

RESOLUTION NO. 2023-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING APPEAL NO. 2023-06, THEREBY OVERTURNING THE DETERMINATION OF THE PLANNING COMMISSION AND APPROVING A MODIFICATION TO CONDITIONAL USE PERMIT NO. 2019-41 TO ALLOW THE CONSTRUCTION OF A SERVICE STATION, AND APPROVING CONDITIONAL USE PERMIT NO. 2023-03 FOR A LAND USE THAT REQUIRES A REGIONAL, STATE, OR FEDERAL PERMIT TO HANDLE, STORE, EMIT OR DISCHARGE REGULATED COMPOUNDS, MATERIALS, CHEMICALS, OR SUBSTANCES WITHIN 500 LINEAR FEET OF A PUBLIC PARK, SCHOOL (K-12), OR RESIDENTIAL ZONE IN THE ARTERIAL COMMERCIAL (C5) ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 2230 NORTH TUSTIN AVENUE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. Fred Cohen with CJC Design, Inc., on behalf of Farz, Inc. (Applicant) and Heinecke Gould Properties, LLC (Property Owner), is requesting approval of modification to Conditional Use Permit (CUP) No. 2019-41 to facilitate the construction of a new service station and convenience store located at 2230 North Tustin Avenue.
- B. Applicant is also requesting approval of Conditional Use Permit (CUP) No. 2023-03, to allow a land use that requires a regional, state, or federal permit to handle, store, emit or discharge regulated compounds, materials, chemicals, or substances within 500 linear feet of a public park, school (k-12) or residential zones in the Arterial Commercial (C5) zoning district at 2230 North Tustin Avenue.
- C. Santa Ana Municipal Code (SAMC) Section 41-424.5(f) requires approval of a CUP for service stations within the Arterial Commercial (C5) zoning district.
- D. SAMC Section 41-199.4(a) requires a conditional use permit for any use that requires a permit from a regional, state, or federal agency to handle, store, emit or discharge regulated compounds, materials, chemicals, or substances that is located within 500 linear feet of a public park, school (K-

12) as defined in section 11362.768 of the Health and Safety Code, or property used or zoned for residential purposes.

- E. On May 26, 2020, the City of Santa Ana Planning Commission held a public hearing for the proposal of a new service station on the subject site. The Planning Commission unanimously approved CUP No. 2019-41 and Variance No. 2019-05 to allow the construction of a new service station on the subject site.
- F. On December 20, 2022, the City Council adopted an ordinance to require businesses requiring a regional, state, or federal permit to handle, store, emit or discharge regulated compounds, materials, chemicals, or substances within 500 linear feet of a public park, school (K-12), or residential zones to obtain a CUP (Ordinance No. NS-3038).
- G. On June 20, 2023, the City Council adopted an ordinance amending various sections of Chapter 41 (Zoning) of the SAMC, which include Section 41-199.4 Noxious uses, to expand the distance measured from subject properties to the closest point of any public park, school, or property used or zoned for residential purposes from 500 linear feet to 1,000 (Ordinance No. NS-3044). However, as the requested application was submitted prior to this ordinance taking effect, the project is subject to the original 500-foot distance.
- H. The applicant is proposing modifications to the original CUP 2019-41 entitlement to allow construction of a new single-story, 2,150-square-foot commercial building, containing a convenience store, as well as a 2,880-square-foot fueling canopy with six fueling stations.
- I. Pursuant to SAMC Section 41-638, the Planning Commission is authorized to review and approve the CUP for this project as set forth by the SAMC.
- J. On June 26, 2023, the Planning Commission held a duly noticed public hearing for CUP No. 2019-41-MOD-1 and CUP No. 2023-03.
- K. At the public hearing, the Planning Commission received a report and staff presentation, as well as public comments, for modification to CUP No. 2019-41 and CUP No. 2023-03. During the public hearing, representatives of the adjacent property at 2112 East Santa Clara Avenue, as well as community members consisting of residents, representatives and parents of children attending the neighboring child-care facility, spoke in opposition of the project. The comments in opposition were regarding concerns about the potential environmental and operational impacts of the new service station on the surrounding area.
- L. After receiving a staff presentation and public comments regarding the changes to the project, the Planning Commission voted to adopt a resolution denying modification to CUP No. 2019 and CUP No. 2023-03, providing two findings for denial pursuant to SAMC Section 41-638. The proposed motion

passed with five votes in favor and two against (Ayes: Commissioners Escamilla, Oliva, Woo, Pham, Ramos, Noes: Leo, Benninger).

- M. On July 6, 2023, Michael Ayaz (Appellant) on behalf of Farz, Inc. & Fred Cohen (Applicant), filed Appeal (APPL) No. 2023-06 for modification to CUP No. 2019-41 and CUP No. 2023-03. Pursuant to SAMC Section 41-645, the City Council is authorized to review appeals of Planning Commission decisions and may, after holding a public hearing, affirm, reverse, change, modify the original decision and may make any additional determination it shall consider appropriate within the limitations imposed by Chapter 41 of the SAMC. To support the City's recommendation to deny the appeal applications and uphold the Planning Commission's denial of modification to CUP No. 2019-41 and CUP No. 2023-03, the City prepared a response to the comments contained within both appeals, attached to the Request for Council Action (RFCA) staff report, dated October 3, 2023, contained within the report and attached thereto as Exhibit 8.
- N. Staff prepared a resolution for denial of modification to CUP No. 2019-41 and CUP No. 2023-03 for consideration by the Planning Commission on the consent calendar of the regularly scheduled August 28, 2023 meeting to affirm the action to deny the subject applications, which took place on June 26, 2023.
- O. On October 3, 2023, the City Council held a duly-noticed public hearing on Appeal No. 2023-06 for modification to CUP No. 2019-41 and CUP No. 2023-03.
- P. The City Council of the City of Santa Ana has considered the information and determines that the following findings, which must be established in order to grant a modification to CUP No. 2019-41 to allow the construction of a new service station and CUP No. 2023-03 to allow a land use that requires a regional, state, or federal permit to handle, store, emit or discharge regulated compounds, materials, chemicals, or substances within 500 linear feet of a public park, school (k-12), or residential zone, at 2230 North Tustin Avenue in the C5 zoning district:
 - 1. That the proposed use will provide a service or facility which will contribute to the general well being of the neighborhood or community.

The proposed service station and convenience store will provide a service to persons that are working or residing in the area. The project will redevelop a vacant lot with a new building and enhanced landscaping, which will contribute to the overall aesthetics of the area. This will benefit the community by allowing the construction of an additional service use and retail building on a vacant lot that will provide additional conveniences for residents, visitors, and employees in the vicinity. For context, the two nearest service stations in Santa Ana are located approximately 0.45-miles to the north (Fairhaven and Tustin

avenues) and approximately 0.45-miles to the south (Tustin Avenue and 17th Street). A third service station is located in the City of Tustin, adjacent to the State Route 55 freeway, approximately 0.58-miles to the southeast.

2. That the proposed use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity.

The proposed site plan has been designed to not be detrimental to the health, safety or welfare of those residing or working in the vicinity. Moreover, the use has been comprehensively evaluated pursuant to the City's zoning ordinance and its noxious uses ordinance, and conditions of approval have been placed to ensure that the use limits impacts related to the following: toxic or noxious fumes; hazardous discharges; glare; electromagnetic disturbances; radiation; smoke; cinders; odors; dust or waste; undue noise or vibration; or other objectionable features that are detrimental to the public health, safety or general welfare, or that are damaging to the physical environment, neighborhood or community.

The site will propose high-quality architecture utilizing a combination of exterior materials and treatments to remain aesthetically harmonious with the surrounding area.

The fueling canopy is proposed along the northeastern end of the site to distance it from sensitive land uses to the west, reducing the impacts from the standard sources of emissions at service stations (i.e., service station infrastructure and vehicles visiting service stations). Additionally, the location of the convenience store adjacent to the western property acts as a physical barrier between nearby sensitive land uses and the fueling canopy. The closest residential land use is approximately 120 feet to the west of the site. Therefore, the recurring and predictable sources of emissions would be limited.

Additionally, the service station will utilize the latest technology in full compliance with State laws designed to ensure safe operations of the service station and minimization of emissions of fumes. Conditions of approval has been placed to ensure a reduction in loading and breathing emissions, due fuel tanker truck deliveries and due to excess pressure released from the gas station vent pipe in the form of gasoline vapor emissions. In addition, the applicant through conditions of approval will be required to conduct periodic reviews of operations to identify opportunities to upgrade or phase out older equipment.

Due to the site's location near sensitive land uses such as the adjacent child care facility and residential zones, additional conditions of approval have been included to mitigate any effects from vehicle idling, outdoor displays, onsite lighting, noise, vehicle maintenance, and the installation of temporary equipment. The service station will meet all emissions and air-quality requirements set by the California Air Resources Board (CARB). In addition, the site will propose high-quality architecture utilizing a combination of exterior materials and treatments to remain aesthetically harmonious with the surrounding area. Finally, the Applicant is not proposing to operate past 12:00 a.m. (midnight) in order to prevent any noise impacts on the sensitive residential land uses. This includes both the fuel pumps and the convenience store.

3. That the proposed use will not adversely affect the present economic stability or future economic development of properties surrounding the area.

The service station will not adversely affect the economic stability or future economic development of properties in the surrounding area. The service station will replace an existing vacant lot and contribute to the existing local economy by providing a commercial service to residents and visitors, as well as generate added sales tax revenue for the City. As detailed in Finding No. 2 in this Resolution, the use has been designed and conditions of approval have been added to the Conditional Use Permit to ensure the project operates in a manner that eliminates impacts onto surrounding properties and sensitive receptors.

4. That the proposed use will comply with the regulations and conditions specified in Chapter 41 for such use.

The proposed use complies with the regulations and conditions in Chapter 41 including building heights, yards, parking and landscaping. A condition of approval has been added to the conditional use permit for a property maintenance agreement to be recorded against the property, which will ensure that the property and all improvements are properly maintained. Additionally, the development will also meet sustainability measures pursuant to the California Green Code, such as providing solar photovoltaic panels on the roof and electric vehicle charging stations.

5. That the proposed use will not adversely affect the General Plan of the city or any specific plan applicable to the area of the proposed use.

- i. The granting of CUP No. 2019-41-MOD-1 and CUP No. 2023-03 supports and is consistent with several goals and policies contained in the General Plan. Specifically, the application would be consistent with Goals 2, 3, 4 of the Land Use Element (“LU”); Goals 1 and 3 of the Economic Prosperity Element (“EU”); Goal 1, 4, 5 of the Mobility Element (“M”); Goal 1 and 3 of the Conservation Element (“CN”); and Goal 2 of the Safety Element (“S”). The project is located within the General Commercial (GC) land use designation, which allows for highly visible and accessible shopping opportunities along arterial corridors and supports the development and continued operation of recreational, cultural, entertainment, employment, and educational opportunities near established residential neighborhoods.

Goal 2 of the Land Use Element encourages a balance of land uses that meet Santa Ana’s diverse needs. The project contributes to Goal 2 of the Land Use Element by providing additional services to Santa Ana residents and visitors, thereby positively contributing to the economic viability of the area by promoting local spending, offering employment opportunities, and providing a safe workplace. In addition, the applicant is making an investment to rehabilitate the site to allow for a safe and attractive establishment by improving the circulation throughout.

Goal 3 encourages the preservation and improvement of the character and integrity of the existing neighborhoods and districts. The proposed improvements address Goal 3 of the Land Use Element by preserving the character of the existing commercial area. The scale and massing of the addition is proposed to be compatible and will maintain the current architectural style, which includes an earth tone color palette, stone veneer, smooth stucco finishes, canopies and trim. The project provides a harmonious development and keeps all four corners of the intersection harmonious aesthetically, promoting a clean and safe environment.

Goal 4 supports a sustainable Santa Ana through improvements to the built environment and a culture of collaboration. The proposed project supports Goal 4 of the Land Use by supporting a sustainable community by ensuring the project has been designed and conditioned to minimize impacts onto surrounding properties. The project will support sustainable improvements to the built environment and encourage land use strategies that reduce the operation impacts of the commercial site. The reconfiguration of the site will additionally contribute to improved living conditions and a

healthier environment for the surrounding area by developing the site in a responsible manner.

Goal 1 of the Economic Prosperity Element promotes the fostering of a dynamic local economy that provides and create employment opportunities for all residents in the City while Goal 3 of the Economic Prosperity Element encourages a business-friendly environment where businesses thrive and build on Santa Ana's strengths and opportunities. The proposed project will support Goals 1 and 3 of the Economic Prosperity Element and will help the applicant to enhance their business offerings and compete with nearby service stations that offer similar services. Moreover, by working on an improved site design with the applicant, staff ensured that that project provided a high level of community investment for residents, workers, and visitors in the area.

Goal 1 of the Mobility Element supports a comprehensive and multi-modal circulation system that facilitates the safe and efficient movement of people, enhances commerce, and promotes a sustainable community. Goal 4 of the Mobility Element coordinates transportation planning efforts with land use and design strategies that encourage sustainable development and achieve broader community goals. Goal 1 of the Conservation Element supports the protection of air resources, improve regional and local air quality, and minimize the impacts of climate change. Goal 2 of the Safety Element supports the protection of residents and environmental resources from contaminated hazardous material sites and minimize risks associated with the use, production, storage, transport, and disposal of hazardous materials. The proposed project will support Goal 4 of the Mobility Element, Goal 1 of the Conservation Element, and Goal 2 of the Safety Element by utilizing land use, design, and sustainable strategies to protect environmental resources and residents. The proposed site configuration contributes to protection of local air quality and minimizes environmental impacts associated with the business.

Section 2. Pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the project is exempt from further review pursuant to Section 15303 of the CEQA Guidelines (Class 3 – New Construction or Conversion of Small Structures). This exemption applies to the construction of small structures, which, in urbanized areas, applies to up to four commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances, where all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive. The proposed structures total less than 10,000 square feet and will be served by all necessary utilities. The project site's location

does not include any environmental features indicating that it is sensitive. As such, a Notice of Exemption, Environmental Review No. 2017-83, will be filed for this project.

Section 3. The City Council hereby approves Appeal Application No. 2023-06, thereby overturning the determination of the Planning Commission and approves Conditional Use Permit Nos. 2019-41-MOD-1 and 2023-03 with modified Conditions of Approval indicated in Exhibit A.

Section 4. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, referendum, and other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

Section 5. The City Council of the City of Santa Ana after conducting the public hearing hereby approves Conditional Use Permit No. 2019-41-MOD-1 and Conditional Use Permit No. 2023-03, as conditioned in Exhibit A, attached hereto and incorporated herein, for the project located at 2230 North Tustin Avenue. This decision is based upon the evidence submitted at the above said hearing, which includes, but is not limited to: the Request for City Council Action dated October 3, 2023, and exhibits attached thereto; and the public testimony, written and oral, all of which are incorporated herein by this reference.

[Signatures on the following page]

ADOPTED this 3rd day of October 2023 by the following vote.

AYES: Councilmember:

NOES: Councilmember:

ABSENT: Councilmember:

ABSTENTIONS: Councilmember:

Valerie Amezcua
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: _____
Jose Montoya
Assistant City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Jennifer L. Hall, City Clerk, do hereby attest to and certify the attached Resolution No. 2023-XXX to be the original resolution adopted by the City Council of the City of Santa Ana on October 3, 2023.

Date: _____

Jennifer L. Hall
City Clerk

EXHIBIT A

Conditions of Approval for Conditional Use Permit No. 2019-41-MOD-1 & Conditional Use Permit No. 2023-03

Conditional Use Permit No. 2019-41-MOD-1 and Conditional Use Permit No. 2023-03 for a service station is approved subject to compliance, to the reasonable satisfaction of the Planning Manager, with applicable sections of the Santa Ana Municipal Code, the California Administrative Code, the California Building Standards Code, and all other applicable regulations.

The Applicant must remain in compliance with all conditions listed below throughout the life of the conditional use permit(s). Failure to comply with each and every condition may result in the revocation of the conditional use permit.

1. All proposed site improvements must conform to the Development Project Review (DP No. 2021-29) and the staff report exhibits.
2. Any amendment to this conditional use permit must be submitted to the Planning Division for review. At that time, staff will determine if administrative relief is available or the conditional use permit must be amended.
3. Prior to the issuance of a building permit, a landscape and irrigation plan shall be submitted for review and approval. The landscape plan shall conform to the commercial landscape standards, Citywide Design Guidelines and the City's Water Efficient Landscape Ordinance. The landscape plans shall note construction of a minimum seven (7) foot tall perimeter wall along the west and southern property lines, except where prohibited by driveways and required landscape setbacks, and shall be coated with anti-graffiti coating. The landscape plan shall include the installation of vines throughout the perimeter walls and portions of the main building's exterior with solid voids and no fenestrations.
4. Upon the discretion of the City Council, the Council may impose any additional conditions of approval they see fit such as the following: _____.
5. Prior to the issuance of a certificate of occupancy, signs must be installed at both driveway exits to indicate "Right Turn Only".
6. Prior to issuance of certificate of occupancy, signs shall be installed, following separate Planning Division review and approval, stating that truck drivers shall limit idling of diesel-powered vehicles to less than five minutes in accordance with Title 13 – Section 2485 of the California Code of Regulations.
7. The hours of operation for the convenience store and service station, including fuel pumps, shall be limited to between 5:00 a.m. and 12:00 a.m. (midnight),

seven days per week, unless extended by approval of a separate conditional use permit.

8. Deliveries of goods and services related to items sold inside the convenience store shall not occur between 10:00 p.m. and 7:00 a.m., with fuel deliveries limited to the hours between 6:00 p.m. and 10:00 p.m., daily.
9. The air/water machine must provide an automatic shut-off component to cease operation when the service station, including the convenience store and fuel pumps, is not in operation.
10. The location of the air/water station shall be placed in an area not prominent to the street and shall be screened to the furthest extent possible.
11. The Applicant shall be responsible for maintaining the premises free of graffiti. All graffiti shall be removed within 24 hours of occurrence.
12. The cash register must be visible from the street at all times and shall not be obstructed at any time by temporary or permanent signage.
13. Window displays and racks must be kept at a maximum height of three (3) feet including merchandise and cannot obstruct the cashier's view to the outside.
14. A timed-access cash controller or a money drop safe capable of easily providing the cashier the ability to quickly deposit money into it must be installed.
15. A silent armed robbery alarm shall be installed prior to issuance of a certificate of occupancy.
16. There shall be no coin-operated games maintained on the premises at any time.
17. No pay telephones shall be located on the premises.
18. "No Loitering/Trespass" signs/placards shall be posted in the parking lot area. The posted signs must conform to Penal Code Section 602.
19. The Applicant shall provide a Closed Circuit Television System approved by the Police Department and capable of viewing and recording events inside the premises with a resolution which will clearly identify individuals for later identification.
20. Clearly distinguishable height markers shall be installed on the inside door jamb of all doors used by the public to access the store. Horizontal marks, one-inch wide by three-inches long, in different colors, and in a contrasting

color to the background, shall be placed every six inches beginning at five feet and ending at six feet six inches.

21. To minimize light intrusion, the use of exterior lighting shall be shielded and/or directed away from adjacent properties.
22. The utilization of outdoor speakers or similar devices onsite are prohibited.
23. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The Applicant and/or business owner shall institute appropriate security and operational measures necessary to comply with this requirement.
24. At all times, the contact information for a responsible party such as an onsite manager or property manager shall be posted in a prominent location. The minimum information in the posting shall include the individual's name, title, phone number, and email address, to report any onsite issues 24 hours per day, seven days per week.
25. A copy of the conditions of approval shall be kept on premises and presented to any authorized City official upon request.
26. The sale of alcoholic beverages shall be prohibited, unless extended by approval of a separate conditional use permit.
27. The outdoor storage or display of boxes, equipment, materials, merchandise, and other similar items shall be prohibited.
28. The outdoor storage, sale, or display of natural or propane gas tanks shall be prohibited.
29. The installation of temporary mechanical equipment, tarps, or similar structures shall be reviewed by the Planning Division.
30. The performance of vehicle maintenance such as but not limited to; replacement of belts, hoses, shock absorbers, oil and air filters, chassis lubrication, air conditioning servicing, wheel alignments, replacement of brake pads, and engine tune-ups or other minor repairs shall be prohibited.
31. Truck drivers shall limit idling of diesel-powered vehicles to less than five minutes in accordance with Title 13 – Section 2485 of the California Code of Regulations.
32. To the extent feasible, the applicant shall install a vapor processor to manage the pressure of the vapor in a gasoline storage tank to prevent overpressure issues and reduce breathing emissions from the pressure/vent valve. The vapor processors shall be certified by the California Air Resources Board (CARB).

33. To the extent feasible, the applicant shall utilize cleanest possible equipment during construction (e.g., all construction equipment must meet or exceed CARB-certification standards).
34. The applicant shall be required to conduct periodic reviews of operations to identify opportunities to upgrade or phase out older equipment.
35. A Property Maintenance Agreement must be recorded against the property prior to issuance of a certificate of occupancy. The agreement will be subject to review and applicability by the Planning and Building Agency, the Community Development Agency, the Public Works Agency, and the City Attorney to ensure that the property and all improvements located thereupon are properly maintained, Developer (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Applicant) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:
 - (a) Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.).
 - (b) Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses.
 - (c) Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable.
 - (d) Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable).

(e) If Developer and the owner of the property are different (e.g., if the Applicant is a tenant or licensee of the property or any portion thereof), both the Applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms.

(f) The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless the prospective assignee agrees in writing to assume all of the duties, obligations and responsibilities set forth under the maintenance agreement.

(g) The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City.

(h) The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of final approval for any construction permit related to this entitlement.