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DEVELOPMENT AGREEMENT NO. 2025-00001

BY AND BETWEEN

THE CITY OF ANAHEIM

AND

OTR, AN OHIO PARTNERSHIP

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DEVELOPMENT AGREEMENT NO. 2025-00001
BY AND BETWEEN
THE CITY OF ANAHEIM
AND
OTR, AN OHIO PARTNERSHIP

THIS DEVELOPMENT AGREEMENT ("Development Agreement" or "Agreement") is made and entered into as of _____, 2025 ("Agreement Date") by and between the CITY OF ANAHEIM, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("City"), and OTR, an Ohio Partnership ("Developer") pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division l of Title 7, Sections 65864 *et seq.*, of the California Government Code (the "Development Agreement Statute"). City and Developer are referred to individually as "Party," and collectively as the "Parties."

RECITALS

This Agreement is entered upon the basis of the following facts, understandings and intentions of City and Developer.

A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute. The Development Agreement Statute authorizes City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: encourage and provide for the development of public facilities in order to support development projects; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in project costs and encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; and, provide assurance to the applicants of development projects (1) that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to the conditions of approval of such projects and provisions of such development agreements, and (2) encourage private participation in comprehensive planning and reduce the private and public economic costs of development.

B. Developer owns that certain real property consisting of approximately 16.2 acres known as Development Area 5 of the Anaheim Hills Festival Specific Plan, as more particularly described in Exhibit A attached hereto, and as diagrammed in Exhibit B attached hereto (the "Property").

C. Developer intends to develop the Property as a mixed-use community of approximately 447 dwelling units, together with certain existing and proposed retail, community services, and other uses (defined more fully in Article [__] below as the "Project").

E. The complexity, magnitude and long-range nature of the Project would be difficult for Developer to undertake if City had not determined, through this Development Agreement, to

inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project.

F. City is desirous of advancing the socioeconomic interests of City and its residents by promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding City's property tax base.

G. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of Anaheim General Plan (the "General Plan") and will implement City's stated General Plan policies; (3) City will receive increased property tax revenues; (4) City will benefit from increased employment opportunities for residents of City created by the Project; and (5) City will receive Public Benefits provided by the Project for the residents of City.

H. Developer has applied for, and City has granted, the Project Approvals (as defined in Section 1.4) and as part of the Project Approvals, City has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq., hereinafter "CEQA"), the required analysis of the environmental effects that would be caused by the Project and has determined those feasible mitigation measures which will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. The environmental effects of the proposed development of the Property were originally analyzed by the EIR (as defined in Section 1.4.1) certified by City on [_____] in connection with the Project. City has also adopted a mitigation monitoring program (the "MMP") to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed. Those mitigation measures for which Developer is responsible are incorporated into, and required by, the Project Approvals. City has also adopted findings of fact and statements of overriding considerations for those adverse environmental impacts of the Project that may not or cannot be mitigated to a less than significant level.

I. In addition to the Project Approvals, the Project may require various additional land use and construction approvals, termed Subsequent Approvals (as defined in Section 1.4.7), in connection with development of the Project.

J. City, as a charter city, enacted Ordinance No. 4377 on November 23, 1982, which makes City subject to the Development Agreement Statute. Pursuant to Section 65865 of the Development Agreement Statute, City adopted Resolution No. 82R-565 (the "Procedures Resolution") on November 23, 1982. The Procedures Resolution establishes procedures and requirements for the consideration of development agreements upon receipt of an application.

K. On _____, 20____, as required by Section 1.0 of the Procedures Resolution, Developer submitted to the Planning Department an application for approval of a development agreement.

L. On _____, 20__, as required by Section 65867 of the Development Agreement Statute and Section 2.2 of the Procedures Resolution, the City Planning Commission held a duly noticed public hearing on this Development Agreement and at the conclusion of such hearing, and after consideration of evidence and testimony submitted by City staff, Developer and all other interested parties, as well as all other relevant information and materials in the administrative record, the Planning Commission considered the matter and recommended that the City Council approve the Agreement and the Project Approvals in accordance with Section 2.3 of the Procedures Resolution.

M. On _____, 20__, the City Council held a duly noticed public hearing regarding this Agreement and, at the conclusion of the hearing, and after considering the recommendation of the Planning Commission, the evidence and testimony submitted by City staff, Developer and all other interested parties, as well as all other relevant information and materials introduced Ordinance No. ____ , deliberated, made the requisite findings, and approved this Agreement. On _____, 20__, the City Council conducted the second reading and adopted Ordinance No. ____ authorizing execution of this Agreement ("Authorizing Ordinance")

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Developer agree as follows:

ARTICLE 1.
GENERAL PROVISIONS

1.1 Parties.

1.1.1 City. City is a charter city and municipal corporation duly organized and existing under its charter and the Constitution and laws of the State of California, with offices located at 200 S. Anaheim Blvd., Anaheim, CA 92805. "City," as used in this Development Agreement, shall include City and any assignee of or successor to its rights, powers and responsibilities.

1.1.2 Developer. Developer is a [_____**[OTR ENTITY]**], with offices located at (address). "Developer," as used in this Development Agreement, shall include any permitted assignee or successor-in-interest as herein provided.

1.2 Property Subject to this Development Agreement.

1.2.1 Property. All of the Property, as described in Exhibit A and shown in Exhibit B, shall be subject to this Development Agreement.

1.3 Term.

1.3.1 Effective Date. This Development Agreement shall become effective upon the effectiveness of the ordinance approving this Agreement (the "Effective Date").

1.3.2 Term of the Agreement. The term of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for a period of Five (5) years ("Initial Term") thereafter unless extended or earlier terminated as provided herein (as such Initial Term may be sooner terminated or extended, the "Term"). If Developer has obtained a Building Permit for the multiple-family building before October 1, 2029 and commenced construction on the multiple-family building before the end of the Initial Term, the City Council hereby delegates authority to the City Manager to extend the Term, which extension shall be granted for an additional period of five (5) years after the Initial Term. Such extension shall be memorialized in an Operating Memorandum, and construction activities shall follow phasing outlined in Exhibit C. Following the expiration or termination of this Term, this Agreement shall terminate and be of no further force and effect, except to the extent any provisions expressly survive termination.

1.4 Project Approvals. Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, the term "Project Approvals" shall mean all of the approvals, plans and agreements described in this Section 1.4.

1.4.1 EIR. The Environmental Impact Report (State Clearinghouse No. 2024010859), which was prepared pursuant to CEQA, was recommended for certification by the Planning Commission on [date], by Resolution No. _____, and certified with findings by the City Council on [date], by Resolution No. _____ (certifying EIR) and Resolution No. _____ (adopting findings) (the "EIR").

1.4.2 General Plan Amendments. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. _____, approved amendments to the City General Plan (the "General Plan Amendments"), which change the land use designation for the Property from Regional Commercial to Mixed-Use Medium to allow for residential uses.

1.4.3 Specific Plan Amendment. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____ and Ordinance No. _____, approved an Amendment to the Anaheim Hills Festival Specific Plan document and Zoning and Development Standards in AMC Chapter 18.108 (the "Specific Plan Amendment") to establish a Mixed-Use land use in a new Development Area 5, with revised development standards and other clarifying text and exhibit updates. The Anaheim Hills Specific Plan, as amended by the Specific Plan Amendment, is referred to herein as the "Specific Plan."

1.4.4 Final Site Plan. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. _____, approved a Final Site Plan (the "Final Site Plan") to implement the development of the Project.

1.4.5 Development Agreement. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. [_____], approved this Development Agreement and authorized its execution.

1.4.6 Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Sections 1.4.1 through 1.4.6 above, which are necessary to develop and/or operate the Project on the Property subsequent to the Effective Date (collectively, "Subsequent Approvals"). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a "Project Approval" under this Development Agreement.

1.5 Definitions.

1.5.1 The Effective Date is _____.

1.5.2 "Event of Default" shall have the meaning set forth in Section 6.1.

1.5.3 "Future Rules" shall have the meaning set forth in Section 3.4.2.

1.5.4 "Impact Fees" shall have the meaning set forth in Section 3.6.3.

1.5.5 "Processing Fees" shall have the meaning set forth in Section 3.6.2.

1.5.6 "Project" shall have the meaning set forth in Recital C.

1.5.7 "Project Approvals" shall have the meaning set forth in Section 1.4

1.5.8 "Property" is described in Exhibit A and depicted in Exhibit B.

1.5.9 "Public Benefits" shall have the meaning set forth in Section 2.1.

1.5.10 "Term" shall have the meaning set forth in Section 1.3.2.

ARTICLE 2.
PUBLIC BENEFITS

2.1 Public Benefits. In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the public benefits ("Public Benefits") described below, which are over and above those dedications, conditions and exactions required by laws or regulations.

1. Promote the cohesive and coordinated renovation of the existing shopping center and the integration of new multifamily residential units through a comprehensive planning strategy;

2. Provide enhanced outdoor gathering spaces within the commercial center, as identified on Exhibit B and described in Exhibit C). Additionally, certain common recreational spaces within the residential development that are required to meet minimum Code requirements (Bluff Park and Dog Park) will be open and available

for use by the general public. These spaces will be privately maintained by the Developer and programmed in such a manner that residents of the surrounding community will be able to enjoy;

3. Strengthen the city's economic base with a variety of high quality construction jobs, as well as long term retail and multifamily management jobs;

4. Provide for and generate substantial revenues for the City in the form of one time and annual fees and exactions, increased property and sales tax and other fiscal benefits;

5. Provide a contribution of $100,000 to Anaheim Fire and Rescue to fund wildfire prevention efforts;

6. Provide the funding and installation of CCTV system and Emergency Vehicle Preemption system on Santa Ana Canyon Road at four intersections to facilitate enhanced emergency response time in the area;

7. Provide a contribution of $100,000 to the Anaheim Police Department to fund evacuation training, planning, and other related preparedness activities; and

8. Help the City meet its obligations under RHNA by providing a variety of needed housing, including 447 residential housing units, of which 10% (approximately 45 units) shall be deed-restricted as affordable to Moderate Income Households (those making up to 120% of Area Median Income) for 55 years.

ARTICLE 3.
DEVELOPMENT OF THE PROPERTY

3.1 Project Development. Developer shall have a vested right to develop the Project on the Property, in accordance with the Vested Elements (defined in Section 3.2).

3.2 Vested Elements. The permitted uses of the Property, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property are as set forth in:

a. The General Plan of City on the Agreement Date, including the General Plan Amendments ("Applicable General Plan");

b. The Specific Plan on the Agreement Date, including the Specific Plan Amendment ("Applicable Specific Plan"); and

c. The Zoning Ordinance of City on the Agreement Date including the Specific Plan Amendment ("Applicable Zoning Ordinance").

d. Other rules, regulations, ordinances and policies of City applicable to development of the Property on the Agreement Date (collectively, together with the Applicable General Plan, Applicable Specific Plan, and the Applicable Zoning Ordinance, the "Applicable Rules"); and

e. The Project Approvals are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (the "Vested Elements"). City hereby agrees to be bound with respect to the Vested Elements, subject to Developer's compliance with the terms and conditions of this Development Agreement. The intent of this Section 3.2 is to cause all development rights which may be required to develop the Project in accordance with the Project Approvals to be deemed to be "vested rights" as that term is defined under California law applicable to the development of land or property and the right of a public entity to regulate or control such development of land or property, including, without limitation, vested rights in and to building permits and certificates of occupancy.

3.3 Development Construction Completion.

3.3.1 Timing of Development; *Pardee* Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals, Developer shall have the right (without obligation), subject to the provisions of the Development Agreement, the Project Approvals and the phasing plan specified in Exhibit D, to develop the Property at such time and in such phases as set forth in this Development Agreement and in the manner Developer deems appropriate in the exercise of its subjective business judgment. Notwithstanding anything to the contrary contained herein, Developer shall have no obligation to commence construction of the multi-family development described herein.

3.4 Effect of Project Approvals and Applicable Rules; Future Rules.

3.4.1 Governing Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Property shall be subject to (a) the Project Approvals, and (b) the Applicable Rules.

3.4.2 Changes in Applicable Rules; Future Rules.

a. To the extent any changes in the Applicable Rules, or any provisions of future General Plans, Specific Plans, Zoning Ordinances or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referenda, resolution, policy, order, moratorium, or other means, adopted by the City Council, Planning Commission, or any other board, commission, agency, committee, or department of City, or any officer or employee thereof, or by the electorate) of City (collectively, "Future Rules") are not in conflict with the Vested Elements, such Future Rules shall be applicable to the Project. For purposes of this Section 3.4.2(a), the word "conflict" means Future Rules that would (i) alter the Vested Elements, or (ii) frustrate in a more than insignificant way the intent or purpose of the Vested Elements in

relation to the Project, or (iii) preclude compliance with, any provision of the Vested Elements, or (iv) delay in a more than insignificant way development of the Project, or (v) limit or restrict the availability of public utilities, services, infrastructure of facilities (for example, but not by way of limitation, water rights, water connection or sewage capacity rights, sewer connections, etc.) to the Project, or (vi) impose limits or controls in the rate, timing, phasing or sequencing of development of the Project, or (vii) add new Impact Fees, or (viii) limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals; or (ix) apply to the Project any Future Rules otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites; or (x) require the issuance of additional permits or approvals by the City other than those required by Applicable Rules; (xi) establish or enact against the Project or Property any fees, taxes (including without limitation general, special and excise taxes), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities; (xii) impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Rules; or (xiii) limit the processing or procuring of applications and approvals of Subsequent Approvals.

b. To the maximum extent permitted by law, City shall prevent any Future Rules from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. Developer reserves the right to challenge in court any Future Rule that would conflict with the Vested Elements or this Agreement or reduce the development rights provided by this Agreement.

c. Notwithstanding Section 3.4.2.(b) above, City shall not be precluded from applying Future Rules to the Project on the Property under any of the following limited circumstances:

(i) if mandated by changes in state or federal laws or regulations adopted after the Effective Date; in such event, provision(s) of the Agreement shall be modified or suspended as may be required to comply with such state or federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations. Notwithstanding the foregoing, City shall not adopt or undertake any rule, regulation or policy which is inconsistent with this Agreement until the City Council makes a written finding, based on substantial evidence in the administrative record, that such rule, regulation or policy is required to comply with such state and federal laws or regulations, which such finding Developer shall have a right to challenge in litigation.

(ii) if mandated pursuant to an unappealable order by a court of competent jurisdiction;

(iii) if adopted as part of a periodic change to any Uniform Code (such as the California Fire Code) so long as such code (as modified to include the foregoing change(s)) has been adopted by City and is in effect on a City-wide basis at the time an application for a Subsequent Approval is formally submitted to City;

(iv) if it consists of Processing Fees and Impact Fees that are in force and effect on a City-wide basis for the class of Subsequent Approval(s) being applied for, which shall be paid at the rate then in effect;

(v) if it consists of a new City-Wide Tax, pursuant to Section 3.6.6 below; or

(vi) if required as a result of a specific and identifiable issue that is presently unknown and unforeseeable that would otherwise have an immediate and substantially adverse risk of the physical health and safety to members of the public that cannot be adequately mitigated to reduce such risk, as reasonably determined by the City Council as reflected in written findings based on substantial evidence in the administrative record ("Public Health and Safety Exception"). Notwithstanding the foregoing, if given the nature and timing of the Public Health and Safety Exception, there is not sufficient time for the City Council to hold a duly-noticed public meeting to adopt written findings as required under this subsection (vi), then the City Manager shall have the authority to apply the Public Health and Safety Exception to the Project to the extent necessary to protect members of the public from the identified immediate and substantial adverse risk of physical health and safety. Thereafter, the City Council shall consider the matter at the next Council meeting where proper notice may be given and shall either: (A) affirm the application of the Public Health and Safety Exception with written findings based on substantial evidence, or (B) rescind its application if no such findings can be made. Developer retains its right to dispute any City reliance on the Public Health and Safety Exception.

(vii) Special Taxes and Assessments. City shall have the right, pursuant to applicable laws and regulations, to seek to establish any assessment district(s), Mello-Roos Community Facilities District(s), maintenance district(s) or other similar district(s) that would include the Property or the Project so long as same constitutes a City-Wide Tax pursuant to Section 3.6 below. Notwithstanding anything to the contrary in the foregoing, Developer shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all such City-Wide Tax(es).

(viii) Mutually Agreed Upon Changes. This Agreement shall not preclude application to the Project of adopted rules, regulations, ordinances and official plans and policies otherwise in conflict with the Applicable Rules in the limited circumstance whereby it is agreed to in writing by Developer. In such a case, Developer may, in its sole discretion, give City written notice of its election to have any subsequent change in the Applicable Rules applied to some portion or all of the Project or the Property as it may own, in which case such subsequent change(s) in the Applicable Rules shall be deemed to be contained within the Applicable Rules insofar as that portion of the Property is concerned.

d. Should an initiative, measure, moratorium, referendum, statute, ordinance, or other limitation be enacted by the citizens of City which would seek to preclude construction of all or any part of the Project or otherwise conflict with this Agreement and Developer's vested rights hereunder, Developer shall have a right to challenge such initiative, measure, moratorium, referendum, statute, ordinance or other limitation in litigation. Unless and until such time as any such litigation is fully and finally resolved, by settlement or by a court of competent jurisdiction, which invalidates or otherwise prevails over all or any part of this Agreement, this Agreement shall remain in full force and effect. In such a case where all or a

portion of this Agreement is invalidated as a result of said litigation, Developer shall have no recourse against City pursuant to the Agreement, but shall retain all other rights, claims and causes of action under this Agreement not so invalidated and any and all other rights, claims and causes of action as law or in equity which Developer may have independent of this Agreement with respect to the Project and its vested rights hereunder.

e. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Project Approvals and Applicable Rules, one (1) set for City and one (1) set for Developer. If it becomes necessary in the future to refer to any of the Project Approvals or Applicable Rules, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Project Approvals and Applicable Rules.

3.4.3 Cooperation in Event of Later Enactment Creating Conflict. If City imposes Future Rules on the Project as a result of the occurrence of the circumstance set forth in subsection (c) above, City shall provide Developer with written notice of same, a copy of any such state or federal law or regulation (if relevant), and a statement concerning the conflict with the provisions of this Agreement. The Parties shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to amend this Agreement so as to comply with the Future Rules. It is the Parties' intent that any such amendment be limited to that which is necessary under subsection (c) above. If Developer does not consent to a reasonable amendment that is required to make this Development Agreement consistent with the Future Rules at issue, City shall provide Developer written notice of the immediate suspension of this Development Agreement, and it shall remain suspended until the date the Development Agreement is so amended. Any time period during which this Development Agreement is suspended pursuant to this subsection (e) shall not result be considered a Force Majeure Event. City shall reasonably cooperate with Developer in securing any Subsequent Approval(s) that may be required as a result of amendment(s) made pursuant to this Section 3.4.3.

3.5 Processing Subsequent Approvals.

3.5.1 Processing of Subsequent Approvals. City will accept, make completeness determinations, and process all applications for Subsequent Approvals for the Project, in accordance with the terms of this Development Agreement.

3.5.2 Scope of Review of Subsequent Approvals.

(a) The Parties acknowledge that to develop and operate the Project on the Property, Developer will need to obtain approval of various Subsequent Approvals from City. For all such Subsequent Approvals, Developer shall formally submit an application with City for the Subsequent Approval at issue in accordance with the Applicable Rules and shall pay all Applicable Fees in connection therewith. City shall timely accept in good faith and with diligence shall process, consider, respond to, review, and take action on each such application. In connection with City's approval of each Subsequent Approval, City shall not impose Conditions of Approval, Impact Fees, and/or Exactions that would conflict with Developer's vested rights granted hereunder; moreover, Developer hereby reserves its right to protest any of the foregoing, and any

such protest shall not be a basis for City to delay, suspend or halt the issuance of the subject Subsequent Approval.

(b) The Subsequent Approvals shall be deemed mechanisms to implement those final policy decisions reflected by the Initial Approvals and other provisions of the Applicable Rules. Subject to the provisions of this Development Agreement and Developer's vested rights hereunder, City hereby retains its discretionary authority in its consideration of any and all Subsequent Approvals that involve the exercise of discretion. Notwithstanding anything to the contrary in the foregoing, City shall exercise any discretion City has related thereto in accordance with Developer's vested rights granted hereunder.

3.6 Development Fees, Exactions; and Conditions.

3.6.1 General. All fees, exactions, dedications, reservations or other impositions to which the Project would be subject, but for this Development Agreement, are referred to in this Development Agreement either as "Processing Fees" (as defined in Section 3.6.2) or "Impact Fees" (as defined in Section 3.6.3).

3.6.2 Processing Fees. "Processing Fees" mean fees charged on a citywide basis to cover the cost of City review of applications for any permit or other review by City departments. Applications for Subsequent Approvals for the Project shall be charged Processing Fees to allow City to recover its actual and reasonable costs of processing Developer's Subsequent Approvals with respect to the Project.

3.6.3 Impact Fees. "Impact Fees" mean monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval for the Project for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. Any fee, exaction or imposition imposed on the Project which is not a Processing Fee is an Impact Fee. No Impact Fees shall be applicable to the Project except as provided in this Development Agreement.

3.6.4 Only the specific Impact Fees listed in Exhibit D shall apply to the Project, except as otherwise explicitly permitted by this Section 3.6.3(a). No change to an Impact Fee in Exhibit D (other than by the applicable inflator) resulting in an increase in dollar amounts charged to the Project that is adopted after the Agreement Date shall apply to the Project. If, after the Agreement Date, City decreases the rate of any of its Impact Fees existing as of the Agreement Date, Developer shall pay the reduced Impact Fee in effect at the time of payment.

3.6.5 Conditions of Subsequent Approvals. In connection with any Subsequent Approvals, City shall have the right to impose reasonable conditions including, without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules or Project Approvals, nor inconsistent with the development of the Project as contemplated by this Agreement. Developer may protest any conditions, dedications or fees while continuing to

develop the Property; such a protest by Developer shall not delay or stop the issuance of building permits or certificates of occupancy.

3.6.6 A "City-Wide Tax" means a general or special tax generally applicable to a category of development or use of one or more kinds, wherever the same may be located in the City, including, without limitation, a general or special tax or assessment adopted in accordance with Cal. Const. Art XIII C and D et seq. (otherwise known as Proposition 218); provided, however, that a general or special tax or assessment that only applies to or that solely impacts the Property (or portion(s) thereof) and/or the Project shall not be considered a City-Wide Tax and therefore shall not apply to the Property (or portion(s) thereof). Notwithstanding anything to the contrary in the foregoing, nothing in this Section 3.6.4.(b) obligates Developer to approve a ballot measure or petition that seeks to impose any such City-Wide Tax, or to waive its right to disapprove the same.

3.6.7 Contribution to Anaheim Fire and Rescue. Developer shall pay to City the amount of One Hundred Thousand Dollars ($100,000.00) to be used by Anaheim Fire and Rescue for wildfire prevention efforts, evacuation training and planning, and other related preparedness activities as determined by the Anaheim Fire Chief; provided, however, that if this payment is made to Anaheim Fire and Rescue later than one (1) year from the Effective Date, the amount of the contribution to Anaheim Fire and Rescue shall be increased to reflect an annual inflationary increase as shown in the Consumer Price Index for all Uban Consumers (CPI-U) for Los Angeles-Long Beach-Anaheim commencing in Year Two of the Term of this Agreement. Developer shall make said payment in one lump sum no later than issuance of the first Building Permit for the multiple-family building.

3.6.8 Contribution to the Anaheim Police Department. Developer shall pay to City the amount of One Hundred Thousand Dollars ($100,000.00) to be used by the Anaheim Police Department for wildfire prevention efforts, evacuation training and planning, and other related preparedness activities as determined by the Anaheim Police Chief; provided, however, that if this payment is made to the Anaheim Police Department later than one (1) year from the Effective Date, the amount of the contribution to the Anaheim Police Department shall be increased to reflect an annual inflationary increase as shown in the Consumer Price Index for all Uban Consumers (CPI-U) for Los Angeles-Long Beach-Anaheim commencing in Year Two of the Term of this Agreement. Developer shall make said payment in one lump sum no later than issuance of the first Building Permit for the multiple-family building.

3.7 Life of Project Approvals and Subdivision Maps.

3.7.1 Life of Subdivision Maps. The terms of any subdivision or parcel map for the Property, any amendment or reconfiguration thereto, or any subsequent tentative map, shall be automatically extended such that such tentative maps remain in effect for a period of time coterminous with the term of this Development Agreement.

3.7.2 Life of Other Project Approvals. The term of all other Project Approvals shall be automatically extended such that these Project Approvals remain in effect for a period of time at least as long as the term of this Development Agreement.

3.7.3 Termination of Agreement. In the event that this Agreement is terminated prior to the expiration of the Term of the Agreement, the term of any subdivision or parcel map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Agreement takes effect (including any extensions).

3.8 Further CEQA Environmental Review.

3.8.1 Reliance on Project EIR. The EIR, which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire Project as it is described in the Project Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on the EIR to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration or subsequent or supplemental EIR unless required by CEQA.

3.9 Developer's Right to Rebuild. Developer may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project become functionally outdated, within Developer's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the Vested Elements, shall comply with the Project Approvals, the Building Regulations existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

3.10 Written Verification of Sufficient Water Supply. Any and all tentative subdivision maps approved for the Project shall comply with Government Code Section 66473.7, if, and to the extent, required by Government Code Section 65867.5(c).

ARTICLE 4.
ANNUAL REVIEW

4.1 Periodic Review. During the Term, Developer shall initiate and City shall conduct a review of Developer's compliance with this Agreement pursuant to Government Code section 65865.1 and the Procedures Resolution at least once every twelve (12) months following the Effective Date ("Periodic Review"). Such Periodic Review shall be limited in scope to determining good faith compliance with the terms and conditions of this Agreement. The Periodic Review shall be initiated and conducted, including, without limitation, making the requisite findings, in accordance with the Development Agreement Act and the Procedures Resolution. Nothing in this Section 4.1 shall prevent the City Council from initiating a review of Developer's compliance hereunder pursuant to Section 6.4 of the Procedures Resolution.

4.2 Relationship to Default Provisions. The above procedures shall supplement and shall not replace that provision of Article 6 of this Development Agreement whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Default and following the procedures set forth in said Article 6.

ARTICLE 5.
AMENDMENTS

5.1 Amendments to Development Agreement Legislation. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation as those provisions existed at the Agreement Date. Except as provided for by the Procedures Resolution or this Agreement, no amendment or addition to those provisions or any other federal or state law and regulation that would materially adversely affect the interpretation or enforceability of this Development Agreement or would prevent or preclude compliance with one or more provisions of this Development Agreement shall be applicable to this Development Agreement unless such amendment or addition is specifically required by the change in law, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The Term of this Agreement may be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Agreement.

5.2 Amendments to Development Agreement. This Development Agreement may only be amended pursuant to and in accordance with the Procedures Resolution.

5.3 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 5.3 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 5.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

5.4 Amendments to Project Approvals. Notwithstanding any other provision of this Development Agreement, Developer may seek and City may review and grant amendments or modifications to the Project Approvals (including the Subsequent Approvals) subject to the following (except that the procedures for amendment of this Development Agreement are set forth in Section 5.2 herein).

5.4.1 Amendments to Project Approvals. Project Approvals (except for this Development Agreement the amendment process for which is set forth in Section 5.2) may be amended or modified from time to time at the written request of Developer. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Section 3.4.

ARTICLE 6.
DEFAULT, REMEDIES AND TERMINATION

6.1 Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 10.1 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 9.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement) shall constitute an "Event of Default," (i) if such defaulting Party does not cure such failure within sixty (60) days following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

6.2 Meet and Confer. During the time periods specified in Section 6.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to

extend the time period for this meet and confer obligation beyond the sixty (60)-day cure period referred to in Section 6.1 (even if the sixty (60)-day cure period itself is extended pursuant to Section 6.1(ii)) unless the Parties agree otherwise in writing.

6.3 Remedies and Termination. If, after notice and expiration of the cure periods and procedures set forth in Sections 6.1 and 6.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 6.4 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 6.6.3 herein. In the event that this Development Agreement is terminated pursuant to Section 6.6.3 herein and litigation is instituted that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

6.4 Legal Action by Parties.

6.4.1 Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Without limiting the foregoing, Developer reserves the right to challenge in court any Future Rules that would conflict with the Vested Elements or the Subsequent Approvals for the Project or reduce the development rights provided by the Project Approvals.

6.4.2 No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Development Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

6.5 Effects of Litigation. In the event that litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Development Agreement, then

Developer shall have no obligations whatsoever under this Development Agreement. In the event that any payment(s) have been made by or on behalf of Developer to City pursuant to the obligations contained in Section 3.6, City shall give to Developer a refund of the monies remaining in any segregated City account into which such payment(s) were deposited, if any, along with interest which has accrued, if any. To the extent the payment(s) made by or on behalf of Developer were not deposited, or no longer are, in the segregated City account, City shall give Developer a credit for the amount of said payment(s) as determined pursuant to this Section 6.5, along with interest, if any, that has accrued, which credit may be applied by Developer to any costs or fees imposed by City on Developer in connection with construction or development within or outside the Property. Developer shall be entitled to use all or any portion of the credit at its own discretion until such time as the credit has been depleted. Any credits due to Developer pursuant to this Section 6.5 may, at Developer's own discretion, be transferred by Developer to a third party for application by said third party to any costs or fees imposed by City on the third party in connection with construction or the development of property within City, whether or not related to the Project. In the event that Developer has already developed or is developing a portion of the Project at the time of any invalidation of the Development Agreement, then any such refund or credit shall be limited to the amount paid by Developer that exceeds, on a pro rata basis, the proportion and uses of the Property retained by Developer to the entire Property. This Section 6.5 shall survive the termination or expiration of this Development Agreement.

6.6 Termination.

6.6.1 Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.3. City shall reasonably cooperate with Developer in executing and recording a notice of termination upon request from Developer.

6.6.2 Survival of Obligations. Upon the termination or expiration of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Development Agreement. The termination or expiration of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) for the Project.

6.6.3 Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in the Development Agreement Legislation and there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to this Article 6 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Development Agreement is terminated only with respect to that portion of the Property to which the default applies. Compliance with the procedures set forth in Sections 6.1 through 6.3 and 6.6.3 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 *et seq.*) including,

but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code Section 910.

ARTICLE 7.
COOPERATION AND IMPLEMENTATION

7.1 Further Actions and Instruments. Each Party to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

7.2 Regulation by Other Public Agencies. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the Property.

7.3 Other Governmental Permits and Approvals; Grants. Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain (a) such permits and approvals and (b) any grants for the Project for which Developer applies.

7.4 Cooperation in the Event of Legal Challenge.

7.4.1 The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. Notwithstanding the foregoing, Developer retains the right to suspend development in its sole discretion.

7.4.2 In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, or the Project Approvals for the Project, Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own counsel (and pay for such counsel at its own expense), and to control its participation and conduct in the litigation in all respects permitted by law. If both Parties elect to defend, the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint

defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. City agrees to give prompt notice to Developer with respect to any action filed or claim made against City no later than the earlier of (i) ten (10) days after valid service of process as to any filed action, (ii) or immediately upon the City's receipt of a petitioner's election to prepare the administrative record or any notice of a case management conference to discuss the administrative record pursuant to Public Resources Code section 21167.6(b), and City shall not respond to any such petitioner election or notice of case management conference without first notifying Developer in writing and affording Developer a reasonable amount of time to confer with City regarding such response, or (iii) fifteen (15) days after receiving written notification of the assertion of such claim. Developer and City shall each have sole discretion to terminate its defense at any time. City retains the option to select and employ independent defense counsel at its own expense. If, in the exercise of its sole discretion, Developer agrees to pay for defense counsel for City, Developer shall jointly participate in the selection of such counsel. .

7.5 Revision to Project. In the event of a court order issued as a result of a successful legal challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

7.6 State, Federal or Case Law. Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

ARTICLE 8.
TRANSFERS AND ASSIGNMENTS

8.1 Right to Assign. Developer shall have the right to sell, mortgage, hypothecate, assign or transfer this Development Agreement, and any and all of its rights, duties and obligations hereunder, to any person, partnership, joint venture, firm or corporation at any time during the term of this Development Agreement, provided that any such sale, mortgage, hypothecation, assignment or transfer must be pursuant to a sale, assignment or other transfer of the interest of Developer in the Property, or a portion thereof. In the event of any such sale, mortgage, hypothecation, assignment or transfer, (a) Developer shall notify City of such event and the name of the transferee, together with the corresponding entitlements being transferred to such transferee and (b) the agreement between Developer and such transferee shall provide that either Developer or the transferee or both shall be liable for the performance of all obligations of Developer pursuant to this Development Agreement and the Development Approvals. Developer shall also provide to the City, for review and approval (which shall not be unreasonably withheld) by the City Manager, a summary of the development qualifications/experience and financial capability of the assignee or transferee to complete the portions of the Project and obligations assigned or transferred;

provided, however, no such approval shall be required when a certificate of occupancy has been issued for the residential units contemplated in the Project. Such transferee and/or Developer shall notify City in writing which entity shall be liable for the performance of such obligations, and upon the express written assumption of any or all of the obligations of Developer under this Development Agreement by such assignee, transferee or purchaser shall, without any act of or concurrence by City, relieve Developer of its legal duty to perform said obligations under this Development Agreement with respect to the Property or portion thereof. If Developer transfers its interest to an Affiliate, such a transfer shall not require City's consent.

8.2 Release upon Transfer. Developer shall be released from its obligations under this Development Agreement with respect to the Property, or portion thereof so transferred, provided that (a) Developer has provided to City the notice of such transfer specified in Section 8.1, above, (b) the transferee executes and delivers to City a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all the obligations of Developer under this Development Agreement and the Development Approvals with respect to the property, or portion thereof, so transferred and (c) the transferee provides City with security equivalent to any security provided by Developer to secure performance of its obligations under this Development Agreement or the Development Approvals. Non-compliance by any such transferee with the terms and conditions of this Development Agreement shall not be deemed a default hereunder or grounds for termination hereof or constitute cause for City to initiate enforcement action against other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder. Upon completion of any phase of development of the Project as determined by City, City may release that completed phase from any further obligations under this Development Agreement. The provisions of this Section shall be self-executing and shall not require the execution or recordation of any further document or instrument. Any and all successors, assigns and transferees of Developer shall have all of the same rights, benefits and obligations of Developer as used in this Development Agreement and the term "Developer" as used in this Development Agreement shall refer to any such successors, assigns and transferees unless expressly provided herein to the contrary. Under no conditions shall Developer be held responsible for any defaults occurring following a transfer of Developer's interest in the Property or a portion thereof to the transferee. Upon request of a Party that has been released pursuant to this Section 8.2, City agrees to reasonably cooperate in the recordation of a notice of release within fifteen (15) days of such release.

8.3 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder (i) is for the benefit of such Property and is a burden upon such Property, (ii) runs with such Property, (iii) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and (iv) each person or entity

having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

ARTICLE 9.
MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

9.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("Mortgage"). This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

9.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or by the Project Approvals and Applicable Rules.

9.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice.

9.4 No Supersedure. Nothing in this Article 10 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this Article 9 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 9.3.

9.5 Technical Amendments to this Article 9. City agrees to reasonably consider approval of an Operating Memoranda pursuant to Section 5.3 in order to facilitate interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for

the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 10.
MISCELLANEOUS PROVISIONS

10.1 Force Majeure. The Term of this Development Agreement and the Project Approvals and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project, enemy action, riots, insurrections, civil disturbances, wars, terrorist acts, fire, unavoidable casualties, pandemic, government mandated shutdowns or government closure (meaning any of the following events: (a) the governmental offices where any action required under this Agreement (collectively, "Government Offices") are not open for business and any Government Offices' systems are not operational such that such action cannot occur; (b) any other third party is not open for business such that its services required as necessary for a Party to perform obligations under this Agreement cannot be performed; (c) overnight couriers are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that, as part of consummation of financial transactions contemplated hereby cannot occur), litigation involving this Agreement or the Project Approvals, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Development Agreement and any subdivision map or any of the other Project Approvals shall not include any period of time during which (i) a development moratorium including, but not limited to, a water or sewer moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay either the construction, funding or development of the Project or (iii) there is any mediation, arbitration; litigation or other administrative or judicial proceeding pending involving the Vested Elements, or Project Approvals. The Term of the Project Approvals shall therefore be extended by the length of any development moratorium or similar action; the amount of time any actions of public agencies prevent, prohibit or delay the construction, funding or development of the Project or prevents, prohibits or delays the construction, funding or development of the Project; or the amount of time to finally resolve any mediation, arbitration, litigation or other administrative or judicial proceeding involving the Vested Elements, or Project Approvals.

10.2 Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier), or delivered by nationally recognized overnight courier service. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party

may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 10.2.

City:	City of Anaheim 200 S. Anaheim Blvd., Suite 733 Anaheim, CA 92805 Attention: City Manager
with copies to:	City of Anaheim 200 S. Anaheim Blvd., Suite 356 Anaheim, CA 92805 Attention: City Attorney
	City of Anaheim 200 S. Anaheim Blvd., Suite 162 Anaheim, CA 92805 Attention: Planning Director
Developer	OTR, an Ohio partnership 275 E. Broad Street Columbus, Ohio 43215
	_____
	_____ Attention: Director Real Estate Real Estate Counsel
with copies to:	Cox, Castle & Nicholson, LLP 2029 Century Park East, Suite 2100 Los Angeles, CA 90067 Attention: Andrew K. Fogg, Esq.

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit.

10.3 Project as a Private Undertaking; No Joint Venture or Partnership. The Project constitutes private development, neither City nor Developer is acting as the agent of the other in any respect hereunder, and City and Developer are independent entities with respect to the terms and conditions of this Agreement. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making City and Developer joint venturers or partners.

10.4 Severability. If any terms or provision(s) of this Development Agreement or the application of any term(s)or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to other

situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Development Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either Party may terminate this Development Agreement by providing written notice of such termination to the other Party.

10.5 Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.

10.6 Construction of Agreement. This Development Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

10.7 Entire Agreement. This Development Agreement is executed in ____ (__) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of thirty-eight (38) pages including the Recitals, and four (4) exhibits, attached hereto and incorporated by reference herein, which, together with the Project Approvals, constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits and appendices are as follows:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Construction Sequencing
Exhibit D	Impact Fees

10.8 Estoppel Certificates. Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) business days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) business day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. The City Manager shall have the right to execute any certificate requested by Developer hereunder upon the review and approval of the City Attorney. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

10.9 Recordation. Pursuant to California Government Code Section 65868.5, within ten (10) days after the later of execution of the Parties of this Development Agreement or the Effective

Date, the City Clerk shall record this Development Agreement with the Orange County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended, the City Clerk shall record notice of such action with the Orange County Recorder.

10.10 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

10.11 Time Is of the Essence. Time is of the essence for each provision of this Development Agreement for which time is an element.

10.12 Applicable Law. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California.

10.13 Attorneys' Fees. Should any legal action be brought by either Party because of a breach of this Development Agreement or to enforce any provision of this Development Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court.

10.14 Third Party Beneficiaries. Except as otherwise provided herein, City and Developer hereby renounce the existence of any third party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

10.15 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

10.16 Counterparts. This Development Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

10.17 Delegation. The City Manager shall have the authority to take ministerial actions to implement and enforce this Agreement on behalf of the City; provided, however, that (i) in no event shall the City Manager (or designee) have the authority, without City Council approval or express delegation of authority, to approve modifications or amendments to this Agreement that substantially change the uses or Development permitted on the site or add to the City's obligations or materially impair or jeopardize its rights hereunder; (ii) in no event shall the City Manager (or designee) have the authority, without City Council approval or express delegation of authority, to approve waivers that materially impair or jeopardize the City's rights hereunder; (iii) the City Manager (or designee) shall have the right, even if he or she has the authority to act hereunder

without seeking City Council approval, to seek such approval, and in such event the City shall not be deemed to be in default hereunder; and (iv)any document evidencing the City Manager's (or designee's) exercise of the authority hereunder shall be subject to review and approval as to form by the City Attorney. The delegation of authority set forth in this Section 10.17 is in addition to and does not modify the authority granted to the City Manager to approve Operating Memoranda pursuant to Section 5.2.

10.18 Authority. The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', city councils', or other approvals have been obtained.

10.19 Hold Harmless Agreement. Developer and City hereby mutually agree to, and shall hold each other, their respective elective and appointive councils, boards, commissions, officers, partners, agents, representatives and employees harmless from any liability for damage or claims for damage for personal injury, including death, and from claims for property damage which may arise from the activities of the other or the other's contractors, subcontractors, agents, or employees which relate to the Project, whether such activities be by Developer or City, or by any of the Developer's or the City's contractors, subcontractors, or by any one or more persons indirectly employed by, or acting as agent for Developer, City, any of the Developer's or the City's contractors or subcontractors. Developer and City agree to and shall defend the other and the other's elective and appointive councils, boards, commissioners, officers, partners, agents, representatives and employees from any suits or actions at law or in equity for damage caused or alleged to have been caused by reason of the aforementioned activities which relate to the Project.

10.20 No Change to Laws Related to Officer Liability. Nothing in this Agreement is meant to restrict defenses to the personal liability of any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners that are afforded under any applicable state or federal law.

[*Signatures on Following Pages]*

IN WITNESS WHEREOF, City and Developer have executed this Development Agreement as of the date first set forth above.

DEVELOPER:

OTR, an Ohio Partnership

By:_____
Name:_____
Title:_____

CITY:

CITY OF ANAHEIM, a California municipal corporation

By:_____
Name:_____
Title:_____

ATTEST:

By: _____
Theresa Bass, City Clerk of Anaheim

APPROVED AS TO FORM:

By: _____
Robert Fabela, City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF ORANGE

On this ___ day of _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF ORANGE

On this ___ day of _____, 20__ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ANAHEIM, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 3, 4, 6, 8, 9, 13 AND 16, AS SHOWN ON A MAP FILED IN BOOK 255, PAGES 1, 2, 3 AND 4 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

PARCEL B:

PARCEL 21 AS SHOWN ON THE MAP ATTACHED TO LOT LINE ADJUSTMENT PLAT NO. 264 RECORDED SEPTEMBER 30, 1991 AS INSTRUMENT NO. 91-532358 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

PARCELS 23 AND 24 AS SHOWN ON THE PLAT ATTACHED TO LOT LINE ADJUSTMENT NO. 293 RECORDED APRIL 30, 1993A5 INSTRUMENT NO. 93-0291591 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.
PARCEL D:

PARCEL A AS SHOWN ON THE MAP ATTACHED TO LOT LINE ADJUSTMENT NO. 295 RECORDED MAY 11, 1993 AS INSTRUMENT NO. 93-0315924 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL E:

PARCEL 26 AS SHOWN ON THE MAP ATTACHED TO LOT LINE ADJUSTMENT NO. 301 RECORDED JULY 27, 1993 AS INSTRUMENT NO. 93-0500566 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL F:

PARCELS 1 AND A AS SHOWN ON THE MAP ATTACHED TO LOT LINE ADJUSTMENT NO. 398 RECORDED JUNE 18, 1998 AS INSTRUMENT NO. 19980382688 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL G:

PARCEL 1 AS SHOWN ON THE MAP ATTACHED TO LOT LINE ADJUSTMENT NO. 692 RECORDED JULY 17, 2012 AS INSTRUMENT NO. 12-404728 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPT FROM PARCELS A THROUGH F INCLUSIVE, ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND ALL GEOTHERMAL RESOURCES (COLLECTIVELY "MINERALS" HEREIN) LYING IN AND UNDER OR PRODUCED FROM OR THROUGH THE LAND, TOGETHER WITH THE SOLE AND EXCLUSIVE RIGHT OF DRILLING INTO, FROM, UNDER AND THROUGH THE LAND,AND TOGETHER WITH SUCH SUBSURFACE EASEMENTS AS MAY BE NECESSARY OR CONVENIENT FROM TIME TO TIME FOR THE PROSPECTING FOR OR THE PRODUCTION OR DEVELOPMENT OF ANY SUCH MINERALS BY MEANS OF SLANT DRILLING OR OTHER REMOVAL OPERATIONS CONDUCTED FROM BEYOND THE LAND INTO, UNDER OR THROUGH THE LAND TO PRODUCING INTERVALS EITHER WITHIN OR BEYOND THE LAND, ALL SUCH RESERVED AND EXCEPTED RIGHTS TO BE SUBJECT, HOWEVER, TO THE CONDITION THAT THE HOLDER OF ANY INTEREST IN SUCH MINERAL RIGHTS SHALL NOT HAVE ANY RIGHT OF ENTRY OR OF ACCESS TO THE SURFACE OF THE LAND OR TO THE FIRST FIVE HUNDRED (500) FEET OF THE LAND, MEASURED VERTICALLY FROM THE SURFACE THEREOF, AS RESERVED IN THE DEED RECORDED OCTOBER 19, 1979 IN BOOK 13359, PAGE 1294 OF OFFICIAL RECORDS.

PARCEL H:

PARCELS 1 AND 2 AS SHOWN ON THE MAP ATTACHED TO LOT LINE ADJUSTMENT NO. LLA:0000745 RECORDED DECEMBER 09, 2016 AS INSTRUMENT NO. 2016000623739 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL I:

NON-EXCLUSIVE EASEMENTS FOR THE PASSAGE OF AND PARKING OF VEHICLES, AND FOR THE PASSAGE AND ACCOMMODATION OF PEDESTRIANS, AND FOR THE INSTALLATION, OPERATION, FLOW AND PASSAGE, USE, MAINTENANCE, REPAIR, RELOCATION AND REMOVAL OF UTILITY LINES, AND FOR ENCROACHMENT, ALL AS SET FORTH IN ARTICLE 2 OF THAT CERTAIN. DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS, RECORDED AUGUST 27, 1990 AS INSTRUMENT NO. 90-455437 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, AS AMENDED BY FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED SEPTEMBER 30, 1991 AS INSTRUMENT NO. 91-532357 OF SAID OFFICIAL RECORDS, AND AMENDED BY SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED MAY 28, 1993 AS INSTRUMENT NO. 93-0363615 OF SAID OFFICIAL RECORDS, AND BY THAT CERTAIN THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED MARCH 15, 1994 AS INSTRUMENT NO. 94-0180469 OF SAID OFFICIAL RECORDS

PARCEL J:

NON-EXCLUSIVE EASEMENTS AS SET FORTH IN SECTION 2.1 ENTITLED "INGRESS AND EGRESS", SECTION 2.2 ENTITLED "UTILITIES", AND SECTION 2.3 ENTITLED "CONSTRUCTION, MAINTENANCE AND RECONSTRUCTION" OF ARTICLE II ENTITLED "EASEMENTS" IN THAT CERTAIN OPERATION AND EASEMENT AGREEMENT BETWEEN DAYTON HUDSON CORPORATION ("DAYTON") AND TWA-ANAHEIM LIMITED PARTNERSHIP, A MICHIGAN LIMITED PARTNERSHIP ("TWA") , - RECORDED OCTOBER 9, 1991 AS INSTRUMENT NO, 91-549861 OF OFFICIAL RECORDS, AS AMENDED BY THAT CERTAIN AMENDMENT TO OPERATION AND EASEMENT AGREEMENT RECORDED OCTOBER 9, 1991 AS INSTRUMENT NO. 91-549863 AND BY THAT SECOND AMENDMENT TO OPERATION AND EASEMENT AGREEMENT RECORDED MAY 28, 1993 AS INSTRUMENT NO. 93-0363612 OF OFFICIAL RECORDS, AND AS SUPPLEMENTED BY THAT CERTAIN SUPPLEMENTAL RESTRICTION AGREEMENT RECORDED OCTOBER 9, 1991 AS INSTRUMENT NO. 91-549864 OF OFFICIAL RECORDS, AND AMENDED BY THAT CERTAIN AMENDMENT TO SUPPLEMENTAL RESTRICTION AGREEMENT RECORDED MAY 28, 1993 AS INSTRUMENT NO. 93-0363613 OF OFFICIAL RECORDS, AND AMENDED BY THAT CERTAIN THIRD AMENDMENT TO OPERATION AND EASEMENT AGREEMENT RECORDED MARCH 15, 1994 AS INSTRUMENT NO. 940180465 OF SAID OFFICIAL RECORDS.

APN: 354-451-04, 06, 08, 10, 12, 13, 17, 19, 20, 27, 28, 31, 32, 33, 37 AND 38

EXHIBIT B

MAP OF PROPERTY

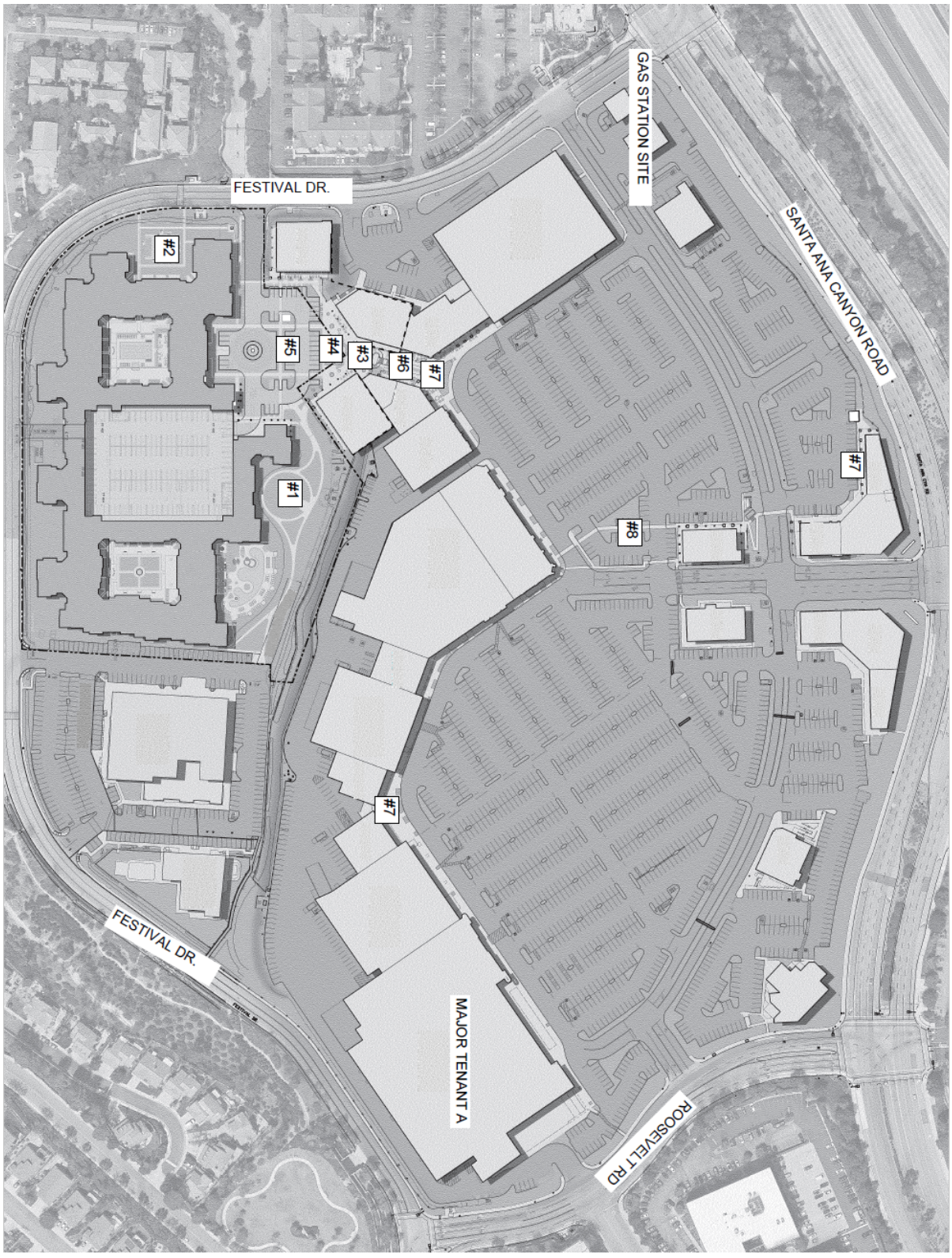

EXHIBIT C

CONSTRUCTION SEQUENCING

The Project objectives include modifications to the Festival Shopping Center to create an enhanced, pedestrian friendly mixed-use project. This will be accomplished through a phased renovation of the entire center that includes improved pedestrian connectivity from the outer parcels and an enhanced plaza and stair connection from the lower level to the upper level. This key connection point will be widened, and an adjacent elevator will provide access for all. The improvements encourage visitors to park in one location and access multiple shopping, dining, and amenity experiences. The first two phases will be implemented based on the commencement of the development of the proposed residential units.

Phase 1 – Site Improvements to be implemented concurrent with Residential Development

- Blufftop Park open space (#1)
- Dog Park open space (#2)
- Enhanced stair connection (#3)
- Enhanced upper deck landing at stair top (#4)
- Vehicular circulation, surface parking area (#5)

Phase 2 – Improvements at Shopping Center Overall – to commence within five years of commencement of Residential Development

- Overall shopping center renovation scope:
  - Renovation of lower-level pedestrian plaza at base of stair (#6)
  - Painting of entire center, excluding Major Tenant A and gas station site due to separate ownership.
  - Refreshed landscape and hardscape areas at focal points
  - Updated lighting fixtures at inward facing façade locations
  - New furniture and features at gathering areas (#7)
  - Pedestrian Connectivity Enhancement (#8)

Notes applicable to all phases:

- In accordance with Section 3.3, nothing in this Exhibit C requires commencement of any development, including the proposed Residential Development

- Any timelines provided herein are subject to force majeure or other extensions provided in the Development Agreement

- All construction to be undertaken consistent with the Specific Plan

- Reference numbers refer to attached Exhibit B site plan

EXHIBIT D

IMPACT FEES

The following City Impact Fees shall apply to the Project as provided in Section 3.6.3 of this Development Agreement:

Parks and Recreation Fees
Library Impact Fees
Transportation Impact Fees
Sanitation District Fees
Sewer Impact Fees