

RESOLUTION NUMBER R- 311625

DATE OF FINAL PASSAGE MAR 20 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING MASTER PLANNED DEVELOPMENT PERMIT NO. 1499941, SITE DEVELOPMENT PERMIT NO. 1499942, CONDITIONAL USE PERMIT NO. 1904584, AMENDMENT TO PLANNED COMMERCIAL DEVELOPMENT/ CONDITIONAL USE PERMIT NO. 88-0585 AND AMENDMENT TO SITE DEVELOPMENT PERMIT NO. 400602 FOR THE TOWN AND COUNTRY - PROJECT NO. 424475.

WHEREAS, HOTEL CIRCLE PROPERTY, LLC., a Delaware Limited Liability Company, Owner and Permittee, filed an application with the City of San Diego for a Master Planned Development Permit No. 1499941, Site Development Permit No. 1499942, and Conditional Use Permit No. 1904584, and amendments to Planned Commercial Development/ Conditional Use Permit No. 88-0585 and Site Development Permit No. 400602, for a master plan development within a premises consisting of three project districts (River Park District, Hotel District and Residential District) that includes the consolidation and renovation of the hotel and convention center (hotel capacity reduced from 954 to 700 guest rooms and the conference facilities reduced from 212,762 to 177,137 gross square feet), construction of a total 840 residential units with incorporated parking structures on four lots, restoration of the San Diego River open space habitat, development of a new passive public park, and development of a multi-use San Diego River Pathway providing a link in the regional recreational corridor and the regional transit center, on a 39.72-acre parcel of land known as the Town and Country project (Project); and

WHEREAS, the project site is located at 500 Hotel Circle North in the OF-1-1 Zone and the Mission Valley Planned District (MVPD) MV-M/SP Zone within the Atlas Specific Plan and the Mission Valley Community Plan area, the Residential Tandem Parking Overlay Zone, and

the Transit Area Overlay Zone. The project is located within the Airport Land Use Compatibility Overlay Zone for Montgomery Field, the Airport Influence Area for San Diego International Airport (SDIA) and Montgomery Field (Review Area 2) as depicted in the adopted Airport Land Use Compatibility Plans (ALUCPs) and the Federal Aviation Administration Part 77 Notification Area for the SDIA and Montgomery Field; and

WHEREAS, the property is legally described within Exhibit A, which is an attachment to the Master Planned Development Permit No. 1499941, Site Development Permit No. 1499942, Conditional Use Permit No. 1904584 and amendment to Planned Commercial Development/Conditional Use Permit No. 88-0585, and amendment to Site Development Permit No. 400602; and

WHEREAS, on June 15, 2017, the Planning Commission of the City of San Diego considered Master Planned Development Permit No. 1499941, Site Development Permit No. 1499942, Conditional Use Permit No. 1904584, and amendments to Planned Commercial Development/Conditional Use Permit No. 88-0585 and Site Development Permit No. 400602, and pursuant to Resolution No. PC-4867 voted to recommend approval; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on March 20, 2018, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Master Planned Development Permit No. 1499941, Site Development Permit No. 1499942, Conditional Use Permit No. 1904584, and amendments to Planned Commercial Development/Conditional Use Permit No. 88-0585 and Site Development Permit No. 400602:

**A. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL COE (SDMC) SECTION 126.0604**

**1. Findings for all Planned Development Permits - Section 126.0604(a)**

**a. The proposed development will not adversely affect the applicable land use plan.** The 39.72-acre project site is located at 500 Hotel Circle North, and is bounded to the south by Hotel Circle North and Camino De La Reina, to the west by Fashion Valley Road, to the north by Riverwalk Drive and Fashion Valley Mall, and to the east by the former the San Diego Union-Tribune property. Interstate-8 is located immediately to the south of Hotel Circle North and Camino De La Reina. The site in the MVPD MV-M/SP zone of the Mission Valley Planned District Ordinance (MVPDO) (proposed to be rezoned to MVPD-MV-M) and the northern portion of the site is zoned OF-1-1 (proposed to be rezoned to MVPD-MV-M), and is within the Mission Valley Community Plan (MVCP) and the Atlas Specific Plan.

The Project proposes the consolidation, renovation, and infill redevelopment of the Town and Country Hotel and Convention Center site. The Project proposes a Master Plan that would guide the redevelopment of the site consisting of three project districts (River Park District, Hotel District and Residential District). Critical proposed elements of the Master Plan includes the consolidation and renovation of the hotel and convention center (hotel capacity reduced from 954 to 700 guest rooms and the conference facilities reduced from 212,762 to 177,137 gross square feet), construction of a total 840 residential units with incorporated parking structures on four lots, restoration of the San Diego River open space habitat, development of a new passive public park, and development of a multi-use San Diego River Pathway providing a link in the regional recreational corridor and the regional transit center.

The land use designation, as amended to Multi-Use, would introduce multi-family residential development on a site that contains commercial, recreational, and hotel uses. The proposed amendment would establish parameters for site development that tie into a multi-modal circulation network by providing a pedestrian and bicycle bridge to the Fashion Valley Trolley Station, multimodal pathway along the river, and Class II bike facilities along Fashion Valley Road and Hotel Circle North. The proposed amendment would also identify park and open space uses along the San Diego River and include specific provisions for revegetation and enhancement opportunities, plaza and open space to create a front door to the River, and connect to adjacent properties. The addition of residential development near public transit would be

consistent with the goals and policies for transit-oriented development of the General Plan and Community Plan.

The proposed development would incorporate current public park space and development guidelines and policies to be consistent with the River Park Master Plan. The River Park Master Plan establishes a vision, principles and recommendations for areas near the San Diego River and identifies river corridor area and sensitive development area adjacent to the River floodway.

Therefore, with the adoption of the Land Use Plan Amendment (LUPA) and Rezone, the proposed development would not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.** An Environmental Impact Report (EIR) No. 424475/SCH No. 2015121066, has been prepared for the Project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. A Mitigation, Monitoring and Reporting Program (MMRP) would be implemented with this Project, which would reduce some of the potential impacts to below a level of significance. The applicant has provided Draft Candidate Findings and Statement of Overriding Considerations to allow the decision-maker to approve the Project with significant and unmitigated direct impacts related to Historical Resources and Transportation/Circulation and Parking.

The permit for the Project includes various conditions and referenced exhibits relevant to achieving project compliance with the applicable regulations of the San Diego Municipal Code (SDMC) in effect for this Project. Such conditions are necessary to avoid adverse impacts to the health, safety and general welfare of persons residing or working in the surrounding area. The Project will comply with the development conditions in effect for the subject property as described in Master Planned Development Permit No. 1499941, Site Development Permit No. 1499942, and Conditional Use Permit No. 1904584, amendments to Planned Commercial Development/Conditional Use Permit No. 88-0585 and Site Development Permit No. 400602, and other regulations and guidelines pertaining to the subject property per the SDMC. Prior to issuance of any building permits for the proposed development, the plans will be reviewed for compliance with all Building, Electrical, Mechanical, Plumbing and Fire Code requirements, and the Owner/Permittee will be required to obtain a grading and public improvement permit. Therefore, the proposed development would not be detrimental to the public health, safety and welfare.

**c. The proposed development will comply with the regulations of the Land Development Code including any proposed deviations pursuant to Section 126.0602(b)(1) that are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone; and any allowable deviations that are otherwise authorized pursuant to the Land Development Code.** The following are the proposed 19 deviations, relevant code sections and requirements, and justifications for the deviations:

1) Minimum Lot Area within the OF-1-1 zone (Open Space-Floodplain)- A deviation from SDMC Section 131.0231 and Table 131-02C, which requires a minimum lot area

of 10 acres. This request allows the project a lot area of 1.70-acres for Lot B, 8.26-acres for Lot C, and 1.61-acres for Lot D;

2) Minimum Lot Width within the OF-1-1 zone (Open Space-Floodplain) – A deviation from SDMC Section 131.0231 and Table 131-02C, which requires a minimum lot width of 500 feet. This request allows the project a minimum lot width of less than 500 feet for Lots C and D (lot width varies);

3) Street Frontage within the OF-1-1 zone (Open Space-Floodplain) – A deviation from SDMC Section 131.0231 and Table 131-02C, which requires a minimum street frontage of 500 feet. This request allows the project a minimum street frontage less than 500 feet for Lot C and Lot D;

4) Lot Depth within the OF-1-1 zone (Open Space-Floodplain) – A deviation from SDMC Section 131.0231 and Table 131-02C, which requires a minimum lot depth of 500 feet. This request allows the project a minimum lot depth of less than 500 feet for Lot B from Private Drive E;

5) Structures within Floodways (River Park District) – A deviation from SDMC Section 143.0145(e)(2), which does not permit permanent structures within the floodway. This request allows for specific existing permanent structures, and substantial improvements within the floodway associated with the passive public park, Private Drive E, the parking lot of the hotel, including fences, picnic tables, posts, informational signage, benches, and directional signage;

6) Flowage Easement (River Park District) – A deviation from SDMC Section 143.0146(a)(4), which requires that a flowage easement to the City shall be granted for that portion of the property within a floodway. This request allows the existing hotel/convention center structures that are located within the currently defined floodway to be designated outside of the flowage easement;

7) River Corridor Area (River Park District) – A deviation from SDMC Section 1514.0302(c), which requires the alignment of the River Pathway to be within the Path Corridor. This request allows the following within the River Corridor Area: Existing Hotel buildings with certain improvements that includes parking and Private Drive E, the River Pathway outside of the Path Corridor and within the floodway, construction of new residential building and site improvements on Lot 4 within the Path Corridor, and shielded lighting along the River Pathway within the Floodway directed away from river and Multi-Habitat Planning Areas;

8) River Influence Area Lot Coverage (River Park District) – A deviation from SDMC Section 1514.0302(d) (1), which requires a maximum of 65-percent lot coverage for any development on a lot wholly or partially within 115 feet of the River Corridor Area. This request allows the project an 85-percent lot coverage for development on Residential Lot 4;

9) River Influence Area Building Height (River Park District) – A deviation from SDMC Section 1514.0302(d)(2), which requires a series of tiers that establish a minimum set

back and maximum building height from the River Corridor Area per SDMC Table 1514-03C and Diagram 1514-03C. This request allows the project to use the same setbacks and height within the regulations for Residential Lot 4, except the implementation would be from edge of floodway instead of edge of River Corridor Area and as illustrated in Master Plan Figure 5-2;

10) River Influence Area Massing (River Park District) – A deviation from SDMC Section 1514.0302(d)(2), which requires a maximum massing setback from the edge of the River Corridor Area per SDMC Table 1514-03C. This request allows the setback massing to be measured from edge of floodway instead of edge of the River Corridor Area for Residential Lot 4. The deviation allows a maximum 50 percent of a building's wall to be located at the setback measured from the floodway; and at or above 90 ft. in height above finished grade, a building's wall shall be at least 30 percent narrower than the width of the building wall on the ground floor within the River Influence Area as illustrated in Master Plan Figure 5-2;

11) Fences (River Park District) – A deviation from SDMC Section 1514.0302(d)(13), which limits fences within 10 feet of outer limit of the River Corridor Area. This request allows the proposed fences for Residential Lot 4 building entrances and terraces, and along Riverwalk Drive within River Corridor Area;

12) Sidewalks/Parkways (River Park District) – A deviation from SDMC Section 1514.0402(b)(1), which requires minimum average widths for sidewalks and parkways per SDMC Table 1514-04A. This request allows for a 8-foot clear corridor sidewalk and a 6-foot landscaped parkway along Fashion Valley Road (new construction only) and Camino de la Reina, and 10-foot multi-modal River Pathway outside of the right-of-way in lieu of pedestrian sidewalk on south side of Riverwalk Drive;

13) Street Frontage (Residential District) – A deviation from SDMC Section 1514.0304(d)(1), which requires a minimum of 70 feet of public street frontage. This request allows for no public street frontage for Lot 3 and 4, since Lot 3 would provide a 366-foot private drive frontage and Lot 4 would provide a 448-foot private drive frontage;

14) Street Yard Area (Residential District) – A deviation from SDMC Section 1514.0304(e)(1), which requires a minimum street yard area of 25 feet multiplied by the street frontage length plus an incremental factor of 0.25 feet for each foot of building elevation over 24 feet. This request allows for a minimum street yard factor to be 15-foot street yard area multiplied by the length of street frontage for new construction;

15) Parking and Building Setbacks and Incremental Building Setback (Residential District) – A deviation from SDMC Section 1514.0304(e)(2) and (3), which requires incremental setback for the street, side, and rear setbacks per SDMC Table 1514-03H. This request allows for a 15 foot street yard setback for Lot 1 and Lot 2 with no additional incremental setback, and a 10 foot street yard setback for Lot 3 and Lot 4, with no additional incremental setback. This requests allows a side yard setback for Lot 1 of 10-foot with no additional incremental setback, and for Lot 2, Lot 3, and Lot 4 a 10-foot side yard setback with no additional incremental setback, except Lot 3 has a 5-foot side yard setback with no additional incremental setback along the eastern side yard. In addition, the request allows for Lots 1, 2, and 3 a 10-foot rear yard setback with no

additional incremental setback, and for Lot 4 a 10-foot rear yard setback facing river with incremental setback as illustrated in Master Plan Figure 5-2. This request also allows architectural projection and encroachments into street yard, side yard or rear yard setbacks that shall project or encroach to a maximum of 4 ft. and includes: projecting balconies above the first story; projecting entries, either at grade or elevated with accompanying stairs and cover; roof projections such as eave, cornice, and eyebrow; bay windows, and turrets; openly supported architectural projections including trellises (there shall be a minimum 6-ft., 8-inch clearance between proposed grade and the lowest horizontal portion of the projection, not including the supports); entry roofs, porches, entry arbors, and patio structures; unroofed structures not in excess of 3 ft. above proposed grade, with a safety railing not exceeding 42 inches in height; trellises with plant material or screening panels on parking structures;

16) Exterior Usable Open Space (Residential District) – A deviation from SDMC Section 1514.0304(f)(2), which requires a minimum of 156 square feet of usable open area per dwelling unit. This request allows for a minimum 100 square feet of usable open area per dwelling unit, including exterior and interior usable common active or passive recreation space;

17) Structural Development Coverage (Residential District) – A deviation from SDMC Section 1514.0304(g), which allows a maximum of 50-percent structural development coverage. This request allows for a 55-percent maximum structural development coverage (calculated over gross acreage of residential zone);

18) Maximum Structural Coverage (Hotel District) – A deviation from SDMC Section 1514.0304(g), which allows a maximum of 50-percent structural development coverage. This request allows for a 60-percent structural development coverage, excluding any fence wall, retaining wall, pier, post, sign, parking space, terrace, deck, paved area, pool cabana, spa, or swimming pool; and

19) Yards and Setback Requirements (Hotel District) – A deviation from SDMC Section 1514.0305(e)(1), which requires a minimum 20-foot street yard factor multiplied by the length of street frontage, and a building setbacks of 15 feet street yard, 10 feet side yard, and 15 rear yard. All setbacks have additional incremental setback of 0.2 feet for every foot of building elevation of 24 feet. This request allows for a minimum 15-foot street yard factor multiplied by the length of street frontage for new construction. In addition, the request allows for a side yard and rear yard building setback of 10 feet with no additional incremental setback.

Each of the requested deviations has been reviewed as they relate to the proposed design of the Project, the property configuration, and the surrounding development. The deviations are appropriate and will result in a more desirable project that efficiently utilizes the site and achieves the revitalization and re-use of the existing underutilized hotel structure for residential use, while meeting the purpose and intent of the development regulations. Other than the requested deviations, the Project meets all applicable regulations and policy documents, and is consistent with the recommended land use, design guidelines, and development standards in effect for this site per the SDMC. In addition, the proposed development will assist in accomplishing the goal of the City by providing market-rate housing opportunities in transit-friendly areas near employment centers. Therefore, with the approval of the requested deviations,

the proposed development is in conformance with the applicable regulations of the Land Development Code (LDC).

**B. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC)  
SECTION 126.0504 AND 1514.0201**

**1. Findings for all Site Development Permits - Section 126.0504(a)**

**a. The proposed development will not adversely affect the applicable land use plan.** As outlined within Master Planned Development Permit Finding (A)(1)(a), listed above, with the adoption of the LUPA and Rezone, the proposed development would not adversely affect the applicable land use plan.

**b. The proposed development will not be detrimental to the public health, safety, and welfare.** As outlined within Master Planned Development Permit Finding (A)(1)(b), listed above, the proposed development would not be detrimental to the public health, safety and welfare.

**c. The proposed development will comply with the applicable regulations of the Land Development Code, including any allowable deviations pursuant to the Land Development Code.** As outlined within Master Planned Development Permit Finding (A)(1)(c), listed above, with the approval of the requested deviations, the proposed development is in conformance with the applicable regulations of the LDC.

**2. Supplemental Site Development Permits Findings-Environmentally Sensitive Lands- Section 126.0504(b).**

**a. The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.** The topography of the project site is relatively flat and ranges from an elevation of about 19 feet above mean sea level (AMSL) to about 29 feet AMSL. The northern portion of the project site is within the Federal Emergency Management Agency (FEMA) Regulatory Floodway of the San Diego River (FIRM Map Number 06073C1618G, revised May 16, 2012). The floodway covers the northern 13.31-acres of the Project site. Existing wetland buffers and habitat areas cover approximately 7-acres. The majority of this area is undeveloped open space, and a portion is currently developed as parking in support of the hotel and convention center. The Project site is entirely within the floodplain of the San Diego River (Zone AE).

The existing site conditions include surface parking within the floodway. The Project proposes to retain a portion of the surface parking and develop the remainder of this area with public recreation facilities including a new public park with trails and passive recreation areas. The remaining portion of the Project site is currently within the 100-year floodplain Zone AE. The Project proposes to construct all new residential structures and new hotel buildings such that the lowest finished floor elevation of all new habitable structures is two feet or more above the Base Flood Elevation (BFE) (water surface elevation for a 100-year flood event). The Project proposes to construct all new residential parking structures attached to habitable structures such



that the finished floor elevation of the lowest level of parking structure is at or above the BFE per FEMA requirements.

The Project proposes to construct a new parking structure for hotel use that is not attached to any habitable structures. The finished floor elevation of the lowest level of parking of this structure is below the BFE but includes flood proofing measures and elevation of electrical equipment above BFE; thus it is permitted per FEMA requirements. To accommodate the construction of new structures within the floodplain, on March 15, 2017, FEMA issued a Conditional Letter of Map Revision (CLOMR) for the Project. No certificates of occupancy will be granted or bonds released for the development associated with this Project until a Letter of Map Revision (LOMR) is obtained by FEMA (Permit Condition No. 41).

EIR No. 424475/SCH No. 2015121066, has been prepared for the Project in accordance with CEQA Guidelines. An MMRP would be implemented with this Project, which would reduce some of the potential impacts to below a level of significance. The applicant has provided Draft Candidate Findings and Statement of Overriding Considerations to allow the decision-maker to approve the Project with significant and unmitigated direct impacts related to Historical Resources and Transportation/Circulation and Parking. Therefore, the site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands.

**b. The proposed development will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.** The topography of the project site is relatively flat and ranges from an elevation of about 19 feet AMSL to about 29 feet AMSL. The northern portion of the project site is within the FEMA Regulatory Floodway of the San Diego River (FIRM Map Number 06073C1618G, revised May 16, 2012). The floodway covers the northern 13.31-acres of the Project site. Existing wetland buffers and habitat areas cover approximately 7-acres. The majority of this area is undeveloped open space, and a portion is currently developed as parking in support of the hotel and convention center. The Project site is entirely within the floodplain of the San Diego River (Zone AE).

The existing site conditions include surface parking within the floodway. The Project proposes to retain a portion of the surface parking and develop the remainder of this area with public recreation facilities including a new public park with trails and passive recreation areas. The remaining portion of the project site is currently within the 100-year floodplain Zone AE. The Project proposes to construct all new residential structures and new hotel buildings such that the lowest finished floor elevation of all new habitable structures is two feet or more above the BFE. The Project proposes to construct all new residential parking structures attached to habitable structures such that the finished floor elevation of the lowest level of parking structure is at or above the BFE per FEMA requirements.

The Project proposes to construct a new parking structure for hotel use that is not attached to any habitable structures. The finished floor elevation of the lowest level of parking of this structure is below the BFE but includes flood proofing measures and elevation of electrical equipment above BFE; thus it is permitted per FEMA requirements. To accommodate the

construction of new structures within the floodplain, on March 15, 2017, FEMA issued a CLOMR for the Project. No certificates of occupancy will be granted or bonds released for the development associated with this Project until a LOMR is obtained by FEMA (Permit Condition No. 41).

The Geotechnical letter and Geologic Reconnaissance prepared by Geocon Inc. was prepared for the project, which indicated the project site with a Hazard Category 31: Liquefaction, High Potential-Shallow Groundwater, major drainages, hydraulic fills. Potential for liquefaction exists at the Project site due to groundwater at a depth of 8 to 14 feet and presence of alluvial soils. Groundwater elevations are dependent on seasonal precipitation, irrigation, and land use among other factors, and vary as a result of these factors. The project site is not underlain by active, potentially active, or inactive faults, and the site is not located in a State of California Earthquake Fault Zone. The geotechnical recommendations identified in the Geotechnical Report have been incorporated into the final design of the Project.

The SDMC includes regulations pertaining to brush management (Section 142.0412) and construction materials for development near open space (Chapter 14, Article 5) to minimize fire risk. In addition, the proposed new development adjacent to the MHPA shall be set back from the MHPA to provide required Brush Management Zone 1 area on the building pad outside of the MHPA.

EIR No. 424475/SCH No. 2015121066, has been prepared for the Project in accordance with CEQA Guidelines. An MMRP would be implemented with this Project, which would reduce some of the potential impacts to below a level of significance. The applicant has provided Draft Candidate Findings and Statement of Overriding Considerations to allow the decision-maker to approve the Project with significant and unmitigated direct impacts related to Historical Resources and Transportation/Circulation and Parking. Therefore, the proposed development has been designed to minimize the alteration of natural land forms and would not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards.

**c. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.** Critical proposed elements of the project includes the restoration of the San Diego River open space habitat, development of a new passive public park, and development of a multi-use San Diego River Pathway providing a link in the regional recreational corridor. Approximately 6.98-acres of the Project are located within the City's Multiple Species Conservation Program (MSCP) Subarea, and a portion of the Multi-Habitat Planning Area (MHPA) bisects the northern portion of the Biological Study Area (BSA) developed for the site.

The Project has a potential for indirect impacts to the MHPA along the northern and eastern boundaries. The MSCP Subarea Plan provides Land Use Adjacency Guidelines to avoid or reduce significant indirect impacts to MHPAs from adjacent land uses. The Land Use Adjacency Guidelines include drainage, lighting, noise, barriers, and slope grading recommendations for adjacent development, as well as recommendations for avoiding or redirecting toxic chemicals (e.g., from landscape or agricultural fertilization) and prohibition of the planting of invasive species. Due to the site's location in relation to the MHPA, the Project

would be required to comply with the Land Use Adjacency Guidelines as discussed in the Biological Resources Section 4.4 (included within the MMRP).

The topography of the Project site is relatively flat and ranges from an elevation of about 19 feet AMSL to about 29 feet AMSL. The northern portion of the Project site is within the FEMA Regulatory Floodway of the San Diego River (FIRM Map Number 06073C1618G, revised May 16, 2012). The floodway covers the northern 13.31-acres of the Project site. Existing wetland buffers and habitat areas cover approximately 7-acres. The majority of this area is undeveloped open space, and a portion is currently developed as parking in support of the hotel and convention center. The Project site is entirely within the floodplain of the San Diego River (Zone AE).

The existing site conditions include surface parking within the floodway. The Project proposes to retain a portion of the surface parking and develop the remainder of this area with public recreation facilities including a new public park with trails and passive recreation areas. The remaining portion of the Project site is currently within the 100-year floodplain Zone AE. The Project proposes to construct all new residential structures and new hotel buildings such that the lowest finished floor elevation of all new habitable structures is two feet or more above the BFE. The Project proposes to construct all new residential parking structures attached to habitable structures such that the finished floor elevation of the lowest level of parking structure is at or above the BFE per FEMA requirements.

The Project proposes to construct a new parking structure for hotel use that is not attached to any habitable structures. The finished floor elevation of the lowest level of parking of this structure is below the BFE but includes flood proofing measures and elevation of electrical equipment above BFE; thus it is permitted per FEMA requirements. To accommodate the construction of new structures within the floodplain, on March 15, 2017, FEMA issued a CLOMR for the Project. No certificates of occupancy will be granted or bonds released for the development associated with this Project until a LOMR is obtained by FEMA (Permit Condition No. 41). Therefore, the proposed development has been sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

**d. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan.** Critical proposed elements of the Project includes the restoration of the San Diego River open space habitat, development of a new passive public park, and development of a multi-use San Diego River Pathway providing a link in the regional recreational corridor. Approximately 6.98-acres of the Project are located within the MSCP Subarea, and a portion of the MHPA bisects the northern portion of the BSA developed for the site.

The Project has a potential for direct and indirect impacts to special-status plant and wildlife species as a result of the project. The City's MSCP Subarea Plan provides Land Use Adjacency Guidelines to avoid or reduce significant indirect impacts to MHPAs from adjacent land uses. The Land Use Adjacency Guidelines include drainage, lighting, noise, barriers, and slope grading recommendations for adjacent development, as well as recommendations for avoiding or redirecting toxic chemicals (e.g., from landscape or agricultural fertilization) and

prohibition of the planting of invasive species. Due to the site's location in relation to the MHPA, the Project would be required to comply with the Land Use Adjacency Guidelines as discussed in the Biological Resources Section 4.4 and included within the MMRP.

**e. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.** The 39.72-acre Project site is located at 500 Hotel Circle North, and is bounded to the south by Hotel Circle North and Camino De La Reina, to the west by Fashion Valley Road, to the north by Riverwalk Drive and Fashion Valley Mall, and to the east by the San Diego Union-Tribune property. Interstate-8 is located immediately to the south of Hotel Circle North and Camino De La Reina. The site is approximately 4.91-miles from the public beaches and local shoreline, and includes Best Management Practices (BMPs) appropriate for the site. A Storm Water Quality Management Plan would be implemented with the Project.

EIR No. 424475/SCH No. 2015121066, has been prepared for the Project in accordance with CEQA Guidelines. An MMRP would be implemented with this Project, which would reduce some of the potential impacts to below a level of significance. The applicant has provided Draft Candidate Findings and Statement of Overriding Considerations to allow the decision-maker to approve the Project with significant and unmitigated direct impacts related to Historical Resources and Transportation/Circulation and Parking. Therefore, the Project would not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

**f. The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.** EIR No. 424475/SCH No. 2015121066, has been prepared for the Project in accordance with CEQA Guidelines. An MMRP would be implemented with this Project, which would reduce some of the potential impacts to below a level of significance. The applicant has provided Draft Candidate Findings and Statement of Overriding Considerations to allow the decision-maker to approve the Project with significant and unmitigated direct impacts related to Historical Resources and Transportation/Circulation and Parking.

The permit for the Project includes various conditions and referenced exhibits relevant to achieving Project compliance with the applicable regulations of the SDMC in effect for this Project. Such conditions are necessary to avoid adverse impacts to the health, safety and general welfare of persons residing or working in the surrounding area. The Project will comply with the development conditions in effect for the subject property as described in Master Planned Development Permit No. 1499941, Site Development Permit No. 1499942, and Conditional Use Permit No. 1904584, and other regulations and guidelines pertaining to the subject property per the SDMC. Prior to issuance of any building permits for the proposed development, the plans will be reviewed for compliance with all Building, Electrical, Mechanical, Plumbing and Fire Code requirements, and the Owner/Permittee will be required to obtain a grading and public improvement permit. With the decision-maker approval of the Candidate Findings and Statement of Overriding Considerations, the nature and extent of mitigation required as a condition of the permit is reasonably related to the proposed development.

**3. Mission Valley Planned District Findings- Section 1514.0201(d)(3)**

**a. The proposed development is consistent with the Mission Valley Community Plan and the Progress Guide and General Plan.** As outlined within Master Planned Development Permit Finding (A)(1)(a), listed above, with the adoption of the LUPA and Rezone, the proposed development would be consistent with the applicable land use plans.

**b. The proposed development provides the required public facilities and is compatible with adjacent open space areas.** The Project proposes the consolidation, renovation, and infill redevelopment of the Town and Country Hotel and Convention Center site. The Project proposes a Master Plan that would guide the redevelopment of the site consisting of three Project districts (River Park District, Hotel District and Residential District). Critical proposed elements of the Master Plan includes the consolidation and renovation of the hotel and convention center (hotel capacity reduced from 954 to 700 guest rooms and the conference facilities reduced from 212,762 to 177,137 gross square feet), construction of a total 840 residential units on four lots and associated parking structures, restore the San Diego River open space habitat, development of a new passive public park, and development of a multi-use San Diego River Pathway providing a link in the regional recreational corridor and the regional transit center.

EIR No. 424475/SCH No. 2015121066, has been prepared for the Project in accordance with CEQA Guidelines. An MMRP would be implemented with this Project, which would reduce some of the potential impacts to below a level of significance. The applicant has provided Draft Candidate Findings and Statement of Overriding Considerations to allow the decision-maker to approve the Project with significant and unmitigated direct impacts related to Historical Resources and Transportation/Circulation and Parking. Therefore, the proposed development does provides the required public facilities and is compatible with adjacent open space areas.

**c. The proposed development meets the purpose, intent and criteria of the Mission Valley Planned District Ordinance including the applicable “Guidelines for Discretionary Review” adopted as a part of this planned district.** The Project is consistent with the MVPD “Guidelines for Discretionary Review” because a context-sensitive approach was used to address the relationship between the development and adjacent natural features, such as providing a gradual transitions in scale from open areas and new development. By clustering neighborhood commercial uses near residential developments, maximizing the open space and recreational areas, and facilitate access to community resources such as the San Diego River and light rail transit line.

Furthermore, by locating new residential and park uses in a Transit Priority Area immediately adjacent to the Fashion Valley Transit Station, the proposed transit-oriented, mixed-use Project fulfills the integrated use approach as recommended in the MVCP and the General Plan City of Villages strategy, and will help achieve the mode share goals of the Climate Action Plan.

d. **The proposed development will comply with all other relevant regulations in the San Diego Municipal Code.** As outlined within Master Planned Development Permit Finding (A)(1)(c), listed above, with the approval of the requested deviations, the proposed development is in conformance with the applicable regulations of the SDMC.

C. **CONDITIONAL USE PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC)**  
**SECTION 126.0405**

1. **Findings for all Conditional Use Permits**

a. **The proposed development will not adversely affect the applicable land use plan.** As outlined within Master Planned Development Permit Finding (A)(1)(a), listed above, with the adoption of the LUPA and Rezone, the proposed development would not adversely affect the applicable land use plan. The existing hotel and convention center uses require approval of a Conditional Use Permit. The Conditional Use Permit and specific Project conditions of approval regulate the permitted use types, hours of operation and existing uses allowed on the site. The Conditional Use Permit approval process analyzes the Project's consistency with the goals, policies and objectives of the City's General Plan and Mission Valley Community Plan. The Project is consistent with City's General Plan and Mission Valley Community Plan and would not adversely affect the applicable land use plans.

b. **The proposed development will not be detrimental to the public health, safety, and welfare.** As outlined within Master Planned Development Permit Finding (A)(1)(b), listed above, the proposed development would not be detrimental to the public health, safety and welfare.


c. **The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.** As outlined within Master Planned Development Permit Finding (A)(1)(c), listed above, with the approval of the requested deviations, the proposed development is in conformance with the applicable regulations of the LDC.

d. **The proposed use is appropriate at the proposed location.** A Planned Commercial Development/Conditional Use Permit No. 88-0585 was approved on September 6, 1989, to implement the Atlas Specific Plan. The existing Conditional Use Permit No. 88-0585 is being amended to remove conditions of approval pertaining to the Atlas Specific Plan, and to incorporate the existing convention center and exhibit hall uses within the new Conditional Use Permit. The existing convention center and exhibit hall requires a Conditional Use Permit in accordance with SDMC Section 141.0409. Therefore, the proposed use is appropriate at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that Master Planned Development Permit No. 1499941, Site Development Permit No. 1499942, and Conditional Use Permit No. 1904584, amendment to Planned Commercial Development/Conditional Use Permit No. 88-0585, and Site Development Permit No. 400602, are granted to HOTEL CIRCLE PROPERTY, LLC., a Delaware Limited Liability Company, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Shannon M. Thomas  
Deputy City Attorney

SMT:als  
08/30/2017  
03/21/2018 Rev. Copy  
Or.Dept:DSD  
Doc. No.: 1545236\_2

**RECORDING REQUESTED  
BY**

CITY OF SAN DIEGO  
DEVELOPMENT SERVICES  
PERMIT INTAKE, MAIL  
STATION 501

**WHEN RECORDED MAIL  
TO**

**CITY CLERK  
MAIL STATION 2A**

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INTERNAL ORDER NUMBER: 24005875 SPACE ABOVE THIS LINE FOR RECORDER'S USE

MASTER PLANNED DEVELOPMENT PERMIT NO. 1499941  
SITE DEVELOPMENT PERMIT NO. 1499942  
CONDITIONAL USE PERMIT NO. 1904584  
**TOWN AND COUNTRY - PROJECT NO. 424475 [MMRP]**  
AMENDMENT TO PLANNED COMMERCIAL DEVELOPMENT/  
CONDITIONAL USE PERMIT NO. 88-0585  
AMENDMENT TO SITE DEVELOPMENT PERMIT NO. 400602  
CITY COUNCIL

This Master Planned Development Permit No. 1499941, Site Development Permit No. 1499942, and Conditional Use Permit No. 1904584 (amendment to Planned Commercial Development/ Conditional Use Permit No. 88-0585 and Site Development Permit No. 400602) is granted by the City Council of the City of San Diego to HOTEL CIRCLE PROPERTY, LLC., a Delaware Limited Liability Company, Owner, and Permittee, pursuant to San Diego Municipal Code (SDMC) Sections 126.0305, 126.0504, and 126.0604. The 39.7-acre site is located at 500 Hotel Circle North in the OF-1-1 Zone and the Mission Valley Planned District (MVPD) MV-M/SP zone within the Atlas Specific Plan and the Mission Valley Community Plan area, the Residential Tandem Parking Overlay Zone, and the Transit Area Overlay Zone. The project is located within the Airport Land Use Compatibility Overlay Zone for Montgomery Field, the Airport Influence Area for San Diego International Airport (SDIA) and Montgomery Field (Review Area 2) as depicted in the adopted Airport Land Use Compatibility Plans (ALUCPs) and the Federal Aviation Administration Part 77 Notification Area for the SDIA and Montgomery Field. The project site is legally is described within attached Exhibit A;

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for a master plan development within a premises consisting of three project districts (River Park District, Hotel District and Residential District) that includes the consolidation and renovation of the hotel and convention center (hotel capacity reduced from 954 to 700 guest rooms and the conference facilities reduced from 212,762 to 177,137 gross square feet), construction of a total 840 residential units with incorporated parking structures on four lots, restoration of the San Diego River open space habitat, development of a new passive



public park, and development of a multi-use San Diego River Pathway providing a link in the regional recreational corridor and the regional transit center, described and identified by size, dimension, quantity, type, and location on the approved exhibits and Master Plan [Exhibit "A"] dated March 20, 2018, on file in the Development Services Department.

The project shall include:

a. Phase I Development:

- 1) River Park District
  - Creation of 8.1-acres of restored riverine open space habitat, which includes the restoration and enhancement areas under Site Development Permit No. 400602 and to fulfill the mitigation requirements of Mitigated Negative Declaration No. 118318;
  - Construction of approximately 3.31-acres of new passive public parkland;
  - Creation of 14-foot-wide San Diego River Pathway located within floodway open space.
  
- 2) Hotel District
  - Demolition of existing structures containing 254 hotel rooms (Royal Palm and Regency Towers to remain), 35,635 square feet of convention space, a 14,298-square-foot building containing the spa; 25,652 square feet of food and beverage buildings, and a 63,500-square-foot parking garage;
  - Removal of approximately 416 surface parking spaces;
  - Consolidation and renovation of the hotel, which includes the remaining 700 guest rooms;
  - Consolidation and renovation of the remaining 177,137 square feet of convention center;
  - Construction of a new lobby, food and beverage facilities, main pool area, and loading dock.
  - Construction of a new four-story parking structure providing 430 parking spaces with architectural shade structures that cover 50-percent of each rooftop parking spaces.
  
- 3) Residential District
  - Construction of two new residential structures providing at least the minimum number of parking spaces required by the Master Plan, architectural shade structures will cover 50-percent of each rooftop parking spaces; and
  - Construction of multi-family dwelling units configured on Lot 1 and 2 consistent with the dwelling range permitted in Table 7-2 of the Master Plan;

## b. Phase II Development:

## 1) Residential District

- Construction of two new residential structures providing at least the minimum number of parking spaces required by the Master Plan, architectural shade structures will cover 50-percent of each rooftop parking spaces; and
- Construction of multi-family dwelling units configured on Lot 3 and 4 consistent with the dwelling range permitted in Table 7-2 of the Master Plan;

## c. Deviations from the SDMC:

- 1) Minimum Lot Area within the OF-1-1 zone (Open Space-Floodplain) – A deviation from SDMC Section 131.0231 and Table 131-02C, which requires a minimum lot area of 10 acres. This request allows the project a lot area of 1.70-acres for Lot B, 8.26-acres for Lot C, and 1.61-acres for Lot D;
- 2) Minimum Lot Width within the OF-1-1 zone (Open Space-Floodplain) – A deviation from SDMC Section 131.0231 and Table 131-02C, which requires a minimum lot width of 500 feet. This request allows the project a minimum lot width of less than 500 feet for Lots C and D (lot width varies);
- 3) Street Frontage within the OF-1-1 zone (Open Space-Floodplain) – A deviation from SDMC Section 131.0231 and Table 131-02C, which requires a minimum street frontage of 500 feet. This request allows the project a minimum street frontage less than 500 feet for Lot C and Lot D;
- 4) Lot Depth within the OF-1-1 zone (Open Space-Floodplain) – A deviation from SDMC Section 131.0231 and Table 131-02C, which requires a minimum lot depth of 500 feet. This request allows the project a minimum lot depth of less than 500 feet for Lot B from Private Drive E;
- 5) Structures within Floodways (River Park District) – A deviation from SDMC Section 143.0145(e)(2), which does not permit permanent structures within the floodway. This request allows for specific existing permanent structures, and substantial improvements within the floodway associated with the passive public park, Private Drive E, the parking lot of the hotel, including fences, picnic tables, posts, informational signage, benches, and directional signage,;
- 6) Flowage Easement (River Park District) – A deviation from SDMC Section 143.0146(a)(4), which requires that a flowage easement to the City shall be granted for that portion of the property within a floodway. This request allows the existing hotel/convention center structures that are located within the currently defined floodway to be designated outside of the flowage easement;

- 7) River Corridor Area (River Park District) – A deviation from SDMC Section 1514.0302(c), which requires the alignment of the River Pathway to be within the Path Corridor. This request allows the following within the River Corridor Area: Existing Hotel buildings with certain improvements including parking and Private Drive E, the River Pathway outside of the Path Corridor and within the floodway, construction of new residential building and site improvements on Lot 4 within Path Corridor, and shielded lighting along the River Pathway within the floodway directed away from the river and Multi-Habitat Planning Areas;
- 8) River Influence Area Lot Coverage (River Park District) – A deviation from SDMC Section 1514.0302(d) (1), which requires a maximum of 65-percent lot coverage for any development on a lot wholly or partially within 115 feet of the River Corridor Area. This request allows the project a 85-percent lot coverage for development on Residential Lot 4;
- 9) River Influence Area Building Height (River Park District) – A deviation from SDMC Section 1514.0302(d)(2), which requires a series of tiers that establish a minimum set back and maximum building height from the River Corridor Area per SDMC Table 1514-03C and Diagram 1514-03C. This request allows the project to use the same setbacks and height within the regulations for Residential Lot 4, except the implementation would be from edge of floodway instead of the edge of the River Corridor Area as illustrated in Master Plan Figure 5-2;
- 10) River Influence Area Massing (River Park District) – A deviation from SDMC Section 1514.0302(d)(2), which requires a maximum massing setback from the edge of the River Corridor Area per SDMC Table 1514-03C. This request allows the setback massing to be measured from edge of floodway instead of edge of the River Corridor Area for Residential Lot 4. The deviation allows a maximum 50 percent of a building's wall to be located at the setback measured from the floodway; and at or above 90 ft. in height above finished grade, a building's wall shall be at least 30 percent narrower than the width of the building wall on the ground floor within the River Influence Area as illustrated in Master Plan Figure 5-2
- 11) Fences (River Park District) – A deviation from SDMC Section 1514.0302(d)(13), which limits fences within 10 feet of the outer limit of the River Corridor Area. This request allows the proposed fences for Residential Lot 4 building entrances and terraces, and along Riverwalk Drive within River Corridor Area;
- 12) Sidewalks/Parkways (River Park District) – A deviation from SDMC Section 1514.0402(b)(1), which requires minimum average widths for sidewalks and parkways per SDMC Table 1514-04A. This request allows for a 8-foot clear corridor sidewalk and a 6-foot landscaped parkway along Fashion Valley Road (new construction only) and Camino de la Reina, and 10-foot multi-modal River Pathway outside of the right-of-way in lieu of pedestrian sidewalk on south side

of Riverwalk Drive;

- 13) Street Frontage (Residential District) – A deviation from SDMC Section 1514.0304(d)(1), which requires a minimum of 70 feet of public street frontage. This request allows for no public street frontage for Lot 3 and 4, since Lot 3 would provide a 366-foot private drive frontage and Lot 4 would provide a 448-foot private drive frontage;
- 14) Street Yard Area (Residential District) – A deviation from SDMC Section 1514.0304(e)(1), which requires a minimum street yard area of 25 feet multiplied by the street frontage length plus an incremental factor of 0.25 feet for each foot of building elevation over 24 feet. This request allows for a minimum street factor to be 15-foot street yard area multiplied by the length of street yard frontage for new construction;
- 15) Parking and Building Setbacks and Incremental Building Setback (Residential District) – A deviation from SDMC Section 1514.0304(e)(2) and (3), which requires incremental setback for the street, side, and rear setbacks per SDMC Table 1514-03H. This request allows for a 15 foot street yard setback for Lot 1 and Lot 2 with no additional incremental setback, and a 10 foot street yard setback for Lot 3 and Lot 4 with no additional incremental setback. This requests allows a side yard setback for Lot 1 of 10-foot with no additional incremental setback, and for Lot 2, Lot 3, and Lot 4 a 10-foot side yard setback with no additional incremental setback, except Lot 3 has a 5-foot side yard setback with no additional incremental setback along the eastern side yard. In addition, the request allows for Lots 1, 2, and 3 a 10-foot rear yard setback with no additional incremental setback, and for Lot 4 a 10-foot rear yard setback facing river with incremental setback as illustrated in Master Plan Figure 5-2. This request also allows architectural projection and encroachments into street yard, side yard or rear yard setbacks that shall project or encroach to a maximum of 4 ft. and includes: projecting balconies above the first story; projecting entries, either at grade or elevated with accompanying stairs and cover; roof projections such as eave, cornice, and eyebrow; bay windows, and turrets; openly supported architectural projections including trellises (there shall be a minimum 6-ft., 8-inch clearance between proposed grade and the lowest horizontal portion of the projection, not including the supports); entry roofs, porches, entry arbors, and patio structures; unroofed structures not in excess of 3 ft. above proposed grade, with a safety railing not exceeding 42 inches in height; trellises with plant material or screening panels on parking structures;
- 16) Exterior Usable Open Space (Residential District) – A deviation from SDMC Section 1514.0304(f)(2), which requires a minimum of 156 square feet of usable open area per dwelling unit. This request allows for a minimum 100 square feet of usable open area per dwelling unit, including exterior and interior usable common active or passive recreation space;

- 17) Structural Development Coverage (Residential District) – A deviation from SDMC Section 1514.0304(g), which allows a maximum of 50-percent structural development coverage. This request allows for a 55-percent maximum structural development coverage (calculated over gross acreage of residential zone);
- 18) Maximum Structural Coverage (Hotel District) – A deviation from SDMC Section 1514.0304(g), which allows a maximum of 50-percent structural development coverage. This request allows for a 60-percent structural development coverage, excluding any fence wall, retaining wall, pier, post, sign, parking space, terrace, deck, paved area, pool cabana, spa, or swimming pool; and
- 19) Yards and Setback Requirements (Hotel District) – A deviation from SDMC Section 1514.0305(e)(1), which requires a minimum 20-foot street yard factor multiplied by length of street frontage, and a building setbacks of 15 feet street yard, 10 feet side yard, and 15 rear yard. All setbacks have additional incremental setback of 0.2 feet for every foot of building elevation of 24 feet. This request allows for a minimum 15-foot street yard factor multiplied by the length of street frontage for new construction. In addition, the request allows for a side yard and rear yard building setback of 10 feet with no additional incremental setback.

d. The residential buildings would be designed to be consistent with U.S. Green Building Council Leadership in Energy and Environmental Design (USGBC LEED) Silver standards or equivalent;

e. Landscaping (planting, irrigation and landscape related improvements);

f. Off-street parking;

g. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

#### **STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by March 19, 2021.

2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
  - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 (ESA) and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service (USFWS) pursuant to Section 10(a) of the federal Endangered Species Act (ESA) and by the California Department of Fish and Wildlife (CDFW) pursuant to California Fish and Wildlife Code section 2835 as part of the Multiple Species Conservation Program (MSCP), the City of San Diego through the issuance of this Permit hereby confers upon Owner/Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement (IA), executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Owner/Permittee by the City: (1) to grant Owner/Permittee the legal standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Owner/Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFW, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Owner/Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owner/Permittee of mitigation obligations required by this Permit, in accordance with Section 17.1D of the IA.
8. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

9. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

11. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

12. This Permit includes a phasing plan. The sequence of development activities on site shall be consistent with the project description in the Final Environmental Impact Report (FEIR) No.424475/ SCH No. 2015121066. Any Changes to the construction phases shall substantially conform to the FEIR to ensure impacts are avoided.

13. Prior to the issuance of any building permits, the Owner/Permittee shall assure by permit and bond implementation of the portion of the restoration/enhancement (Restoration and Enhancement Plan, prepared by AECOM, dated 2017) associated with Mitigated negative Declaration No. 118318 / Site Development Permit No. 400602 to the satisfaction of the

Development Services Department Environmental Designee and MSCP.

14. This Permit supersedes Planned Commercial Development/Conditional Use Permit No. 88-0585, and replaces and supersedes Site Development Permit No. 400602.

**ENVIRONMENTAL/MITIGATION REQUIREMENTS:**

15. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program [MMRP] shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

16. The mitigation measures specified in the MMRP and outlined in ENVIRONMENTAL IMPACT REPORT NO.424475/SCH NO. 2015121066, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

17. The Owner/Permittee shall comply with the MMRP as specified in ENVIRONMENTAL IMPACT REPORT NO.424475/SCH NO. 2015121066, to the satisfaction of the Development Services Department and the City Engineer. Prior to issuance of any construction permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas:

- Transportation/Circulation
- Historical Resources (Archaeological and Built Environment)
- Air Quality
- Noise

18. The Development Services Department (DSD) Director's Environmental Designee (ED) and the Planning Department shall review and approve all Construction Documents (CD), (plans, specification, details, etc.) to ensure the Permit Conditions requirements are incorporated into the design.

19. In addition, the ED and Planning Department shall verify that the Permit Conditions/Notes that apply ONLY to the construction phases of this project are included VERBATIM, under the heading, "**ENVIRONMENTAL/PLANNING DEPARTMENT REQUIREMENTS.**"

**Note: Permit Holder's Representatives must alert RE and MMC if there are any discrepancies in the plans or notes, or any changes due to field conditions. All conflicts must be approved by RE and MMC BEFORE the work is performed.**

20. The Construction Protection Monitoring shall be implemented in conjunction with the Land Use – Multiple Species Conservation Plan (MSCP) Land use Adjacency Guidelines (LUAG) and Restoration/Enhancement Plan permit conditions. The Construction Protection Monitoring shall be implemented throughout construction of Phase I and Phase II:



**I. Prior to Construction**

- A. **Biologist Verification:** The owner/permittee shall provide a letter to the City's Mitigation Monitoring Coordination (MMC) section stating that a Project Biologist (Qualified Biologist) as defined in the City of San Diego's Biological Guidelines (2012), has been retained to implement the project's biological monitoring program. The letter shall include the names and contact information of all persons involved in the biological monitoring of the project.
- B. **Preconstruction Meeting:** The Qualified Biologist shall attend the preconstruction meeting, discuss the project's biological monitoring program, and arrange to perform any follow up mitigation measures and reporting including site-specific monitoring, restoration or revegetation, and additional fauna/flora surveys/salvage.
- C. **Biological Documents:** The Qualified Biologist shall submit all required documentation to MMC verifying that any special mitigation reports including but not limited to, maps, plans, surveys, survey timelines, or buffers are completed or scheduled per City Biology Guidelines, Multiple Species Conservation Program (MSCP), Environmentally Sensitive Lands Ordinance (ESL), project permit conditions; California Environmental Quality Act (CEQA); endangered species acts (ESAs); and/or other local, state or federal requirements.
- D. **BCME:** The Qualified Biologist shall present a Biological Construction Mitigation/Monitoring Exhibit (BCME) which includes the biological documents in C above. In addition, include: restoration/revegetation plans, plant salvage/relocation requirements (e.g., coastal cactus wren plant salvage, burrowing owl exclusions, etc.), avian or other wildlife surveys/survey schedules (including general avian nesting and USFWS protocol), timing of surveys, wetland buffers, avian construction avoidance areas/noise buffers/ barriers, other impact avoidance areas, and any subsequent requirements determined by the Qualified Biologist and the City ADD/MMC. The BCME shall include a site plan, written and graphic depiction of the project's biological mitigation/monitoring program, and a schedule. The BCME shall be approved by MMC and referenced in the construction documents.
- E. **Avian Protection Requirements:**  
General Avian: To avoid any direct impacts to raptors and/or any native/migratory birds, removal of habitat that supports active nests in the proposed area of disturbance should occur outside of the breeding season for these species (February 1 to September 15). If removal of habitat in the proposed area of disturbance must occur during the breeding season, the Qualified Biologist shall conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction survey shall be conducted within 10 calendar days prior to the start of construction activities (including removal of vegetation). The applicant shall submit the results

of the pre-construction survey to City DSD for review and approval prior to initiating any construction activities. If nesting birds are detected, a letter report or mitigation plan in conformance with the City's Biology Guidelines and applicable State and Federal Law (i.e. appropriate follow up surveys, monitoring schedules, construction and noise barriers/buffers, etc.) shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities is avoided. The report or mitigation plan shall be submitted to the City for review and approval and implemented to the satisfaction of the City. The City's MMC Section and Biologist shall verify and approve that all measures identified in the report or mitigation plan are in place prior to and/or during construction.

Western Red Bat: To avoid and minimize impacts to the western red bat (*Lasiurus blossevillii*), the biological monitor shall conduct a pre-construction survey for this special-status bats within and immediately adjacent to the development area if grading or vegetation clearing/trimming is proposed in or adjacent to native habitat during the typical bat breeding season defined by the City's MSCP Subarea Plan (i.e., March–September). If surveys show that bats are present and may be impacted directly or indirectly by construction activities, these activities shall be delayed until the end of the breeding season or until surveys by a qualified biologist confirm that bats are no longer present, or the project biologist will work with the appropriate wildlife agencies (i.e., USFWS and/or CDFW) to determine appropriate avoidance measures (e.g., avoidance buffers).

- F. **Resource Delineation:** Prior to construction activities, the Qualified Biologist shall supervise the placement of orange construction fencing or equivalent along the limits of disturbance adjacent to sensitive biological habitats and verify compliance with any other project conditions as shown on the BCME. This phase shall include flagging plant specimens and delimiting buffers to protect sensitive biological resources (e.g., habitats/flora & fauna species, including nesting birds) during construction. Appropriate steps/care should be taken to minimize attraction of nest predators to the site.
- G. **Education:** Prior to commencement of construction activities, the Qualified Biologist shall meet with the owner/permittee or designee and the construction crew and conduct an on-site educational session regarding the need to avoid impacts outside of the approved construction area and to protect sensitive flora and fauna (e.g., explain the avian and wetland buffers, flag system for removal of invasive species or retention of sensitive plants, and clarify acceptable access routes/methods and staging areas, etc.).

## II. During Construction

- A. **Monitoring:** All construction (including access/staging areas) shall be restricted to areas previously identified, proposed for development/staging, or previously disturbed as shown on "Exhibit A" and/or the BCME. The Qualified Biologist

shall monitor construction activities as needed to ensure that construction activities do not encroach into biologically sensitive areas, or cause other similar damage, and that the work plan has been amended to accommodate any sensitive species located during the pre-construction surveys. In addition, the Qualified Biologist shall document field activity via the Consultant Site Visit Record (CSVR). The CSVR shall be e-mailed to MMC on the 1<sup>st</sup> day of monitoring, the 1<sup>st</sup> week of each month, the last day of monitoring, and immediately in the case of any undocumented condition or discovery.

- B. **Subsequent Resource Identification:** The Qualified Biologist shall note/act to prevent any new disturbances to habitat, flora, and/or fauna onsite (e.g., flag plant specimens for avoidance during access, etc.). If active nests or other previously unknown sensitive resources are detected, all project activities that directly impact the resource shall be delayed until species specific local, state or federal regulations have been determined and applied by the Qualified Biologist.

### III. Post Construction Measures

- A. In the event that impacts exceed previously allowed amounts, additional impacts shall be mitigated in accordance with City Biology Guidelines, ESL and MSCP, State CEQA, and other applicable local, state and federal law. The Qualified Biologist shall submit a final BCME/report to the satisfaction of the City ADD.

#### LAND USE – MULTIPLE SPECIFIC CONSERVATION PLAN LAND USE ADJACENCY GUIDELINES REQUIREMENTS:

21. The Land Use – MSCP LUAG shall be implemented in conjunction with the Construction Protection Monitoring and Restoration/Enhancement Plan permit conditions. The Land Use – MSCP LUAG shall be implemented throughout construction of Phase I and Phase II.
22. Prior to issuance of any construction permit or notice to proceed, DSD-Land Development Review (LDR), and/or MSCP staff shall verify the Applicant has accurately represented the project's design in or on the Construction Documents (CD's/CD's consist of Construction Plan Sets for Private Projects and Contract Specifications for Public Projects) are in conformance with the associated discretionary permit conditions and Exhibit "A," and also the City's Multi-Species Conservation Program (MSCP) Multi-Habitat Planning Area (MHPA) Land Use Adjacency Guidelines. The applicant shall provide an implementing plan and include references on/in CD's of the following:
- A. **Grading/Land Development/MHPA Boundaries** – No grading will occur within or directly adjacent to the MHPA. MHPA boundaries on-site and adjacent properties shall be delineated on the CDs. DSD Planning and/or MSCP staff shall ensure that all grading is included within the development footprint, specifically manufactured slopes, disturbance, and development within or adjacent to the MHPA. For projects within or adjacent to the MHPA, all manufactured slopes

associated with site development shall be included within the development footprint.

- B. **Drainage** – All new and proposed parking lots and developed areas in and adjacent to the MHPA shall be designed so they do not drain directly into the MHPA. All developed and paved areas must prevent the release of toxins, chemicals, petroleum products, exotic plant materials prior to release by incorporating the use of filtration devices, planted swales and/or planted detention/desiltation basins, or other approved permanent methods that are designed to minimize negative impacts, such as excessive water and toxins into the ecosystems of the MHPA.
- C. **Toxics/Project Staging Areas/Equipment Storage** – Projects that use chemicals or generate by-products such as pesticides, herbicides, and animal waste, and other substances that are potentially toxic or impactive to native habitats/flora/fauna (including water) shall incorporate measures to reduce impacts caused by the application and/or drainage of such materials into the MHPA. No trash, oil, parking, or other construction/development-related material/activities shall be allowed outside any approved construction limits. Where applicable, this requirement shall be incorporated into leases on publicly-owned property when applications for renewal occur. Provide a note in/on the CD's that states: *"All construction related activity that may have potential for leakage or intrusion shall be monitored by the Qualified Biologist/Owners Representative or Resident Engineer to ensure there is no impact to the MHPA."*
- D. **Lighting** – Lighting within or adjacent to the MHPA shall be directed away/shielded from the MHPA and be subject to City Outdoor Lighting Regulations per LDC Section 142.0740.
- E. **Barriers** – New development within or adjacent to the MHPA shall be required to provide barriers (e.g., non-invasive vegetation; rocks/boulders; 6-foot high, vinyl-coated chain link or equivalent fences/walls; and/or signage) along the MHPA boundaries to direct public access to appropriate locations, reduce domestic animal predation, protect wildlife in the preserve, and provide adequate noise reduction where needed.
- F. **Invasives** – No invasive non-native plant species shall be introduced into areas within or adjacent to the MHPA.
- G. **Brush Management** – New development adjacent to the MHPA shall be set back from the MHPA to provide required Brush Management Zone 1 area on the building pad outside of the MHPA. Zone 2 may be located within the MHPA provided the Zone 2 management will be the responsibility of an HOA or other private entity except where narrow wildlife corridors require it to be located outside of the MHPA. Brush management zones will not be greater in size than currently required by the City's regulations, the amount of woody vegetation

clearing shall not exceed 50 percent of the vegetation existing when the initial clearing is done and vegetation clearing shall be prohibited within native coastal sage scrub and chaparral habitats from March 1-August 15 except where the City ADD/MMC has documented the thinning would be consistent with the City's MSCP Subarea Plan. Existing and approved projects are subject to current requirements of Municipal Code Section 142.0412.

- H. **Noise** – Due to the site's location adjacent to or within the MHPA where the Qualified Biologist has identified potential nesting habitat for listed avian species, construction noise that exceeds the maximum levels allowed shall be avoided during the breeding seasons for the following: Least Bell's vireo (March 15 through September 15) and Southwestern Willow Flycatcher (May 1 through August 30). If construction is proposed during the breeding season for the species, U.S. Fish and Wildlife Service protocol surveys shall be required in order to determine species presence/absence. If protocol surveys are not conducted in suitable habitat during the breeding season for the aforementioned listed species, presence shall be assumed with implementation of noise attenuation and biological monitoring. When applicable (i.e., habitat is occupied or if presence of the covered species is assumed), adequate noise reduction measures shall be incorporated as follows:

23. Prior to the issuance of any grading permit, the City Manager (or appointed designee) shall verify that the following project requirements regarding the **Least Bell's vireo** are shown on the construction plans:

No clearing, grubbing, grading, or other construction activities shall occur between March 15 AND September 15, the breeding season of the Least Bell's vireo, until the following requirements have been met to the satisfaction of the City Manager:

- A. A qualified biologist (possessing a valid Endangered Species Act Section 10(a)(1)(A) Recovery Permit) shall survey those wetland areas that would be subject to construction noise levels exceeding 60 decibels [dB(A)] hourly average for the presence of the Least Bell's VIREO. Surveys for this species shall be conducted pursuant to the protocol survey guidelines established by the U.S. Fish and Wildlife Service within the breeding season prior to the commencement of construction. If the Least Bell's vireo is present, then the following conditions must be met:
- I. Between March 15 AND September 15, no clearing, grubbing, or grading of occupied Least Bell's vireo habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; AND
  - II. Between March 15 AND September 15, no construction activities shall occur within any portion of the site where construction activities would result in noise levels exceeding 60 dB(A) hourly average at the edge of

occupied least bell's vireo or habitat. An analysis showing that noise generated by construction activities would not exceed 60 dB (A) hourly average at the edge of occupied habitat must be completed by a qualified acoustician (possessing current noise engineer license or registration with monitoring noise level experience with listed animal species) and approved by the City Manager AT least two weeks prior to the commencement of construction activities. prior to the commencement of any of construction activities during the breeding season, areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; OR

- III. At least two weeks prior to the commencement of construction activities, under the direction of a qualified acoustician, noise attenuation measures (e.g., berms, walls) shall be implemented to ensure that noise levels resulting from construction activities will not exceed 60 dB(A) hourly average at the edge of habitat occupied by the Least Bell's vireo. Concurrent with the commencement of construction activities and the construction of necessary noise attenuation facilities, noise monitoring\* shall be conducted at the edge of the occupied habitat area to ensure that noise levels do not exceed 60 dB (A) hourly average. If the noise attenuation techniques implemented are determined to be inadequate by the qualified acoustician or biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season (September 16).

\* Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB (A) hourly average or to the ambient noise level if it already exceeds 60 dB (A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

- B. IF LEAST BELL'S VIREO are not detected during the protocol survey, the qualified biologist shall submit substantial evidence to the City Manager and applicable resource agencies which demonstrates whether or not mitigation measures such as noise walls are necessary between March 15 and September 15 as follows:
- I. If this evidence indicates the potential is high for Least Bell's vireo to be present based on historical records or site conditions, then condition A.III shall be adhered to as specified above.

- II. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

**RESTORATION AND ENHANCEMENT PLAN REQUIREMENTS:**

24. The Restoration and Enhancement Plan shall be implemented by the Owner/Permittee in conjunction with the Construction Protection Monitoring and Land Use – Multiple Species Conservation Plan (MSCP) Land Use Adjacency Guidelines (LUAG) permit conditions:

**I. Prior to Permit Issuance**

*A. Land Development Review (LDR) Plan Check*

1. Prior to NTP or issuance for any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, whichever is applicable, the ADD environmental designee shall verify that the requirements for the revegetation/restoration plans and specifications, including mitigation of direct impacts to 1.74 acres oak riparian woodland restoration, 3.53 acres of southern cottonwood-willow riparian forest enhancement, 1.46 acres of southern cottonwood-willow riparian forest restoration, and 1.37 acre of coastal sage scrub restoration have been shown and noted on the appropriate landscape construction documents. The landscape construction documents and specifications must be found to be in conformance with Attachment B of the Restoration and Enhancement Plan for the project prepared by AECOM (2017).

*B. Revegetation/Restoration Plan(s) and Specifications*

1. Landscape Construction Documents (LCD) shall be prepared on D-sheets and submitted to the City of San Diego Development Services Department, Landscape Architecture Section (LAS) for review and approval. LAS shall consult with Mitigation Monitoring Coordination (MMC) and obtain concurrence prior to approval of LCD. The LCD shall consist of revegetation/restoration, planting, irrigation and erosion control plans; including all required graphics, notes, details, specifications, letters, and reports as outlined below.
2. Landscape Revegetation/Restoration Planting and Irrigation Plans shall be prepared in accordance with the San Diego Land Development Code (LDC) Chapter 14, Article 2, Division 4, the LDC Landscape Standards submittal requirements, and Attachment “B” (General Outline for Revegetation/Restoration Plans) of the City of San Diego’s LDC Biology Guidelines (July 2002). The Principal Qualified Biologist (PQB) shall identify and adequately document all pertinent information concerning the revegetation/restoration goals and requirements, such as but not limited to,

- plant/seed palettes, timing of installation, plant installation specifications, method of watering, protection of adjacent habitat, erosion and sediment control, performance/success criteria, inspection schedule by City staff, document submittals, reporting schedule, etc. The LCD shall also include comprehensive graphics and notes addressing the ongoing maintenance requirements (after final acceptance by the City).
3. The Revegetation Installation Contractor (RIC), Revegetation Maintenance Contractor (RMC), Construction Manager (CM) and Grading Contractor (GC), where applicable shall be responsible to insure that for all grading and contouring, clearing and grubbing, installation of plant materials, and any necessary maintenance activities or remedial actions required during installation and the 120 day plant establishment period are done per approved LCD. The following procedures at a minimum, but not limited to, shall be performed:
    - a. The RMC shall be responsible for the maintenance of the *upland/wetland* mitigation area for a minimum period of 120 days. Maintenance visits shall be conducted on a *weekly* basis throughout the plant establishment period.
    - b. At the end of the 120 day period the PQB shall review the mitigation area to assess the completion of the short-term plant establishment period and submit a report for approval by MMC.
    - c. MMC will provide approval in writing to begin the *five-year* long-term establishment/maintenance and monitoring program.
    - d. Existing indigenous/native species shall not be pruned, thinned or cleared in the revegetation/mitigation area.
    - e. The revegetation site shall not be fertilized.
    - f. The RIC is responsible for reseeded (if applicable) if weeds are not removed, within one week of written recommendation by the PQB.
    - g. Weed control measures shall include the following: (1) hand removal, (2) cutting, with power equipment, and (3) chemical control. Hand removal of weeds is the most desirable method of control and will be used wherever possible.
    - h. Damaged areas shall be repaired immediately by the RIC/RMC. Insect infestations, plant diseases, herbivory, and other pest problems will be closely monitored throughout the *five-year* maintenance period. Protective mechanisms such as metal wire netting shall be used as necessary. Diseased and infected plants shall be immediately disposed of off-site in a legally-acceptable manner at the discretion of the PQB or Qualified Biological Monitor (QBM) (City approved). Where possible, biological controls will be used instead of pesticides and herbicides.
  4. If a Brush Management Program is required the revegetation/restoration plan shall show the dimensions of each brush management zone and notes shall be provided describing the restrictions on planting and maintenance



and identify that the area is impact neutral and shall not be used for habitat mitigation/credit purposes.

*C. Letters of Qualification Have Been Submitted to ADD*

1. The applicant shall submit, for approval, a letter verifying the qualifications of the biological professional to MMC. This letter shall identify the PQB, Principal Restoration Specialist (PRS), and QBM, where applicable, and the names of all other persons involved in the implementation of the revegetation/restoration plan and biological monitoring program, as they are defined in the City of San Diego Biological Review References. Resumes and the biology worksheet should be updated annually.
2. MMC will provide a letter to the applicant confirming the qualifications of the PQB/PRS/QBM and all City Approved persons involved in the revegetation/restoration plan and biological monitoring of the project.
3. Prior to the start of work, the applicant must obtain approval from MMC for any personnel changes associated with the revegetation/restoration plan and biological monitoring of the project.
4. PQB must also submit evidence to MMC that the PQB/QBM has completed Storm Water Pollution Prevention Program (SWPPP) training.

**II. Prior to Start of Construction**

*A. PQB/PRS Shall Attend Preconstruction (Precon) Meetings*

1. Prior to beginning any work that requires monitoring:
  - a. The owner/permittee or their authorized representative shall arrange and perform a Precon Meeting that shall include the PQB or PRS, Construction Manager (CM) and/or Grading Contractor (GC), Landscape Architect (LA), Revegetation Installation Contractor (RIC), Revegetation Maintenance Contractor (RMC), Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC.
  - b. The PQB shall also attend any other grading/excavation related Precon Meetings to make comments and/or suggestions concerning the revegetation/restoration plan(s) and specifications with the RIC, CM and/or GC.
  - c. If the PQB is unable to attend the Precon Meeting, the owner shall schedule a focused Precon Meeting with MMC, PQB/PRS, CM, BI, LA, RIC, RMC, RE and/or BI, if appropriate, prior to the start of any work associated with the revegetation/ restoration phase of the project, including site grading preparation.
2. Where Revegetation/Restoration Work Will Occur
  - a. Prior to the start of any work, the PQB/PRS shall also submit a revegetation/restoration monitoring exhibit (RRME) based on the

- appropriate reduced LCD (reduced to 11" x 17" format) to MMC, and the RE, identifying the areas to be revegetated/restored including the delineation of the limits of any disturbance/grading and any excavation.
- b. PQB shall coordinate with the construction superintendent to identify appropriate Best Management Practices (BMPs) on the RRME.
3. When Biological Monitoring Will Occur
    - a. Prior to the start of any work, the PQB/PRS shall also submit a monitoring procedures schedule to MMC and the RE indicating when and where biological monitoring and related activities will occur.
  4. PQB Shall Contact MMC to Request Modification
    - a. The PQB may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the revegetation/restoration plans and specifications. This request shall be based on relevant information (such as other sensitive species not listed by federal and/or state agencies and/or not covered by the MSCP and to which any impacts may be considered significant under CEQA) which may reduce or increase the potential for biological resources to be present.

### III. During Construction

#### A. *PQB or QBM Present During Construction/Grading/Planting*

1. The PQB or QBM shall be present full-time during construction activities including but not limited to, site preparation, cleaning, grading, excavation, landscape establishment in association with impacts related to improvements to the existing pedestrian bridge which could result in impacts to sensitive biological resources as identified in the LCD and on the RRME. A total of 0.13 acre of sensitive vegetation communities would be impacted during improvements to the existing pedestrian bridge. Impacts resulting from bridge improvements would be temporary in nature and associated with a construction work area around the existing bridge. New footings/abutments for the improved bridge would not be constructed. In addition, approximately 0.01 acre of southern cottonwood-willow riparian forest would be graded to create a drainage channel between a new outfall structure (located in the stormwater management area) and the existing river channel. Lastly, approximately 3.80 acres of other vegetation communities and land covers (i.e., eucalyptus woodland, disturbed habitat, and urban/developed) would be impacted with construction of the stormwater management area (including water quality basin and outfall structure) and public park space (including the San Diego River Pathway). **The RIC and/or QBM are responsible for notifying the PQB/PRS of changes to any approved construction plans,**

**procedures, and/or activities. The PQB/PRS is responsible to notify the CM, LA, RE, BI and MMC of the changes.**

2. The PQB or QBM shall document field activity via the Consultant Site Visit Record Forms (CSVSR). The CSVSR's shall be faxed by the CM the first day of monitoring, the last day of monitoring, monthly, and in the event that there is a deviation from conditions identified within the LCD and/or biological monitoring program. The RE shall forward copies to MMC.
3. The PQB or QBM shall be responsible for maintaining and submitting the CSVSR at the time that CM responsibilities end (i.e., upon the completion of construction activity other than that of associated with biology).
4. All construction activities (including staging areas) shall be restricted to the development areas as shown on the LCD. The PQB/PRS or QBM staff shall monitor construction activities as needed, with MMC concurrence on method and schedule. This is to ensure that construction activities do not encroach into biologically sensitive areas beyond the limits of disturbance as shown on the approved LCD.
5. The PQB or QBM shall supervise the placement of orange construction fencing or City approved equivalent, along the limits of potential disturbance adjacent to (or at the edge of) all sensitive habitats, including those wetlands, waters and riparian habitats protected under the jurisdiction of USACE, CDFW, RWQCB, and the City (southern cottonwood-willow riparian forest, emergent wetlands, coastal and valley freshwater marsh, and open water), as shown on the approved LCD.
6. The PQB shall provide a letter to MMC that limits of potential disturbance have been surveyed, staked and that the construction fencing is installed properly.
7. The PQB or QBM shall oversee implementation of BMP's, such as gravel bags, straw logs, silt fences or equivalent erosion control measures, as needed to ensure prevention of any significant sediment transport. In addition, the PQB/QBM shall be responsible to verify the removal of all temporary construction BMP's upon completion of construction activities. Removal of temporary construction BMP's shall be verified in writing on the final construction phase CSVSR.
8. PQB shall verify in writing on the CSVSR's that no trash stockpiling or oil dumping, fueling of equipment, storage of hazardous wastes or construction equipment/material, parking or other construction related activities shall occur adjacent to sensitive habitat. These activities shall occur only within the designated staging area located outside the area defined as biological sensitive area.
9. The long-term establishment inspection and reporting schedule per LCD must all be approved by MMC prior to the issuance of the Notice of Completion (NOC) or any bond release.

*B. Disturbance/Discovery Notification Process*

1. If unauthorized disturbances occurs or sensitive biological resources are discovered that were not previously identified on the LCD and/or RRME, the PQB or QBM shall direct the contractor to temporarily divert construction in the area of disturbance or discovery and immediately notify the RE or BI, as appropriate.
2. The PQB shall also immediately notify MMC by telephone of the disturbance and report the nature and extent of the disturbance and recommend the method of additional protection, such as fencing and appropriate Best Management Practices (BMP's). After obtaining concurrence with MMC and the RE, PQB and CM shall install the approved protection and agreement on BMP's.
3. The PQB shall also submit written documentation of the disturbance to MMC within 24 hours by fax or email with photos of the resource in context (e.g., show adjacent vegetation).

*C. Determination of Significance*

1. The PQB shall evaluate the significance of disturbance and/or discovered biological resource and provide a detailed analysis and recommendation in a letter report with the appropriate photo documentation to MMC to obtain concurrence and formulate a plan of action which can include fines, fees, and supplemental mitigation costs.
2. MMC shall review this letter report and provide the RE with MMC's recommendations and procedures.

**IV. Post Construction**

*A. Mitigation Monitoring and Reporting Period*

1. Five-Year Mitigation Establishment/Maintenance Period
  - a. The RMC shall be retained to complete maintenance monitoring activities throughout the five-year mitigation monitoring period.
  - b. Maintenance visits will be conducted twice per month for the first six months, once per month for the remainder of the first year, and quarterly thereafter.
  - c. Maintenance activities will include all items described in the LCD.
  - d. Plant replacement will be conducted as recommended by the PQB (note: plants shall be increased in container size relative to the time of initial installation or establishment or maintenance period may be extended to the satisfaction of MMC).
2. Five-Year Biological Monitoring
  - a. All biological monitoring and reporting shall be conducted by a PQB or QBM, as appropriate, consistent with the LCD.

- b. Monitoring shall involve both qualitative horticultural monitoring and quantitative monitoring (i.e., performance/success criteria). Horticultural monitoring shall focus on soil conditions (e.g., moisture and fertility), container plant health, seed germination rates, presence of native and non-native (e.g., invasive exotic) species, any significant disease or pest problems, irrigation repair and scheduling, trash removal, illegal trespass, and any erosion problems.
- c. After plant installation is complete, qualitative monitoring surveys will occur monthly during year one and quarterly during years two through five.
- d. Upon the completion of the 120-days short-term plant establishment period, quantitative monitoring surveys shall be conducted at 0, 6, 12, 24, 36, 48 and 60 months by the PQB or QBM. The revegetation/restoration effort shall be quantitatively evaluated once per year (in spring) during years three through five, to determine compliance with the performance standards identified on the LCD. All plant material must have survived without supplemental irrigation for the last two years.
- e. Quantitative monitoring shall include the use of fixed transects and photo points to determine the vegetative cover within the revegetated habitat. Collection of fixed transect data within the revegetation/restoration site shall result in the calculation of percent cover for each plant species present, percent cover of target vegetation, tree height and diameter at breast height (if applicable) and percent cover of non-native/non-invasive vegetation. Container plants will also be counted to determine percent survivorship. The data will be used determine attainment of performance/success criteria identified within the LCD.
- f. Biological monitoring requirements may be reduced if, before the end of the fifth year, the revegetation meets the fifth year criteria and the irrigation has been terminated for a period of the last two years.
- g. The PQB or QBM shall oversee implementation of post-construction BMP's, such as gravel bags, straw logs, silt fences or equivalent erosion control measure, as needed to ensure prevention of any significant sediment transport. In addition, the PQB/QBM shall be responsible to verify the removal of all temporary post-construction BMP's upon completion of construction activities. Removal of temporary post-construction BMPs shall be verified in writing on the final post-construction phase CSV.

*B. Submittal of Draft Monitoring Report*

1. A draft monitoring letter report shall be prepared to document the completion of the 120-day plant establishment period. The report shall include discussion on weed control, horticultural treatments (pruning, mulching, and disease control), erosion control, trash/debris removal, replacement planting/reseeding, site protection/signage, pest management, vandalism, and irrigation maintenance. The revegetation/restoration effort shall be visually assessed at the end of 120 day period to determine mortality of individuals.
2. The PQB shall submit two copies of the Draft Monitoring Report which describes the results, analysis, and conclusions of all phases of the Biological Monitoring and Reporting Program (with appropriate graphics) to MMC for review and approval within 30 days following the completion of monitoring. Monitoring reports shall be prepared on an annual basis for a period of five years. Site progress reports shall be prepared by the PQB following each site visit and provided to the owner, RMC and RIC. Site progress reports shall review maintenance activities, qualitative and quantitative (when appropriate) monitoring results including progress of the revegetation relative to the performance/success criteria, and the need for any remedial measures.
3. Draft annual reports (three copies) summarizing the results of each progress report including quantitative monitoring results and photographs taken from permanent viewpoints shall be submitted to MMC for review and approval within 30 days following the completion of monitoring.
4. MMC shall return the Draft Monitoring Report to the PQB for revision or, for preparation of each report.
5. The PQB shall submit revised Monitoring Report to MMC (with a copy to RE) for approval within 30 days.
6. MMC will provide written acceptance of the PQB and RE of the approved report.

*C. Final Monitoring Reports(s)*

1. PQB shall prepare a Final Monitoring upon achievement of the fifth year performance/success criteria and completion of the five year maintenance period.
  - a. This report may occur before the end of the fifth year if the revegetation meets the fifth year performance /success criteria and the irrigation has been terminated for a period of the last two years.
  - b. The Final Monitoring report shall be submitted to MMC for evaluation of the success of the mitigation effort and final acceptance. A request for a pre-final inspection shall be submitted at this time, MMC will schedule after review of report.
  - c. If at the end of the five years any of the revegetated area fails to meet the project's final success standards, the applicant must

consult with MMC. This consultation shall take place to determine whether the revegetation effort is acceptable. The applicant understands that failure of any significant portion of the revegetation/restoration area may result in a requirement to replace or renegotiate that portion of the site and/or extend the monitoring and establishment/maintenance period until all success standards are met.

**LAND USE (NOISE - GENERAL PLAN CONSISTENCY) REQUIREMENTS:**

25. Prior to issuance of any residential building permit, the Owner/Permittee shall submit an exterior to interior noise analysis to identify appropriate sound transmission reduction measures necessary to achieve an interior noise level that would not exceed 45 dBA as identified in the Acoustical Analysis (July 2016) prepared by AECOM, Inc. Construction documents shall fully illustrate the incorporation of the following, as necessary:

To achieve a noise reduction level of 15 to 20 bBA, the following noise reduction measures shall be required:

- a. Air Conditioning or mechanical ventilation;
- b. Double-paned glass;
- c. Solid core doors with weather stripping and seals;

To achieve a noise reduction of 20 to 25 dBA where exterior noise levels exceed 65 dBA CNEL, attenuation measures a, b, c, in addition to attenuation measures d, e, and f shall be required:

- d. Stucco or brick veneer exterior walls or wood siding with one-half inch thick fiberboard underlayer;
- e. Glass portions of windows and/or doors shall not exceed 20 percent;
- f. Exterior vents facing noise source shall be baffled;

To achieve a noise reduction of 20 to 25 dBA where exterior noise levels exceed 70 dBA CNEL, attenuation measures a, b, c, d, e, f, in addition to attenuation measures g, and h shall be required:

- g. Interior sheetrock of exterior walls attached to studs by resilient channels or double walls;
- h. Window assemblies, doors, wall construction materials and insulation shall have a lab-tested Standard Transmission Class (STC) rating of 30 or greater.

26. Prior to issuance of Final Inspection/Occupancy, the Owner/Permittee shall submit two copies of the final acoustical report with construction documents to the Building Inspector, to verify that interior acoustical levels of 45 dBA have been achieved as identified in the approved technical report.

**AIR QUALITY REQUIREMENTS:**

27. Prior to issuance of any residential construction permits, the Owner/Permittee shall identify on construction documents the following:

- A. The Owner/Permittee shall be required to install air filtration devices rated with a minimum efficiency reporting value of 13 or higher (MERV-13) in the intake of ventilation systems for Residential Parcels 1, 2, and 3. HVAC systems shall be installed with a fan unit designed to force air through the MERV filter. Prior to issuance of a residential building permit, the Owner/Permittee shall demonstrate on the Construction Documents (CD), (plans, specification, details, etc.) compliance with this measure. To ensure long-term maintenance and replacement of the MERV filters in the individual residential units, the owner/property manager of residential units shall maintain and replace MERV filters in accordance with the manufacturer's recommendations. The owner/property manager shall keep a record of activities related to maintenance of the filters.
- B. The Owner/Permittee shall be required to design residential buildings on Residential Parcels 1, 2, 3, and 4 so that the air intakes are on the northern and/or western sides of the buildings and away from I-8 and SR-163, to the extent feasible.

**HEALTH AND SAFETY REQUIREMENTS:**

28. Prior to issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits or a Notice to Proceed for Subdivisions, but prior to the first preconstruction meeting, whichever is applicable, the Owner/Permittee shall submit a concurrence letter issued by the County of San Diego Department of Environmental Health (DEH), Voluntary Assistance Program indicating that the technical information, findings, and recommendations submitted to DEH as they pertain to the project site have been reviewed and accepted. The Owner/Permittee shall be required to provide a qualified monitor during the full duration of the excavation of the location of the former gas service station.

**CLIMATE ACTION PLAN REQUIREMENTS:**

29. Owner/Permittee shall comply with the Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements" and shall be enforced and implemented to the satisfaction of the Development Services Department.



**AFFORDABLE HOUSING REQUIREMENTS:**

30. Prior to the issuance of any building permits, the Owner/Permittee shall comply with the affordable housing requirements of the City's Inclusionary Affordable Housing Regulations (SDMC § 142.1301 et seq.).

**AIRPORT REQUIREMENTS:**

31. Prior to the issuance of any building permits, the Owner/Permittee shall provide a copy of the signed agreement [DS-503] and show certification on the building plans verifying that the structures do not require Federal Aviation Administration (FAA) notice for Determination of No Hazard to Air Navigation, or provide an FAA Determination of No Hazard to Air Navigation as specified in Information Bulletin 520.

**ENGINEERING REQUIREMENTS:**

32. The Owner/Permittee shall comply with all Conditions of the Final Map for the Vesting Tentative Map No. 1499943.

33. The project proposes to import material from the project site. All excavated material listed to be exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2015 edition and Regional Supplement Amendments adopted by Regional Standards Committee.

34. The drainage system proposed for this development, as shown on the site plan, is private and subject to approval by the City Engineer.

35. Prior to the issuance of any building permits, the Owner/Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to the requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

36. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for the private storm drain connection into the public storm drain system in the Hotel Circle North right-of-way.

37. Prior to the issuance of any building permits, the Owner/Permittee shall dedicate 4 feet of right-of-way, and grant 19 feet of Irrevocable Offer of Dedication (IOD) along Lot 1 and Lot A, 23 feet of IOD along Lot 5, and additional IOD area from the north edge of Lot 5 to Riverwalk Drive on Fashion Valley Road to provide a 4-lane major future roadway per approved Exhibit "A," satisfactory to the City Engineer.

38. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the Owner/Permittee to provide the right-of-way free and clear of all encumbrances and prior easements. The Applicant must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.

39. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of current City Standard curb ramps Standard Drawing SDG-130 and SDG-132 with Detectable/Tactile Warning Tile, per approved Exhibit "A," satisfactory to the City Engineer.
40. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of current City Standard curb ramps Standard Drawing SDG-136 with Detectable/Tactile Warning Tile at the proposed driveway on Fashion Valley Road per approved Exhibit "A," satisfactory to the City Engineer.
41. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of current City Standard curbs, gutters, sidewalks and driveways, per approved Exhibit "A" adjacent to the site on Fashion Valley Road, Hotel Circle North, and Camino De la Reina, satisfactory to the City Engineer.
42. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of current City Standard driveways, per approved Exhibit "A" adjacent to the site on Fashion Valley Road, satisfactory to the City Engineer.
43. Prior to the issuance of any building permit, per the City of San Diego Street Design Manual-Street Light Standards, and Council Policy 200-18, the Owner/Permittee shall assure, by permit and bond to the installation of current City Standard street lights adjacent to the site on Fashion Valley Road and Hotel Circle North.
44. Prior to the issuance of any construction permit, the Owner/Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
45. Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.
46. Prior to the issuance of any construction permit, the applicant shall submit a Technical Report that will be subject to final review and approval by the City Engineer, based on the Storm Water Standards in effect at the time of the construction permit issuance.
47. Development of this project shall comply with all storm water construction requirements of the State Construction General Permit, Order No. 2009-00090DWQ, or subsequent order, and the Municipal Storm Water Permit, Order No. R9-2013-0001, or subsequent order. In accordance with Order No. 2009-00090DWQ, or subsequent order, a Risk Level Determination shall be calculated for the site and a Storm Water Pollution Prevention Plan (SWPPP) shall be implemented concurrently with the commencement of grading activities.
48. Prior to issuance of a grading or a construction permit, a copy of the Notice of Intent (NOI) with a valid Waste Discharge ID number (WDID#) shall be submitted to the City of San Diego as a proof of enrollment under the Construction General Permit. When ownership of the entire

site or portions of the site changes prior to filing of the Notice of Termination (NOT), a revised NOI shall be submitted electronically to the State Water Resources Board in accordance with the provisions as set forth in Section II.C of Order No. 2009-0009-DWQ and a copy shall be submitted to the City.

49. Prior to the issuance of any building permits, the Owner/Permittee shall obtain a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency prior to issuance of any grading, engineering, or building permits. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.

50. No certificates of occupancy will be granted or bonds released for development associated with this project until a Letter of Map Revision (LOMR) is obtained from FEMA. The LOMR is issued based upon as-built site conditions, therefore, the Owner/Permittee must allow time to complete this process. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.

51. Fill placed in the SFHA for the purpose of creating a building pad must be compacted to 95% of the maximum density obtainable with the Standard Proctor Test Fill method issued by the American Society for Testing and Materials (ASTM Standard D-698). Granular fill slopes must have adequate protection for a minimum flood water velocity of five feet per second.

52. The Owner/Permittee shall denote on the improvement plans "Subject to Inundation" all areas lower than the base flood elevation plus two (2) feet.

53. Prior to the issuance of any building permits, the Owner/Permittee shall enter into an agreement with the City waiving the right to oppose a special assessment initiated for the construction of flood control facilities and their perpetual maintenance.

54. Prior to the issuance of any building permits, the Owner/Permittee shall grant a flowage easement, satisfactory to the City Engineer, over property within the floodway.

55. This project proposes to construct structures within the flood fringe of a Special Flood Hazard Area (SFHA). All residential structures built within the SFHA must be constructed with the lowest floor elevated a minimum of two feet above the base flood elevation (BFE) at that location. All non-residential structures must be floodproofed to a minimum of two feet above the BFE.

56. The Owner/Permittee shall floodproof all structures subject to inundation. The floodproofed structures must be constructed to meet the requirements of the Federal Insurance Administration's Technical Bulletin 3-93. Additionally, a registered civil engineer or architect must certify prior to occupancy that those requirements have been met.

57. Prior to the issuance of any building permits, the Owner/Permittee shall enter into an agreement to indemnify, protect and hold harmless the City, its officials and employees from any and all claims, demands, causes or action, liability or loss because of, or arising out of flood waters.

**PARK AND RECREATION REQUIREMENTS:**

58. In lieu of paying the park component of the Mission Valley Development Impact Fee, the Owner/Permittee shall provide 3.31-acres of population-based park land for the addition of 840 residential units within the Mission Valley Community. The 3.31-acres of population based park land will be provided on site and will remain in private ownership with a Recreation Easement for public use on the land and will be privately maintained in perpetuity. Owner/Permittee shall design, construct, and maintain all 3.31-acres of population based park, which includes the San Diego River Pathway, prior to issuance of occupancy for the first residential building permit.

59. In lieu of paying the park component of the Mission Valley Development Impact Fee, the Owner/Permittee shall pay the project's population-based requirements for the Recreation Center and Aquatic Complex for the addition of 840 residential units within the Mission Valley Community. The project's share of the cost of the Recreation Center is \$484,074 (Fiscal Year 2017 dollars) and \$160,023 (Fiscal Year 2017 dollars) for the Aquatic Complex, which are due prior to issuance of the first residential building permit.

60. Prior to the approval of any Substantial Conformance Review (SCR) for development within the River Park District, the Park Planning Section of the Planning Department shall review the SCR submittal for consistency with the approved Exhibit "A." If the amount of population-based park acreage is not in conformance with the approved Exhibit "A" an ad-hoc developer contribution fee, as determined by the City to fully satisfy population-based park acreage requirements will be required at the time of building permit issuance.

61. The Owner/Permittee shall enter into a fully executed Park Development Agreement (PDA) with the City for the design, construction, and long term maintenance of the 3.31-acres of on-site population-based park prior to recordation of the final map.

62. The Owner/Permittee shall design and construct the 3.31 acre population-based park consistent with Park and Recreation Development approved General Development Plan (GDP).

**LANDSCAPE REQUIREMENTS:**

63. Prior to issuance of any construction permits for grading, the Owner/Permittee shall submit complete construction documents for the revegetation and hydroseeding of all disturbed land in accordance with the Landscape Standards and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A," on file in the Office of the Development Services Department.

64. Prior to issuance of any construction permits for right-of-way improvements, the Owner/Permittee shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall show, label, and dimension a 40 square-foot area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

65. In the event that a foundation only permit is requested, the Owner/Permittee shall submit a site plan or staking layout plan identifying all landscape areas consistent with Exhibit "A," Landscape Development Plan, on file in the Office of the Development Services Department. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area.'

66. Prior to issuance of any construction permits for structures, the Owner/Permittee shall submit complete landscape and irrigation construction documents consistent with the Landscape Standards to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, on file in the Development Services Department. Construction plans shall show, label, and dimension a 40 square-foot area around each tree which is unencumbered by hardscape and utilities as set forth under LDC 142.0403(b)(5).

67. Prior to issuance of any construction permits for structures, the Owner/Permittee shall submit a water budget in accordance with the Water Conservation Requirements per §142.0413, Table 142-04I, to be included with the construction documents. An irrigation audit shall be submitted consistent with Section 2.7 of the Landscape Standards of the Land Development Manual at final inspection. The irrigation audit shall certify that all irrigation systems have been installed and operate as approved by the Development Services Department.

68. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including in the right-of-way, consistent with the Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

69. Parking Structures with rooftop parking decks shall incorporate architectural shade structures over each parking stall that is exposed to open sky, and shall cover a minimum of 50-percent of each stall (a minimum of 9 feet for a standard stall depth of 18 feet) at a minimum opacity of 50-percent for the shading element.

70. If any required landscape (including existing or new plantings, hardscape, landscape features, shade structures, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace it in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage.

#### **MULTIPLE SPECIES CONSERVATION PROGRAM:**

71. Prior to the issuance of any construction permits, the Owner/Permittee shall grant the on-site Multiple Habitat Planning Area (MHPA) to the City's Multiple Species Conservation Program (MSCP) preserve through either fee title to the City, or a covenant of easement granted in favor of the City and the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW), as shown on Exhibit "A." The Owner/Permittee shall

maintain in perpetuity any MHPA lands granted by covenant of easement unless otherwise agreed to by the City.

72. Prior to issuance of any construction permit for grading, documentation demonstrating the remainder MHPA would be adequately managed and monitored in a manner consistent with the City's MSCP Preserve Management Framework shall be submitted and approved by the Development Services Department and Planning Department/MSCP Section. Documentation shall consist of either a Habitat Management Plan (HMP) or Covenant of Easement and either document would identify the responsible entity, Habitat Manager, and funding source for long term-maintenance and management.

**LONG RANGE PLANNING/DESIGN REQUIREMENTS:**

73. Prior to issuance of any building permit for Parcel 4, the Owner/Permittee shall assure that the site plan confirms that all ground level units with a north face shall have entrances and terraces that connect directly via stairs to the River Pathway or a public access way leading a short distance to the River Pathway in the case of a building corner unit. Upper level units with a north face shall have balconies overlooking the park and river.

**PLANNING/DESIGN REQUIREMENTS:**

74. Prior to the issuance of any construction permit, construction documents shall demonstrate compliance with the approved Exhibit "A," including the Master Plan.

75. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

76. Prior to the issuance of any construction permits, the Owner/Permittee shall execute and record a Covenant of Easement which ensures preservation of the Environmentally Sensitive Lands that are outside the allowable development area on the premises as shown on Exhibit "A" for Sensitive Biological Resources and Special Flood Hazard Areas, in accordance with SDMC section 143.0152. The Covenant of Easement shall include a legal description and an illustration of the premises showing the development area and the Environmentally Sensitive Lands as shown on Exhibit "A."

77. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A," Comprehensive Sign Plan No. 2, or the City-wide sign regulations.

78. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

**TRANSPORTATION REQUIREMENTS**

79. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing authorized by the appropriate City decision maker in accordance with the SDMC.

80. Owner/Permittee shall ensure that parking for residential units is always unbundled from purchase price in order to incentivize use of transit and other alternative modes of transportation. Prior to final inspection, Owner/Permittee shall submit to the Development Services Department a copy of the standard purchase agreement showing that parking will be priced separately from dwelling units.

81. Prior to the issuance of the first building permit, the Owner/Permittee shall assure by permit and bond the dedication and widening of Hotel Circle North between Fashion Valley Road and Camino De La Reina by approximately 37 to 39 feet to 4-lane Collector standards consistent with Mission Valley Community Plan. The widening shall occur on the north side of Hotel Circle North and accommodate an additional westbound and eastbound through lane with a two-way-left-turn-lane, and Class II bike lanes on both sides. The traffic signals at Hotel Circle North/Fashion Valley Road and Hotel Circle North/Camino De La Reina intersections shall be modified accordingly to accommodate the proposed widening, satisfactory to the City Engineer. These improvements shall be completed and accepted by the City Engineer prior to first residential building issuance of occupancy.

82. Prior to the issuance of the first building permit, the Owner/Permittee shall assure by permit and bond dedication and widening of Camino De La Reina between Hotel Circle North and Private Drive D by approximately 40 feet to 4-lane major standards consistent with Mission Valley Community Plan. The widening shall occur on the north side of Camino De La Reina and accommodate an additional westbound and eastbound through lane, a raised median, and Class II bike lanes on both sides. The traffic signal at Hotel Circle North/Camino De La Reina intersection shall be modified accordingly to accommodate the proposed widening, satisfactory to the City Engineer. These improvements shall be completed and accepted by the City Engineer prior to first residential building issuance of occupancy.

83. Prior to the issuance of the first building permit, the Owner/Permittee shall prepare and submit a Transportation Demand Management (TDM) program as outlined in Section 4.2.8.2 of EIR, and committed to via the project's Climate Action Plan checklist, satisfactory to the City Engineer. The Owner/Permittee shall implement and maintain the TDM program, to include at a minimum:

- Construction of the San Diego River Pathway on the north and south sides of the San Diego River through the Town & Country Park would include a multi-use trail for pedestrians and bicyclists. The existing pedestrian bridge is approximately 5 feet wide (nonstandard for a multi-use path) and substandard and degraded. The project would demolish the bridge and build a new 10-foot-wide

bridge that meets standards for a multi-use path serving pedestrians and bicyclists connecting the site to the Fashion Valley Transit Center.

- Provide carpool/vanpool parking spaces in preferentially located areas (closest to building entrances). These spaces would be signed and striped “carpool/vanpool parking only.” Information about the availability of and the means of accessing the vanpool parking spaces could be posted on Transportation Information Displays located in retail back-offices, common area, or on intranets, as appropriate.
- Provide a charging station(s) for electric vehicles.
- The project would coordinate with local transit operators to provide input on how and when routes should be implemented to serve the area.
- To encourage the use of transit, the project would provide no less than 50 percent transit subsidy for 25 percent of the hotel employees for a period of three years.
- Transportation information would be displayed in common areas to include, at a minimum, the following materials:
  - Ridesharing promotional materials, including the iCommute program.
  - Promotional materials for “Guaranteed Ride Home” programs like those provided by iCommute to ensure that residents and employees that carpool, vanpool, take transit, walk, or bike to work are provided with a ride to their home or location near their residence in the event that an emergency occurs during their work day.
  - Bicycle route and parking, including maps and bicycle safety information.
  - Materials publicizing internet and telephone numbers for referrals on transportation information.
  - Promotional materials provided by MTS and other publicly supported transportation organizations.
  - A listing of facilities at the site for carpoolers and vanpoolers, transit riders, bicyclists, and pedestrians, including information on the availability of preferential carpool and vanpool parking spaces and the methods for obtaining these spaces.
- Annual events would be held to promote the use of alternative transportation.
- The project would provide bicycle storage for hotel employees. For hotel guests, free bikes would also be available for use.
- The project would provide flexible work schedules to stagger arrivals and departures of hotel employees.
- Complimentary shuttle service to and from San Diego International Airport for hotel guests.

To ensure that the goals and objectives of the TDM program are met, a Monitoring and Reporting Program shall be prepared every year for a period of five years, and submitted satisfactory to the City Engineer.



**PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:**

84. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s) (BFPD), on each water service (domestic, fire and irrigation), in a manner satisfactory to the Public Utilities Director and the City Engineer. BFPDs shall be located above ground on private property, in line with the service and immediately adjacent to the right-of-way. The Public Utilities Department will not permit the required BFPDs to be located below grade or within the structure.

85. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of all public water and sewer facilities are to be in accordance with established criteria in the most current City of San Diego Water and Sewer Design Guides.

86. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of the 12-inch public water in Hotel Circle North and Camino de la Reina.

87. All public water and sewer facilities are to be in accordance with the established criteria in the most current City of San Diego Water and Sewer Design Guides.

88. All proposed private water and sewer facilities located within a single lot are to be designed to meet the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check.

89. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any sewer facilities and five feet of any water facilities.

90. Prior to the issuance of occupancy for the first residential building permits, the Owner/Permittee shall assure, by permit and bond, to cap (abandon) at the property line any existing unused sewer lateral and install new public sewer lateral(s) which must be located outside of any driveway or vehicular use area.

91. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, to remove (kill) at the main any existing unused water service.

92. All public water and sewer facilities are to be constructed and installed in accordance with the approved Water and Sewer Studies.

**INFORMATION ONLY:**

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on March 20, 2018, by Resolution No. R-311625.

Approval No.: MPDP No. 1499941/SDP 1499942/CUP 1904584

Date of Approval: MAR 20 2018

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES  
DEPARTMENT

\_\_\_\_\_  
Jeffrey A. Peterson  
Development Project Manager

258118-3

**NOTE: Notary acknowledgment  
must be attached per Civil Code  
section 1189 et seq.**

\_\_\_\_\_  
**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of  
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**


HOTEL CIRCLE PROPERTY, LLC.,  
a Delaware Limited Liability Company,  
**Owner, and Permittee**

By \_\_\_\_\_  
Name:  
Title:

**NOTE: Notary acknowledgments  
must be attached per Civil Code  
section 1189 et seq.**

Office of  
The City Attorney  
City of San Diego

MEMORANDUM

**DATE:** March 22, 2018  
**TO:** Elizabeth Maland, City Clerk  
**FROM:** Shannon M. Thomas, Deputy City Clerk   
**SUBJECT:** Item #330 – Town and Country – Project No. 424475 – Council Meeting of  
March 20, 2018

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We are submitting a revised Resolution Nos. R-2018-75, R-2018-76, R-2018-77, and R-2018-78 to indicate the change on the hearing date from September 18, 2017 to March 20, 2018.

Thank you.

SMT:als  
Doc. No.: 1714633

Passed by the Council of The City of San Diego on MAR 20 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 20 2018.

**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

**311625**

Resolution Number R-\_\_\_\_\_