An exterior lighting plan shall be submitted with building permit plans review and approval. Photometric plans shall include the following;

- a. A photometric study and manufacturer's cut sheets of all exterior lighting on the new buildings and within the common open space areas shall be submitted with the exterior lighting plan. All on-site lighting shall provide a minimum intensity of one foot-candle and a maximum intensity of ten foot-candles at ground level throughout the areas serving the public and used for parking, with a ratio of average light to minimum light of four to one (4:1). The light sources shall be shielded to minimize offsite glare, shall not direct light skyward and shall be directed away from adjacent properties and public right-of-ways. If lights are proposed to be mounted on buildings, down-lights shall be utilized. Light poles shall not exceed 14 feet in height, including the height of any concrete or other base material.
 - b. For safety, sufficient lighting shall be located at the vehicle entry driveway and shall include a form of decorative lighting.
18. **Wall Plan:** Revise the wall and fence plan such that the plan provided for building permit plan check incorporates the following changes:
- a. All project walls shall be constructed or finished in a decorative material.
 - b. All walls shall be finished with a decorative cap.
 - c. Wall segments terminating at the property line with Merrill Avenue shall include decorative columns finished with a decorative cap.
19. **Building Elevations Conditions:** Revise the submitted plot plan such that the plan provided for building permit plan check incorporates the following changes:
- a. Building elevations shall clearly specify all materials, colors and finishes.
20. **Trash Enclosure:** Revise the trash enclosure plan such that the plan provided for building permit plan check incorporates the following changes:
- a. Trash enclosures shall include a solid cover or decorative trellis.
21. **Landscape and Irrigation Plans** shall be submitted for Design Review approval. Design modifications may be required as deemed necessary. Separate applications and filing fees are required. Landscaping and irrigation plans must be submitted prior to building permit issuance. Landscaping and irrigation shall be installed per the approved plan and a completed "Certificate of Substantial Completion" (Appendix C of the water Efficient Landscaping and Irrigation Ordinance Summary and Design Manual) signed by the Designer/auditor responsible for the project shall be submitted to the Planning Division. Call the Case Planner to schedule a final inspection at least one week prior to needing the release of utilities.
- b. Landscaping shall be designed to provide 100 percent coverage of planters.
 - c. All above ground equipment, visible to the public right-of-way shall be fully screened by landscaping.

Prior to Release of Utilities and/or Occupancy:

22. Install the landscape and irrigation per the approved plans and submit the completed "Certificate of Substantial Completion" (Appendix C of the water Efficient Landscaping and Irrigation Ordinance Summary and Design Manual) signed by the Designer/auditor responsible for the project and submitted to the Planning Division for Planning Division site inspection.

- **Public Works**

Conditions to be fulfilled prior to occupancy unless otherwise noted:

23. Storm Drain construction will be contingent on engineer's drainage study.
24. *MM TRA-1: Prior to issuance of the certificate of occupancy of the project, signal timing adjustment and coordination shall be made to the traffic signal at the Riverside Avenue/Central Avenue intersection. These would include installation of an interconnect or fiber optic communication cable on Riverside Avenue between Merrill Avenue/Sunnyside Avenue and Central Avenue to coordinate the two signal systems. Once the two intersections are coordinated, signal timing can be synchronized and changes be implemented at the intersections whereby coordination on southbound traffic along Riverside Avenue will improve overall operations at the Riverside Avenue/Central Avenue intersection.
25. Installation of raised curb median and bulb-outs subject to Public Works review and approval.
26. Installation of sewers and sewer laterals to serve this project to Public Works specifications. Extension of sewer main in Merrill Avenue required to, and along project frontage (approximately 700'±).
27. Street trees are required, the developer shall work with the Public Works Street Trees Division to identify appropriate species of the trees, spaced at a minimum of 35 feet.
28. Closure of unused driveway(s) to Public Works specifications.
29. Off-site improvement plans to be approved by Public Works prior to issuance of construction permit.
30. A surety prepared by Public Works to be posted to guarantee the required off-site improvements prior to issuance of a building permit.
31. Size, number and location of driveways to Public Works specifications as shown on existing site plan in Exhibit 7, Project Plans.
32. All security gates or facilities proposed now or in the future will be located on-site and adequate stacking space and vehicle turn-around area will have to be provided to Public Works and Fire Department specifications as shown on existing site plan in Exhibit 7, Project Plans.
33. Prior to Building Permit Issuance, the Developer shall complete a lot line adjustment to consolidate or reconfigure the project site parcels to the satisfaction of the Planning Division and Public Works Department.
34. Trash Enclosures per City Standards. Tandem enclosures must contain similar bins, recycling bins shall be paired together and solid waste bins shall be paired together.

35. 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.
36. 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.
37. 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:
38. 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;
39. Incorporates the applicable Source Control BMP's as described in the Santa Ana River Region WQMP and provides a detailed description of their implementation;
40. Incorporates Treatment Control BMP's as described in the Santa Ana River Region WQMP and provides information regarding design considerations;
41. Describes the long-term operation and maintenance requirements for BMP's requiring long-term maintenance; and
42. Describes the mechanism for funding the long-term operation and maintenance of the BMP's requiring long-term maintenance.
43. 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.
44. 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.

45. Prior to building or grading permit closeout or the issuance of a certificate of occupancy or certificate of use, the applicant shall:
46. Demonstrate that all structural BMP's described in the project-specific WQMP have been constructed and installed in conformance with approved plans and specifications;
47. Demonstrate that applicant is prepared to implement all non-structural BMP's described in the approved project-specific WQMP; and
48. Demonstrate that an adequate number of copies of the approved project-specific WQMP are available.
49. Advisory – 1: Figure 3.14 of the Traffic Impact Analysis depicts the on-street parking layout, proposed roadway striping, and proposed sections of median and curb extensions. The final street section and striping configuration will be subject to further review and approval by the Traffic Engineering Division upon the formal submittal of street improvement plans by the applicant.
50. The project shall provide adequate sight distance at all project driveways.
51. The project is anticipated to result in a significant impact at the intersection of Central Avenue and Riverside Avenue. In order to mitigate this impact, the project shall install fiber optic communications, in existing conduit, between the traffic signals at Riverside Avenue at Merrill Avenue, and Riverside Avenue at Central Avenue, including necessary switches, splicing, and fiber optic distribution units per the City's specification. This will allow improved signal operations along Riverside Avenue, and allow the City to deploy CCTV cameras to monitor and adjust traffic progression in the area.

- **Fire Prevention**

52. An automatic fire sprinkler system is required by City Ordinance 16.32.080. Under separate cover, submit plans for the automatic fire sprinkler system(s) and obtain approval from the Fire Department prior to installation. Systems exceeding 20 sprinkler heads shall be provided with supervisory service and shall be monitored by a UL Central Station (UUFX) and shall be UL, FM or ETL certificated for the life of the system. Post Indicator valves, Detector Check control valves and water flow switches are required to be supervised by an UL listed central station.

Have a UL, FM or ETL listed and licensed C10 fire alarm contractor submit plans and obtain approvals prior to installation. Alarm contractor shall provide a copy of a maintenance contract complying with N.F.P.A. 72.

53. Requirements for construction shall follow the currently adopted California Building Code and California Fire Code with City of Riverside amendments.
54. Group R, Division 2 occupancies shall be provided with a manual and automatic fire alarm system in apartment houses three or more stories in height or containing 16 or more dwelling units. (See California Fire Code for exceptions). Submit plans and obtain approvals from the Fire Department prior to installation. New fire alarm systems shall be UL, FM or ETL certificated for the life of the system. Central Station shall be UL UUFX.

55. Provide for Fire Department vehicle access to within one hundred and fifty (150) feet of all portions of all exterior walls of all structures. This measurement shall be based on the path of travel as determined by the Fire Department.

Access roadways shall be a minimum of twenty (20) feet in unobstructed width with a minimum vertical clearance of thirteen feet, six inches (13'6"). Grade differential shall not exceed twenty (20) percent.

Access roadways shall be all weather surfaces, paved, provided with engineered turf block, or alternate design. Such roadways shall be maintained at all times. Information Bulletin attached.

56. Provide for fire department access to the gate. "Knox" key devices are available for use in the city. Contact the Fire Department for applications and details.
57. An "Infrared Automatic Gate System" is required for all electric gates. Contact the Fire Prevention Division for information.
58. Construction plans shall be submitted and permitted prior to construction.
59. Fire Department access shall be maintained during all phases of construction.
60. All required hydrants shall be in service and fire flow available prior to building permit release by the Fire Department. Violation of this requirement may result in citations that require a court appearance to be issued.
61. Provide for fire department access to the facility. "Knox" key devices are available. Contact the Fire Department for applications and details.

- **Public Utilities Water**

62. Existing water line fronting the property shall satisfactorily be relocated out of the sidewalk and into Merrill Avenue.

- **Public Utilities Electric**

63. 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.
64. 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 surveyor.
65. Provisions for electrical Utility equipment to provide power to the site is the responsibility of the developer. Please make sure that all clearances are maintained and location of the equipment is approved by the Utility.
66. Developer is responsible for all trenching, installation of conduit and sub-structures required to provide power to the site.
67. Plot existing electrical distribution facilities on the original site plan.

68. Please show proposed location of transformers and electrical rooms.

69. A switch will need to be installed to provide power.

70. Blanket Public Utility Easement required on all parcels.

- **Parks, Recreation and Community Services – Park Planning**

71. Developer shall make payment of all applicable Park Development Impact Fees (local, aquatic, regional/reserve and trail fees) per RMC Chapters 16.60, 16.44 and 16.76.

Standard Conditions

Planning

72. There shall be a two-year time limit in which to commence construction of the project beginning the day following approval by the Planning Commission unless a public hearing is held by City Council; in that event the time limit begins the day following City Council approval.

73. Within 30 days of approval of this case by the City, the developer 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 approval, 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 of any such claim; action or proceeding and the City will cooperate in the defense of the proceeding.

74. 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.

75. The applicant shall cooperate with the Riverside Police Department (RPD) in the enforcement of all laws relating to this permit. Material violation, as determined by the City Planning Commission, of any laws in connection with this use or failure to cooperate with RPD will be cause for revocation of this permit.

76. This permit is issued based upon the plans and information submitted by the applicant, which has been used as the basis for evaluation of the proposed use in this staff report and for the conditions of approval herein. Permittee shall notify Community Development Department, Planning Division, of any change in operations and such change may require a revision to this permit. Failure to notify the city of any change in operations is material grounds for revocation of this conditional use permit.

77. The applicant herein of the project subject to this conditional use permit acknowledges all of the conditions imposed and accepts this permit subject to those conditions and with the full awareness of the provisions of Title 19 of the Riverside

Municipal Code. The applicant shall inform all its employees and future operators of the business subject to this permit of the restrictions and conditions of this permit as they apply to the business operations.

78. Failure to abide by all conditions of this permit shall be cause for revocation.
79. The subject property shall be developed and operated substantially as described in the text of this report and as shown on the plot plan on file with this case except for any specific modifications that may be required by these conditions of approval.
80. Enumeration of the conditions herein shall not exclude or excuse compliance with all applicable rules and regulations in effect at the time this permit is exercised.

**CITY OF RIVERSIDE DEVELOPMENT
INDEMNIFICATION AGREEMENT**

This INDEMNIFICATION AGREEMENT ("Agreement") is made this ____ day of _____, 2018, 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. P17-0466, P17-0468, P17-0469, P17-0470, P17-0471 and P17-0472, a proposal to _____ on _____ the Property located at _____ (the "Project").

C. As a condition of approval to Planning Case Nos. P17-0466, P17-0468, P17-0469, P17-0470, P17-0471 and P17-0472, 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. P17-0466, P17-0468, P17-0469, P17-0470, P17-0471 and P17-0472 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