

# REQUEST FOR COUNCIL ACTION



**CITY COUNCIL MEETING DATE:**

**SEPTEMBER 15, 2020**

**TITLE:**

**COUNCILMEMBER BACERRA’S REQUEST FOR RECONSIDERATION OF ADOPTION OF CITY COUNCIL RESOLUTION NO. 2020-067 OVERRULING THE ORANGE COUNTY AIRPORT LAND USE COMMISSION’S DETERMINATION OF INCONSISTENCY WITH THE AIRPORT ENVIRONS LAND USE PLAN INCLUDED WITH ITEM NO. 75C FROM THE AUGUST 18, 2020 CITY COUNCIL AGENDA, AND SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL APPROVING AMENDMENT APPLICATION NO. 2020-01 REZONING PROPERTY LOCATED AT 2300, 2310, AND 2320 SOUTH REDHILL AVENUE, AND APPROVE AN INDEMNIFICATION AGREEMENT WITH ARRIMUS CAPITAL FOR POTENTIAL AIRPORT LIABILITY**

*/s/ Kristine Ridge*

CITY MANAGER

**CLERK OF COUNCIL USE ONLY:**

APPROVED

- As Recommended
- As Amended
- Ordinance on 1<sup>st</sup> Reading
- Ordinance on 2<sup>nd</sup> Reading
- Implementing Resolution
- Set Public Hearing For \_\_\_\_\_

CONTINUED TO \_\_\_\_\_

FILE NUMBER \_\_\_\_\_

## RECOMMENDED ACTION

It is recommended that the City Council consider taking action as follows:

1. Discuss Councilmember Bacerra’s request for reconsideration of Resolution No. 2020-067 overruling the Orange County Airport Land Use Commission’s Determination of Inconsistency which was one of several approvals related to the proposed Warner Redhill Mixed Use Development Project associated with Agenda Item No. 75C on the August 18, 2020 City Council Meeting Agenda and vote on the requested Motion to Reconsider. If the Motion to Reconsider is not approved by the necessary majority vote, take action on item 4 below.
2. If a Motion for Reconsideration is adopted, consider adoption of Resolution No. 2020-067 Overruling the Orange County Airport Land Use Commission’s Determination of Inconsistency for the Warner Redhill Mixed Use Development Project with the Airport Environs Land Use Plan for John Wayne Airport and take action on item 4 below.

3. If Resolution No. 2020-067 is not adopted by a 2/3 vote take no further action.
4. If the Motion for Reconsideration is not approved or Resolution No. 2020-067 is adopted by the necessary -2/3 vote, conduct the second reading of and adopt Ordinance No. NS-XXXX and approve the proposed Indemnification Agreement with Arrimus Capital.
  - 4A. AN ORDINANCE OF THE CITY COUNCIL APPROVING AMENDMENT APPLICATION NO. 2020-01 REZONING THE PROPERTY LOCATED AT 2300, 2310, AND 2320 SOUTH REDHILL AVENUE FROM LIGHT INDUSTRIAL (M-1) TO SPECIFIC DEVELOPMENT NO. 96 (SD-96) AND ADOPTING SD-96 FOR SAID PROPERTY
  - 4B. Authorize the City Manager to execute an Indemnification Agreement with Arrimus Capital (Applicant) subject to non-substantive changes approved by the City Manager and City Attorney.

### **DISCUSSION**

This matter has been placed on the agenda at Councilmember Bacerra's request for reconsideration of the City Council's approval of Resolution No. 2020-067 pertaining to the City Council making findings to overrule the Orange County Airport Land Use Commission's (ALUC) determination of inconsistency between the proposed Warner Redhill Mixed-Use Project and the Airport Environs Land Use Plan (AELUP) for John Wayne Airport. It is recommended that the City Council entertain a motion and a second, to reconsider Resolution No. 2020-067 from the August 18, 2020 City Council meeting. If the motion is passed the City Council may reopen discussion of Resolution No. 2020-67 which was a part of former Item No. 75C on August 18, 2020, and which is numbered as Item No. 60A on this agenda.

The City Council voted to approve Item No.75C on August 18, 2020 by a vote of 5-2. Item No. 75C included several different actions and approvals. See Item No. 75C in its entirety at the link below:

[https://santaana.granicus.com/GeneratedAgendaViewer.php?view\\_id=2&clip\\_id=2964](https://santaana.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=2964).

Councilmember Bacerra voted to approve all items associated with agenda item No. 75C, including Resolution No. 2020-067 and has, subsequently asked at the immediate following meeting for reconsideration of the approval of said Resolution.

The City Council has the authority, pursuant to rules of parliamentary procedure, to reconsider, renew, rescind or amend previous actions approved by the City Council. This is often referred to as reconsideration of an agenda item. A request to reconsider must be made at the same meeting at which the action was taken or the very next meeting. The request is then presented as a motion to reconsider which allows the City Council to revisit an item previously discussed and voted on. If the motion to reconsider passes, Resolution No. 2020-067 appears back before the City Council,

as if it were on the floor for the first time, and a new motion to approve or deny said Resolution will be in order.

If the motion to reconsider is approved, the City Council may then discuss, deliberate, and vote on Resolution 2020-067 as it is now presented as new business Item No. 60A of this agenda. If Resolution No. 2020-067 is not approved, the City Council will not need to take any further action.

If Resolution No. 2020-067 is approved, the City Council is asked to take two additional actions. The first is to conduct the second reading of and adopt Ordinance No. NS-XXXX and the second is to approve the proposed Indemnification Agreement with Arrimus Capital. The City Council conducted the first reading of the ordinance on August 18, 2020. The proposed second reading was on the agenda at the City Council's September 1, 2020 meeting, but was not considered because of the request for reconsideration.

At the August 18, 2020 meeting Councilmember Bacerra asked about the impacts of the City overruling the Airport Land Use Commission's finding of inconsistency between the proposed project and the John Wayne Airport AELUP. At the time, the City Council was told that as a consequence of overruling Airport Land Use Commission the Airport would be absolved of any liability resulting from an airport or airline accident on the project property. The City Council was informed that the developer, Arrimus Capital, had provided the City with an avigation easement that fully indemnified and absolved the City from liability. The developer had not yet provided the indemnification, but was required, as a condition of approval to do so in connection with the required avigation easement. At this time, the developer has agreed to enter into a stand-alone indemnification agreement to be recorded against the project property rather than include indemnification language in the easement. The City Council is asked to approve the agreement, which has been executed by the Applicant and attached hereto as Exhibit 3.

### **FISCAL IMPACT**

There is no fiscal impact associated with approval of this action.

Submitted by: Minh Thai, Executive Director/Planning and Building Agency

Exhibits:           1. Resolution No. 2020-067  
                          2. Ordinance NS-XXXX  
                          3. Indemnification Agreement  
                          4. August 18, 2020 City Council meeting Staff Report Item No. 75C can be view in its entirety at the link below:  
[https://santaana.granicus.com/GeneratedAgendaViewer.php?view\\_id=2&clip\\_id=2964](https://santaana.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=2964)

## RESOLUTION NO. 2020-067

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA OVERRULING THE ORANGE COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION OF INCONSISTENCY FOR A MIXED-USE DEVELOPMENT PROJECT LOCATED 2300, 2310 AND 2320 SOUTH REDHILL WITH THE AIRPORT ENVIRONS LAND USE PLAN FOR JOHN WAYNE AIRPORT, INCLUDING SUPPORTIVE FINDINGS

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

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

WHEREAS, Article 5 of Chapter 3 of Division 1 of Title 7 (commencing with Section 65300) of the Government Code requires the City to prepare and adopt a comprehensive, long-term general plan for the physical development of the City; and

WHEREAS, on February 2, 1998, the City of Santa Ana adopted the Land Use Element of the General Plan, which has since been amended from time to time; and

WHEREAS, Jeremy Ogulnick, representing Arrimus Capital ("Applicant"), seeks to develop a Mixed-Use Commercial and Residential Project ("proposed Project"), on a 14.69-acre site at 2300, 2310, and 2320 South Redhill Avenue in Santa Ana, California ("Project Site"); and

WHEREAS, the Project as currently proposed entails, among other things, (1) demolition of the existing three (3) structures on the Project Site; (2) redevelopment of the Project Site with a commercial and residential mixed-use development consisting of up to 80,000 square feet leasable commercial area, 1,100 residential units, 2,600 onsite parking spaces, and onsite landscaping and amenities; (3) approval of General Plan Amendment (GPA) No. 2020-02, which would change the Project Site's existing land use designation of Professional & Administration Office (PAO) to District Center (DC); and (4) approval of Amendment Application (AA) No. 2020-01, which would change the zoning of the Project Site from Light Industrial (M-1) to Specific Development No. 96 (SD-96) designation; and

WHEREAS, the requested General Plan Amendment would change the General Plan land use designation of the property from Professional and Administrative Office (PAO) to District Center (DC) and to update text portions of the City's Land Use Element to reflect this change in order to allow for development of the mixed-use commercial and residential Project; and

WHEREAS, California Public Utilities Code (PUC) Section 21676(b) requires the City of Santa Ana to refer projects requiring a general plan amendment or a zone change to the Orange County Airport Land Use Commission (ALUC) for consistency with the 2008 John Wayne Airport (JWA) Environs Land Use Plan (AELUP); and

WHEREAS, the ALUC is charged with the adoption of an AELUP, establishing guidelines for compatible development in the vicinity of an airport within the jurisdiction of the County of Orange. PUC Section 21670(a) sets forth the fundamental purpose of the AELUP as: (1) "... to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems" and (2) "... to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses;" and

WHEREAS, on May 21, 2020, the ALUC found the proposed project to be inconsistent with the 2008 JWA AELUP by a 6-0 vote. ALUC's findings were made pursuant to AELUP Sections 1.2 and 2.1.4, and PUC Section 216749(a). These sections empower the ALUC "to assist local agencies in ensuring compatible land uses in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses," and "to coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety and welfare;" and

WHEREAS, on May 26, 2020, the Planning Commission held a duly noticed public hearing on the entitlements for the project. Prior to the Planning Commission taking action on the item, staff provided a verbal update informing the Commission regarding ALUC's determination made on May 21, 2020, after the publication of the staff report to the Commission, that the project was inconsistent with the Airport Environs Land Use Plans [AELUP]. Following staff's presentation, and holding the public hearing, the Planning Commission voted 5:1:1 (Phan abstained and Contreras-Leo was absent) to recommend that the City Council approve the required entitlements and environmental documentation for the proposed Project.

WHEREAS, pursuant to PUC Section 21676(b), the City may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of Article 3.5 Airport Land Use Commission of the PUC. At least 45 days prior to the decision to overrule the ALUC, the local agency governing body shall provide the ALUC and the State Division of Aeronautics a copy of the proposed decision and findings. The commission and the Division of Aeronautics may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the ALUC and State Division of Aeronautics comments are not available within this time limit, the local agency governing body may act without them. Should comments be

received, the City Council must include the comments from the ALUC in the public record of any final decision to overrule the ALUC. This decision shall be determined at a public hearing to make the specific findings that the proposed overruling is consistent with the purposes stated in PUC Section 21670.

WHEREAS, on June 16, 2020, the City Council of the City of Santa Ana adopted a resolution (Resolution No. 2020-051) authorizing the Planning Division to initiate the preparation and drafting of findings and determination overruling the Orange County ALUC's determination of inconsistency associated with the proposed Mixed-Use Development and to provide notice in accordance with PUC Section 21676(b) to the ALUC and the State Division of Aeronautics; and

WHEREAS, on June 30, 2020, the Planning Division of the City of Santa Ana provided a Notice of Intent to overrule the Orange County ALUC's determination that the Mixed-Use Development project is inconsistent with the AELUP of JWA and findings to the ALUC and the State Division of Aeronautics; and

WHEREAS, all correspondences received by the ALUC and State Division of Aeronautics have been included in the public record; and

WHEREAS, on August 6, 2020, the City gave public notice of a City Council public hearing for consideration of overruling ALUC's determination on the proposed Mixed-Use Development project by advertising in the Orange County Register, a newspaper of general circulation, by mailing to owners of property and residents within 500 feet of the Project, and posting a notice on site; and

WHEREAS, August 18, 2020, the City Council conducted a duly noticed public hearing to consider the Environmental Impact Report (EIR) No. 2020-01, General Plan Amendment No. 2020-02, Amendment Application No. 2020-01, and the ALUC overruling determination of inconsistency action and at which hearing members of the public were afforded an opportunity to comment upon such actions.

Section 2. The City Council of the City of Santa Ana made the following findings:

- A. The City of Santa Ana is required to provide findings supporting the overrule of the Orange County ALUC determination as required in the California PUC Section 21676(b). Based on the following Findings of Fact and the associated substantial evidence in the public record, the proposed action by the City on the Mixed-Use Development Project at 2300, 2310 and 2320 Red Hill Avenue and related zoning change and General Plan Amendment are consistent with the purposes of the State Aeronautics Act as stated in PUC Section 21670.
- B. The proposed Project provides for the orderly development of JWA, and its surrounding area and promotes the overall goals and objectives of the State noise standards by avoiding new noise and safety problems, and protecting

the public health, safety and welfare through the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards to the extent that this area is not already devoted to incompatible uses. This Project would not add any new residential or commercial noise impacts to the JWA 65 dBA Community Noise Equivalent Level (CNEL) noise area.

- C. It is in the public interest to: provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to PUC Section 21669 and to prevent the creation of new noise and safety problems.
- D. To provide for the orderly development of JWA and the area surrounding the airport, the ALUC adopted the 2008 AELUP on April 17, 2008. The AELUP guides development proposals to provide for orderly development of the airport and the area surrounding the airport through implementation of the standards in Section 2.1 (aircraft noise, safety compatibility zones, building height restrictions).
- E. The ALUC is required to use the California Airport Land Use Planning Handbook (Handbook) that was updated by the California Department of Transportation, Division of Aeronautics (Caltrans) in 2011. The AELUP has not been updated to incorporate the Handbook nor has it updated information about the operation and environmental effects of JWA as reflected in its most recent Final Environmental Impact Report (EIR) certified by the Orange County Board of Supervisors on June 25, 2019 for the General Aviation Improvement Program (GAIP).
- F. On May 21, 2020, the City of Santa Ana presented the Mixed-Use development to the ALUC for a determination of consistency with the JWA AELUP. The ALUC staff report dated May 21, 2020, finds that with regard to AELUP issues of aircraft noise, building heights, safety zones and heliports, that the proposed project, zone change, and General Plan Amendment are each consistent. Despite consistency with each stated criteria of the AELUP, the ALUC staff recommended, "[t]hat the Commission find the proposed ...Mixed Use Project inconsistent with the AELUP for JWA per AELUP Sections 1.2 and 2.1.4 and PUC Section 21674.
- G. The Project is consistent with the AELUP of JWA and with the purposes of the State Aeronautics Act based on the following Findings of Fact and substantial evidence:
  - a. Lack of evidence of inconsistency by the ALUC.
  - b. There was no evidence presented by or to the ALUC at its hearing on May 21, 2020, to support finding of inconsistency, nor was there a request to provide supplemental information. The ALUC staff made a

presentation at the Commission hearing based on the staff report. The only addition made by the ALUC staff to the staff report published with the meeting agenda was their acknowledgment of the City's letter on May 20, 2020 stating that the Final EIR for the Project would reinstate a mitigation measure requiring "Notice of Airport in Vicinity," to be included in all lease/rental agreements and post outdoor signage informing the public of the presence of operating aircraft, which demonstrates further compliance with the AELUP and to minimize potential future noise complaints.

- c. Noise. The residential and commercial land uses under the proposed Project are consistent with the aircraft noise standards of the AELUP.
  - i. Project is located outside of the JWA 60 to 65 dBA CNEL aircraft noise contours. Aircraft noise analysis was completed in the Project's EIR and presented at the ALUC hearing. The JWA GAIP EIR also contains noise analysis demonstrating that the Project is outside of the 60 dBA CNEL noise contour. This noise analysis is based on one year's worth of aircraft operations in all runway operating configurations with for both existing aircraft fleet mixes and future fleet forecasts. This analysis includes the time of day of all operations and includes noise penalties for evening (7 pm to 10 pm) and night (10 pm to 7 am) aircraft operations of five and ten decibels per operation. Residential land uses are normally consistent in areas impacted by aircraft noise up to 60 dBA CNEL and commercial land uses up to 65 dBA CNEL as shown in the AELUP Table 1. These are the same noise standards used by the FAA and the State of California to identify compatible land uses near airports.
  - ii. The project is located outside of the JWA single-event aircraft noise contours. The detailed aircraft noise analysis completed as part of the JWA GAIP EIR included analysis of single event aircraft noise. This analysis included single event noise contours for the noisiest aircraft making regular use of JWA. The Project developer's consultant provided analysis and information at the ALUC hearing showing the Project site is located outside of the JWA 85 dB single event noise contours for all aircraft making regular use of the Airport.
  - iii. The project includes mitigation measure notifying future residents. The Final EIR for the Project revised on May 22, 2020 includes a mitigation measure requiring "Notice of Airport in Vicinity," to be included in all lease/rental agreements and post outdoor signage informing the public of the presence of operating aircraft, which demonstrates further compliance with the AELUP and to minimize potential future noise complaints.



- d. Safety. The residential and commercial land uses under the proposed project are consistent with the safety standards of the AELUP. Project is not in any of the AELUP safety zones. The project is located more than a mile from the outer edge of AELUP Zone 6, Traffic Pattern Zone as depicted in Appendix D. Further, AELUP Appendix D states the “Basic Compatibility Qualities” of Zone 6 as “Allow residential uses” and “Allow most nonresidential uses.”
  - i. Project is not in the JWA runway protection zones (RPZ). The Project is located nearly two miles from the outer edge of the nearest JWA RPZ.
  - ii. The FAA’s Determinations of No Hazard to Air Navigation for the Mixed-Use development structures are the only source of authoritative, aviation safety findings regarding the project. The FAA conducted an aeronautical study (49 U.S.C. §44718 and 14 CFR Part 77) and issued its Determinations on March 5, 2020 that structures associated with the project “do not exceed standards and would not be a hazard to air navigation” and that “[b]ased on this evaluation, marking and lighting are not necessary for aviation safety.” The FAA’s Determinations establish that the Project would be neither an obstruction nor a hazard to air navigation.
  - iii. In this case it is important to first establish what entity has authority over the use of airspace over the project site. “The United States Government has exclusive sovereignty of airspace of the United States” (49 U.S.C. § 40103(a)(1)).
  - iv. In order to use this airspace, the FAA Administrator is responsible for: (1) Plans and policy for the safe use of the navigable airspace (49 U.S.C. § 40103(b)(1); and (2) “[R]egulations on the flight of aircraft (including regulations on safe altitudes) for navigating, protecting and identifying aircraft; protecting individuals and property on the ground; using the navigable airspace efficiently; and preventing collision between aircraft, between aircraft and land or water vehicle, and between aircraft and airborne objects” (49 U.S.C. § 40103(b)(2)).
  - v. The FAA’s aeronautical studies for the project structures are the definitive standard for assessing compliance with federal aviation safety laws and regulations (49 U.S.C. § 77.1(c)). This federal authority is recognized in State law (Cal. PUC §21240).
  - vi. The City of Santa Ana has the local police powers to control land use on the site (Cal. Const., art. XI 11, § 7). This constitutional authority is acknowledged in State law (Cal. PUC §21670 and §21676) and the ALUC process (AELUP §4.11) allowing for overrule of an ALUC finding of inconsistency.

- vii. The other entities that have processed or commented on this project have aviation safety duties and responsibilities related to this matter. Each of these entities relies on or ultimately defers to the FAA's authoritative aviation safety role in airspace determinations.
- viii. The AELUP for JWA, Section 2.1.3 Building Height Restrictions states, "In adopting criteria for building height restrictions in the vicinities of airports, the Commission considered only one standard and that was Federal Aviation Regulations Part 77 ([14 CFR] Part 77) entitled, *Objects Affecting Navigable Airspace*. "These regulations **are the only definitive standard available** [emphasis added] and the standard most generally used."
- ix. Section 2.1.3 also recognizes FAA aeronautical studies beyond 14 CFR Part 77 surfaces as the standard for review, "In addition to the 'imaginary surfaces,' the Commission will use all of the FAR Part 77.23 standards along with the results of FAA aeronautical studies, [emphasis added] or other studies deemed necessary by the Commission, in order to determine if a structure is an 'obstruction.'" This section goes on to state: The Commission considers and recognizes the FAA as the single "Authority" for analyzing project impact on airport or aeronautical operations, or navigational-aid siting, including interference with navigational-aids or published flight paths and procedures. The Commission also considers the FAA as the "Authority" for reporting the results of such studies and project analyses. The Commission will not consider the findings of reports or studies conducted by parties other than the FAA unless the FAA certifies and adopts such findings as true and correct.
- x. Section 2.1.3 adds reference to FAA Advisory Circular 150/5190-4A, A Model Zoning Ordinance to Limit Height of Objects Around Airports for Commission Review. This FAA Advisory Circular provides specific guidance for establishing zoning regulations along with specific guidance on a "variance" process for potential obstructions. At Section 3.b., "The Federal Aviation Administration (FAA) conducts aeronautical studies on obstructions which examine their effect on such factors as: aircraft operational capabilities; electronic and procedural requirements; and, airport hazard standards. **If an aeronautical study shows that an obstruction, when evaluated against these factors, has no substantial adverse effect upon the safe and efficient use of navigable airspace, then the obstruction is considered not to be a hazard to air navigation** [emphasis added]."

- xi. CalTrans Division of Aeronautics – Caltrans publishes the California Airport Land Use Planning Handbook (“Handbook”) in accordance with State Law with the purpose to, “ provide information to ALUCs, their staffs, airport proprietors, cities, counties, consultants, and the public; to identify the requirements and procedures for preparing effective compatibility planning documents; and define exemptions where applicable (Caltrans, 2011).” The Handbook provides specific guidance for assessing potential airspace obstructions in Section 4.5 Airspace Protection.
- xii. JWA – The FAA requires airport sponsors like Orange County to accept specific grant assurances when they accept federal funding. Hazard Removal and Mitigation and Compatible Land Use are two of these assurances (49 U.S.C. § 47107(a)(9) and (10)). For hazard removal, the Airport relies on the FAA’s aeronautical study to meet its requirement. For compatible land use, the Airport relies on coordination with the surrounding cities and the ALUC. The following are the specific assurances:
  - xiii. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.
  - xiv. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.
- e. Height. The residential and commercial land uses under the proposed project are consistent with the height standards of the AELUP.
  - i. The proposed buildings associated with the Project would not exceed the sloping, three-dimensional 100:1 (one percent sloping surface from the nearest runway over 3,200 feet in actual length) FAA notification surface to require the Filing of FAA Form 7460-1. This fact is stated in the ALUC staff report and was repeated at the ALUC hearing on the Project. Despite this fact, the Project

proponent filed with the FAA and received a Determination of No Hazard to Air Navigation on March 5, 2020.

- ii. The Project does not exceed the sloping, three-dimensional 50:1 FAA precision instrument Approach Surface to JWA Runway 20R. This fact is stated in the ALUC staff report and was repeated at the ALUC hearing on the Project. Despite this fact, the Project proponent filed with the FAA and received a Determination of No Hazard to Air Navigation on March 5, 2020.
- f. Overflight. "Close to the JWA approach centerline" as identified by the ALUC is neither an FAA nor an AELUP standard.
- i. The FAA is the only authoritative source of aviation safety data and the FAA does not have a "close to the JWA approach centerline" standard. The FAA's Aeronautical Study of the Project and Determinations of No Hazard to Air Navigation issued on March 5, 2020 are the only authoritative source of airspace impact information as stated in the AELUP.
  - ii. The AELUP clearly identifies its airport land use planning standards around aircraft noise, safety, and height. Objective measures of these standards are clearly identified in AELUP Section 2.1. The Project is consistent with each of these objective standards.
  - iii. Two-dimensional flight tracks and a list of unassociated aircraft do nothing to inform the impact of overflights. The ALUC provided one day of arrival flight tracks, one day of departure flight tracks and lists of aircraft by time of day and altitude that were purported to have produced these flight tracks.
  - iv. The Project proponent prepared three-dimensional models of the ALUC-provided flight track information to depict actual overflight proximity to a scaled model of the Project. These three-dimensional models show that some residents and users of the property would likely be able to see aircraft flying past the property from certain locations. Aircraft noise information from the AELUP, the JWA GAIP EIR and from the Project EIR demonstrate that the noise impact would be less than 60 dBA CNEL and less than single event noise standards identified in the JWA GAIP EIR.
  - v. Aircraft noise contours used to objectively measure noise impact already assume flight tracks and actual operating conditions for a full year including future operations. One day of arrival flight tracks and one day of departure flight tracks are simple anecdotes and not substantive evidence.

- vi. The project is located outside of the JWA single event noise exposure areas documented in the JWA General Aviation Improvement Program EIR certified on June 25, 2019. The project developer presented this information to the ALUC Commission at its hearing on May 21, 2020.
- vii. ALUC Commissioners Monin and Murphy asked for but did not receive evidence of general aviation aircraft using Runway 2R/20L would “be turning right in front of the site.” In fact, the GA aircraft pattern and voluntary noise abatement procedures for Runway 2R/20L operate within one to two miles from the end of the runway north of the airport and on a 15-degree offset from the extended runway centerline to avoid airspace conflicts with aircraft arriving Runway 20R. This location places GA aircraft south of Barranca Parkway and aligned with the Tustin Legacy property southeast of the Project site. These regular GA aircraft flight tracks are substantiated in the presentation by JWA staff on April 6, 2019 at a Town Hall meeting about the GAIP.
- g. Heliports. Heliports are not a part of the Project.
- h. Zone Change and General Plan Amendment. The proposed zone change, and General Plan Amendment are consistent with the objective AELUP aircraft noise, safety and height standards and are therefore consistent with the larger planning role of the ALUC. “Close to the JWA approach centerline” is not an FAA or an ALUC standard.
  - i. ALUC offers no substantiation that overflights of new residents would be disturbed or annoyed. On the contrary, the ALUC demonstrates that the Project is located outside of the 60 dBA CNEL noise contour. As such, the Project would not add any new residential or commercial noise impacts to the JWA 65 dBA Community Noise Equivalent Level (CNEL) noise area.
  - ii. Flight tracks for one day of arrivals and one day of departures are not unique and are fully accounted for in the one year of overflights used to measure CNEL noise impacts associated with JWA.
  - iii. Flight tracks for one day of arrivals and one day of departures are not unique and are fully accounted for in the single-event noise contours produced for the JWA GAIP EIR. The Project is located outside of these single-event noise contours.
  - iv. The JWA comments on the Project conflict with its own noise analysis contained in the GAIP EIR. The ALUC staff report states, “Because of the project location within the primary approach corridor and its proximity to JWA (2.25 miles), JWA stated it is not

supportive of the proposed residential portion of the project.” The objective analysis and conclusions of the JWA GAIP EIR find that the objective aircraft noise analysis demonstrate that the Project would be located outside of the 60 dBA CNEL noise contour and would have no impact on operations at JWA due to height.

- v. The ALUC staff report states that, “per Section 1.2 of the AELUP for JWA, the purpose of the AELUP is to safeguard the general welfare of the inhabitants within the vicinity of the airport and to ensure the continued operations of the airport.” The method by which the ALUC achieves this purpose is through the application of the objective standards contained in Section 2.1 of the AELUP. As demonstrated in the ALUC staff report and, in these Findings, the Project is consistent with each of the standards. As a result, the ALUC has met their duty under Section 1.2 by ensuring that the Project meets these standards.
- vi. The ALUC staff report states that “Additionally, Section 2.1.4 of the AELUP for JWA and PUC Section 21674 charge the Commission to coordinate at the local level to ensure compatible land use planning.” The method by which the ALUC achieves this charge is through the application of the objective standards contained in Section 2.1 of the AELUP. As demonstrated in the ALUC staff report and, in these Findings, the Project is consistent with each of the standards. As a result, the ALUC has met their duty under Section 2.1.4 and PUC Section 21674 by ensuring that the Project meets these standards.

Section 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT: The City Council has reviewed and certified Environmental Impact Report No. 2020-01; adopted the Mitigation Monitoring and Reporting Program (MMRP); and adopted the Statement of Overriding Consideration for the proposed Project.

Section 4. INDEMNIFICATION. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, and other and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively “Actions”), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections

1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

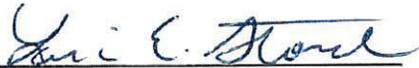
Section 5. CITY COUNCIL ACTION: Based on the above evidence and Findings made, and the remainder of the record in this case, the City Council of the City of Santa Ana hereby resolves to overrule the Orange County ALUC's determination that the Mixed-Use Development Project is inconsistent with the Orange County AELUP.

Section 6. EXECUTION OF RESOLUTION. The Mayor shall sign this Resolution and the Clerk of the Council shall attest and certify to the adoption thereof.

ADOPTED this ``18<sup>th</sup> day of August, 2020.

  
Miguel A. Pulido  
Mayor

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

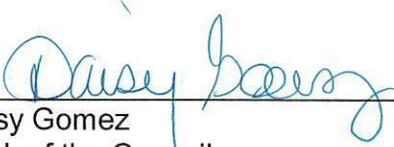
By:   
Lisa E. Storck  
Assistant City Attorney

AYES:	Councilmembers	<u>Bacerra, Mendoza, Penaloza, Sarmiento, Solorio (5)</u>
NOES:	Councilmembers	<u>Pulido, Villegas (2)</u>
ABSTAIN:	Councilmembers	<u>None (0)</u>
NOT PRESENT:	Councilmembers	<u>None (0)</u>

**CERTIFICATE OF ATTESTATION AND ORIGINALITY**

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2020-067 to be the original resolution adopted by the City Council of the City of Santa Ana on August 18, 2020.

Date: 8-27-2020

  
\_\_\_\_\_  
Daisy Gomez  
Clerk of the Council  
City of Santa Ana





ORDINANCE NO. NS-XXXX

AN ORDINANCE OF THE CITY COUNCIL APPROVING AMENDMENT APPLICATION NO. 2020-01 REZONING THE PROPERTY LOCATED AT 2300, 2310, AND 2320 SOUTH REDHILL AVENUE FROM LIGHT INDUSTRIAL (M-1) TO SPECIFIC DEVELOPMENT NO. 96 (SD-96) AND ADOPTING SD-96 FOR SAID PROPERTY

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

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

**WHEREAS**, Chapter 41, Article 1, Division 1, Section 41-1 of the Santa Ana Municipal Code establishes the necessity of segregating the location of residences, businesses, trades and industries; regulating the use of buildings, structures, and land regulation; the location, height, bulk and size of buildings and structures, the size of yards and open space; the City is divided into land-use districts of such number, shape and area as may be considered best suited to carry out these regulations and provide for their enforcement; and

**WHEREAS**, the regulations are considered necessary in order to: encourage the most appropriate use of land, conserve and stabilize property value, provide adequate open spaces for light and air and to prevent and fight fires, prevent undue concentration of population, lessen congestion on streets and highways, and promote the health, safety and general welfare of the people, all as part of the general plan of the City; and

**WHEREAS**, the City of Santa Ana has adopted a zoning map which has since been amended from time to time; and

**WHEREAS**, Jeremy Ogulnick, representing Arrimus Capital (“Applicant”), seeks to develop a Mixed-Use Commercial and Residential Project (“proposed Project”), on a 14.69-acre site at 2300, 2310, and 2320 South Redhill Avenue in Santa Ana, California (“Project Site”); and

**WHEREAS**, during the City’s entitlement and environmental review process, and in response to comments and concerns raised by the City and public, the Applicant has proposed the subject mixed-use Project; and

**WHEREAS**, the Project as currently proposed entails, among other things, (1) demolition of the existing three (3) structures on the Project Site; (2) redevelopment of the Project Site with a commercial and residential mixed-use development consisting of up to 80,000 square feet leasable commercial area, 1,100 residential units, 2,600 onsite parking spaces, and onsite landscaping and amenities; (3) approval of General Plan

Amendment (GPA) No. 2020-02, which would change the Project Site's existing land use designation of Professional & Administration Office (PAO) to District Center (DC); and (4) approval of Amendment Application (AA) No. 2020-01, which would change the zoning of the Project Site from Light Industrial (M-1) to Specific Development No. 96 (SD-96) designation; and

**WHEREAS**, Applicant agrees to execute a Mutual Declaration of Acknowledgement and Acceptance of Approval Conditions, signed by the developer and property owner and recorded against the development property, attached hereto and incorporated herein by reference as Exhibit C; and

**WHEREAS**, the requested Amendment Application would change the zoning designation of the property from Light Industrial (M-1) to Specific Development No. 96 (SD-96) and adoption of Specific Development No. 96 to reflect this change in order to facilitate the construction of the proposed Project; and

**WHEREAS**, Environmental Impact Report No. 2020-01 (State Clearinghouse/SCH No. 2019080011) for the proposed Project was circulated between January 3, 2020 to February 18, 2020; and

**WHEREAS**, the Environmental Impact Report analyzed the impacts related to the proposed amendment to the zoning map and adoption of Specific Development No. 96; and

**WHEREAS**, during the public comment period, a Planning Commission work-study session was held on February 10, 2020 where staff presented proposed Project and described the Draft EIR; and

**WHEREAS**, on May 11, 2020 and May 26, 2020, the Planning Commission conducted a duly noticed public hearing to consider the EIR and the GPA, and AA applications described above. After hearing all relevant testimony from staff, the public and the City's consultant team, the Planning Commission voted to recommend that the City Council certify the EIR and adopt the findings, the statement of overriding considerations and the mitigation monitoring and reporting program and approve the Project; and

**WHEREAS**, on August 6, 2020, the City gave public notice of a City Council public hearing for consideration of Environmental Impact Report No. 2020-01 (State Clearinghouse No. 2019080011) by advertising in the Orange County Register, a newspaper of general circulation, and by mailing to owners of property and residents within 500 feet of the Project; and

**WHEREAS**, on August 18, 2020, the City Council conducted a duly noticed public hearing to consider the EIR, General Plan Amendment No. 2020-02, and Amendment Application No. 2020-01 and at which hearing members of the public were afforded an opportunity to comment upon Environmental Impact Report No. 2020-01. After hearing all relevant testimony from staff, the public and the City's consultant team,

the City Council voted to certify the EIR, adopt the findings, the statement of overriding considerations and the mitigation monitoring and reporting program and approve the Project; and

**WHEREAS**, the “EIR” consists of the Final EIR and all attachments and appendices, as well as the Draft EIR and its attachments and appendices (as modified by the Final EIR).

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT: The City Council has reviewed and certified Environmental Impact Report No. 2020-01; adopted the Mitigation Monitoring and Reporting Program (MMRP); and adopted the Statement of Overriding Consideration for the proposed Project, including this Amendment Application No. 2020-01.

SECTION 3. AMENDMENT APPLICATION: The Amendment Application consists of amendments to the zoning map (SDM IRS-9) and adoption of Specific Development No. 96, as shown in Exhibit A and Exhibit B respectively, attached hereto and incorporated herein by reference.

SECTION 4. LOCATION OF DOCUMENTS: The Amendment Application, Environmental Impact Report and all supporting documents are online, on file and available for public review at Santa Ana City Hall, 20 Civic Center Plaza, Santa Ana, California 92702.

SECTION 5. GENERAL PLAN CONSISTENCY: The City Council hereby finds that the proposed Amendment Application is compatible with the objectives, policies, and general plan land use programs as amended by General Plan Amendment No. 2020-02 in that:

- A. The proposed Amendment Application will not adversely affect the public health, safety, and welfare in that the Amendment Application will not result in incompatible land uses on adjacent properties, inconsistencies with any General Plan goals or policies, or adverse impacts to the environment.
- B. The amendment application to change the zoning designation from Light Industrial (M-1) to Specific Development No. 96 (SD-96) is consistent with Santa Ana Municipal Code section 41-593.1 for the following reasons:

- (1) Protecting and enhancing the value of properties by encouraging the use of good design principles and concepts, as related to the division of property, site planning and individual improvements with full recognition of the significance and effect they have on the proper planning and development of adjacent and nearby properties.

The project's site plan has been designed to integrate the project site into the surrounding community. The development's primary access points will be from a right-in, right-out driveway on Redhill Avenue, and from a signalized intersection on Warner Avenue. These access points have been designed to ensure the safety of residents and visitors of the project site, as well as commuters, employees, and residents of the surrounding community.

Onsite circulation has been designed to ensure a high-quality pedestrian experience, with wide sidewalks, a central paseo, and plazas and courtyards that buffer or separate pedestrians from onsite vehicular traffic. Moreover, the project has been broken into four primary buildings and two freestanding commercial pads, which reduces the overall massing of the project and creates a more pedestrian-scale village of buildings onsite. The two future roadway connections on the project site will allow the development to become integrated with the adjacent site to the southwest, should an application for redevelopment be approved. (As of the date of this ordinance, no application for redevelopment of the adjacent site to the southwest has been submitted for the City's consideration).

(2) Encouraging, securing and maintaining the orderly and harmonious appearance, attractiveness and aesthetic development of structures and grounds in order that the most appropriate use and value thereof be determined and protected.

The project's six buildings on the 14.69-acre site are designed in a cohesive manner with unifying materials, floor heights, and articulation using contemporary architecture in an "industrial tech" style. High-quality building materials will ensure long-term durability and maintaining high value of the project, including metal trim, awnings, railing, slats, and cladding; brick veneers and high-quality light sand finish stucco; glass railing; and poured concrete forms. Onsite furniture and details, such as lighting, waste receptacles, benches, tables, and open space areas, have been designed to complement the site's contemporary architecture. High ground-floor window and ceiling heights will contribute to the high-quality commercial component of the project site, which has been designed to create a dynamic, commercial and residential village. These finishes and designs are consistent with the development standards and design guidelines found in the City's mixed-use zoning areas such as the Transit Zoning Code and Metro East Mixed Use (MEMU) Overlay Zone, as well as the Citywide Design Guidelines.

Open space and amenities will be provided on the site in a variety of means, including private unit balconies and patios, amenity decks atop parking structures, ground-level courtyards, the central paseo, and the central plaza. The resident open space areas will contain pools, courtyards, exercise areas, relief areas for pets, and other amenities typical to high-quality mixed-use developments found in Santa Ana and in Orange County. Based on a standard of two (2) acres of public park and/or recreational area per 1,000 residents (SAMC Sec. 35-108), the proposed project would require 4.2 acres of parkland to serve the new residents. The onsite total proposed open space is 183,363 square feet (4.21 acres), which is consistent with the SAMC standard and with other mixed-use projects that provide their own onsite public and private open space areas.

- (3) Providing a method whereby specific development plans are to be based on the general plan as well as other regulations, programs, and legislation as may, in the judgment of the city, be required for the systematic execution of the general plan.

With approval of General Plan Amendment No. 2020-02, the Project will be consistent with the General Plan Land Use Element. Although the Project requires an amendment to the Land Use Element to allow for residential use of the property, the Project still supports and is consistent with several other overarching goals and policies of the General Plan. For example, as described in the associated General Plan Amendment No. 2020-02: Housing Element Goal 2, to create diversity of quality housing, affordability levels, and living experiences that accommodate Santa Ana's residents and workforce of all household types, income levels, and age groups to foster an inclusive community. Land Use Element Goal 4, to protect and enhance development sites and districts which are unique community assets that enhance the quality of life. Urban Design Element, Goal 1, to improve the physical appearance of the City through development of districts that project a sense of place, positive community image, and quality environment.

- (4) Recognizing the interdependence of land values and aesthetics and providing a method to implement this interdependence in order to maintain the values of surrounding properties and improvements and encouraging excellence of property development, compatible with the general plan for, and character of, the city, with due regard for the public and private interests involved.

The proposed development contains a large commercial component of 80,000 square feet of leasable retail, service, and restaurant area. This volume of commercial space complements the residents, visitors, and employees working and living on and around the project site.

The 80,000 square feet of leasable commercial area is among the largest commercial components proposed in recent mixed-use developments. For comparison, the Elan project (1660 East First Street) approved in 2018 contains 603 residential units and 20,000 square feet of commercial space; the First American redevelopment (114 East Fifth Street) approved in 2019 contains 220 residential units and 12,350 square feet of commercial space, and The Heritage (2001 East Dyer Road), which is under construction nearby, contains 1,221 residential units and 18,400 square feet of net new commercial square footage.

The mixture of land uses on the project site, including residential, commercial, and open space, will contribute to the formation a dynamic mixed-use village. The commercial and open space components will serve both residents and visitors of the project site, as well as the large daytime employee population working in the project site's immediate vicinity.

(5) Ensuring that the public benefits derived from expenditures of public funds for improvements and beautification of streets and public facilities shall be protected by exercise of reasonable controls over the character and design of private buildings, structures and open spaces.

The mixed-use development will utilize existing water, sewer, and drainage infrastructure and will not result in the expansion of infrastructure. In addition, the Project will not result in the expansion of new or altered police or fire facilities. The Project will be subject to utility user tax, property taxes based on the valuation of the new construction and management company business taxes. The building facades and new landscaping are designed to deter graffiti, existing sidewalks will be removed and replaced with new sidewalks that are constructed to current City standards, new street lights will be installed and the City's Building Security Ordinance will be implemented which includes security and crime preventing measures to help reduce City expenditures on public services and maintenance. In addition, the development will be subject to all required development impact fees.

## SECTION 6. INDEMNIFICATION.

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

B. Further Indemnification. Within five (5) days of receipt of a referendum petition by the City, Applicant shall deposit Fifty Thousand Dollars (\$50,000) ("Referendum Deposit") with the City. City may use the funds to pay any and all costs associated with said referendum measure. If at any time the Referendum Deposit account has Five Thousand Dollars (\$5,000) or less remaining, Applicant shall, within three (3) days of receiving notice from the City, deposit with the City additional funds as requested by the City to cover all costs and expenses associated with processing the referendum and holding the related election. Following certification of the election results, any funds remaining in the Referendum Deposit account shall be returned to the Applicant.

SECTION 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.



SECTION 8. CITY COUNCIL ACTIONS: The City Council hereby takes the following actions:

1. The City Council hereby adopts an Ordinance approving Amendment Application No. 2020-01 as follows:
  - A. Subject to compliance with the adopted Mitigation Monitoring and Reporting Program, the property at 2300, 2310, and 2320 shall be amended to Specific Development No. 96 and the Specific Development No. 96 plan shall be adopted as set forth in Exhibit A and Exhibit B, attached hereto and incorporated herein by reference.
  - B. The Amendment Application shall not take effect unless and until Environmental Impact Report No. 2020-01 and General Plan Amendment No. 2020-02, are each certified and approved by the City Council.

SECTION 9. EXECUTION OF ORDINANCE. The Mayor shall sign this Ordinance and the Clerk of the Council shall attest and certify to the adoption thereof.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Miguel A. Pulido  
Mayor

APPROVED AS TO FORM:  
Sonia R. Carvalho  
City Attorney

By:   
Lisa Storck  
Assistant City Attorney

AYES: Councilmembers \_\_\_\_\_  
NOES: Councilmembers \_\_\_\_\_  
ABSTAIN: Councilmembers \_\_\_\_\_  
NOT PRESENT: Councilmembers \_\_\_\_\_

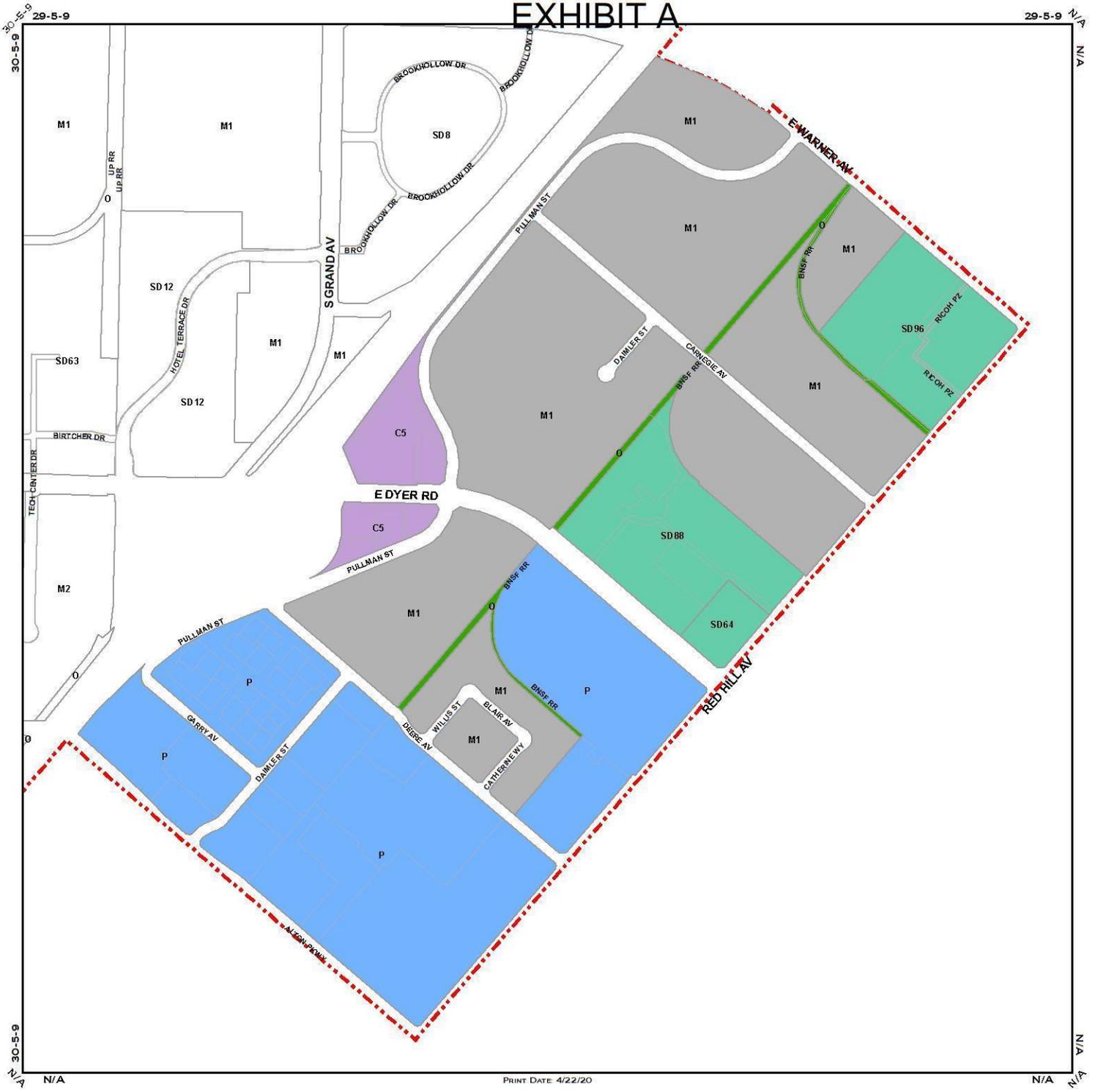
CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on \_\_\_\_\_, 2020, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: \_\_\_\_\_

\_\_\_\_\_  
Daisy Gomez  
Clerk of the Council  
City of Santa Ana

# EXHIBIT A



PRINT DATE: 4/22/20

## ZONING DISTRICTS

A1	GENERAL AGRICULTURAL	CSM	SOUTH MAIN STREET COMMERCIAL DIST.	R2	TWO-FAMILY RESIDENCE	-B	PARKING MODIFICATION
C1	COMMUNITY COMMERCIAL	GC	GOVERNMENT CENTER	R3	MULTIPLE-FAMILY RESIDENCE	-OZ	OVERLAY ZONE
C1-MD	COMMUNITY COMMERCIAL - MUSEUM DIST.	M1	LIGHT INDUSTRIAL	R4	SUBURBAN APARTMENT	-PRD	PLANNED RESIDENTIAL DEVELOPMENT
C2	GENERAL COMMERCIAL	M2	HEAVY INDUSTRIAL	RE	RESIDENTIAL ESTATE	-HD2	HEIGHT DISTRICT II
C4	PLANNED SHOPPING CENTER	O	OPEN SPACE	SD	SPECIFIC DEVELOPMENT		
C5	ARTERIAL COMMERCIAL	P	PROFESSIONAL	SP	SPECIFIC PLAN		
CR	COMMERCIAL RESIDENTIAL	R1	SINGLE-FAMILY RESIDENCE	OZ1	METRO EAST OVERLAY ZONE		



## SECTIONAL DISTRICT MAP: IRS-9

CITY OF SANTA ANA, CALIFORNIA



Exhibit:

# 60A-27

EXHIBIT B



**THE WARNER REDHILL MIXED-USE  
SPECIFIC DEVELOPMENT NO. 96**

Amendment Application No. 2020-01

Ordinance NS-\_\_\_\_\_



# THE WARNER REDHILL MIXED-USE SPECIFIC DEVELOPMENT No. 96

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## SECTION 1 – INTRODUCTION AND APPLICABILITY OF ORDINANCE

The purpose of The Warner Redhill Mixed-Use Specific Development (SD) zone (SD-96) is to guide the redevelopment of an existing industrial site into a mixed-use and pedestrian oriented development. SD-96 is authorized by Chapter 41, Division 26, Section 41-593 et seq. of the Santa Ana Municipal Code (SAMC). SD-96 contains specific standards and regulations for the purpose of establishing land use regulations and development and operational standards for the development site. All other applicable Chapters, Articles, and Sections of the SAMC are in full effect unless expressly superseded by regulations contained within this specific development.

### A. Specific Development Location

The specific development site is 14.37 acres and is located at 2300, 2310, and 2320 South Redhill Avenue in the City of Santa Ana. The site is located at the southwest corner of Redhill Avenue and Warner Avenue. Regional access to the site is provided via the Costa Mesa (SR-55) Freeway at the Dyer Road exit. Access to the site is provided by Red Hill Avenue and Warner Avenue. The site is located within the southeastern most portion of the City of Santa Ana adjacent to the cities of Tustin and Irvine and the Tustin Legacy Specific Plan and the Irvine Business Complex.

**Figure 1: Specific Development Area**



## **SECTION 2 – PURPOSE AND OBJECTIVES**

The specific development is intended to redevelop an industrial site into a mixed-use and pedestrian oriented community. Located at one of the City's southeastern gateways, the specific development will function as a key focal center, and serve to link Santa Ana to surrounding industrial, commercial and residential areas. SD-96 will meet the following objectives:

1. Facilitate development of a mixed-use village containing commercial and multi-family residential buildings, which would help meet the region's demand for housing.
2. Transform an underutilized site with an economically viable development consistent with other regional redevelopments in the Tustin Legacy Specific Plan and Irvine Business Complex (IBC) and combines residential uses with community-serving retail near employment opportunities, freeway access, and transit.
3. Redevelop existing land uses that would utilize existing infrastructure, including: water, sewer, arterial roadways, transit, and freeways; and provide non-vehicular (pedestrian and bicycle) circulation.
4. Develop a mix of housing to assist the City in meeting its jobs/housing balance.
5. Provide onsite uses that reduce vehicular miles traveled (VMT) by providing an internal pedestrian circulation system that links residential uses, recreation areas, and retail/commercial areas onsite.
6. Implement the SCAG Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) Land Use Policies related to population and housing by providing additional housing near employment centers.

SD-96 establishes standards and regulations for protecting the health, safety, and general welfare of the people of the City by promoting and enhancing the value of property and encouraging the orderly development of the property.

## **SECTION 3 – LAND USE AND ZONING**

### **A. Density and Intensity**

The maximum authorized building density and intensity for the project is a floor area ratio (FAR) of 2.06, including residential areas, community-serving areas (e.g., leasing office, gym and club room), commercial components, and interior corridors. The maximum residential density permitted is 77 dwelling units per acre.

## B. Permitted Uses

1. SD-96 permits the development of a mixed-use community consisting of 80,000 square feet of leasable commercial area to be constructed in conjunction with a residential component consisting of up to 1,100 residential units configured in live/work, stacked dwelling, lined block, or podium configurations.
2. This section identifies the permitted, conditional, and accessory or temporary uses within the SD-96 area. Uses in the table are permitted subject to the permit criteria referenced. Uses identified by a “P” are permitted by right, those identified by a “CUP” are subject to a Conditional Use Permit, and those identified by “LUC” are subject to a Land Use Certificate.

**Table 1: Permitted Uses**

Land Use Types	SD-96	Additional Use Regulations
Commercial/retail and service uses such as bakeries, bookstores, art galleries, food/grocery stores (retail market), pet stores and similar uses.	P	
Office uses. Professional, administrative and business offices providing personal and professional services, including medical and dental offices, architects/engineers, and similar uses.	P	
Service oriented office uses including insurance, real estate, travel, finance (including walk-up ATMs), creative office co-working (WeWork, Common Desk, etc.), beauty salons, and similar uses.	P	
Health and Fitness Clubs	P	
Tattoo/Body art establishment	P	
Restaurants, cafes and eating establishments	P	
Outdoor dining	P	
Multi-family apartments and/or condominiums and associated leasing offices and recreational/fitness facilities.	P	
Live/work lofts	P	
Alcohol sales for on-site or off-site consumption	CUP	Subject to SAMC Sec. 41-196
Limited artisan/craft manufacturing, ancillary to a primary allowed use	CUP	
Pick-up windows	P	
Food vending vehicles	LUC	Subject to Article XIV
Temporary outdoor activities	LUC	Subject to SAMC Sec.41-195.5



Land Use Types	SD-96	Additional Use Regulations
Businesses operating between 12:00 a.m. (midnight) and 7:00 a.m.	CUP	
Major wireless communication facilities	CUP	Subject to SAMC Sec. 41-198
Minor wireless communication facilities	LUC	Subject to SAMC Sec. 41-198

Any use not included shall be considered prohibited unless deemed to be similar to an allowable use as interpreted by the Executive Director of the Planning and Building Agency or his/her designee.

### C. Development Standards

The development standards for SD-96 are subject to and shall comply with the development approved plans per Development Project No. 2019-06 (DP No. 2019-06) and the approved Mitigation Monitoring and Reporting Program (MMRP), attached hereto as **Attachment A** and **Attachment B** for reference. The plans shall govern in the event there is a conflict between the SD and the project plans. The following standards in Table 3 are minimums unless otherwise indicated.

**Table 2 – Development Standards**

Item	Standard
Density	77 dwelling units per acre
Floor Area Ratio (FAR)	2.06
Minimum Lot Size	14 acres (entire specific development area) <sup>(1)</sup>
Building Height	7 Levels; 94 feet (not including subterranean levels)
<b>Building Setbacks:</b>	
Redhill Avenue Setback	10 feet minimum
Warner Avenue Setback	8 feet minimum
Interior Property Line Setback	10 feet minimum
<b>Outdoor Dining Setbacks:</b>	
Redhill Avenue Setback	6 feet minimum
<b>Table 2 Notes:</b>	
(1) Prior to the issuance of building permits, any and all subdivision maps, lot line adjustments, or voluntary lot mergers shall be approved and recorded.	

#### **D. Off-Street Parking Standards**

The minimum off-street parking requirements for the development is as follows:

1. Two (2) vehicle parking spaces per residential unit, not to be less than 2,200 residential parking spaces;
2. Five (5) vehicle parking spaces per 1,000 square feet of gross floor area of leasable commercial space, achieved through 351 parking spaces and 49 valet service spaces as administered per the approved Parking Management Plan, attached hereto as **Attachment C**;
3. One (1) bicycle parking space per five (5) residential units and one (1) space per each 7,500 square feet of commercial space; and
4. One (1) motorcycle parking space per every 250 vehicle parking spaces.

#### **E. Open Space Requirements**

The development shall provide open space, public plazas and pedestrian paseos as shown on the approved plans.

1. Common Open Space: The project will provide a minimum of 15 percent of the total lot size shall be open space in the form of common, landscaped open space areas, pools, spas, deck, courtyard and lobby, interior community room, dining room, gym, business room, etc.
2. Private Open Space: Each residential unit shall have a patio or balcony of a minimum size of 50 square feet.

#### **F. Walls/Fences**

A new solid block wall with a minimum height of seven (7) feet shall be constructed along the project site's entire perimeter, except in street-side landscape setback areas. The block wall shall be designed to contain a decorative cap, regularly-spaced decorative pilasters, and a decorative finish in accordance to the design provisions contained within the most recent version of the City's design guidelines. Fences/walls along Redhill Avenue and Warner Avenue properties lines are prohibited.

## **SECTION 4 – DESIGN AND PERFORMANCE STANDARDS**

This section provides standards and guidelines to ensure the development is of high quality and cohesive and to facilitate exterior alterations to the development.

### **A. Materials, Finishes and Colors**

Exterior building and exterior parking structure materials, finishes and colors for the project shall comply with the approved materials board submitted for the project and as approved by the Planning and Building Agency Executive Director. Any changes to the materials, finishes and colors shall be approved by the Planning and Building Agency Executive Director. All trash enclosures and similar ancillary structures shall match the texture, material and color of the primary building. Double-paned windows shall be installed for the project as a means to further reduce noise levels.

### **B. Exterior Lighting**

An exterior lighting plan for the security and safety of on-site areas such as building entrances, parking, loading, pedestrian walkways, alley walkways and open space areas shall be provided to the Planning and Building Agency Director for review and approval. A minimum of one foot-candle evenly distributed across a parking lot is recommended. At entrances and loading areas, up to 2 foot-candles may be appropriate. Decorative night lighting is required. Low energy lights, such as LED lights or solar powered lights, shall be used whenever possible. Light fixtures and their structural support shall be designed to be architecturally compatible with the main buildings on-site. Direct glare onto adjoining property, streets, or skyward shall be avoided. All lighting fixtures shall be shielded to confine light spread on-site.

### **C. Refuse Collection and Trash Enclosure**

Bins for recycling and any other refuse mandated by the State of California shall be provided for all uses in trash enclosures. There shall be an onsite designated trash staging area only to be used on service days and the staging area and bins shall not disrupt vehicular use of streets or drive aisles. The minimum requirements needed to service the development shall be clearly indicated on the plans and subject to the approval of the Public Works Agency.

### **D. Utility and Mechanical Equipment**

All utility lines shall be placed underground except where required to be above-ground by utility providers. Where equipment is located above-ground, it shall be screened from public view. This includes all ground, wall, and roof mounted equipment. Screening elements shall be an integral part of the building; no screening method shall give the appearance of being “tacked on.” Typical ground-mounted equipment shall be adequately screened with decorative walls and/or landscaping.

## **SECTION 5 – PUBLIC REALM AND LANDSCAPE DESIGN STANDARDS**

A detailed and comprehensive Public Realm and Landscape Plan shall be submitted to the Planning and Building Agency Executive Director or his/her designee for review and approval prior to the issuance of building permits.

The plan shall comply with the City's Water Efficient Landscape Ordinance (WELO) Chapter 41, Article XVI of the SAMC. The plan shall include an irrigation system layout with the location of controllers and points of connection with data on valve sizes and gallons per minute (G.P.M.), the size and location of sleeves and all spray heads, including the location of conventional systems and drip systems; an irrigation legend with complete specifications; irrigation notes and construction details of all assemblies and components; a recommended irrigation schedule, preferably on an annual basis; and a summary block on the initial page of submitted plans that will present the above information clearly and accurately.

The plan shall include a Plant Legend containing: plant symbol, scientific name of plant material, common name of plant material, plant container size, and plant spacing. Very low, low and medium water usage plant materials are encouraged.

The plan shall include details of site furnishings. Site furnishing should be compatible in style with the buildings and selected to bring comfort, scale and design expression to the streetscape. These must also be highly durable and easy to maintain. Planters and pots should be used to complement the project architecture and other site amenities; avoiding obstructions to pedestrian traffic flow with planters and pots. All elements of the furniture palette should be uniform.

Landscaping for the project shall be completed in phases by building and shall be installed and inspected prior to occupancy of units within that building. The Owner shall be responsible for maintaining all common area landscaping within the development.

## **SECTION 6 – SIGNAGE AND WAYFINDING**

A comprehensive sign program shall be submitted for review and approval by the Planning and Building Agency Executive Director or his or her designee prior to the issuance of building permits. The sign program may include creative signage where the contents and standards of the sign program are not consistent with the Santa Ana Municipal Code, provided the sign program complements the form and function of the building and contributes to the aesthetics of the project.

## **SECTION 7 – PUBLIC ART**

A Public Art Program shall be submitted to the Planning and Building Executive Director for review and approval prior to the issuance of building permits. Public Art shall be installed and maintained with a value equivalent to one-half of one percent (0.5%) of the total construction cost of the development. Total construction cost shall mean all design, engineering and construction costs.

## **SECTION 8 – PROPERTY SAFETY AND MAINTENANCE**

### **A. On-Site Property Manager**

The specific development area shall include 24-hour on-site Property Management services and personnel. Up-to-date 24-hour contact information for the on-site personnel shall be provided to the following City Agencies on an ongoing basis:

1. Police Department,
2. Fire Authority,
3. Planning and Building Agency, and
4. Community Development Agency.

### **B. Maintenance**

The property shall be maintained free of trash, debris and graffiti. Graffiti shall be removed within 24-hours after its appearance in accordance with Section 10-227 of the Santa Ana Municipal Code.

### **C. Crime Free Housing**

Prior to submittal into building plan check, a Crime Free Housing Plan shall be submitted for review and approval by the Planning and Building Agency Director. The Plan shall be approved prior to occupancy of the first unit and shall be implemented and administered by the Owner.

### **D. Building Security.**

All structures and parking lots shall comply with the provisions of Chapter 8, Article II, Division 3 of the Santa Ana Municipal Code (Building Security Ordinance).

### **E. Emergency Evacuation Plan.**

An approved Emergency Evacuation Plan (EEP) from City Police and Fire Protection agencies shall be on file for the project. Up-to-date 24-hour emergency contact information for the on-site personnel shall be provided to the City on an ongoing basis and the approved EEP shall be kept onsite and also be submitted to the following City Agencies:

1. Police Department
2. Orange County Fire Authority
3. Planning and Building Agency
4. Community Development Agency

#### **F. On Going Property Maintenance.**

Developer (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Developer) shall execute a maintenance agreement with the City of Santa Ana which shall be recorded against the property and which shall be in a form reasonably satisfactory to the City Attorney. The maintenance agreement shall contain covenants, conditions and restrictions relating to the following:

1. Compliance with operational conditions applicable during any period(s) of construction or major repair (e.g., proper screening and securing of the construction site; implementation of proper erosion control, dust control and noise mitigation measure; adherence to approved project phasing etc.);
2. Compliance with ongoing operational conditions, requirements and restrictions, as applicable (including but not limited to hours of operation, security requirements, the proper storage and disposal of trash and debris, enforcement of the parking management plan, and/or restrictions on certain uses);
3. Ongoing compliance with approved design and construction parameters, signage parameters and restrictions as well as landscape designs, as applicable;
4. Ongoing maintenance, repair and upkeep of the property and all improvements located thereupon at all times (including but not limited to controls on the proliferation of trash and debris about the property; the proper and timely removal of graffiti; the timely maintenance, repair and upkeep of damaged, vandalized and/or weathered buildings, structures and/or improvements; the timely maintenance, repair and upkeep of exterior paint, parking striping, lighting and irrigation fixtures, walls and fencing, publicly accessible bathrooms and bathroom fixtures, landscaping and related landscape improvements and the like, as applicable);
5. If Developer and the owner of the property are different (e.g., if the applicant is a tenant or licensee of the property or any portion thereof), both the applicant and the owner of the property shall be signatories to the maintenance agreement and both shall be jointly and severally liable for compliance with its terms;
6. The maintenance agreement shall further provide that any party responsible for complying with its terms shall not assign its ownership interest in the property or any interest in any lease, sublease, license or sublicense, unless

the prospective assignee agrees in writing to assume all of the duties and obligations and responsibilities set forth under the maintenance agreement;

7. The maintenance agreement shall contain provisions relating to the enforcement of its conditions by the City and shall also contain provisions authorizing the City to recover costs and expenses which the City may incur arising out of any enforcement and/or remediation efforts which the City may undertake in order to cure any deficiency in maintenance, repair or upkeep or to enforce any restrictions or conditions upon the use of the property. The maintenance agreement shall further provide that any unreimbursed costs and/or expenses incurred by the City to cure a deficiency in maintenance or to enforce use restrictions shall become a lien upon the property in an amount equivalent to the actual costs and/or expense incurred by the City; and
8. The execution and recordation of the maintenance agreement shall be a condition precedent to the issuance of final approval for any construction permit related to this entitlement.

#### **G. Avigation Easement.**

Developer (and the owner of the property upon which the authorized use and/or authorized improvements are located if different from the Developer) shall, prior to issuance of a building permit, execute and record an avigation easement on the area governed by this specific development.

**ATTACHMENT A:** Attached to the Agenda as “Plans.”

**ATTACHMENT B:** Attached to the Staff Report as Exhibit B to Exhibit 2

**ATTACHMENT C:** Attached to the Staff Report as Exhibit 7



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Santa Ana  
Planning Division  
20 Civic Center Plaza (M-20)  
P.O. Box 1988  
Santa Ana, California 92702

FREE RECORDING  
GOVERNMENT CODE § 27383

**DEFENSE AND INDEMNIFICATION AGREEMENT**

This Defense and Indemnification Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of August 2020, by and between \_\_\_\_\_, (“Property Owner”) and Arrimus Capital Investments, LLC (“Applicant”), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (“City”). Property Owner and Applicant, and their heirs and assigns, shall be collectively referred to as “Developer” herein. City and Developer are sometimes collectively referred to in this Agreement as the “Parties” and individually as a “Party”.

**RECITALS**

- A. The Developer has submitted formal applications to the City for the approval of a mixed-use development project, to be located at 2300, 2310 and 2320 S. Red Hill Avenue, Santa Ana, as more particularly described in the legal description set forth in Exhibit “A” attached hereto and incorporated herein (“Property” or “Project”).
- B. California Public Utilities Code (PUC) Section 21676(b) requires the City of Santa Ana to refer projects requiring a general plan amendment or a zone change to the Orange County Airport Land Use Commission (ALUC) for consistency with the 2008 John Wayne Airport (JWA) Environs Land Use Plan (AELUP).
- C. The ALUC is charged with the adoption of an AELUP, establishing guidelines for compatible development in the vicinity of an airport within the jurisdiction of the County of Orange. PUC Section 21670(a) sets forth the fundamental purpose of the ALUC as: (1) “... to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems” and (2) “... to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses”.
- D. On May 21, 2020, the ALUC found the proposed Project to be inconsistent with

the 2008 JWA AELUP by a 6-0 vote. ALUC's findings were made pursuant to AELUP Sections 1.2 and 2.1.4, and PUC Section 216749(a). These sections empower the ALUC "to assist local agencies in ensuring compatible land uses in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses," and "to coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety and welfare".

- E. On May 26, 2020, the Planning Commission held a duly noticed public hearing on the entitlements for the project. Prior to the Planning Commission taking action on the item, staff provided a verbal update informing the Commission regarding ALUC's determination made on May 21, 2020, after the publication of the staff report to the Commission, that the project was inconsistent with the Airport Environs Land Use Plans [AELUP]. Following staff's presentation, and holding the public hearing, the Planning Commission voted 5:1:1 to recommend that the City Council approve the required entitlements and environmental documentation for the proposed Project.
- F. Pursuant to PUC Section 21676(b), the City may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of Article 3.5 Airport Land Use Commission of the PUC. At least 45 days prior to the decision to overrule the ALUC, the local agency governing body shall provide the ALUC and the State Division of Aeronautics a copy of the proposed decision and findings. The commission and the Division of Aeronautics may provide comments to the local agency governing body within 30 days of receiving the proposed decision and findings. If the ALUC and State Division of Aeronautics comments are not available within this time limit, the local agency governing body may act without them. Should comments be received, the City Council must include the comments from the ALUC in the public record of any final decision to overrule the ALUC. This decision shall be determined at a public hearing to make the specific findings that the proposed overruling is consistent with the purposes stated in PUC Section 21670.
- G. On June 16, 2020, the City Council of the City of Santa Ana adopted a resolution (Resolution No. 2020-051) authorizing the Planning Division to initiate the preparation and drafting of findings and determination overruling the Orange County ALUC's determination of inconsistency associated with the proposed Project and to provide notice in accordance with PUC Section 21676(b) to the ALUC and the State Division of Aeronautics.
- H. On June 30, 2020, the Planning Division of the City of Santa Ana provided a Notice of Intent to overrule the Orange County ALUC's determination that the Project is inconsistent with the AELUP of JWA and findings to the ALUC and the State Division of Aeronautics.

- I. On August 6, 2020, the City gave public notice of a City Council public hearing for consideration of overruling ALUC's determination on the proposed Project by advertising in the Orange County Register, a newspaper of general circulation, by mailing to owners of property and residents within 500 feet of the Project, and posting a notice on site.
- J. On August 18, 2020, after a duly noticed public hearing at which all members of the public were afforded the opportunity to provide their comments and testimony, the City approved the zone change and general plan amendment, overruled the ALUC's determination of inconsistency of the Proposed Project, and certified the environmental impact report for the Project. All correspondence received by the City from the ALUC, the City of Tustin, and the State of California, Department of Transportation - Division of Aeronautics, have all been included in the public record.
- K. In order to move forward with the processing of the Project, and to specifically indemnify the City for any property or personal injury damages or claims related to or associated with the City's action to overrule the ALUC's Finding of Inconsistency, the Parties desire to enter into this Defense and Indemnification Agreement. Property Owner and Applicant, and their successors and assigns, shall be jointly and severally responsible for all obligations of the Developer pursuant to the terms of this Agreement.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Incorporation of Recitals. The Parties incorporate each of the Recitals in this Agreement as if fully set forth herein.
2. Indemnification and Defense. Developer shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (together with the City, collectively, the "City Parties"), harmless from any and all claims including property damage and personal injury claims, demands, lawsuits, writs of mandamus, other proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions, and any claim or award of costs, attorneys' fees, and/or expert witness fees incurred in the pursuit of any of the foregoing (collectively "Claims"), brought against the City Parties, related to, arising out of and/or associated with the City action overruling the ALUC's Determination of Inconsistency for the Project. Developer obligations under this section are subject to the following:

- a. City shall promptly notify Developer of any Claims brought and City shall cooperate with Developer in the defense of the Claims.
- b. Developer's liability under this section shall not apply to any liabilities, losses, claims, actions, causes of action or demands arising from a City Party's negligence, willful misconduct or criminal acts, or to the extent that City fails to provide notice as set forth in subsection (a) above or fails to follow its own procedures for the processing of the Project.
- c. City shall cooperate with Developer's defense against any such Claims, including providing reasonable access to information, evidence, and potential witnesses necessary to defend against such Claims.
- d. It is expressly agreed that Developer shall pay for the defense of any Claims brought against City, that the City shall have the right to approve, which approval will not be unreasonably withheld, conditioned or delayed, the legal counsel providing the City's defense, and that Developer shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. However, nothing herein shall prohibit the City from participating in the defense of any litigation by its own counsel at its own cost and expense.
- e. Developer shall have the right to settle or compromise any Claims arising hereunder with sole payment obligation; provided, however, that if such settlement or compromise involves the City as a named defendant, Developer shall first obtain the written consent of City, which shall not be unreasonably withheld, conditioned or delayed.

3. Counsel. The Parties represent that they have consulted or have had the opportunity to consult legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

4. Term. This Agreement shall be recorded and shall run with the land to benefit the City, in perpetuity unless and until the Project no longer exists and the City agrees to file and record a release of such Agreement.

5. Binding. The Parties agree that the terms, conditions and provisions of this Agreement are binding upon, and shall inure to the benefit of, all assigns and successors in interest of each of the Parties hereto. If during the term of this Agreement, Property Owner transfers ownership of the Property to a new owner, all benefits to and obligations of Property Owner under this Agreement shall automatically transfer to the new owner and thereafter, the term "Property Owner" shall be deemed to mean such new owner. Also in that event, Property Owner shall automatically be released as a Party to the Agreement and no longer be entitled to the benefits of or be subject to any obligations under this Agreement.

6. Additional Acts. The Parties agree to perform any acts and execute any



Facsimile: (714) 647-6956

Courtesy copies to: City of Santa Ana  
Planning Department  
20 Civic Center Plaza (M-20)  
Santa Ana, CA 92702  
Facsimile:

and City Attorney  
City of Santa Ana  
20 Civic Center Plaza (M-29)  
P.O. Box 1988  
Santa Ana, California 92702  
Facsimile: (714) 647-6515

Developer: Arrimus Capital Investments, LLC  
240 Newport Center Drive, Suite 200  
Newport Beach, CA 92660  
Attn: Chris Lee

A party may change its address by giving notice in writing to the other party. Thereafter any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If personally delivered, such communication shall be effective on receipt. If sent by overnight mail delivery service or first class, certified mail, return receipt requested, such communication shall be effective on receipt, rejection or inability to deliver. If sent by facsimile or electronic mail, such communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on either the transmission report issued by the transmitting facsimile machine or the electronic mail message, as applicable, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

14. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same Agreement. Electronic signatures will have the same force and effect as original signatures.

15. Authority. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

16. Breach/Remedies. If the Developer fails to properly perform any of its obligations hereunder, City shall be entitled to notify the Developer to rectify such breach and perform its due obligations within a reasonable period of time. If Developer fails to rectify its breach within the prescribed period of time, the City shall be entitled to seek any and all possible remedies according to applicable laws, including but not limited to claiming for compensation.

IN WITNESS WHEREOF, the parties hereto have executed this Defense and Indemnification Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA,  
a charter city and municipal  
corporation

\_\_\_\_\_  
Daisy Gomez  
City Clerk

\_\_\_\_\_  
Kristine Ridge  
City Manager

APPROVED AS TO FORM:  
Sonia R. Carvalho  
City Attorney

By: *Lisa E. Storck*  
Lisa E. Storck  
Assistant City Attorney

RECOMMENDED FOR APPROVAL:

APPLICANT:  
Arrimus Capital, LLC

\_\_\_\_\_  
Minh Thai  
Executive Director  
Planning and Building Agency

*CL*  
By: Chris Lee  
Its: *member*

PROPERTY OWNER:

*CL*  
Name: *RHW Holdings, LLC*  
Title: *managing member*

**EXHIBIT A**

**LEGAL DESCRIPTION**

[Attached behind this page]