

ORDINANCE NO. NS-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPROVING DEVELOPMENT AGREEMENT NO. 2023-02 FOR A MIXED-USE DEVELOPMENT, KNOWN AS THE RELATED BRISTOL SPECIFIC PLAN PROJECT, AT 3600 BRISTOL STREET BETWEEN THE CITY OF SANTA ANA AND GREENVILLE RANCH LLC, BSG WEST BRISTOL LLC, AND MCG BRISTOL WEST LLC

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

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

- A. Steven Oh, with RCR Bristol, LLC (“Applicant”), on behalf of Greenville Ranch LLC, BSG West Bristol LLC, and MCG Bristol West LLC (“Property Owners”), is seeking to construct of a mixed-use development (“Project”), known as the Related Bristol Specific Plan Project, at 3600 Bristol Street (“Project Site”).
- B. The Project entails, among other things, (1) demolition of the existing sixteen (16) structures on the Project Site; (2) the establishment of a new Related Bristol Specific Plan (SP No. 5) and a change of zone for the Project Site to the new Related Bristol Specific Plan (SP No. 5) designation; (3) redevelopment of the Project Site into 3,750 residential units, up to 350,000 square feet of commercial space, 250 hotel rooms, and 200 senior care units, including 6,520 onsite parking spaces, and 13.1 acres of onsite open space; and (4) approval of Vesting Tentative Tract Map (“VTTM”) No. 2023-01.
- C. The City of Santa Ana (“City”) is authorized, pursuant to Government Code Sections 65864 through 65869.5, to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certainty for both City and owner in the development process.
- D. Because of the logistics, magnitude of the expenditure and considerable lead time prerequisite to planning and developing the Project, Applicant has proposed to enter into a development agreement concerning the Project (“Development Agreement No. 2023-02”) to provide assurances that the Project can proceed without disruption caused by a change in the City's planning policies and requirements except as provided in the Development Agreement No. 2023-02, which assurance will thereby

reduce the actual or perceived risk of planning for and proceeding with development of the Project.

- E. On August 12, 2024, the Planning Commission of the City of Santa Ana held a duly-noticed public hearing on the proposed Development Agreement No. 2023-02, recommending City Council approval of Development Agreement No. 2023-02.
- F. Entering into this Development Agreement No. 2023-02 would provide the City with extraordinary and significant benefits that are of regional significance, relate to existing deficiencies in public facilities, require the Property Owners to contribute a greater percentage of benefits than would otherwise be required, and represent benefits which would not otherwise be required as part of the development process.
- G. The Project and the use that the Property Owners propose in connection with the Project have been extensively reviewed and considered by the City Council, and such proposed development and use have been found to accommodate the City's recommendations and suggestions in order to protect the public's interest to enhance the desirability of such proposed development and use. The terms and conditions of this Development Agreement No. 2023-02 are fair, just and reasonable, and the City Council has concluded that the pursuit of the Project will serve the interests of the City.
- H. Based on the entire record before the City Council and all written and oral evidence presented, the City Council finds the Development Agreement No. 2023-02 in the public's interest and results in substantial community benefits because it meets and facilitates the fulfillment of many of the City's adopted General Plan "Issues, Goals and Policies" for each individual element, as further documented in the Ordinance of the City Council approving Amendment Application No. 2023-03 to establish the Related Bristol Specific Plan (SP No. 5) and approve the Zone Change.

Section 2. The City prepared a Draft Supplemental Environmental Impact Report ("SEIR") that analyzed the Project's environmental impacts in accord with the California Environmental Quality Act (Public Resources Code, §§ 21000 et seq., "CEQA"), the regulations promulgated thereunder (14 Cal. Code of Regulations, §§ 15000 et seq., the "CEQA Guidelines"), and the City's Local CEQA Guidelines. The Draft SEIR was made available for public review for 45 days between July 6, 2023 and August 21, 2023. The document was made available online at the City of Santa Ana website and available for review at City Hall and the City of Santa Ana Public Library in hard copy form. In response to comments received on the Draft SEIR, the City prepared a Final SEIR and released it to the public on August 1, 2024. The Final SEIR in the City Council Resolution approving the Final SEIR is incorporated herein by reference. The City Council Resolution recommends certification of the Final SEIR (SCH No. 2020029087), adoption of findings under CEQA, and adoption of the Mitigation

Monitoring and Reporting Program and the Statement of Overriding Considerations, and among other things, properly assesses the environmental impact of the Project in accordance with CEQA. This Resolution incorporates by reference the environmental findings and analysis set forth in the Resolution for the Final SEIR (SCH No. 2020029087) as if fully set forth herein.

Section 3. The City Council of the City of Santa Ana, after conducting the public hearing, hereby approves the Development Agreement No. 2023-02, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference, and authorizes the City Manager and Clerk of the Council to execute it on behalf of the City with such non-substantive changes as may be authorized by the City Manager and City Attorney. The Clerk of the Council is hereby authorized and directed to cause this Development Agreement No. 2023-02 to be recorded with the County Recorder's Office.

Section 4. This Ordinance shall not be effective unless and until the City Council Resolution for Final SEIR No. 2020029087, the Planning Commission Resolution for VTTM No. 2023-01, the City Council Ordinance for AA No. 2023-03, and the City Council Resolution to Overrule the Orange County/John Wayne Airport Land Use Commission's determination of inconsistency are adopted and become effective. If said resolutions and ordinance are for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or otherwise do not go into effect for any reason, then this Ordinance shall be null and void and have no further force and effect.

Section 5. This Ordinance shall not be effective unless and until the City receives a fully executed copy of the Development Agreement No. 2023-02, including the executed Joinder of the Fee Owners of the Property. If the fully executed copy of the Development Agreement No. 2023-02 is not received by the City Clerk within 30 days of the approval of this Ordinance by the City Council, then this Ordinance shall be null and void and have no further force and effect.

Section 6. The documents and materials associated with this Ordinance that constitute the record of proceedings on which these findings are based are located at Santa Ana City Hall, 20 Civic Center Plaza, Santa Ana, CA 92701. The City Clerk is the custodian of records for the record of proceedings.

Section 7. Pursuant to Government Code Section 66020, the Applicant may protest the imposition of fees, dedications, reservations, or other exactions imposed on this development project by taking the necessary steps and following the procedures established by Sections 66020 through 66022 of the California Government Code.

Section 8. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, and other and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such

other procedures), judgments, orders, and decisions (collectively “Actions”), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the Project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve the legal counsel providing the City’s defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

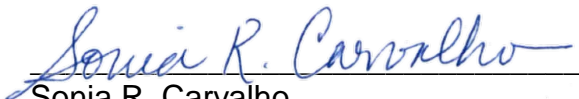
Section 9. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 10. This Ordinance shall be effective thirty days after its adoption provided the conditions precedent set forth above have been satisfied. The City Clerk shall certify the adoption of this Ordinance and shall cause the same to be posted as required by law. Pursuant to Government Code Section 65868.5, within 10 days following the entering into of the Development Agreement, as evidenced by full execution thereof, the City Clerk shall record with the Orange County Recorder a copy of the Development Agreement.

ADOPTED this 17th day of September, 2024.

Valerie Amezcua
Mayor

APPROVED AS TO FORM:
City Attorney


Sonia R. Carvalho
City Attorney

AYES: Councilmembers: _____

NOES: Councilmembers: _____

ABSTAIN: Councilmembers: _____

NOT PRESENT: Councilmembers: _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Jennifer L. Hall, City Clerk, do hereby attest to and certify the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on September 17, 2024.

Date: _____

City Clerk
City of Santa Ana

Exhibit A

Development Agreement No. 2023-02

RECORDED AT REQUEST OF:)

)

AND WHEN RECORDED RETURN TO:)

City of Santa Ana)

20 Civic Center Plaza (M-30))

Santa Ana, CA 92702)

Attention: Clerk of the Council)

)

Exempt from filing fees pursuant to Government Code §27383

DEVELOPMENT AGREEMENT NO. 2023-02

A DEVELOPMENT AGREEMENT BETWEEN

CITY OF SANTA ANA

and

RCR BRISTOL, LLC

A DELAWARE LIMITED LIABILITY COMPANY

DEVELOPMENT AGREEMENT NO. 2023-02

This Development Agreement (“Agreement”) is entered into as of this [REDACTED] day of [REDACTED], 2024 by and between the City of Santa Ana, California (“City”) on the one hand, and RCR BRISTOL, LLC, a Delaware limited liability company (“Owner” or “RCR”), on the other hand. City and Owner may be referred to in this Agreement individually as a “party” or collective as the “parties.”

RECITALS

- A. City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code. RCR has an option to enter into a long-term ground lease to the Property, which ground lease constitutes an equitable interest in the Property.
- B. This Agreement constitutes a current exercise of City’s police powers to provide predictability to RCR in the development approval process by vesting the permitted uses, density, intensity of use, timing and phasing of development, and applicable ordinances consistent with the Development Plan in exchange for RCR’s commitment to provide significant public benefits to City as set forth in Section 4 below.
- C. RCR has requested that City enter into this Agreement and proceedings have been taken in accordance with applicable State law and the rules and regulations of the City in furtherance thereof.
- D. The best interests of the citizens of the City of Santa Ana and the public health, safety and welfare will be served by entering into this Agreement.
- E. The City Council hereby finds and determines that this Agreement is of major significance because it will provide significant economic benefit to the City through additional jobs created by the construction and operation of the Project, property and sales tax revenue to the City, infrastructure improvements, neighborhood revitalization, and general economic benefit.
- F. The provision by RCR of the public benefits as set forth in Section 4 below allows the City to realize significant economic, recreational, open space, educational, social, and other public benefits to City. These public benefits will advance the interests and meet the needs of Santa Ana residents and visitors to a significantly greater extent than would development of the Property without this Agreement.
- G. The physical effects, if any, of the Project and this Agreement have been analyzed pursuant to the California Environmental Quality Act as amended to date and as documented in the Final Environmental Impact Report entitled “Related Bristol Specific Plan Final Supplemental Environmental Impact Report” (State Clearinghouse House No. 2020029087 and City of Santa Ana DP No. 2022-31 (“Project FEIR”).
- H. This Agreement and the Project are consistent with the Santa Ana General Plan.
- I. All actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters.

- J. Development of the Property in accordance with this Agreement will provide substantial benefits to City, as set forth in Section 4 below, and as stated Sections 1.4 and 2.1 of the Specific Plan. will further important policies and goals of City.
- K. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Section 65864, et seq. of the Government Code are intended.
- L. On August 29, 2023, the City Council held a public hearing and authorized the City's Planning Division to draft findings and issue a determination overruling the County of Orange Airport Land Use Commission's Determination of Inconsistency associated with the Project and to provide notice of same in accordance with Section 21676(b) of the Public Utilities Code to the County of Orange Airport Land Use Commission and the State of California Department of Transportation's Division of Aeronautics.
- M. On August 12, 2024 City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.
- N. On September 17, 2024, the City Council held a public hearing introducing this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, RCR, and members of the public. On [REDACTED], consistent with applicable provisions of State law and the rules and regulations of the City, the City Council adopted Ordinance No. [REDACTED] finding this Agreement consistent with the City's General Plan and approving and adopting this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, City and Owner hereby agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1. **Definitions.** The following terms when used in this Agreement (including in the recitals above) shall be defined as follows:

1.1.1. "Assigned Rights" has the meaning set forth in Section 2.5.1 hereof.

1.1.2. "Assignment and Assumption Agreement" has the meaning set forth in Section 2.5.1 hereof.

1.1.3. "Assumed Obligations" has the meaning set forth in Section 2.5.1 hereof.

1.1.4. "Agreement" means this Development Agreement.

1.1.5. "City" means the City of Santa Ana, a charter city and California municipal corporation.

1.1.6. “City Attorney” means the City of Santa Ana City Attorney.

1.1.7. “City Council” means the duly elected city council of the City of Santa Ana.

1.1.8. “Development” means the improvement of the Property for the purposes of completing the structures, improvements, and facilities comprising the Project including, but not limited to: grading; construction of infrastructure and other public facilities; construction of buildings and structures; installation of landscaping consistent with this Agreement. “Development” does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.9. “Development Impact Fee” means a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees for processing applications for governmental regulatory actions or approvals.

1.1.10. “Development Plan” means the plan for development of the Property pursuant to the Project Approvals as set forth in Exhibit “C.”

1.1.11. “Development Project Review Approvals” refers to the administrative review of all projects meeting the requirements of Division 3 of Article V of Chapter 41 (Zoning) of the Santa Ana Municipal Code as may be required by the Project Approvals.

1.1.12. “Discretionary Action” or “Discretionary Approval” means an action that requires the exercise of judgment, deliberation, or discretion on the part of the City, including any board, agency, commission, or department and any officer or employee thereof, in the process of approving or disapproving Development of the Project, as distinguished from an activity that is defined herein as a Ministerial Permit or Ministerial Approval (i.e., Development Project Review Approvals).

1.1.13. “Effective Date” means the date the ordinance approving and authorizing this Agreement becomes effective.

1.1.14. “Executive Director” has the meaning set forth in Section 2.5.1 hereof.

1.1.15. “Existing Land Use Regulations” means the Land Use Regulations that are in effect on the Effective Date, pursuant to California Government Code Section 65866.

1.1.16. “Existing Project Approvals” means all Project Approvals approved or issued on or before the Effective Date.

1.1.17. “Fee Owners” shall collectively mean Greenville Ranch, LLC, BSG West Bristol, LLC, and MCG Bristol West, LLC, and their respective successors and assigns.

1.1.18. “Future Project Approvals” means Project Approvals for the Project that are adopted, approved, or issued after the Effective Date.

1.1.19. “Ground Lease” means the long term ground lease to be entered into by and between the Fee Owners, as ground lessors, and Owner, as ground lessee.

1.1.20. “Land Use Regulations” means all ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines, or other actions of City, including but not limited to the provisions set forth in the City’s General Plan, Municipal Code, that affect, govern, or apply to the Development of the Project and use of the Property in a manner consistent with this Agreement, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development of the Property, subject to the terms of this Agreement, whether adopted by the City Council or the voters in an initiative. “Land Use Regulations” does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes (special or general) and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests that provide for the use or the entry upon public property;
- (e) the exercise of the power of eminent domain.

1.1.21. “Leasehold Estate” means the leasehold estate to be created under the Ground Lease.

1.1.22. “Owner” means RCR or, as to each Project Phase that is the subject of a Sub Ground Lease, the Sub Ground Lessee under such Sub Ground Lease, and their successors in interest to all or any part of the applicable leasehold estate.

1.1.23. “Ministerial Approval,” or “Ministerial Act” means the nondiscretionary permits, plans, inspections, certificates, documents and licenses required to be taken, issued, or approved by the City in order for Owner to develop the Project, including, without limitation, building permits, grading permits, Development Project Review Approvals, and other similar permits and approvals. Any approval or act that is not a Discretionary Approval is a Ministerial Approval.

1.1.24. “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.25. “Project” means the development of the Property, as more specifically described in Exhibit “A” and shown on Exhibit “B,” pursuant to the Project Approvals and the Development Plan, as such Development Plan may be further defined, enhanced, or modified pursuant to the provisions of this Agreement.

1.1.26. “Project Open Space” means the approximately 13.1 acres of publicly accessible open-space areas, as defined in the Specific Plan, to be ground leased and maintained by Owner.

1.1.27. “Project Phase” shall mean a portion of the development of the Property as contemplated by the Project Approvals. To avoid confusion, a “Project Phase” may include one or more Development phases and shall not be limited to any single Specific Plan Phase and may consist of a portion of a Specific Plan Phase.

1.1.28. “Project Approvals” means all site-specific (meaning specifically applicable to the Project only and not generally applicable to some or all other properties within the City) plans, maps, permits, entitlements, approvals (including Development Project Review Approvals), and entitlements of every kind and nature that are sought or agreed to in writing by Owner in its sole and absolute discretion for Development of the Project and that are approved by the City. Project Approvals include, but are not limited to, general plan amendments, specific plan approvals or amendments, site plans, development project review approvals, tentative and final subdivision maps, design guidelines, variances, zoning designations, conditional use permits, grading, building, and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports and negative declarations. A list of the Project Approvals is set forth in Exhibit “C.”

1.1.29. “Property” means the real property described in Exhibit “A” and shown in Exhibit “B” to this Agreement. The Property is approximately 41.13 gross acres in size and is occupied by the Metro Town Square commercial development as of the Effective Date. It is composed of nine Assessor Parcel Numbers (APNs): 412-131-12, 412-131-13, 412-131-14, 412-131-16, 412-131-17, 412-131-22, 412-131-24, 412-131-25 and 412-131-26.

1.1.30. “Public Benefit” refers to those benefits provided to the City and the community by Owner pursuant to Section 4 below.

1.1.31. “Reservation of Rights” means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.3 of this Agreement.

1.1.32. “Specific Plan Phase” means any one of the three phases as shown on Figure 6-2 (Conceptual Phasing Plan) of the Related Bristol Specific Plan.

1.1.33. “Sub Ground Lease” shall mean a sub ground lease entered into by Owner with a third party pursuant to the terms of which Owner sub ground leases to such third party the portion of the Property referenced therein.

1.1.34. “Sub Ground Lessee” shall mean the lessee under any Sub Ground Lease.

1.1.35. “Sub Leasehold Estate” means the leasehold estate created under any Sub Ground Lease.

1.1.36. “Term” has the meaning ascribed thereto in Section 2.4.1 below.

1.2. Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit “A” – Legal Description of the Property

Exhibit “B” – Map showing Property and its location

2. GENERAL PROVISIONS.

2.1. Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of the Development Plan, the Project Approvals, and this Agreement. This Agreement shall be recorded against the Property, subject to the terms and conditions of the Joinder attached hereto, which shall be executed by the Fee Owners and shall also bind the fee title to the Property subject to the terms and conditions of the Joinder attached hereto.

2.2. Ownership of Property. Owner represents and covenants that it has an option to enter into the Ground Lease, which Ground Lease constitutes an equitable interest in the Property. The Property’s fee simple owners are the Fee Owners as defined in Section 1.1.18. Owner does not have a fee simple interest in the Property.

2.3. City Council Findings. The City Council finds that:

2.3.1. This Agreement is consistent with the City’s General Plan.

2.3.2. This Agreement ensures a desirable and functional community environment, provides effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Project, and enhances effective utilization of resources within the City.

2.3.3. This Agreement provides public benefits beyond those that are necessary to mitigate the development of the Project, as set forth in Section 4 below.

2.3.4. This Agreement strengthens the public planning process, encourages private participation in comprehensive planning, and reduces costs of development and government.

2.3.5. The best interests of the citizens of the City and the public health, safety, and welfare will be served by entering into this Agreement.

2.4. Term.

2.4.1. The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty (20) years thereafter (the “Initial Term”), unless modified or extended pursuant to the provisions of this Agreement. Together, the Initial Term and any extension under this Agreement shall constitute the “Term.” The Term, including all possible extensions, shall not exceed twenty-five-years unless this Agreement is amended to allow further extensions. Owner shall execute this Agreement which shall be recorded against the Property no later than ten (10) days following Owner’s receipt of the fully-executed, recordable Agreement from the City. If Owner fails to enter into the Ground Lease within one (1) year of the Effective Date then this Agreement shall be null and void and of no further force or effect and the parties shall record a “Termination Release” as set forth in Section 10.1 below.

(a) Owner has represented to City that Fee Owners are aware and understand of all of the terms of this Agreement and have consented to recordation of this Agreement against the Property subject to the terms and conditions of the Joinder attached hereto. Fee Owner shall

execute the Joinder attached to this Agreement and the properly executed Joinder shall be provided to City no later than ten (10) days after approval of this Agreement by the City Council.

(b) It is anticipated that Parties will sign the Development Agreement upon approval of the Agreement by the City Council. Owner and Fee Owner shall cause this Agreement to be timely recorded against the Property no later than ten (10) days following Owner's receipt of the fully-executed, recordable Agreement from the City.

(c) Failure of Owner to record this Agreement against the Property within ten (10) days following the receipt of the fully-executed, recordable Agreement from the City shall constitute an event of default by Owner under this Agreement.

2.4.2. The Initial Term of this Agreement shall be automatically extended by up to five (5) years if Owner achieves the following milestones: grading permits have been issued and construction has commenced on: (i) no less than 250,000 square feet of non-residential floor area (e.g., grocer, retail, restaurants); and (ii) a hotel, subject to financial feasibility. Owner shall remain eligible for the five (5) year extension if Owner determines that a hotel is financially infeasible and City, employing a commercial reasonableness standard, affirms same. Owner shall within 30 days reimburse City for the reasonable cost of the City's review of the hotel financial feasibility study.

2.4.3. If Owner fails to satisfy the prerequisites to securing the automatic extension, the City Council may nonetheless elect, in its sole discretion, to grant one or more extensions if Owner provides the City with a plan that includes a Development timeline and specific Development milestones.

2.4.4. When the Term ends, Owner shall have no vested right under this Agreement, regardless of whether or not Owner has paid City any Development Impact Fee.

2.4.5. If any party other than Owner initiates litigation that challenges the Project, this Agreement (and/or the ordinance approving this Agreement), or any of the Existing Project Approvals, the Owner will have the right to toll commencement of the Term, except for the duty to record this Agreement within ten (10) days of receipt of the fully-executed, recordable Agreement from the City, and any obligations of Owner under this Agreement during the period of such litigation. The tolling shall commence upon receipt by the City of written notice from Owner invoking this right to tolling. The tolling shall terminate when the action, including any appeal, is finally resolved, whether by entry of a final, non-appealable judgment that upholds the Project and the Existing Project Approvals or voluntary or involuntary dismissal of the entire action (and the passage of time required to appeal an involuntary dismissal) by the moving party. Owner shall similarly have the right to toll commencement of the Term, except for the duty to record this Agreement within ten (10) days of receipt of the fully-executed, recordable Agreement from the City, and any obligations of Owner under the Agreement in the event a referendum petition challenging the Project, the ordinance approving this Agreement, or any of the Project Approvals is submitted to the City Clerk. The tolling shall terminate if and when: (1) the City Clerk determines the referendum petition did not receive sufficient signatures to qualify for the ballot; or (2) the election results of the referendum uphold the Project and the Existing Project Approvals and are certified by the City Council. This Agreement shall be null and of no further force and effect in the event that the City Council rescinds the challenged action.

2.5. Assignment.

2.5.1. Right to Sell, Transfer, Assign and Sub Ground Lease. Owner shall have the right, from time to time, to transfer all or portions of its interest in the Leasehold Estate and any Sub Leasehold Estate (including through the entering into of one or more Sub Ground Leases) (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm, limited liability company, or corporation and, in connection therewith, to assign its rights under this Agreement, in whole or in part, to said person, partnership, joint venture, firm, limited liability company (collectively, the "Assigned Rights"); provided, however, that any such assignment of any rights and obligations under this Agreement shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement that pertain to the Project Phase that is the subject of such transfer, and be made in compliance with the following conditions precedent:

(a) No transfer or assignment of any right or interest under this Agreement (in whole or in part) shall be made unless made together with the transfer of all or a part of the Leasehold Estate or Sub Leasehold Estate, as applicable, to which such rights or interests apply.

(b) In connection with any such assignment of an Owner's rights and obligations under this Agreement (in whole or in part), Owner shall notify City in writing at least sixty (60) days in advance of any sale assignment and shall provide City with a draft assignment and assumption agreement ("Assignment and Assumption Agreement"), in a form reasonably satisfactory to City, to be entered into by Owner, such assignee, and the City, pursuant to the terms of which such assignee shall expressly and unconditionally assume those duties, obligations, agreements, covenants, and waivers of Owner under this Agreement that are applicable to the Project Phase that is the subject of the portion of the Leasehold Estate, or Sub Leasehold Estate, as applicable, being transferred, including, without limitation, the covenants not to sue and waivers contained in Sections 7.3.1 and 9.5.1 hereof (collectively, the "Assumed Obligations"). Notwithstanding the failure of any assignee to execute the Assignment and Assumption Agreement, as required by Section 2.5.1(b) above, the burdens of this Agreement (as they relate to the Project Phase that is the subject of the Leasehold Estate or Sub Leasehold Estate being transferred) shall be binding upon such transferee, but the benefits of this Agreement shall not inure to such transferee unless the Assignment and Assumption Agreement is executed.

(c) The Executive Director for the Planning and Building Agency (the "Executive Director") shall have the administrative authority to approve of the Assignment and Assumption Agreement and to determine whether Owner has complied with the above conditions, which approval and determination shall not be unreasonably withheld or conditioned. The Executive Director shall use best efforts to approve of the Assignment and Assumption Agreement and to determine whether the Owner has complied with the above conditions within five (5) business days following receipt of Owner's written request. The Executive Director's failure to approve or disapprove the foregoing within thirty (30) days following the Executive Directors receipt of Owner's written request shall constitute City's approval of the same.

(d) Owner shall include the following sentence in each assignment, transfer or other conveyance document: "The Parties agree and acknowledge that no building permits will be issued by the City for a particular Project Phase unless and until the Community Benefit

Payment has been made for the applicable Specific Plan Phase which the particular Project Phase is in.”

2.5.2. No Release of Transferring Owner. Notwithstanding any sale, transfer or assignment as provided in any Assignment and Assumption Agreement delivered in accordance with the provisions of Section 2.5.1 above, a transferring Owner shall continue to be obligated to comply with all of the terms and conditions set forth in this Agreement (and such transferring Owner shall not be released from any of such obligations) with respect to the transferred Leasehold Estate or Sub Leasehold Estate, or any transferred portion thereof, as applicable, and following any such transfer the transferring Owner and the transferee under the Assignment and Assumption Agreement shall be jointly and severally liable with respect to all of the obligations assumed by such transferee under such Assignment and Assumption Agreement.

2.6. Administrative Changes and Modifications.

2.6.1. Owner and City acknowledge that further planning and development of the Project may demonstrate that refinements and changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project development and with respect to those items covered in general terms under this Agreement, the Project Approvals, the Existing Land Use Regulations, and, once issued, any Future Project Approvals.

2.6.2. If and when the parties find that “Substantially Conforming Changes,” as herein defined, are necessary, desirable or appropriate, they may, unless otherwise required by law, effectuate such changes or adjustments through an administrative operating memorandum that is executed by Owner and the Executive Director of the City’s Planning and Building Agency or the Director’s designee. As used herein, a “Substantially Conforming Change” is a minor change, modification, or adjustment that is deemed to be in substantial conformance with the Development Plan at the City’s sole and absolute discretion. The following are excluded from the definition of “Substantially Conforming Changes”: (1) changes to the timing or amount of the Project’s Twenty-Two Million dollar (\$22,000,000) Community Benefit Payment; (2) changes to the In-Lieu Fee; (3) changes to the Project Open Space; and (4) changes to the Timing of Development as set forth in Sections 3.5.1 and 3.5.2. A Substantially Conforming Change is not considered an amendment to this Agreement or to Development Plan and so does not require prior notice or hearing by the Planning Commission or City Council.

2.7. Amendment or Cancellation of Agreement. Except for Substantially Conforming Changes as defined by Section 2.6.2 above, this Agreement may be amended or modified from time to time only with the written consent of Owner and the City or their successors and assigns, and only upon approval of an amendment by the City Council after a public hearing in accordance with Government Code Section 65868. This provision shall not limit any remedy of City or Owner as provided by this Agreement. For avoidance of doubt, no modification of the Development Agreement pursuant to this Section 2.7 shall limit or impair the rights of Fee Owners under the attached Joinder without the consent of Fee Owners.

2.8. Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

2.8.1. Expiration of the stated Term of this Agreement as set forth in Section 2.4, including any extension(s).

2.8.2. Entry of a final judgment by a court of competent jurisdiction setting aside, voiding, or annulling the adoption of the ordinance approving this Agreement and/or any Project Approvals as set forth in Exhibit C.

2.8.3. The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement and/or any Project Approvals. In the event a referendum petition challenging the ordinance approving this Agreement and/or any Project Approvals is submitted to the City Clerk, Owner shall deposit with the City Ten Thousand Dollars (\$10,000) ("Petition Deposit") to cover the actual cost incurred by the City examining the petition and verifying signatures. Should the referendum qualify for the ballot, Owner may request, at or prior to the Council meeting at which the Council will take up the referendum issue, that the City Council repeal the ordinance and/or any Project Approvals rather than submitting it to the voters. If Owner does not request that the City Council repeal the ordinance and/or any Project Approvals and the City Council submits the referendum to the voters, Owner shall deposit Fifty Thousand Dollars (\$50,000) ("Referendum Deposit") with the City. City may use the Referendum Deposit to pay any and all costs associated with the said referendum measure (e.g., legal fees for outside counsel). Any funds remaining in the Petition Deposit may be put toward the Referendum Deposit at the Owner's request. If at any time the Referendum Deposit account has Five Thousand Dollars (\$5,000) or less remaining, Owner shall, within three (3) business days of receiving notice from the City, deposit with the City Twenty-Five Thousand Dollars (\$25,000) as requested by the City to cover necessary costs and expenses associated with the referendum and holding the related election. Following certification of the election results, any funds remaining in the Petition Deposit or the Referendum Deposit account shall be returned to the Owner within thirty (30) days of certification of the election results. In the event Owner requests that the City Council repeal the ordinance and the City Council nonetheless determines to submit the ordinance to the voters, Owner shall have no financial responsibility for the costs associated with holding the election, including any obligation to make a Referendum Deposit.

2.8.4. Completion of the Project in accordance with the terms of this Agreement, which is hereby defined to be: (i) issuance by the City of all required occupancy permits and final approvals for occupancy for the Project's 3,750 multi-family residential units, 350,000 square feet of commercial uses, 250 room hotel, and 200 senior living/continuum of care units; (ii) acceptance by City or applicable public agency of all required dedications in connection with same; and (iii) written notification by City to Owner that the Project is complete.

2.8.5. Termination of the Agreement as provided under this Agreement, including but not limited to Section 7.4 herein, shall not constitute termination of any other Project Approvals. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination or with respect to any obligations that are specifically set forth as surviving this Agreement. Upon such termination, any Development Impact Fees paid by Owner to City on which construction has not yet begun shall be refunded to Owner by City.

2.9. Notices.

2.9.1. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

2.9.2. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City:

City Clerk
20 Civic Center Plaza, 8th Floor
PO Box 1988 M-30
Santa Ana, Ca 92702

Copies to:

City Manager
City Attorney
Executive Director of Planning and Building Agency

If to Owner:

Related California Residential, LLC
18201 Von Karman Avenue, Ste 900
Irvine, CA 92612
Attn: Steven S. Oh
E-mail: Steven.Oh@Related.com

Copies to:

Sean Matsler, Esq.
Cox, Castle & Nicholson LLP
3121 Michelson Drive, Ste 200
Irvine, CA 92612
E-mail: smatsler@coxcastle.com

If to Fee Owners:

Greenville Ranch, LLC
8856 Sutter Circle, Unit 526b
Huntington Beach, CA 92646
Attn: Alice Z. Callens

And

BSG West Bristol, LLC
c/o Eide Bailly LLP
1505 Madrona St. N., Ste 800
Twin Falls, ID 83301
Attn: Jeff Spackman

And

MCG Bristol West, LLC
6618 Avenida Bizarro
La Jolla, CA 92037
Attn: David Cortney

2.9.3. Either party may, by written notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

2.9.4. Consistent with the Joinder attached hereto, Fee Owners shall receive notice of any default and have the right, but not obligation, to cure any default as permitted in Sections 9.1.2 and 9.1.3 below. Fee Owners and their lenders shall also be entitled to receive a Certificate of Compliance upon request as provided in Section 10.20.

3. DEVELOPMENT OF THE PROPERTY.

3.1. Rights to Develop. Subject to the terms of this Agreement, including the Reservation of Rights in Section 3.3 below, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, this Agreement, and the Project Approvals, and the Development Plan for the duration of the Term. Owner may proceed with demolition permits prior to pulling building permits provided Owner has provided proof of financing for that portion of the Project that demolition permits are being sought for. From the commencement of demolition until issuance of the Certificate of Occupancy, Owner shall ensure that the Property is secured and that all construction walls are maintained in a good condition and repair with no graffiti.

3.1.1. Except as expressly provided otherwise herein, the Project shall remain subject to all Existing Land Use Regulations and Project Approvals for the Term. Except as otherwise provided in this Agreement, and notwithstanding the authority of the City to further revise the Land Use Regulations pursuant to Government Code Section 65866, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Existing Land Use Regulations and Project Approvals.

3.1.2. In accordance with Government Code Section 66452.6(a), any subdivision map approved which relates to all or a portion of the Property shall be extended for the greater of (i) the Term of this Agreement or (ii) expiration of the tentative map pursuant to Section 66452.6.

3.1.3. Owner shall comply with all mitigation measures required to be undertaken pursuant to any document prepared in compliance with the California Environmental Quality Act with respect to the Project.

3.1.4. Notwithstanding Section 3.1.1 above, Owner acknowledges and agrees that the Project requires additional Project Approvals (the Future Project Approvals identified in Section 1.1.19). These Future Project Approvals shall be consistent with the Existing Project Approvals and this Agreement as to the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication

of land for public purposes; however the Future Project Approvals may include additional conditions that are lawful and appropriate to the type of Project Approval.

3.2. Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservation of Rights in Section 3.3 below, the rules, regulations and official policies governing, *inter alia*, permitted uses and Development of the Property, the density and intensity of use and of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property, shall be the Existing Land Use Regulations and Project Approvals. In connection with any subsequent Project Approvals and except as specifically provided otherwise herein, City may exercise its discretion as set forth in Section 3.3.2.

3.2.1. City shall reasonably strive to complete:

- (a) its initial review of individual development projects within 30 days after the application is deemed complete,
- (b) any second plan review within 15 days after submission, and
- (c) any third plan review within 10 days after submission.

3.2.2. Notwithstanding the foregoing, the City does not guarantee that the timelines above will be met, and failure to meet these timelines does not constitute a default.

3.2.3. To help ensure expedited review of its development approvals, Owner may elect to pay for City to use a contract planner. City agrees to retain a contract planner to expedite review, if Owner so elects.

3.3. Reservation of Rights.

3.3.1. Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following are not Existing Land Use Regulations, but shall apply to the development of the Property as they are in effect at the time of application for Development Project Review Approvals, provided such regulations and/or fees (as applicable) are not designed in a manner such that they are applicable only, to the Project and/or Property:

- (a) Processing fees and charges of every kind and nature imposed by City to cover the actual costs to City of processing applications for Project Approvals or for monitoring compliance with any Project Approvals granted or issued.
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided that such procedural regulations do not conflict with the Project Approvals.
- (c) Regulations, policies, and rules governing engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all uniform codes adopted by the City and any local amendments to those codes adopted by the City, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Grading Ordinance.

(d) Regulations that are in material conflict with this Agreement but that are reasonably necessary to protect the residents of the Project or the immediate community from a condition perilous to their health or safety. To the maximum extent possible, any such regulations shall be applied and construed so as to provide Owner with the rights and assurances provided under this Agreement.

(e) Regulations that are not in material conflict with this Agreement or the Development Plan. For avoidance of doubt, any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to materially conflict with the Development Plan and shall therefore not be applicable to the development of the Property.

(f) Regulations that are in material conflict with the Development Plan; provided Owner has given written consent to the application of such regulations to Development of the Property.

(g) Regulations that impose, levy, alter or amend fees, or charges relating to consumers or end users, including, without limitation, trash can placement, service charges and limitations on vehicle parking.

(h) Regulations of other public agencies, including Development Impact Fees adopted or imposed by such other public agencies, although collected by City.

3.3.2. Subsequent Project Approvals. This Agreement shall not prevent City from exercising its rights under Government Code Section 65866 when acting on subsequent Project Approvals provided that such City actions do not materially conflict with this Agreement, the Development Plan, the Existing Land Use Regulations, and/or the Project Approvals.

3.3.3. Modification or Suspension by State or Federal Law. In the event that State, County or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary 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 and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.3.4. Intent. The parties acknowledge and agree that City is restricted in its authority to limit certain aspects of its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to City all of its police power that cannot be or are not expressly so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority that cannot be or is not by this Agreement's express terms so restricted.

3.4. Regulation by Other Public Agencies. It is acknowledged by the parties that 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 Agreement does not limit the authority of such other public agencies.

3.5. Timing of Development. 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 in that

case 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 specific intent of the parties to provide for the timing of the Project in this Agreement. To do so, the parties acknowledge and provide that Owner shall have the right, but not the obligation, to complete the Project in such order, at such rate, at such times, and in as many development phases and sub-phases as Owner deems appropriate in its sole subjective business judgment, except for the following:

3.5.1. No building permits for residential units shall be issued in excess of 1,875 residential units unless and until Owner commences construction activities for at least 175,000 square feet of commercial development. Owner may construct commercial square footage beyond 175,000 square feet if and when such additional commercial development is supported by market conditions, as determined by Owner in its sole discretion. Owner understands that commercial development is a priority to the City and agrees to exercise its discretion in good faith.

3.5.2. No less than 35,000 square feet of commercial development in Phase 1 or Phase 2 (as shown on Specific Plan Figure 6-2) shall consist of a grocer.

3.6. Moratoria. Except as specifically set forth in this section, City agrees that to the extent permitted by law, no moratorium or other similar limitation (whether relating to the rate, timing, or sequencing of the development of the Project or any part thereof and whether or not enacted by local initiative or otherwise) affecting subdivision maps, grading or building permits, occupancy certificates, or other entitlements approved, issued, or granted within the City, after the Effective Date of this Agreement, shall apply to the Project. Owner acknowledges and agrees that the provisions hereof shall not preclude the application to the Project of a moratorium or other similar limitation (of the type described in the preceding sentence) enacted in order to protect an imminent threat to the public health or safety.

3.7. Development Agreement/Project Approvals. In the event of any inconsistency between any Existing Land Use Regulation and a Project Approval, the provisions of the Project Approval shall control. In the event of any inconsistency between any Existing Land Use Regulation or Project Approval and this Agreement, the provisions of this Agreement shall control.

4. PUBLIC AND COMMUNITY SAFETY BENEFITS.

4.1. Public Benefits. The Project is expected to bring significant fiscal benefits to the City. The Project will also serve to implement the City's General Plan vision for the Property, which has long been designated as a District Center where intense mixed-use development is encouraged. In addition, Owner has committed by this Agreement to contribute the public and community safety benefits, as provided below.

4.2. Community Benefits.

4.2.1. Santa Ana Police Department Substation: Prior to or concurrent with the construction completion of the Project's Phase 1, as contemplated by the Development Approvals), Owner shall provide City, upon the City's written request, with exclusive use of a 500 square foot space and 3 dedicated parking stalls within the Property for use by the Santa Ana Police Department as an administrative substation. This substation space and parking stalls will be owned by Owner but improved (tenant improvements), operated and maintained by the Santa Ana Police Department. The final location of the substation and its parking stalls are

envisioned to be located in one of the buildings along Plaza Drive or MacArthur in Phase 3 of the Project, as contemplated by the Development Approvals, but may be temporarily located anywhere on the Property, including potentially within existing commercial center. The substation and its parking stalls may be relocated within the Property subject to the mutual agreement of the parties. For the Term of the Agreement, Owner shall maintain private onsite security to monitor all areas of the Property.

4.2.2. Project Community Benefit Package: The Project will provide significant economic benefit to the City through additional jobs created by the construction and operation of the Project, property and sales tax revenue to the City, infrastructure improvements, neighborhood revitalization, and general economic benefit. In addition, Owner has agreed to provide the City with a Twenty-Two Million dollar (\$22,000,000) payment (“Community Benefit Payment”), which Community Benefit Payment shall be allocated at the City’s sole discretion. The Community Benefit Payment shall be paid to City by Owner pursuant to the following schedule: (1) Eight Million dollars (\$8,000,000) prior to or concurrent with the issuance of the first demolition permit in furtherance of the Project’s first Specific Plan Phase (“Community Benefit Payment No. 1”); (2) Six Million dollars (\$6,000,000) prior to the issuance of the first building permit in furtherance of the Project’s second Specific Plan Phase (“Community Benefit Payment No. 2”); and (3) Eight Million dollars (\$8,000,000) prior to the issuance of the first building permit in furtherance of any component of the Project’s third Specific Plan Phase except for building permits in furtherance of the Project Open Space (“Community Benefit Payment No. 3”). If the City has not received Community Benefit Payment No. 2 on or before the date that is 36 months and 1 day from the date of the Community Benefit Payment No. 1 payment, then Community Benefit Payment No. 2 shall accrue simple interest at a rate of five percent (5%) per annum until such time as it is paid to the City. Similarly, if the City has not received Community Benefit Payment No. 3 on or before the date that is 36 months and 1 day from the date of the Community Benefit Payment No. 2 payment, then Community Benefit Payment No. 3 shall accrue simple interest at a rate of five percent (5%) per annum until such time as it is paid to the City. Developer may commence construction of the Specific Plan Phases in any order. Notwithstanding the Specific Plan Phase order, Community Benefit Payment No. 1 shall be paid prior to or concurrent with the issuance of the first demolition permit in furtherance of any Specific Plan Phase; Community Benefit Payment No. 2 shall be paid prior to or concurrent with the issuance of the first building permit in furtherance of a different Specific Plan Phase; and Community Benefit Payment No. 3 shall be paid prior to or concurrent with the issuance of the first building permit in furtherance of the final Specific Plan Phase.

4.2.3. Business Retention and Local Vendors. Owner assumes the risk and shall be solely liable for any and all relocation benefits that are payable to any existing tenants in accordance with Government Code Sections 7260 et. seq. (See also *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 101 Cal.App.4th 1317). Owner shall defend and indemnify the City against any and all relocation claims.

4.2.4. Hotel Economic Benefits. The hotel(s) shall be operated under a recognized hotel flag or by a boutique hotel operator with a demonstrated track record of success operating similar hotels. Owner shall employ commercially reasonable efforts to secure a four-star hotel or above out of a five-star rating system as widely recognized and commonly used in the hospitality industry.

4.2.5. Project Open Space. In accordance with the Specific Plan, Owner shall construct, own, and maintain the Project Open Space.

(a) Owner shall design the Project Open Space to promote biodiversity, extend thermal comfort, and to promote biophilic design, health, and wellness.

(b) Owner shall provide a total minimum of 4 free on-site events per year for the general public (e.g., concerts or farmers markets) including programming on sustainability and wellness, subject to Force Majeure events, as follows: (a) a minimum of two (2) free events per year shall be provided commencing one year after the completion of the southern Mixed-Use/Village Core district as set forth in the Specific Plan; and (b) a minimum of two (2) free events per year shall be provided commencing one year after the completion of the northern Mixed-use/Residential district as set forth in the Specific Plan. Owner's obligation under this Section shall terminate after 25 years after the commencement of the first free on-site event or upon termination of this Agreement whichever occurs later.

(c) Owner shall record one or more open space easements against the Property for the benefit of the City concurrent with the recordation of the subdivision maps that implement a given Project Phase or Development phase, as contemplated by the Project Approvals.

(d) City shall provide Owner a credit against its park and open space fee obligations (e.g., Park Acquisition and Development Fee) for the hard and soft cost of all land, improvements, operation, and maintenance associated with the Project Open Space. In the event the Project Open Space is less than 13.1 acres, Owner must satisfy any required park and recreation fees or other obligations (including those specified in Chapter 35, Article IV of the Santa Ana Municipal Code) for the amount of the acreage shortfall as calculated by the City.

4.2.6. Construction Standards.

(a) Leadership in Energy and Environmental Design (LEED). The Project shall be constructed to a minimum LEED Silver standard, as established by the U.S. Green Building Council.

(b) Water Conservation. The Project shall include high-efficiency irrigation, native drought-tolerant plantings, low-flow plumbing fixtures, and Energy Star equipment and appliances.

(c) Electric Vehicle ("EV") Parking. No less than 5% of all structured parking stalls in the Project shall be equipped with EV chargers. No less than 10% of all parking stalls located within the parking structures shall be EV ready with sufficient electrical infrastructure to enable the future installation of EV conduit and chargers.

(d) Signage Program. Owner shall implement a signage program to promote mass transit, provide ride-share infrastructure & bike/e-mobility facilities.

(e) Electrical Appliances: All individual residential units within the Project shall utilize electric or induction stoves, ovens, and clothing dryers. This obligation shall not apply to commercial, common area, hotel, or other non-residential uses.

(f) Photovoltaic Panels: The Project shall incorporate photovoltaic panels on all residential components of the Project

(g) Ecology & Wellness. Owner shall exercise commercially reasonable efforts to implement a single use plastic or non-biodegradable plastic use reduction program with retail tenants where feasible, with the exception of the grocer.

(h) Carbon Sequestering. Owner shall exercise commercially reasonable efforts to incorporate carbon sequestering vegetation in the landscaping plans

(i) Fitwell. Owner shall exercise commercially reasonable efforts to obtain Fitwell certification for the residential components of the Project.

(j) Bike Lockers. With issuance of each building permit, Owner shall provide for and maintain and secure bike lockers or bike storage rooms on the Property. At least half of the lockers shall be made available for free to Project residents and employees.

4.2.7. Orange County Flood Control District Parcel: The Orange County Flood Control District owns an approximately 0.2 acre parcel (APN 412-131-27) adjacent to, and immediately northeast of, the Property (“OCFCD Parcel”). Owner shall make a reasonable and good faith effort to work cooperatively with City and the Orange County Flood Control District to improve and maintain the OCFCD Parcel.

5. HOUSING OPPORTUNITY ORDINANCE COMPLIANCE.

5.1. Owner Exemption. During the Term of this Agreement, as such Term may be extended, Consistent with Santa Ana Municipal Code Section 41-1903(a), Owner is exempt from Santa Ana Municipal Code Article XVIII.I inclusionary housing requirements (i.e., the Affordable Housing and Opportunity Ordinance) because Owner is entering into this Agreement. In lieu of compliance with Article XVIII.I, Owner commits to the In-Lieu Fee as set forth in Section 5.1.1, below, which may be paid at the time of building permit issuance for each market rate residential unit contemplated by a given building permit or in the aggregate, at Owner’s sole discretion. In-Lieu fees paid in excess of the requirements for a particular building permit may be accrued and used by Owner to satisfy future in lieu fee requirements. Upon expiration or termination of this Agreement, Owner shall be subject to Santa Ana Municipal Code Article XVIII.I for any unit that has not received a Certificate of Occupancy.

5.1.1. In-Lieu Fee. Upon timely payment of the Twenty-Two Million dollar (\$22,000,000) Community Benefit Payment as provided in Section 4.2.2, Owner shall make an in-lieu fee payment at the time of building permit issuance for each market rate residential unit contemplated by the building permit equal to five dollars (\$5.00) per habitable square foot of each market rate residential unit (excluding Senior Assisted Living Community units, identified in Section 4.1.3 of the Specific Plan as Congregate Housing, Assisted Living or Memory Care units). At Owner’s sole discretion, Owner may convert any Senior Assisted Living Community units to Independent Living units (as defined in Section 4.1.3 of the Specific Plan) and/or multifamily market rate units by paying the in-lieu housing fee in accordance with this Agreement.

6. REVIEW FOR COMPLIANCE.

6.1. Periodic Review.

6.1.1. The City shall review this Agreement annually, on or before July 1, 2025, and annually thereafter until the expiration of this Agreement, in order to ascertain the compliance by Owner with the terms of this Agreement (“Annual Review”). Owner shall timely submit an Annual Monitoring Report, in a form acceptable to the City Manager on or before the first anniversary of the Effective Date and annually thereafter until the expiration of this Agreement. If the Annual Review is not submitted within thirty (30) days after written notice from the City Manager, then Owner shall be in breach of this Agreement. The failure of the City to conduct the Annual Review shall not constitute a default by Owner. The Annual Monitoring Report shall be accompanied by an “Annual Review and Administration Fee” sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. The amount of the Annual Review and Administration Fee” shall be set annually by resolution of the City Council.

6.1.2. The Annual Review shall include a progress report on the status of the implementation of the Project and the new tax revenue generated by the Project, including, but not limited to, the following:

(a) Development and construction progress of the following uses and Project components:

- (i) Site development
- (ii) Public infrastructure,
- (iii) Project design features,
- (iv) Community benefits,
- (v) Plaza,
- (vi) Hotel,
- (vii) Residential,
- (viii) Commercial,
- (ix) Office
- (x) Parking
- (xi) Philanthropic activities (education, culture, arts)

(b) Reporting for items listed in Section 6.1.2(a) shall include a table substantially similar to the following:

An example of a compliance report for site development and can be applied to other above criteria and metrics.

Reporting Period: 2025 – 1st Report Year 1 of 20 of Agreement
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Use	Approved SF/Units/Rooms	Total Completed In Period	Cumulative Total Completed	Remaining to Be Completed	Status & Look Ahead
Residential	3,750	100	200	3,550	On target with 300 to be completed in the next period
Hotel	250	250	250	0	Completed
Commercial New	350,000	150,000	150,000	200,000	150k completed for Tenant X. 20-Year lease. Negotiating with Tenant Y for a 15 year lease.

(c) Progress relative to economic projections of:

- (i) Increases in property tax,
- (ii) Property Tax In-Lieu of VLF received by the City,
- (iii) Sales tax received from the Project,
- (iv) Business tax received from the Project,
- (v) Hotel Visitors Tax (HVT)
- (vi) Utility User Tax received from the Project,

(d) Reporting for items listed in Section 6.1.2(c) shall be include a table, prepared by Owner with City's cooperation, substantially similar to the following:

Reporting Period: 2024 – _____ Year 1 of 20 of Agreement					
Revenue	Total for Period	Cumulative to date	Percentage increase over 2018 Base Year	Status & Look Ahead	
Property Tax					
Property Tax In-Lieu of VLF					
Sales Tax					
TOT (HVT)					
Business Tax Franchise Tax					
UUT					

6.2. Special Review. The City Council may order a special review of compliance with this Agreement at any time commencing one year following the issuance of the Project's first building permit, but not more than once during any 12-month period. The City Manager, or his or her designee, shall conduct such special reviews.

6.3. Review Procedure.

6.3.1. During either an Annual Review or a special review, Owner shall be required to demonstrate good-faith compliance with the terms of this Agreement. The burden of proof on this issue shall be on Owner.

6.3.2. Upon completion of an Annual Review or a special review, the City Manager, or the City Manager's designee, shall submit a receive and file report to the Planning Commission if he or she finds that Owner is in good-faith compliance with the terms of this Agreement. If the City Manager, or the City Manager's designee, finds on the basis of reasonable evidence that Owner is not in good-faith compliance with the terms of this Agreement, he or she shall set the matter for hearing before the Planning Commission and shall submit a report setting forth said evidence concerning compliance by Owner with the terms of this Agreement and his or her recommended finding on that issue.

6.3.3. If the Planning Commission finds on the basis of substantial evidence that Owner is in good-faith compliance with the terms of this Agreement, it shall confirm same and formally conclude the review by resolution. If the Planning Commission finds and determines on the basis of substantial evidence that Owner has not complied in good faith with the terms and conditions of this Agreement:

(a) The Planning Commission shall provide written notice to Owner of such findings setting forth the nature of the problem and the actions, if any, required of Owner to cure such problem.

(b) If the problem can be cured and Owner fails to take such actions and cure such problem within sixty (60) days after of the effective date of the Planning Commission's notice or, in the event that such problem cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such problem within such sixty (60) day period and to diligently proceed to complete such actions and cure such problem, then the Planning Commission may recommend to the City Council modification or termination of this Agreement.

(c) Owner may appeal a Planning Commission determination pursuant to this Section 6.3.3 pursuant to City's rules for consideration of appeals in zoning matters then in effect. If a Planning Commission determination is appealed, any cure ordered by the Planning Commission shall be tolled until a decision is reached by the City Council on the appeal. Notice of default as provided under Section 7 of this Agreement shall be given to such Owner prior to or concurrent with proceedings under Section 6.4 and Section 6.5.

6.4. Proceedings Upon Modification or Termination. If, upon a finding under Section 6.3, City determines to proceed with modification or termination of this Agreement, City shall give

written notice to Owner of its intention so to do. The notice shall be given at least ten (10) calendar days prior to the scheduled hearing and shall contain:

6.4.1. The time and place of the hearing;

6.4.2. A statement as to whether or not City proposes to terminate or to modify this Agreement; and,

6.4.3. Such other information that the City considers necessary to inform Owner of the nature of the proceeding.

6.5. Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, Owner shall be given an opportunity to be heard. Owner shall be required to demonstrate good-faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on Owner. If the City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of this Agreement, the City Council may terminate this Agreement or, in lieu of termination and with the consent of Owner, modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final.

6.6. Certificate of Agreement Compliance.

6.6.1. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the City Manager and City Council that: (1) this Agreement remains in effect; and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder.

6.6.2. Whether or not the Certificate is relied upon by assignees or other transferees or Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the City Manager or City Council.

6.7. Conditions of Discretionary Approvals. The requirements imposed as conditions of any discretionary approval received through the City's existing regulatory process shall be governed by the terms of those approvals, and in no event shall such conditions be affected by the termination, cancellation, rescission, revocation, or default or expiration of this Development Agreement (although such conditions must comply with the Applicable Rules).

7. DEFAULT AND REMEDIES.

7.1. Remedies in General. It is acknowledged by the parties that City and Owner would not have entered into this Agreement if either party were to be liable in damages arising out of a breach or default under this Agreement and, therefore, each of the parties hereto hereby acknowledge and agree that the sole remedies that either party hereto may pursue and enforce against the other arising out of a default or breach under this Agreement by the other party (and

the expiration of all applicable notice and cure periods) shall be an action for specific performance or a termination of this Agreement by such non-defaulting party's obligations under this Agreement (subject to the terms and provisions of Section 6.3.3), and each party hereto expressly waives any other remedy they might otherwise be entitled to pursue, at law or in equity, against the other, and each party hereto expressly waives any right to sue the other for damages or claim any damages.

7.2. Release.

7.2.1. Except for specific performance, Owner, for itself, its successors and assignees, hereby releases City, its officers, agents and employees, from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, because it entered into this Agreement or because of the terms of this Agreement. Owner hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY..”

By initialing below, Owner hereby waives the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

Owner's Initials

7.2.2. Except for specific performance, City, for itself, its successors and assignees, hereby releases Owner, its officers, agents and employees, from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, because it entered into this Agreement or because of the terms of this Agreement. City hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY..”

By initialing below, City hereby waives the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

City's Initials

7.3. Termination or Modification of Agreement for Default of an Owner. City may terminate or modify this Agreement for any failure of Owner to perform any material duty or obligation of

Owner under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as “default”); provided, however, City may terminate or modify this Agreement pursuant to this Section 7.4 only after providing written notice to Owner of default setting forth the nature of the default and the actions, if any, required by Owner to cure such default and, where the default can be cured Owner has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

7.3.1. No Cross Default. Parties agree and acknowledges that, notwithstanding anything stated to the contrary in this Agreement: (a) the failure of RCR to comply with or satisfy any of RCR’s obligations under this Agreement shall not limit or impair a transferee’s rights and benefits under this Agreement with respect to its Assigned Rights (as they apply to the Project Phase owned by such transferee) under Section 2.5.1 of this Agreement and (b) the failure of any transferee to satisfy such transferee’s Assumed Obligations as provided for under Section 2.5.1 of this Agreement shall not, as to the Project Phase to which those Assumed Obligations apply, limit or impair any of the Assigned Rights of any other transferee as to the Project Phase owned by such other transferee.

7.4. Voluntary Termination of Agreement by RCR. In the event RCR determines, in its sole discretion, prior to issuance of the first demolition permit implementing the first Specific Plan Phase, that it no longer wishes to proceed with the Project pursuant to the terms of this Agreement, RCR may terminate this Agreement by providing the City with 30 days written notice. Notwithstanding this or other provisions herein, RCR’s indemnity and defense obligations shall survive such termination for the later of twelve (12) months or expiration of the statute of limitations on any and all potential causes of action against the City as set forth in Section 8 of this Agreement.

7.5. Notice and Cure Rights. Notwithstanding anything stated to the contrary in this Agreement, City shall have no right to terminate any of the rights of any Owner under this Agreement unless such Owner has failed to cure any default under this Agreement giving rise to any such termination right within the cure periods expressly provided for above in this Section 7.

8. LITIGATION

8.1. Third-Party Litigation Concerning Agreement. Owner shall defend, at its expense, including attorneys’ fees, indemnify, and hold harmless City, its agents, officers and employees from any claim, action or proceeding against City, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement, any document prepared for the Project in compliance with the California Environmental Quality Act, or the approval of any permit or entitlement granted pursuant to this Agreement for the Project. City shall promptly notify Owner of any claim, action, proceeding or determination included within this Section 8.1 no later than fourteen (14) business days and City’s receipt of service of process and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action, proceeding or determination as required by this Section, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless City as to that claim, action, proceeding, or determination. City may in its discretion participate in the defense.

8.2. Environmental Assurances. Owner shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of

Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including attorneys' fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense.

8.3. Reservation of Rights. With respect to Section 8.1 and Section 8.2 herein, City reserves, the right to either (1) approve the attorney(s) that the indemnifying party selects, hires or otherwise engages to defend the indemnified party hereunder, which approval shall not be unreasonably withheld, conditioned, or delayed; or (2) conduct its own defense; provided, however, that the indemnifying party shall reimburse the indemnified party forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

8.4. Challenge to Existing Land Use Approvals. By accepting the benefits of this Agreement, Owner, on behalf of itself and its successors in interest, hereby expressly agrees and covenants not to sue or otherwise challenge any land use approval affecting the Property and in effect as of the Effective Date. Such agreement and covenant includes, without limitation, the covenant against any direct suit by Owner or its successor in interest, or any participation, encouragement or involvement whatsoever that is adverse to City by Owner or its successor in interest, other than as part of required response to lawful orders of a court or other body of competent jurisdiction. Owner hereby expressly waives, on behalf of itself and its successors in interest, any claim or challenge to any land use approval affecting the Property and in effect as of the Effective Date.

8.5. Survival. The provisions of Sections 8.1 and 8.2 shall survive the termination of this Agreement.

9. MORTGAGEE PROTECTION.

9.1. The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner'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. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. In furtherance of the foregoing, and notwithstanding anything stated to the contrary in this Agreement, any Mortgagee of the Property shall be entitled to the following rights and privileges:

9.1.1. Default under Agreement Does Not Impair Lien of any Mortgage. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property, the Leasehold Estate, or any Sub Leasehold Estate made in good faith and for value, unless otherwise required by law.

9.1.2. Request for Notices of Default by Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the Property, the Leasehold Estate, or Sub Leasehold Estate, or any

part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by the applicable Owner in the performance of such Owner's obligations under this Agreement.

9.1.3. If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

9.1.4. Lender Protection Provisions.

(a) Notices to Mortgagees; Mortgagee's Right to Cure.

(i) Notices to Mortgagees. City shall send to each Mortgagee which has provided City written notice of its name and address, in the manner provided by Section 9.1 above, a true, correct and complete copy of any written notice sent to Owner or any Sub Ground Lessee, as applicable, of a default by Owner or any Sub Ground Lessee under this Agreement at the same time as and whenever any such notice of default shall be given by City to Owner or any Sub Ground Lessee, addressed to such Mortgagee at the address last furnished to City by such Mortgagee. Owner and each Sub Ground Lessee, as applicable, irrevocably directs that City accept, and City agrees to accept, performance and compliance by any such Mortgagee of and with any term, covenant, agreement, provision, condition or limitation on Owner's, or any Sub Ground Lessee's, part to be kept, observed or performed hereunder with the same force and effect as though kept, observed or performed by Owner and/or any such Sub Ground Lessee, as applicable, provided that such performance and/or compliance is made in accordance with the provisions of Section 10.1.4 below.

(ii) Mortgagee's Right to Cure. Notwithstanding anything stated to the contrary in this Agreement, this Agreement shall not be terminated as to any Project Phase because of a default or breach hereunder on the part of Owner or any Sub Ground Lessee until and unless:

(1) written notice of any such default or breach has been delivered to Mortgagee in accordance with the provisions of Section 10.3 above,

(2) with respect to a default or breach that is curable solely by the payment of money, Mortgagee, Owner and any applicable Sub Ground Lessee have failed to cure such default or breach within thirty (30) days following the expiration of any of Owner's and/or any Sub Ground Lessee's, as applicable, notice and cure periods set forth herein, and

(3) with respect to a default or breach that is not curable solely by the payment of money, Mortgagee, Owner and/or any applicable Sub Ground Lessee have failed to cure such default or breach within ninety (90) days following the expiration of any of Owner's and/or any applicable Sub Ground Lessee's notice and cure periods set forth herein or, if such default or breach is curable but cannot be cured within such time period, (i) Mortgagee has failed to notify City within such ninety (90) day time period that Mortgagee intends to cure such default or breach, (ii) Mortgagee fails to commence to cure such default or breach within such ninety (90) day period, or (iii) Mortgagee fails to diligently prosecute such cure to completion. It is expressly understood and agreed that no Mortgagee shall have any obligation

hereunder to cure or complete any cure of any breach or default by Owner or any applicable Sub Ground Lessee hereunder.

(b) Permitted Transfers to Mortgagee.

(i) Notwithstanding anything stated to the contrary in this Agreement, the following transfers shall be permitted and shall not require the approval or consent of City:

(1) A transfer of the Owner's or any Sub Ground Lessee's Leasehold Estate or Sub Leasehold Estate, as applicable (and the concurrent transfer of the Owner's or any Sub Ground Lessee's rights under this Agreement with respect to the Project Phase that is the subject of the Leasehold Estate or Sub Leasehold Estate provided the conditions in Section 2.5.1 hereof have been complied with as to such Project Phase), at a foreclosure sale under a Mortgage, whether pursuant to the power of sale contained therein or a judicial foreclosure decree, or by an assignment in lieu of foreclosure, or

(2) Any subsequent transfer by a Mortgagee (or its nominee or designee if the Mortgagee, or such nominee or designee, is the purchaser at such foreclosure sale or under such assignment in lieu of foreclosure) with respect to the Leasehold Estate or any Sub Leasehold Estate, and the concurrent transfer of the Owner's or any Sub Ground Lessee's rights under this Agreement with respect to the Project Phase that is the subject of the Leasehold Estate or Sub Leasehold Estate so transferred, provided that the conditions in Section 2.5.1 hereof have been complied with as to such Project Phase.

(ii) Any transferee arising from any transfer permitted above shall be liable to perform the obligations of Owner or any Sub Ground Lessee, as applicable, under this Agreement only so long as such transferee holds title to the Leasehold Estate or Sub Leasehold Estate, provided that upon any such conveyance of title, such transferee's transferee expressly assumes and agrees to perform all of the obligations of this Agreement first arising after the date of such conveyance to the extent applicable to the Project Phase to which such Leasehold Estate or applicable Sub Leasehold Estate applies.

(iii) Following the transfer, if any, described in Section 10.1.3(b)(i) above, all non-curable defaults existing under this Agreement prior to such transfer shall be deemed waived without further notice or action of any party.

(c) Rights of Mezzanine Lender. Any lender that makes a loan to Owner or to any Sub Ground Lessee, or to any entity holding an interest in Owner or any Sub Ground Lessee, direct or indirect, that is secured by a pledge of equity interests in Owner or any applicable Sub Ground Lessee, direct or indirect, shall be entitled to all of the rights and remedies under this Section 10.1.3 that are afforded to a Mortgagee under this Agreement, (i) provided that Owner or any applicable Sub Ground Lessee shall have provided to City written notice setting forth the name and address of any such lender, and (ii) except that such rights and remedies shall be subject and subordinate to the rights of any Mortgagee, and shall not impair any of the rights and remedies afforded any Mortgagee, hereunder.

9.1.5. Obligations of Mortgagee Under Agreement. Any Mortgagee who comes into possession of the Leasehold Estate, or a Sub Leasehold Estate, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Leasehold Estate or Sub Leasehold Estate as applicable, or part thereof, subject to the terms of

this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of an Owner's obligations or other affirmative covenants of an Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by an Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.5 of this Agreement.

(a) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property as applicable, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of an Owner's obligations or other affirmative covenants of an Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by an Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.5 of this Agreement.

9.1.6. Fee Owners' Right to Encumber Property. Fee Owners shall have the right to encumber the fee title in the Property by any mortgage, deed of trust or other security device securing financing for the fee title in the Property to the extent permitted pursuant to the terms of (and subject to all the terms and conditions set forth in) the Ground Lease, and nothing in this Agreement shall impair such right. Any Mortgagee of the fee title in the Property shall have all the benefits of a Mortgagee provided in this Agreement, including the right to receive notice of default and the right, but not obligation, to cure any default as permitted hereunder. Notwithstanding anything to the contrary in this Section 9.1, a Mortgagee of the fee title shall have no obligations under this Agreement except that upon any conveyance of fee title to such Mortgagee, the Mortgagee shall assume the express obligations of the Fee Owners under this Agreement.

10. MISCELLANEOUS PROVISIONS.

10.1. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Orange County Recorder by the Clerk of the City Council against the Property within ten (10) days following Owner's receipt of the fully-executed, recordable Agreement from the City. If the parties to this Agreement or their successors in interest amend or cancel this Agreement, or if the City terminates or modifies this Agreement as provided herein for failure of the Owner to comply in good faith with the terms and conditions of this Agreement, the City Clerk shall cause notice of such action recorded with the Orange County Recorder, and in connection with any termination of this Agreement, in such form or by such recordable instrument, that will allow a reputable title company to remove the Agreement as an exception to title of the Property (a "Termination Release").

10.2. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall

be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

10.3. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payment of the Development Impact Fees set forth therein, are essential elements of this Agreement and City would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

10.4. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California, with venue in Orange County. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

10.5. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

10.6. Singular and Plural. As used herein, the singular of any word includes the plural.

10.7. Joint and Several Obligations. If at any time during the Term of this Agreement the Property is owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot that has been finally subdivided and sold to such owner as a member of the general public shall have any obligation under this Agreement except as expressly provided for herein.

10.8. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

10.9. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

10.10. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns, and no other person shall have any right of action based upon any provision of this Agreement.

10.11. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by: (1) strikes, lockouts or labor disputes; (2) inability to obtain labor or materials or reasonable substitutes therefor (including as a result of freight embargos); (3) inclement weather which delays or precludes construction; (4) acts of God, including but not limited to earthquakes, or the public enemy or civil commotion; (5) condemnation, (6) fire or other casualty; (7) shortage of fuel, electricity or

natural gas; (8) action or nonaction of public utilities or of local, state or federal governments, affecting the work, including, but not limited to, any delays in the permitting process as a result of the action or inaction of such governmental authorities including government shutdown for a period of time of one (1) week or more; (9) criminal acts or acts of terrorism; or (10) pandemic or government imposed quarantine (11) other conditions similar to those enumerated above which are beyond the reasonable anticipation or control of such Party, or other causes beyond the Party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event , provided that the Term of this Agreement shall not be extended pursuant to this section for more than five (5) years.

10.12. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

10.13. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

10.14. Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

10.15. Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

10.16. Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

10.17. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

10.18. Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

10.19. Agent for Service of Process. In the event any Owner is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, Owner shall file with the City Manager, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

10.20. Certificate of Compliance. At any time during the term of this Agreement, any lender or either Party may request either Party to this Agreement to confirm that (1) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications); (2) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults; and (3) any other information reasonably requested. Each Party hereby agrees to provide a Certificate to such lender or other Party within thirty (30) days of receipt of the written request therefor.

10.21. Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind Owner to the performance of its obligations hereunder.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement on the last day and year set forth below.

**OWNER
RCR BRISTOL, LLC,**

a Delaware limited liability company

By: _____

Name:

Title:

Dated: _____

CITY

City OF SANTA ANA, a California municipal corporation

By: _____

Mayor

Dated: _____

ATTEST:

By: _____

City Clerk

Dated: _____

**APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP**

By: _____

City Attorney

Dated: _____

JOINDER

Unless expressly defined herein, all capitalized terms used herein shall have the meanings ascribed to such terms in the Development Agreement (the "Development Agreement") to which this Joinder is attached.

The undersigned Fee Owners are hereby entering into this Joinder for the sole purpose of subjecting their fee title to the Property to the burden and effect of the Development Agreement and, upon the recording of the Development Agreement in the Official Records of Orange County, fee title to the Property shall be encumbered by all of the terms and conditions of the Development Agreement; provided, however, notwithstanding the foregoing, the City acknowledges and agrees that unless the Fee Owners hereafter execute an Assignment and Assumption Agreement in a form approved by Fee Owners and the City in the manner described in Section 2.5.1 of the Development Agreement (the "Approved Form"), the Fee Owners (including members, partners, officers, agents or representatives of Fee Owners) shall have no liability, rights or obligations under the Development Agreement except for such rights or obligations expressly set forth for the benefit or burden of Fee Owners under the Development Agreement. Unless and until an Assignment and Assumption Agreement, in the Approved Form, is executed by the Fee Owners and City, City shall have no recourse against the Fee Owners or the fee title to the Property. Fee Owners shall receive notice of default and have the right, but not obligation, to cure any default as permitted in Sections 9.1.2 and 9.1.3 of the Development Agreement. Fee Owners and their lenders shall be entitled to receive a Certificate of Compliance upon request as provided in Section 10.20 of the Development Agreement. In addition, in the event that the Ground Lease is terminated, Fee Owners shall thereafter have the right to terminate the Development Agreement upon written notice to City, in which event the City shall cause to record a Termination Release with the Orange County Recorder. For avoidance of doubt, no modification of the Development Agreement pursuant to Section 2.7 of the Development Agreement shall limit or impair the rights of Fee Owners under this Joinder without the consent of Fee Owners.

Greenville Ranch, LLC,
a California limited liability company

By: _____
Alice Z. Callens, President

By: _____
Louise A. Callens, Secretary/Treasurer

Executed as of _____, 2024

MCG Bristol West, LLC,
a California limited liability company

By: _____
David W. Cortney, Manager

Executed as of _____, 2024

BSG West Bristol, LLC,
a California limited liability company

By: _____
Robert Bradley Gisler, Manager

By: _____
Susan E. Gisler, Manager

Executed as of _____, 2024

EXHIBIT "A"
(Legal Description of the Property)

LEGAL DESCRIPTION:

PARCEL 1:

PARCELS 1 AND 2, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 40, PAGES 5 AND 6 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, CALIFORNIA.

EXCEPTING FROM SAID PARCEL 2 THAT PORTION THEREOF CONVEYED TO THE CITY OF SANTA ANA BY DEED RECORDED MAY 17, 1972 IN BOOK 10130, PAGE 417, OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERLY TERMINUS OF THAT CERTAIN COURSE IN THE NORTHERLY BOUNDARY OF PARCEL 2 OF SAID MAP THAT READS NORTH 89° 03' 58" WEST 74.47 FEET; THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY NORTH 86° 12' 27" WEST 75.11 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 30.00 FEET, A RADIAL AT SAID POINT BEARS NORTH 39° 01' 25" WEST; THENCE CONTINUING ALONG SAID NORTHERLY BOUNDARY SOUTHWESTERLY 5.30 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 10° 07' 33" TO A POINT ON A LINE PARALLEL WITH AND 59.00 FEET SOUTHERLY FROM THE CENTERLINE OF MAC ARTHUR BOULEVARD AS SHOWN ON SAID MAP, A RADIAL AT SAID POINT BEARS NORTH 49° 08' 58" WEST; THENCE LEAVING SAID CURVE ALONG SAID PARALLEL LINE SOUTH 89° 03' 58" EAST A DISTANCE OF 78.76 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PARCELS 1, 2, 3 AND 4 IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 79, PAGES 19 AND 20 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "B"
(Map of the Property)

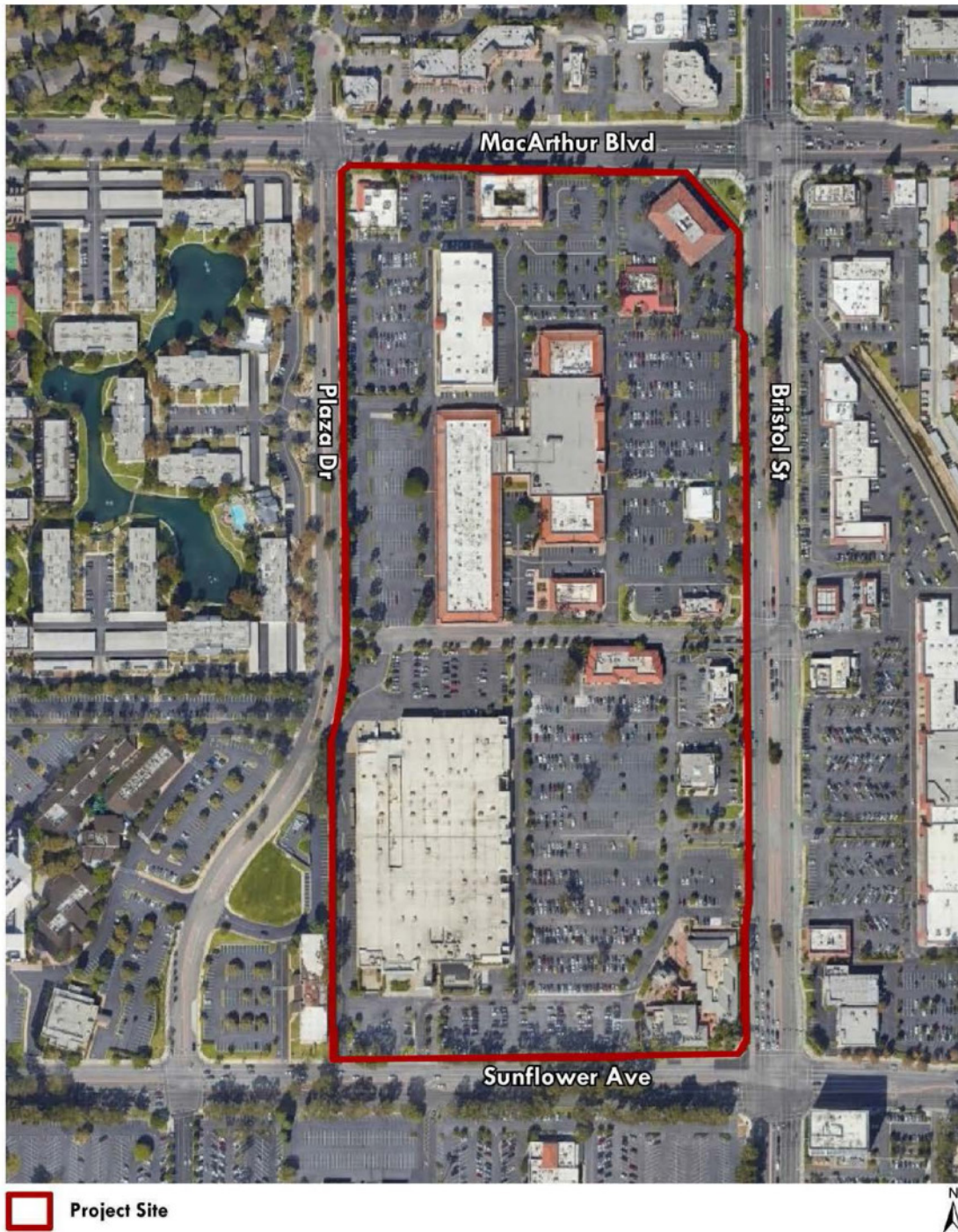


EXHIBIT “C”

Development Plan and list of Project Approvals

Development Plans and entitlement applications as presented in the City Staff Report Dated September 17, 2024 are incorporated herein by reference. Project Approvals include, but may not be limited to the following entitlements:

1. The Final Supplemental Environmental Impact Report entitled “Related Bristol Specific Plan Final Environmental Impact Report” (State Clearinghouse House No. 2020029087 and City of Santa Ana Development Project No. 2022-31 (“Project FEIR”), which tiers off the GPU FEIR (SCH# 2020029087) that was certified by the City on April 19, 2022.
2. The “Related Bristol” Specific Plan, dated July 2024, adopted by the City Council on [REDACTED], 2024, by way of Ord. No. [REDACTED].
3. The Vesting Tentative Tract Map, dated July 29, 2024, approved by the City Council on September 17, 2024, by way of Resolution No. ____.
4. The Zoning Map Amendment dated [REDACTED] 2023, adopted by the City Council on [REDACTED], 2024, by way of Ord. No. [REDACTED].