

RESOLUTION NUMBER R- 311962

DATE OF FINAL PASSAGE SEP 10 2018

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO ADOPTING SITE DEVELOPMENT PERMIT NO. 1857123 AND PLANNED DEVELOPMENT PERMIT NO. 1857124, AMENDING PLANNED INDUSTRIAL DEVELOPMENT NO. 90-0892; ADOPTING PLANNED DEVELOPMENT PERMIT NO. 2152114, AMENDING PLANNED INDUSTRIAL DEVELOPMENT NO. 90-0892; ADOPTING PLANNED DEVELOPMENT PERMIT NO. 2152115, AMENDING PLANNED INDUSTRIAL DEVELOPMENT NO. 96-7756; AND APPROVING A MULTI-HABITAT PLANNING AREA BOUNDARY LINE CORRECTION FOR 9775 TOWNE CENTRE DRIVE – PROJECT NO. 527644 MMRP.

WHEREAS, BMR-APEX LP, a Delaware limited partnership filed an application with the City of San Diego for (i) Site Development Permit (SDP) No. 1857123 and Planned Development Permit (PDP) No. 1857124, amending Planned Industrial Permit (PID) No. 90-0892; (ii) PDP No. 2152114, amending PID No. 90-0892; and (iii) PDP No. 2152115, amending PID No. 96-7756 (collectively “Permits”), all for the purpose of the demolition of existing structures and the construction of an approximately 165,000 square foot, four story scientific research building with two levels of underground parking known as the 9775 Towne Centre Drive project (Project), located at 9775 Towne Centre Drive; and

WHEREAS, the project site is legally described as Parcel 1 of Parcel Map No. 15937, filed in the Office of the County Recorder of San Diego County, January 4, 1990 as file/page No. 90-006036 of Official Records, in the University Community Plan area, in the IP-1-1 zone; and

WHEREAS, PDP No. 2152115, amending PID No. 96-7756, will allow the transfer of 7,635 square footage (SF) from 9855, 9865, 9875, 9879, and 9885 Towne Centre Drive from

Subarea 11 to Subarea 12, reducing the existing entitled area from 200,000 SF to 192,365 SF;
and

WHEREAS, PDP No. 2152114, amending PID No. 90-0892, will allow the transfer of 18,878 SF from Lots 3A, 3B, and 3D (4535, 4545, and 4550 Towne Centre Court) to Lot 6A within Subarea 12, reducing the existing entitled area from 201,000 SF to 182,122 SF; and

WHEREAS, SDP No. 1857123 and PDP No. 1857124, amending PID No. 90-0892 will allow for the demolition of existing structures and the construction of an approximately 165,000 square foot, four story scientific research building with two levels of underground parking, utilizing the total transferred area of 26,513 SF, for the Project; and

WHEREAS, adjustment of the Multi-Habitat Planning Area (MHPA) boundary line is necessary to reflect the accurate limits of existing disturbance at the Project site; and

WHEREAS, on June 21, 2018, the Planning Commission of the City of San Diego considered the Permits and pursuant to Resolution No. 4941-PC voted to recommend City Council 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 September 10, 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 the Permits:

I. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0505

A. Findings for all Site Development Permits

1. The proposed development will not adversely affect the applicable land use plan. The project is on a 12.11-acre site located at 9775 Towne Centre Drive within the University Community Plan area. The University Community Plan (UCP) designates the project site for Scientific Research. The project is proposing a new Scientific Research building with underground parking consistent with that designation. The project site is within the Community Plan Implementation Overlay Zone Type A (CPIOZ A), is identified as Prime Industrial Lands and is regulated by Planned Industrial Development Permit (PID) No. 90-0892. The CPIOZ A ensures Development Intensity Element implementation and limits uses and development intensity to levels specified in the Land Use and Development Intensity Table (Table 3) of the University Community Plan (UCP).

The project proposes a 165,000-square-foot (SF) building on Lot 6A within Subarea 12 of the University Community Plan area. To account for the applicable automobile trips associated with the new building, the transfer of allocated square footage from Subarea 11 and from other lots within Subarea 12 to the project site lot, Lot 6A, is proposed. The transfer from one Subarea to another is allowed with the approval of a Planned Development Permit as outlined by the University Community Plan.

The project site is designated Scientific Research by the University Community Plan. The uses contemplated within the Scientific Research designation are research laboratories, supporting facilities, headquarters or administrative offices and personnel accommodations, and related manufacturing activities. The proposed amendment to the University Community Plan would increase the allowable development intensity of Scientific Research use on the site and would not result in inconsistencies with the existing land use designation. The Industrial Element of the Plan emphasizes the City-wide importance of and encourages the retention and growth of Scientific Research use in the community because of its proximity to University of California San Diego (UCSD). Increased intensity is consistent with this emphasis and the community plan policies regarding retention and growth of Scientific Research in areas designated for industrial development.

The project site is also identified as Prime Industrial Land by the General Plan's Economic Prosperity Element which encourages the growth and retention of base sector industrial uses such as Scientific Research, in areas that are identified as Prime Industrial Lands. The proposed amendment to the University Community Plan is consistent with Economic Prosperity Policies EP-A.1 through EP-A.5 and EP-A.12 which aim to protect base sector uses that provide quality job opportunities, encourage expansion of existing industrial uses to

facilitate retention in the area in which they are located, mitigate any environmental impacts to adjacent land and be adequately served by existing and planned infrastructure.

Adding additional square footage in the University Community Plan for Scientific Research use would allow for companies to locate or expand their business activities at a location close to the UCSD campus and related research facilities that contribute significantly to the City's overall economy as export-oriented business activities. In addition, the increase of square footage would make better use of the site's designation as Prime Industrial Land, particularly considering the reduction in availability of such land both in the City and the University Community Plan area, and would increase in the number of quality employment opportunities in the City.

The amendment of the University Community Plan will increase square footage for Subarea 12 by 46,122 square feet. The amendment to Planned Industrial Development (PID) No. 96-7756 will transfer 7,635 square feet to Lot 6A. The amendment to PID No. 90-0892 will transfer 18,878 square feet to Lot 6A and will increase the square footage for Lot 6A to 165,000 square feet. With this added square footage and the associated increase of traffic, all street segments are anticipated to continue to operate at acceptable levels of service. The proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The project will not be detrimental to public health, safety and welfare in that the permit controlling the development and continued use of the Project for this site contains specific conditions addressing compliance with the City's codes, policies, and regulations, as well as other regional, state, and federal regulations to prevent detrimental impacts to the health, safety and general welfare of persons residing and/or working in the area. Conditions of approval require compliance with several development controls, the review of all construction plans by professional staff to determine construction will comply with all regulations, and the inspection of construction to assure construction permits are implemented in accordance with the approved plans, and that the final construction will comply with all regulations. Therefore, the proposed development will not be detrimental to the health, safety, or general welfare of persons residing or working in the area.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code. The proposed Project has been designed to comply with the regulations of the San Diego Municipal Code (SDMC), including requirements for coverage, open space, grading, landscaping, and all other requirements of the development criteria for the IP-1-1 zone. In addition, the project is designed to comply with the regulations for Environmentally Sensitive Lands. No deviations to the relevant regulations of the San Diego Municipal Code are requested or required to approve the project. Approval of the Planned Development Permits will allow the transfer of square footage as described by the University Community Plan and would allow for sufficient square footage for the proposed scientific research facility.

B. Supplemental Findings – Environmentally Sensitive Lands

1. 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 environmentally sensitive lands on the project site are in the form of coastal sage scrub and non-native grassland. The impacts to these resources have been determined to be less than significant. The footprint of the proposed project is entirely within the project footprint identified in the existing development. The sensitive lands are located behind the proposed development. In addition, the project proposes a covenant of easement to protect the environmentally sensitive lands. As the proposed development proposes a covenant of easement, the environmentally sensitive lands would be protected, and the development would not result in impacts to the environmentally sensitive lands. Therefore, the site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to the environmentally sensitive lands.

2. 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 Development Services Department reviewed a geotechnical report prepared for the project and found the project's geotechnical consultant has adequately addressed the geologic site conditions. Drainage would be directed into appropriate storm drain systems designated to carry surface runoff. The proposed fire access has been reviewed and determined to be adequate. In addition, brush management zones of 35 feet and 65 feet are provided. As the project addresses all geologic, drainage and fire issues identified with the project site, 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.

3. The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands. The proposed subdivision is designed such that the environmentally sensitive lands on the site would be avoided. The footprint of the proposed project is entirely within the project footprint identified in the existing development. The sensitive lands are located behind the proposed development. In addition, a covenant of easement is proposed over both areas of sensitive resource so as to prevent future impacts from development. As the proposed project is configured to allow for the environmentally sensitive lands to remain outside of the project footprint and a covenant of easement to protect the environmentally sensitive lands is a condition of the development, the proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands.

4. The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan. The project site is located within and adjacent to the City of San Diego's Multi-Habitat Planning Area (MHPA). Impacts to sensitive vegetation in the form of coastal sage scrub were addressed in the Eastgate Technology Park Environmental Impact Report (EIR) which is incorporated in the Mitigated Negative Declaration (MND) for the project by reference. The footprint of the proposed project is entirely within the project footprint identified in the Eastgate Technology Park EIR. Mitigation measures outlined in the EIR were previously implemented when the entire site was graded, including

mitigation for the 0.12-acre of coastal sage scrub that would be affected by the current project. Therefore, there are no new impacts to the existing coastal sage scrub outside what was originally authorized for development, and no new mitigation is required. Therefore, the project is consistent with the City of San Diego's Multiple Species Conservation Program Subarea Plan.

5. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. The project site is located approximately 1.7 miles east of the Pacific Ocean and east of Interstate 5. Drainage associated with the project would be directed into appropriate storm drain systems designated to carry surface runoff. Therefore, the proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.

6. The nature and extent of the mitigation required as a condition of the permit is reasonable related to, and calculated to alleviate, negative impacts created by the proposed development. An initial environmental study of the proposal determined that the project could have a significant environmental effect to Paleontological Resources. The project provides mitigation in the form of monitoring during construction activities and preconstruction meetings which must include a Qualified Paleontologist. The project must also produce a Monitoring Report post construction in accordance with Paleontological Guidelines. As the proposed mitigation measures are related to the potential of disturbance to Paleontological Resources known to potentially be located in close proximity to the project site, the nature and extent of the mitigation required as a condition of the permit is reasonable related to, and calculated to alleviate, negative impacts created by the proposed development.

II. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0605

A. Findings for all Planned Development Permits

1. The proposed development will not adversely affect the applicable land use plan. The project is on a 12.11-acre site located at 9775 Towne Centre Drive within the University Community Planning Area. The University Community Plan (UCP) designates the project site for Scientific Research. The project is proposing a new Scientific Research building with underground parking consistent with that designation. The project site is within the Community Plan Implementation Overlay Zone Type A (CPIOZ A), is identified as Prime Industrial Lands and is regulated by Planned Industrial Development Permit (PID) No. 90-0892. The CPIOZ A ensures Development Intensity Element implementation and limits uses and development intensity to levels specified in the Land Use and Development Intensity Table (Table 3 of the UCP).

Refer to Site Development Permit Finding A.1.a. above for additional information. Given this information, the proposed development will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The project will not be detrimental to public health, safety and welfare in that the permit controlling the development and continued use of the Project for this site contains specific

conditions addressing compliance with the City's codes, policies, and regulations, as well as other regional, state, and federal regulations to prevent detrimental impacts to the health, safety and general welfare of persons residing and/or working in the area. Conditions of approval require compliance with several development controls, the review of all construction plans by professional staff to determine construction will comply with all regulations, and the inspection of construction to assure construction permits are implemented in accordance with the approved plans, and that the final construction will comply with all regulations. In addition, the project is conditioned to close an existing driveway and restore the curb, gutter and sidewalk per City of San Diego Standards. Further, the project is also conditioned to construct a new 25-foot driveway and a five-foot, non-contiguous sidewalk along Towne Centre Drive connecting to an existing sidewalk per City of San Diego Standards. These improvements will improve public safety. Therefore, the proposed development will not be detrimental to the health, safety, or general welfare of persons residing or working in the area.

3. 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 proposed Project has been designed to comply with the regulations of the San Diego Municipal Code (SDMC), including requirements for coverage, open space, grading, landscaping and all other requirements of the development criteria for the IP-1-1 zone. No deviations to the regulations of the San Diego Municipal Code are requested or required to approve the project. Approval of the Planned Development Permits will allow the transfer of square footage as described by the University Community Plan and would allow for sufficient square footage for the proposed scientific research facility.

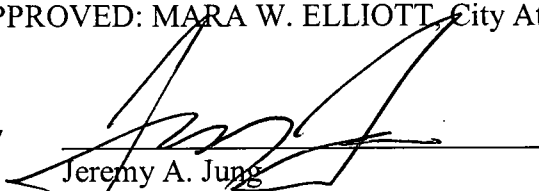
The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that (i) SDP No. 1857123 and PDP No. 1857124 is granted to BMR-APEX LP; (ii) PDP No. 2152114 is granted to BMR-AXIOM LP; and (iii) PDP No. 2152115 is granted to BMR-9885 TOWNE CENTRE LP and BMR-9865 TOWNE CENTRE LP under the terms and conditions set forth in the attached Permits which are made a part of this resolution.

BE IT FURTHER RESOLVED, that the MHPA boundary line correction as shown on
the submitted Project plan drawings is approved.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Jeremy A. Jung
Deputy City Attorney

JAJ:nja
08/24/18
09/06/18 Cor. Copy
09/07/18 Cor. Copy 2
Or. Dept: DSD – Planning Division
Doc. No.: 1821780

Attachments: 1. SDP No. 1857123 and PDP No. 1857124
2. PDP No. 2152114
3. PDP No. 2152115

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

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24006943

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SITE DEVELOPMENT PERMIT NO. 1857123 and PLANNED DEVELOPMENT PERMIT NO. 1857124
(AMENDMENT TO PLANNED INDUSTRIAL DEVELOPMENT PERMIT NO. 90-0892)

9775 TOWNE CENTRE DRIVE PROJECT NO. 527644 MMRP

CITY COUNCIL

This Site Development Permit No. 1857123/Planned Development Permit No. 1857124, an Amendment to Planned Industrial Development Permit No. 90-0892, is granted by the City Council of the City of San Diego to BMR-APEX LP, a Delaware limited partnership, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0505 and 126.0605. The approximately 12.108-acre site is located at 9775 Towne Centre Drive in the IP-1-1 Zone of the University Community Plan area. The project site is legally described as Parcel 1 of Parcel Map No. 15937, filed in the Office of the County Recorder of San Diego County, January 4, 1990 as file/page No. 90-006036 of Official Records.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee for the demolition of existing structures and the construction of an approximately 165,000 square foot, four-story scientific research building with two levels of underground parking for a total of 324,335 square feet as described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated 09/10/2018 on file in the Development Services Department.

The project shall include:

- a. Demolish an existing scientific research office building and construct a new, 165,000-square-foot, four-story scientific research building with 324,335 square feet of underground parking in two levels;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking;
- d. 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 09/10/2021.
2. Planned Industrial Development Permit No. 90-0892 shall remain in force and effect except as amended for the project by this Permit.
3. 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.
4. 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.
5. 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.
6. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
7. 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.).
8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

13. 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.

14. The mitigation measures specified in the MMRP and outlined in Mitigated Negative Declaration No. 527644, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

15. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 527644 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:

Paleontological Resources.

CLIMATE ACTION PLAN REQUIREMENTS:

16. 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.

ENGINEERING REQUIREMENTS:

17. 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.

18. Prior to issuance of the first building permit, the Owner/Permittee shall assure by permit and bond the closure of all non-utilized driveways along the project's frontage on Towne Centre Drive with current City standard curb and gutter, satisfactory to the City Engineer. All improvements shall be completed and accepted by the City Engineer prior to first occupancy.

19. Prior to issuance of the first building permit, the Owner/Permittee shall assure by permit and bond the improvement of the project frontage along Towne Centre Drive, with curb, gutter and five-

foot-wide noncontiguous sidewalk, and the construction of one 25-foot-wide driveway consistent with City standards, satisfactory to the City Engineer. All improvements shall be completed and accepted by the City Engineer prior to first occupancy.

20. 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.

21. 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.

22. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for proposed private storm drain system within Towne Centre Drive public right of way.

23. Prior to the issuance of any building permits, the Owner/Permittee shall obtain an Encroachment Maintenance Removal Agreement, from the City Engineer, for trees, landscaping/irrigation and existing seat wall within Towne Centre Drive satisfactory to City Engineer.

24. Development of this project shall comply with all storm water construction requirements of the State Construction General Permit, Order No. 2009-0009DWQ, or subsequent order, and the Municipal Storm Water Permit, Order No. R9-2013-0001, or subsequent order. In accordance with Order No. 2009-0009DWQ, 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.

25. 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.

GEOLOGY REQUIREMENTS:

26. The Owner/Permittee shall submit a geotechnical investigation report or update letter that specifically addresses the proposed construction plans. The geotechnical investigation report or update letter shall be reviewed for adequacy by the Geology Section of the Development Services Department prior to issuance of any construction permits.

27. The Owner/Permittee shall submit an as-graded geotechnical report prepared in accordance with the City's "Guidelines for Geotechnical Reports" following completion of the grading. The as-graded geotechnical report shall be reviewed for adequacy by the Geology Section of the Development Services Department prior to exoneration of the bond and grading permit close-out.

LANDSCAPE REQUIREMENTS:

28. Prior to issuance of any grading permit, the Owner/Permittee shall submit complete construction documents for the revegetation and hydro-seeding of all disturbed land in accordance with the City of San Diego Landscape Standards, Storm Water Design Manual, 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 Development Services Department.

29. Prior to issuance of any public improvement permit, 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.

30. Prior to issuance of any building permit (including shell), the Owner/Permittee shall submit complete landscape and irrigation construction documents, which are consistent with the Landscape Standards, to the Development Services Department for approval. The construction documents shall be in substantial conformance with Exhibit "A." Construction plans shall provide a 40-square-foot area around each tree that is unencumbered by hardscape and utilities unless otherwise approved per §142.0403(b)5.

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

32. If any required landscape, including existing or new plantings, hardscape, landscape features, et cetera, indicated on the approved construction documents is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Certificate of Occupancy.

BRUSH MANAGEMENT PROGRAM REQUIREMENTS:

33. The Owner/Permittee shall implement the following requirements in accordance with the Brush Management Program shown on Exhibit "A" on file in the Development Services Department.

34. The Brush Management Program shall be based on a standard Zone One of 35 feet in width and a Zone Two of 65 feet in width, exercising the Zone Two reduction option and Alternative Compliance measures set forth under §142.0412(f), §142.0412(i), and §142.0412(j). Zone One shall range from 30 feet to 79 feet in width with a corresponding Zone Two of zero (0) feet to 65 feet in width, extending out from the habitable structures towards the native/naturalized vegetation as

shown on Exhibit "A." Where the full brush management zones cannot be provided, openings along the brush side of the habitable structures, plus a 10-foot perpendicular return along adjacent wall faces, shall be upgraded to dual-glazed, dual-tempered panes as alternative compliance for the reduced brush management zones.

35. Prior to issuance of any grading permit, landscape construction documents required for the engineering permit shall be submitted showing the brush management zones on the property in substantial conformance with Exhibit "A."

36. Prior to issuance of any Building Permits, a complete Brush Management Program shall be submitted for approval to the Development Services Department and shall be in substantial conformance with Exhibit "A" on file in the Development Services Department. The Brush Management Program shall comply with the City of San Diego's Landscape Regulations and the Landscape Standards.

37. Within Zone One, combustible accessory structures (including, but not limited to decks, trellises, gazebos, etc.) shall not be permitted while accessory structures of non-combustible, one-hour fire-rated, and/or heavy timber construction may be approved within the designated Zone One area subject to Fire Marshal's approval.

38. The Brush Management Program shall be maintained at all times in accordance with the City of San Diego's Landscape Standards.

MULTIPLE SPECIES CONSERVATION PROGRAM:

39. BIOLOGICAL RESOURCE PROTECTION DURING CONSTRUCTION:

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 - To avoid any direct impacts to any species identified as a listed, candidate, sensitive, or special status species in the MSCP, 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.

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 (CSV). The CSV shall be e-mailed to MMC on the 1st day of monitoring, the 1st 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/MMC within 30 days of construction completion.

MHPA LAND USE ADJACENCY GUIDELINES:

40. Prior to issuance of any construction permit or notice to proceed, DSD/ 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 measures below under the bolded heading of each item.

41. Grading/Land Development/MHPA Boundaries - Prior to issuance of any construction permit or notice to proceed, DSD/ LDR, and/or MSCP staff shall verify MHPA boundaries onsite and adjacent properties are delineated on the CDs. DSD Planning and/or MSCP staff shall ensure that all grading is included within the approved development/construction 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.

42. Drainage - Prior to issuance of any construction permit or notice to proceed, DSD/ LDR, and/or MSCP staff shall verify all new and proposed parking lots, staging areas, and developed areas in and adjacent to the MHPA are designed so they do not drain directly into the MHPA. All staging and developed/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 temporary and permanent methods that are designed to minimize negative impacts, such as excessive water and toxins into the ecosystems of the MHPA.

43. Toxics/Project Staging Areas/Equipment Storage - Prior to issuance of any construction permit or notice to proceed, DSD/ LDR, and/or MSCP staff shall verify projects that use chemicals or generate by-products such as pesticides, herbicides, and animal waste, and other substances that are potentially toxic or impactful 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. 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."

44. Lighting - Prior to issuance of any construction permit or notice to proceed, DSD/ LDR, and/or MSCP staff shall verify lighting within or adjacent to the MHPA is directed away/shielded from the MHPA, or limited to the immediate area and is in compliance with City Outdoor Lighting Regulations per LDC Section 142.0740.

45. Barriers – Prior to issuance of any construction permit or notice to proceed, DSD/ LDR, and/or MSCP staff shall verify construction and new development within or adjacent to the MHPA includes 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.

46. Invasives - Prior to issuance of any construction permit or notice to proceed, DSD/ LDR, and/or MSCP staff shall verify no invasive non-native plant species are being introduced into areas within or adjacent to the MHPA.

47. Noise - Prior to issuance of any construction permit or notice to proceed, DSD/ LDR, and/or MSCP staff shall verify (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, that construction noise that exceeds the maximum levels (60 dB or greater at the beginning edge of the habitat) allowed shall be avoided during the breeding seasons for the California Gnatcatcher (3/1-8/15). If construction is proposed during the breeding season for the species, USFWS 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.

DEDICATION/EASEMENT OF MHPA LAND:

48. Prior to recordation of the first final map and/or issuance of any grading permits, the on-site MHPA shall be conveyed to the City's MSCP preserve through either fee title to the City, covenant of easement granted in favor of the City and wildlife agencies or dedication of land in fee title to the City. Conveyance of any land in fee to the City shall require approval from the Park and Recreation Department Open Space Division Deputy Director and shall exclude detention basins or other storm water control facilities, brush management areas, landscape/revegetation areas, and graded slopes. To facilitate MHPA conveyance, any non-fee areas shall have covenant of easements for MHPA lands placed over them if located in the MHPA, and be maintained in perpetuity by the owner/Permittee/Applicant unless otherwise agreed to by the City for acceptance of dedicated land in fee title.

49. Permit condition numbers 39 through 47 of this permit are required to be placed verbatim on the construction documents and plans for the Project Site under the heading ENVIRONMENTAL PERMIT REQUIREMENTS. These permit conditions shall also be shown as actual specifications on the construction plans where applicable.

PLANNING/DESIGN REQUIREMENTS:

50. 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.

51. Prior to the issuance of any construction permit, a Covenant of Easement shall be recorded consistent with LDC, Section 143.0152. The easement drawings shall provide the exact square footage/acreage of the proposed covenant of easement. The easement shall be recorded prior to grading/construction permits.

52. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations.

53. 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

54. 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 by the appropriate City decision maker in accordance with the SDMC.

55. Prior to issuance of the first certificate of occupancy, the Owner/Permittee shall provide and maintain all elements of the Transportation Demand Management Plan listed in the Climate Action Plan (CAP) checklist including bikesharing, subsidized transit passes/parking cash-out, electric vehicle charging stations, on-site shower facilities, and preferential carpool/vanpool parking, satisfactory to the City Engineer.

56. Prior to any work starting in the public right-of-way, the Owner/Permittee shall apply for a "Public Right-of-Way Permit for Traffic Control."

PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:

57. Prior to the issuance of any building permits, the Owner/Permittee shall, assure by permit and bond, the design and construction of new water and sewer service(s) outside of any driveway or drive aisle and the abandonment of any existing unused water and sewer services within the right-of-way adjacent to the project site, in a manner satisfactory to the Public Utilities Director and the City Engineer.

58. 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), 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.

59. 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.

60. Prior to Final Inspection, all public water and sewer facilities, if required shall be complete and operational in a manner satisfactory to the Public Utilities Director and the City Engineer.

61. The Owner/Permittee shall design and construct all proposed public water and sewer facilities, in accordance with established criteria in the current edition of the City of San Diego Water and Sewer Facility Design Guidelines and City regulations, standards and practices.

INFORMATION ONLY:

- 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 09/10/2018 and Approved Resolution Number R-311962

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Morris E. Dye
Development Project Manager

**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.

BMR-APEX LP,
a Delaware limited partnership
Owner/Permittee

By _____
Federico Mina
Vice President, Development

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

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

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24006943

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Planned Development Permit No. 2152114
Amending Planned Industrial Development Permit 90-0892
9775 TOWNE CENTRE DRIVE PROJECT NO. 527644 MMRP
CITY COUNCIL

This Planned Development Permit No. 2152114, an amendment to Planned Industrial Development Permit No. 90-0892, is granted by the City Council of the City of San Diego to BMR-AXIOM LP, a Delaware limited partnership, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0605. The site is located at 4535, 4545 and 4550 Towne Centre Court in the IP-1-1 Zone of the University Community Plan area. The project site is legally described as Parcels 1, 2 and 4 of Parcel Map No. 16828 in the City of San Diego, County of San Diego, State of California as per the Map thereof filed in the Office of the County Recorder of San Diego County, April 23, 1992 as File No. 1992-0239394 of Official Records.

Subject to the terms and conditions set forth in this Permit, the Owner/Permittee accepts a voluntary reduction of entitled square footage on the site from 201,000 square feet by 18,878 square feet to 182,122 square feet.

The effect of this permit shall be:

- a. Reduction of the entitled square footage on the site from 201,000 square feet by 18,878 square feet to 182,122 square feet.

STANDARD REQUIREMENTS:

1. This Permit amends Planned Industrial Development Permit No. 90-0892 by reducing the development potential of 201,000 square feet on the project site authorized by the prior Planned Industrial Development Permit No. 90-0892 by 18,878 square feet leaving a remainder of 182,122 square feet entitled on the project site. All other permit conditions of 90-0892 shall remain in effect.
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. 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.

10. 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.

INFORMATION ONLY:

- 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 09/10/2018 and Approved Resolution Number 311962

Permit Type/PTS Approval No.: Planned Development Permit No. 2152114

Date of Approval: ~~SEP 10 2018~~

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Morris Dye
Development Project Manager

**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.

BMR-AXIOM LP,
a Delaware limited partnership
Owner/Permittee

By _____
Federico Mina
Vice President, Development

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

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

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24006943

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Planned Development Permit No. 2152115
Amending Planned Industrial Development Permit 96-7756
9775 TOWNE CENTRE DRIVE PROJECT NO. 527644 MMRP
CITY COUNCIL

This Planned Development Permit No. 2152115, an amendment to Planned Industrial Development Permit No. 96-7756, is granted by the City Council of the City of San Diego to BMR-9885 TOWNE CENTRE LP, a Delaware limited partnership and BMR-9865 TOWNE CENTRE LP, a Delaware limited partnership, Owners/Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0605. The site is located at 9855, 9865, 9875, 9879, and 9885 Towne Centre Drive in the IP-1-1 Zone of the University Community Plan area. The project site is legally described as parcels 1 through 3 inclusive of Parcel Map 18286, in the City of San Diego, County of San Diego, State of California, according to map thereof, filed in the office of the County Recorder of San Diego County, June 21, 1999.

Subject to the terms and conditions set forth in this Permit, the Owners/Permittees accept a voluntary reduction of entitled square footage on the site as described below:

The effect of this permit shall be:

- a. To amend Planned Industrial Development Permit No. 96-7756 by reducing the entitled square footage on the site from 200,000 square feet (SF) to 199,735 SF (reduction of 265 SF); and
- b. Acknowledgment that this 199,735 SF of development (which, for purposes of clarity, equals the existing square footage constructed on the project site) is comprised of 192,365 SF of trip generating space and 7,370 SF of non-trip generating covered courtyard area; and
- c. For purposes of clarity, the 7,370 SF of non-trip generating covered courtyard area may not be converted to any trip generating use.

STANDARD REQUIREMENTS:

1. This Permit amends Planned Industrial Permit No. 96-7756 by reducing the development potential of 200,000 square feet of trip generating space on the project site authorized by the prior

Planned Industrial Development Permit No. 96-7756 by 7,635 square feet leaving a remainder of 192,365 square feet of trip generating space entitled on the project site.

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 Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees by the City: (1) to grant Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Owners/Permittees of mitigation obligations required by this Permit, in accordance with Section 17.1D of the IA.

8. 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 Owners/Permittees 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 Owners/Permittees 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.

9. The Owners/Permittees 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 Owners/Permittees of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owners/Permittees 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, Owners/Permittees 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 Owners/Permittees 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 Owners/Permittees shall not be required to pay or perform any settlement unless such settlement is approved by Owners/Permittees.

INFORMATION ONLY:

- 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 09/10/2018 and Approved Resolution Number 2311962

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Morris Dye
Development Project Manager

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

The undersigned Owners/Permittees, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owners/Permittees hereunder.

BMR-9885 TOWNE CENTRE LP,
a Delaware limited partnership
Owner/Permittee

By _____
Federico Mina
Vice President, Development

BMR-9865 TOWNE CENTRE LP,
a Delaware limited partnership
Owner/Permittee

By _____
Federico Mina
Vice President, Development

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

Passed by the Council of The City of San Diego on SEP 10 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 10 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:

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

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

(Seal)

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 311962