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CLERK OF COUNCIL

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DATE: JUL 22 2019

RECORDED AT REQUEST OF:)

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder

AND WHEN RECORDED RETURN TO:)
City of Santa Ana)
20 Civic Center Plaza (M-30))
Santa Ana, CA 92702)
Attention: Clerk of the Council)

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Exempt from filing fees pursuant to Government Code §27383

DEVELOPMENT AGREEMENT NO. 2018-02

A DEVELOPMENT AGREEMENT BETWEEN

CITY OF SANTA ANA

and

**MAIN PLACE SHOPPINGTOWN, LLC
A DELAWARE LIMITED LIABILITY COMPANY**

DEVELOPMENT AGREEMENT NO. 2019- NN

This Development Agreement (hereinafter "Agreement") is entered into as of this ____ day of _____, 2019 by and between the City of Santa Ana, California (hereinafter "City"), and MAIN PLACE SHOPPINGTOWN, LLC, a DELAWARE limited liability company (hereinafter "Owner"):

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.
- B. This Agreement constitutes a current exercise of City's police powers to provide predictability to Owner in the development approval process by vesting the permitted uses, density, intensity of use, and timing and phasing of development consistent with the Development Plan in exchange for Owner's commitment to provide significant public benefits to City as set forth in Section 4 below.
- C. Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City.
- 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, increased transient-occupancy and sales tax revenue to the City, and general economic benefit.
- F. The provision by Owner of the public benefits allows the City to realize significant economic, recreational, open space, educational, social and public facilities benefits. The 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 California Environmental Quality Act as amended to date and as documented in the Final Environmental Impact Report entitled "Fashion Square Commercial Center Subsequent Final Environmental Impact Report" (State Clearinghouse House No. 1983021103) ("FEIR"), the 1996 Addendum to the FEIR (Environmental Review No. 96-033 and City of Santa Ana DP No. 1996-25), and the 2019 Addendum to the FEIR (Environmental Review No. 2018-72 and City of Santa Ana DP No. 2018-17) ("2019 Addendum").
- H. This Agreement and the Project are consistent with the Santa Ana General Plan and any specific plan applicable thereto.
- 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 and 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, ensure progressive installation of necessary improvements, 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;

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 are hereby acknowledged, the parties 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. "Agreement" means this Development Agreement.

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

1.1.3. "City Council" means the duly elected city council of the City of Santa Ana.

1.1.4. [INTENTIONALLY OMITTED]

1.1.5. "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; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.6. "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or development approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.7. "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 park "in lieu" fees specified in Government Code Section 66477, fees for processing applications for governmental regulatory actions or approvals, or fees collected under

development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4.

1.1.8. “Development Plan” means the plan for development of the Property as set forth in Exhibit “C.”

1.1.9. “Development Project Review Approvals” refers to the administrative review of all projects meeting the requirements of Division 3 of Article V of the Santa Ana Municipal Code.

1.1.10. “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.

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

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

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

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

1.1.15. “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 of or the entry upon public property;
- (e) the exercise of the power of eminent domain.

1.1.16. "Owner" means the persons and entities listed as Owner on page 1 of this Agreement and their successors in interest to all or any part of the Property.

1.1.17. "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.

1.1.18. "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.

1.1.19. "Net New" square footage means square footage constructed in excess of the redevelopment of the central box (i.e., the space previously occupied by Nordstrom), the construction of the Central Plaza, and the first 75,000 square feet of a large-format entertainment use and associated parking and site improvement. For purposes of clarity, in the event Owner develops a large-format entertainment use in excess of 75,000 square feet, or develops a second large-format entertainment use, all said development in excess of the first 75,000 square feet shall constitute "Net New" square footage.

1.1.20. "Project" means the development of the Property in the City that is known as the MainPlace Mall and that is more specifically described in Exhibits "A" and "B," as contemplated by the Development Plan as such Development Plan may be further defined, enhanced, or modified pursuant to the provisions of this Agreement.

1.1.21. "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, and entitlements to use 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.

1.1.22. "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.23. "Public Benefit" refers to those benefits provided to the City and the community by Owner pursuant to Section 4 below.

1.1.24. "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.

1.1.25. "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

Exhibit “C” – Development Plan

Exhibit “D” – Development Impact Fees

Exhibit “E” – Assignment and Assumption Agreement

Exhibit “F” – 2018 Base Tax Year Values

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 and this Agreement.

2.2. Ownership of Property. Owner represents and covenants that it is the Owner of the fee simple title to, or has an equitable interest in, the Property or a portion thereof.

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, 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.

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 ten (10) years thereafter (the “Initial Term”), unless this term is modified or extended pursuant to the provisions of this Agreement. Together, the Initial Term and any extension under this Agreement constitute the “Term.” The maximum term shall not exceed twenty-five (25) years if all extensions are authorized.

2.4.2. The Initial Term of this Agreement is automatically extended by five additional years for an Initial Term of 15 years if the Owner achieves the following milestones:

(a) Within the first seven (7) years of the Initial Term, the redevelopment of the central box (i.e., the space previously occupied by Nordstrom), the construction of the Central Plaza, and the construction of a large-format (i.e., minimum 75,000 net, new square feet) entertainment use and associated parking and site improvement, with certificates of occupancy having issued for at least 90 percent of floor area of such developments; and

(b) Within the first eight (8) years of the Initial Term, commencement of (1) one or more hotel developments that are included in the Development Plan. For purposes of this section, "commencement" shall include the Owner having paid all required Development Impact Fees, been issued a building permit, and performed construction activity on the site of the hotel development.

2.4.3. The City hereby conditionally grants to Owner two five-year-extension options (each an "Extension Option"), in addition to the Initial Term as it may be extended under Section 2.4.2. The Extension Options are subject to the following conditions:

(a) To exercise the first Extension Option, by the end of the tenth year of the Initial Term, Owner must demonstrate that during any year of the first ten years the total gross annual general fund revenues generated by the Project have increased by at least a factor of 2.0 over 2018 revenues generated by the Project, as set forth in Exhibit F.

(b) To exercise the second Extension Option (if the Term has been extended to 15 years under either Section 2.4.2 or subsection 2.4.3(a) above), Owner must demonstrate that the total gross annual general fund revenues generated by the Project have increased by at least a factor of 2.5 over 2018 revenues generated by the Project, as set forth in Exhibit F, during any one of the years 11 through 15.

(c) If Owner does not satisfy the prerequisites to exercising an Extension Option under subsection 2.4.3(a) or (b) above, the City may, at its sole discretion, allow Owner to exercise that Extension Option anyway if Owner does both of the following:

(i) Provides City with a plan that includes a timeline and specific milestones for moving the non-residential portion of the Project forward on a priority basis, demonstrating to the City's satisfaction that the Project will meet or exceed expectations of fiscal benefit to the City by the end of the five-year Extension Option period; and

(ii) Pays to the City a fee of \$250,000.00.

2.4.4. When the Term, including any authorized extension thereof, ends, Owner shall have no vested right under this Agreement, regardless of whether or not Owner has paid 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 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). Owner shall similarly have the right to toll commencement of the

Term 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; (2) the City Council rescinds the challenged action; or (3) the election results of the referendum are certified by the City Council.

2.5. Assignment.

2.5.1. Right to Assign. Owner shall have the right to sell, transfer or assign the Property in whole or in part (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 at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property to which such rights or interests apply.

(b) Before with any such sale, transfer or assignment:

(i) Owner shall notify City, in writing, of such sale, transfer or assignment and shall provide City with an executed agreement (“Assignment and Assumption Agreement”), in substantially the form attached hereto as Exhibit E, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties, obligations, agreements, covenants, waivers of Owner under this Agreement, including, without limitation, the covenants not to sue and waivers contained in Sections 6.2 and 7.4 hereof.

(ii) Owner shall also provide City with such information reasonably requested by City that demonstrates to City’s reasonable satisfaction such transferee or assignee has sufficient development experience and financial capability to complete the Project and perform all obligations assumed.

(c) Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by this subsection 2.5.1(b)(i), the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed.

(d) The Executive Director for the Planning and Building Agency shall have the administrative authority to determine that Owner has complied with the above conditions. Such determination shall not be unreasonably withheld, conditioned, or delayed.

2.5.2. Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring Owner shall continue to be obligated under this Agreement with respect to the transferred Property or any transferred portion thereof, unless such transferring Owner is given a

release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Owner of the following conditions:

- (a) Owner is not then in default under this Agreement.
- (b) Owner has complied with Section 2.5.1 above.
- (c) The purchaser, transferee or assignee provides City with security equivalent to any security previously provided by Owner to secure performance of its obligations hereunder.

2.5.3. Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section 2.5.

2.6. Utilities. The Project shall be connected to all utilities necessary to provide adequate water, sewer, gas, electric, and other utility service to the Project, prior to the issuance of final approval for occupancy or the certificate of occupancy for any portion of the Project.

2.7. Sale to Public and Completion of Construction. The provisions of Section 2.5.1 shall not apply to the sale or lease (for a period longer than one year) of any residential lot or unit that has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public. This Agreement shall terminate with respect to any residential lot or unit and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

2.7.1. The residential lot or unit has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public; and

2.7.2. City final approval for occupancy or the certificate of occupancy has been issued for a building on the lot, and the fees for such lot set forth in this Agreement have been paid.

2.8. Administrative Changes and Modifications.

2.8.1. 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 Existing Project Approvals, the Existing Land Use Regulations, and, once issued, any Future Project Approvals.

2.8.2. 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 the 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 under the Development Plan. 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.

2.9. Amendment or Cancellation of Agreement. Except for Substantially Conforming Changes as defined by Section 2.8.2 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.

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

2.10.1. Expiration of the stated Term of this Agreement as set forth in Section 2.4.

2.10.2. Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

2.10.3. The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement. In the event a referendum petition challenging the ordinance approving this Agreement 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, rather than submitting it to the voters. If Owner does not request that the City Council repeal the ordinance, and the City Council submits the ordinance to the voters, Owner shall deposit Fifty Thousand Dollars (\$50,000) ("Referendum Deposit") with the City. City may use the funds to pay any and all costs associated with the said referendum measure. 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 (\$5000) or less remaining, Owner shall, within three (3) days of receiving notice from the City, deposit with the City additional funds as requested by the City to cover all costs and expenses associated with 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. 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 responsibility for the costs associated with holding the election.

2.10.4. Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits, final approval for occupancy by the City, and acceptance by City or applicable public agency of all required dedications.

2.10.5. Termination of the Agreement as provided in Sections 6.3 or 6.4 herein. Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. 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 for residential units on which construction has not yet begun shall be refunded to Owner by City.

2.11. Notices.

2.11.1. 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.

2.11.2. 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 82702

Copy to:

City Manager
City Attorney
Executive Director of Planning and Building Agency

If to Owner:

Centennial
8750 N. Central Expressway, Suite 1740
Dallas, TX 75231
Attn: Development

Copies to:

MainPlace Mall
2800 N. Main Street, Suite 775
Santa Ana, CA 92705
Attn: General Manager

Peter J. Howell
Rutan & Tucker
611 Anton Blvd.
Costa Mesa, CA 92626

2.11.3. Either party may, by 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.

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.

3.1.1. Except as expressly provided otherwise herein, the Project shall remain subject to all Existing Land Use Regulations and Project Approvals. 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 tentative 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 1.1.14). 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 permitted uses of the Property, the density and intensity of use 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 subsequently adopted Project Approvals and except as specifically provided otherwise herein, City may exercise its discretion in accordance with the Land Use Regulations then in effect, as provided by this Agreement, including, but not limited to, the Reservation of Rights. City shall accept for processing, review, and take action on all applications for subsequent Project Approvals, and such applications shall be processed in the same manner and the City shall exercise its discretion, when required or authorized to do so, to the same extent it would otherwise be entitled in the absence of this Agreement.

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 established at the time of application, 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.

(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 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. 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, in acting on subsequent Project Approvals and to the same extent it would otherwise be authorized to do so absent this Agreement, from applying subsequently adopted or amended Land Use Regulations that do not materially conflict with this Agreement.

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. The building permit for residential units 401 up to 820 may not be issued until Owner commences construction activities for all development components on the Property described in Section 2.4.2(a). For purposes of this section, "commences" shall include the Owner having paid all required Development Impact Fees, been issued a building permit, and performed construction activity on the site. However, in the event Owner determines to proceed with a mixed-use development that includes residential, as well as a commercial component of not less than 20,000 square feet, the limitation set forth in the preceding sentence shall not apply.

3.5.2. The building permit for the 821th residential unit may not be issued until at least 200,000 square feet of net new non-residential development, excluding office space, on the Property has commenced construction.

3.5.3. The building permit for the 1350th residential unit may not be issued until at least 400,000 square feet of net new non-residential development, excluding office space, on the Property has commenced construction.

3.6. Property Maintenance Agreement.

3.6.1. Owner shall, as required by the Conditions of Approval, enter into a Property Maintenance Agreement which shall include:

- (a) A Parking Management Plan; and
- (b) A Property Maintenance Plan.

3.7. 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.

3.8. 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 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 relatively intense mixed-use development is encouraged. In addition, Owner has committed by this Agreement to contribute to the acquisition, construction and maintenance of certain "Public Benefits" as provided below.

4.1.1. City Facilities. Owner shall provide the following benefits towards the acquisition, construction and maintenance of the City Facilities, as follows:

(a) Public Art. Owner shall create, install, and maintain a public art project with a value equivalent to one-half of one percent (0.5%) of the total construction cost of the Project. Total construction cost shall mean all construction costs, but shall not include design and engineering costs. Owner shall prepare and submit to the City, no later than one hundred eighty (180) days before final approval for occupancy or the issuance of a certificate of occupancy, a public art plan that is consistent with Chapter 15 of the Citywide Design Guidelines, Public Art Guidelines. Although Owner anticipates satisfying all or most of the entire Public Art requirement early in the implementation of the Project, this requirement shall be satisfied as long as art with a value equivalent to one-half of one percent (0.5%) of the completed portion of the Project has been installed prior to final approval for occupancy or the issuance of a Certificate of Occupancy for that portion of the Project.

4.1.2. Public-Accessible Benefits.

(a) Owner shall provide each of the public benefits described in the Development Plan, including the Specific Plan.

(b) Owner shall provide the City, or mutually acceptable designee of City, with use of the Central Plaza, Entry Plaza, or other mutually acceptable space at least 12 days each calendar year (no more than two of which shall be consecutive and no more than three of which shall be on a Saturday or Sunday) for events that are reasonably compatible with Project programming.

(c) Owner shall provide at least 10 free events each year for the general public.

(d) Owner shall provide publicly accessible open-space areas, to be owned and maintained by Owner, as identified in the Development Plan.

(e) Owner shall install bike lanes and sidewalk along Main Place Drive between Main Street and Bedford Avenue, as specified in the Project Approvals..

(f) Owner shall provide and maintain secure bike lockers or bike storage rooms in at least four locations on the Property, including at least two within or in close proximity to the residential development. At least half of the lockers shall be made available for free to Project residents and employees.

(g) In connection with development of any office building, Owner shall provide a secure, private shower facility for employees of tenants located in the office building to use to shower and change after riding to the Project site, which shall be made available free of charge to said employees (though commercial tenants may be charged as part of their share of common-area expenses).

(h) As part of its obligation to provide Public Art, Owner shall provide at least two water features in public areas of the Project (which include public areas of the enclosed mall), one of which may be a splash pad, if Owner determines the installation and maintenance of a splash pad to be feasible and desirable.

(i) Owner shall include at least one high-end food court (i.e., "food hall") area of the Project and shall endeavor to ensure that at least ten percent (10%) of the leasable square footage is occupied by new, local food vendors, to the extent reasonably feasible.

(j) Owner shall submit to the City within 90 days of the Effective Date, a plan for ongoing engagement and support of local philanthropic activities within the City focusing on, but not limited to, the following activities:

(i) Education

(ii) Culture

(iii) Arts

(k) Tenant Character and Quality. Notwithstanding any provision herein to the contrary, Owner covenants that, for the Term of this Agreement, Owner will endeavor to ensure that the tenant mix remains consistent with a high quality regional shopping center, equivalent to or surpassing the current tenant mix in terms of quality. The hotels will be operated under an internationally recognized hotel flag or by a boutique hotel operator with a demonstrated

track record of success operating similar hotels and classified as a 3 star or above in a 5-star rating system as widely recognized and commonly used in the hospitality industry.

4.1.3. Graffiti Removal. Owner shall also install and maintain graffiti protection on new surfaces and shall, within 48 hours of discovery of graffiti, cause it to be removed and associated restorations completed throughout the Project.

4.2. Local Live-Work Preference. Prior to issuance of any building permits, Owner shall develop and submit to the City Manager or the City Manager's designee, a local live-work plan for the Project targeting, to the extent feasible and consistent with state and federal fair housing laws, a preference or priority for persons who currently either live or work in the City of Santa Ana for the rental or sale of residential units at the Project.

4.3. Local Sourcing Plan. Owner agrees to make a good-faith effort to encourage contractors and suppliers to hire and procure locally, to the extent that it is cost effective and does not delay the overall project development schedule.

5. REVIEW FOR COMPLIANCE.

5.1. Periodic Review.

5.1.1. The City shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the compliance by Owner with the terms of this Agreement ("Annual Review"). Owner shall submit an Annual Monitoring Report, in a form acceptable to the City Manager, within thirty (30) days after written notice from the City Manager. 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.

5.1.2. 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 subsection 5.1.2(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: 2022 – 2 nd Report Year 3 of 10 of Agreement					
Use	Approved SF/Units/Rooms	Total Completed In Period	Cumulative Total Completed	Remaining to Be Completed	Status & Look Ahead
Residential	1,900	100	200	1,700	On target with 300 to be completed in the next period
Hotel	400	150	150	250	Negotiating with Hilton to construction a new full service hotel for the next period
Commercial Existing 1,100,000 (ex)	300,000 (vac)	100,000	200,000	100,000	150k ten-year lease with Tenant A since 2019. 50K 20 Year lease with Tenant B. Working with Tenant C for remaining 100k with a 15 year lease.
Commercial New	250,000	150,000	150,000	100,000	150k completed for Kidzania. 20-Year lease. Negotiating with Tenant X for a 15 year lease.
New Office	750,000	0	150,000	600,000	150k completed in 2020. Tenant X with 20-year lease. Market is soft. No new activity in reporting period. Anticipate XX for next period.

- (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 subsection 5.1.2(c) shall be include a table, prepared by the Owner with City’s cooperation, substantially similar to the following:

Reporting Period: 2022 – 2 nd Report Year 3 of 10 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					

5.2. Special Review. The City Council may order a special review of compliance with this Agreement at any time, but not more than once during any 12 month period. The City Manager, or his or her designee, shall conduct such special reviews.

5.3. Review Procedure.

5.3.1. During either a periodic 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.

5.3.2. Upon completion of a periodic review or a special review, the City Manager, or the City Manager’s designee, shall submit a report to the Planning Commission setting forth the evidence concerning good-faith compliance by Owner with the terms of this Agreement and his or her recommended finding on that issue.

5.3.3. If the Planning Commission finds and determines on the basis of substantial evidence that Owner has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

5.3.4. 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 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 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 5.3.4 pursuant to City's rules for consideration of appeals in zoning matters then in effect. Notice of default as provided under Section 6.3 of this Agreement shall be given to Owner prior to or concurrent with proceedings under Section 5.4 and Section 5.5.

5.4. Proceedings Upon Modification or Termination. If, upon a finding under Section 5.3, 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:

5.4.1. The time and place of the hearing;

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

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

5.5. 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.

5.6. Certificate of Agreement Compliance.

5.6.1. 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.

5.6.2. 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.

5.7. 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).

6. DEFAULT AND REMEDIES.

6.1. Remedies in General. It is acknowledged by the parties that City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that City shall not be liable in damages to Owner, or to any successor in interest of Owner, or to any other person, and Owner covenants not to sue for damages or claim any damages:

6.1.1. For any breach of this Agreement or for any cause of action that arises out of this Agreement; or

6.1.2. For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

6.1.3. Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

6.2. Release.

6.2.1. Except for non-monetary remedies, 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, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments to the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon City 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

6.2.2. 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.

6.3. Termination or Modification of Agreement for Default of 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 6.3 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. City's sole remedy for any default or breach of this Agreement by Owner shall be City's right to terminate this Agreement.

6.4. Voluntary Termination of Agreement by Owner. In the event Owner determines, in its sole discretion, that it no longer wishes to proceed with the Project pursuant to the terms of this Agreement, Owner may terminate this Agreement by providing the City with 30 days written notice. Notwithstanding this or other provisions herein, Owner's indemnity and defense obligations shall survive such termination.

7. LITIGATION.

7.1. 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, or the approval of any permit or entitlement granted pursuant to this Agreement or for the Project. City shall promptly notify Owner of any claim, action, proceeding or determination included within this Section 7.1, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action, proceeding or determination, 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.

7.2. 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.

7.3. Reservation of Rights. With respect to Section 7.1 and Section 7.2 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.

7.4. 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.

7.5. Waiver.

7.5.1. 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

7.5.2. 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

7.6. Survival. The provisions of Sections 7.1 through 7.4, inclusive, shall survive the termination of this Agreement.

8. MORTGAGEE PROTECTION.

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. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

8.1. 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 made in good faith and for value, unless otherwise required by law.

8.2. The Mortgagee of any mortgage or deed of trust encumbering the Property, 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 Owner in the performance of Owner's obligations under this Agreement.

8.3. 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.

8.4. 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, 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 Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by 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. MISCELLANEOUS PROVISIONS.

9.1. 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 within ten (10) days after the City enters into this Agreement, in accordance with Section 65868.5 of the Government Code. 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.

9.2. 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.

9.3. 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.

9.4. 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.

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

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

9.7. 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.

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

9.9. 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.

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

9.11. 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; (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 or such governmental authorities; (9) criminal acts or acts of terrorism; or (10) 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.

9.12. 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.

9.13. 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.

9.14. 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.

9.15. 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.

9.16. 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.

9.17. 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.

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

9.19. Agent for Service of Process. In the event 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.

9.20. 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.

9.21. 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

MAINPLACE SHOPPINGTOWN LLC,
a Delaware limited liability company

By: US Centennial Malls JV, LLC,
a Delaware limited liability company,
its Sole Member

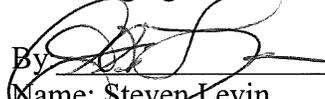
By: Centennial/USEF Manager, LLC,
a Delaware limited liability company
its Managing Member

By: 
Name: Steven Levin
Title: President

CMF MP SOUTH LLC,
a Delaware limited liability company

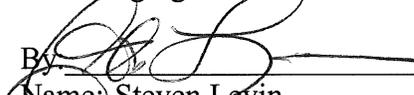
By: US Centennial Malls JV, LLC,
a Delaware limited liability company
its Sole Member

By: Centennial/USEF Manager, LLC,
a Delaware limited liability company
its Managing Member

By: 
Name: Steven Levin
Title: President

US CENTENNIAL MALLS JV, LLC,
a Delaware limited liability company

By: Centennial/USEF Manager, LLC,
a Delaware limited liability company
its Managing Member

By: 
Name: Steven Levin
Title: President

City

City OF SANTA ANA, a California municipal corporation

By: 
City Manager

By: 
Mayor

Dated: _____

ATTEST:

By: 
City Clerk



APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP


City Attorney

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "A"
(Legal Description of the Property)

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

PARCEL A-1:

PARCELS 1 THROUGH 8 OF PARCEL MAP NO. 99-152, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 328, PAGES 36 THROUGH 42 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT FROM A PORTION OF SAID LAND ALL MINERALS, OIL, GASES AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE OR THE UPPER 500 FEET THEREOF, AS RESERVED BY THE STATE OF CALIFORNIA IN DEED RECORDED MAY 5, 1972 IN BOOK 10114, PAGE 873, OFFICIAL RECORDS.

ALSO EXCEPT FROM A PORTION OF SAID PARCEL, ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF SAID PARCEL LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR A PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID PARCEL OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID PARCEL OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER TO THE EXTENT SUCH RIGHTS TO DRILL HAVE BEEN EXCEPTED BY THE PARTIES NAMED IN DEEDS, LEASES AND OTHER DOCUMENTS OF RECORD, AS RESERVED IN DEED RECORDED NOVEMBER 1, 1985 AS INSTRUMENT NO. 85-424259, OFFICIAL RECORDS.

ALSO EXCEPT FROM A PORTION OF SAID PARCEL, ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF SAID PARCEL LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR A PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID PARCEL OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID PARCEL OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER TO THE EXTENT SUCH RIGHTS TO DRILL HAVE BEEN EXCEPTED BY THE PARTIES NAMED IN DEEDS, LEASES AND OTHER DOCUMENTS OF RECORD, AS RESERVED IN DEED RECORDED JANUARY 22, 1986 AS INSTRUMENT NO. 86-29056, OFFICIAL RECORDS.

ALSO EXCEPT FROM A PORTION OF SAID PARCEL, ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY ALL PARTS OF SAID PARCEL LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR A PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID PARCEL OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID PARCEL OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER TO THE EXTENT SUCH RIGHTS TO DRILL HAVE BEEN EXCEPTED BY THE PARTIES NAMED IN DEEDS, LEASES AND OTHER DOCUMENTS OF RECORD, AS RESERVED IN DEED RECORDED NOVEMBER 25, 1985 AS INSTRUMENT NO. 85-474287, OFFICIAL RECORDS.

AN EASEMENT FOR BUILDING PURPOSES, ABOVE ELEVATION 153.70 FEET AND BELOW ELEVATION 171.20 FEET (CITY OF SANTA ANA DATUM), DESCRIBED AS FOLLOWS:

COMMENCING AT POINT "A" AS DESCRIBED IN PARCEL A-1 OF THE DEED RECORDED DECEMBER 5, 1988 AS INSTRUMENT NO. 88-632609, OFFICIAL RECORDS; THENCE NORTH 0° 03' 47" WEST, 170.37 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 56' 13" EAST, 36.63 FEET; THENCE NORTH 0° 03' 47" WEST, 132.18 FEET; THENCE NORTH 89° 53' 48" WEST, 36.63 FEET; THENCE SOUTH 0° 03' 47" EAST, 132.29 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B-1: (NORTH)

THAT PORTION OF PARCEL 2 OF PARCEL MAP NO. 670, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 31, PAGE 42 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 2 OF PARCEL MAP NO. 670, SAID POINT ALSO BEING THE INTERSECTION OF THE SOUTHERLY LINE OF ROUTE 22 AND THE WESTERLY LINE OF MAIN STREET, AS SHOWN ON SAID PARCEL MAP NO. 670; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2, SOUTH 89° 48' 07" WEST 676.41 FEET; THENCE SOUTH 0° 11' 53" EAST 76.45 FEET TO A POINT IN THE SOUTHERLY LINE OF MAINPLACE ROADWAY AS DESCRIBED IN THE GRANT DEED FOR STREET PURPOSES RECORDED JULY 28, 1989 AS INSTRUMENT NO. 89-401286 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, SAID POINT BEING ON A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 448.00 FEET, A RADIAL LINE OF SAID CURVE PASSING THROUGH SAID POINT BEARS NORTH 15° 22' 35" EAST, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 0° 03' 47" EAST 293.66 FEET; THENCE SOUTH 89° 56' 13" WEST 217.67 FEET; THENCE NORTH 0° 03' 47" WEST 276.68 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 34.50 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 72° 54' 22" AN ARC DISTANCE OF 43.90 FEET TO A POINT, A RADIAL LINE OF SAID CURVE PASSING THROUGH SAID POINT BEARS NORTH 17° 09' 25" WEST, SAID POINT BEING LOCATED ON SAID SOUTHERLY LINE OF MAINPLACE ROADWAY; THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 89° 48' 07" EAST 72.99 FEET TO A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 448.00 FEET AND EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15° 34' 28" AN ARC DISTANCE OF 121.78 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GASES AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN, THAT MAY BE WITHIN OR UNDER SAID LAND, WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE OR THE UPPER 500 FEET THEREOF, AS RESERVED BY THE STATE OF CALIFORNIA IN DEED RECORDED MAY 5, 1972 IN BOOK 10114, PAGE 873 OF OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH, AND TO USE AND OCCUPY ALL PARTS OF SAID PARCEL LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR OR PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID PARCEL OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID PARCEL OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER, TO THE EXTENT SUCH RIGHTS TO DRILL HAVE BEEN EXCEPTED BY THE PARTIES NAMED IN DEEDS, LEASES, AND OTHER DOCUMENTS OF RECORD, AS

RESERVED IN DEED RECORDED NOVEMBER 1, 1985 AS INSTRUMENT NO. 85-424259 OF OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ALL OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH, AND TO USE AND OCCUPY ALL PARTS OF SAID PARCEL LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR OR PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID PARCEL OR OTHER LAND, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID PARCEL OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER, TO THE EXTENT SUCH RIGHTS TO DRILL HAVE BEEN EXCEPTED BY THE PARTIES NAMED IN DEEDS, LEASES, AND OTHER DOCUMENTS OF RECORD, AS RESERVED IN DEED RECORDED JANUARY 22, 1986 AS INSTRUMENT NO. 86-29056 OF OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ALL OIL, GAS HYDROCARBON SUBSTANCES AND MINERALS OF EVERY KIND AND CHARACTER, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH, AND TO USE AND OCCUPY ALL PARTS OF SAID PARCEL LYING MORE THAN 500 FEET BELOW THE SURFACE THEREOF FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR OR PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID PARCEL OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID PARCEL OR ANY PORTION THEREOF WITHIN 500 FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER, TO THE EXTENT SUCH RIGHTS TO DRILL HAVE BEEN EXCEPTED BY THE PARTIES NAMED IN DEEDS, LEASES, AND OTHER DOCUMENTS OF RECORD, AS RESERVED IN THE DEED RECORDED NOVEMBER 25, 1985 AS INSTRUMENT NO. 85-474287 OF OFFICIAL RECORDS.

SAID PARCEL OF LAND APPEARS TO BE A PORTION OF PARCEL 8 OF PARCEL MAP NO. 99-152, AS SHOWN ON A MAP FILED IN BOOK 328, PAGES 36 THROUGH 42 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B-2:

EASEMENTS FOR THE PURPOSES AND UPON THE TERMS AND CONDITIONS SPECIFIED IN SECTIONS IIA, IIB, IIC, IID AND IIG OF THAT CERTAIN AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT RECORDED JANUARY 27, 1986 AS INSTRUMENT NO. 86-35230 OF OFFICIAL RECORDS.

PARCEL C-1

ALL THOSE PORTIONS OF PARCELS 1 AND 2 OF PARCEL MAP NO. 670, IN THE CITY OF SANTA ANA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 31, PAGE 42 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PARCEL 2 OF SAID PARCEL MAP NO. 670, SAID POINT ALSO LYING ON THE INTERSECTION OF THE SOUTHERLY LINE OF ROUTE 22 AND THE WESTERLY LINE OF MAIN STREET; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID PARCEL 2 AND SOUTHERLY LINE OF SAID ROUTE 22, SOUTH 89° 48' 07" WEST, 289.48 FEET; THENCE LEAVING SAID NORTHERLY LINE, SOUTH 0° 11' 53" EAST, 507.55 FEET TO THE TRUE POINT OF BEGINNING. THENCE SOUTH 0° 03' 07" EAST,

258.75 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 34.50 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 80° 48' 56", AN ARC DISTANCE OF 48.66 FEET TO THE BEGINNING POINT OF A REVERSING CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 225.50 FEET, A RADIAL LINE FROM SAID POINT BEARS SOUTH 09° 14' 11" EAST; THENCE SOUTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 09° 12' 13", AN ARC DISTANCE OF 36.22 FEET TO A POINT, A RADIAL LINE FROM SAID POINT BEARS SOUTH 18° 26' 24" EAST; THENCE SOUTH 89° 56' 13" WEST, 362.16 FEET TO A POINT HEREINAFTER DEFINED AS POINT "A";

THENCE NORTH 0° 03' 47" WEST, 302.66 FEET; THENCE SOUTH 89° 53' 48" EAST, 426.35 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL C-2:

NON-EXCLUSIVE EASEMENTS OVER THE COMMON AREA (AS DEFINED IN THE AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED JANUARY 24, 1986 RECORDED JANUARY 27, 1986 AS INSTRUMENT NO. 86-35230 OF OFFICIAL RECORDS THE AGREEMENT) FOR INGRESS, EGRESS, THE PASSAGE AND PARKING OF VEHICLES AND PEDESTRIANS, UTILITIES, AND CONSTRUCTION, SUPPORT AND MAINTENANCE OF BUILDINGS AND APPURTENANCES, AND INCIDENTAL PURPOSES, ALL AS SET FORTH IN, AND UPON THE CONDITIONS CONTAINED IN THE REFERENCED AGREEMENT.

PARCEL C-3:

AN EASEMENT FOR MAINTENANCE, OPERATION, REPAIR AND RECONSTRUCTION OF A PORTION OF THE BASEMENT AREA AND INCIDENTAL PURPOSES PURSUANT TO THE TERMS OF SECTION II J OF THE AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED JANUARY 24, 1986 RECORDED JANUARY 27, 1986 AS INSTRUMENT NO. 86-35230 OF OFFICIAL RECORDS.

PARCEL C-4:

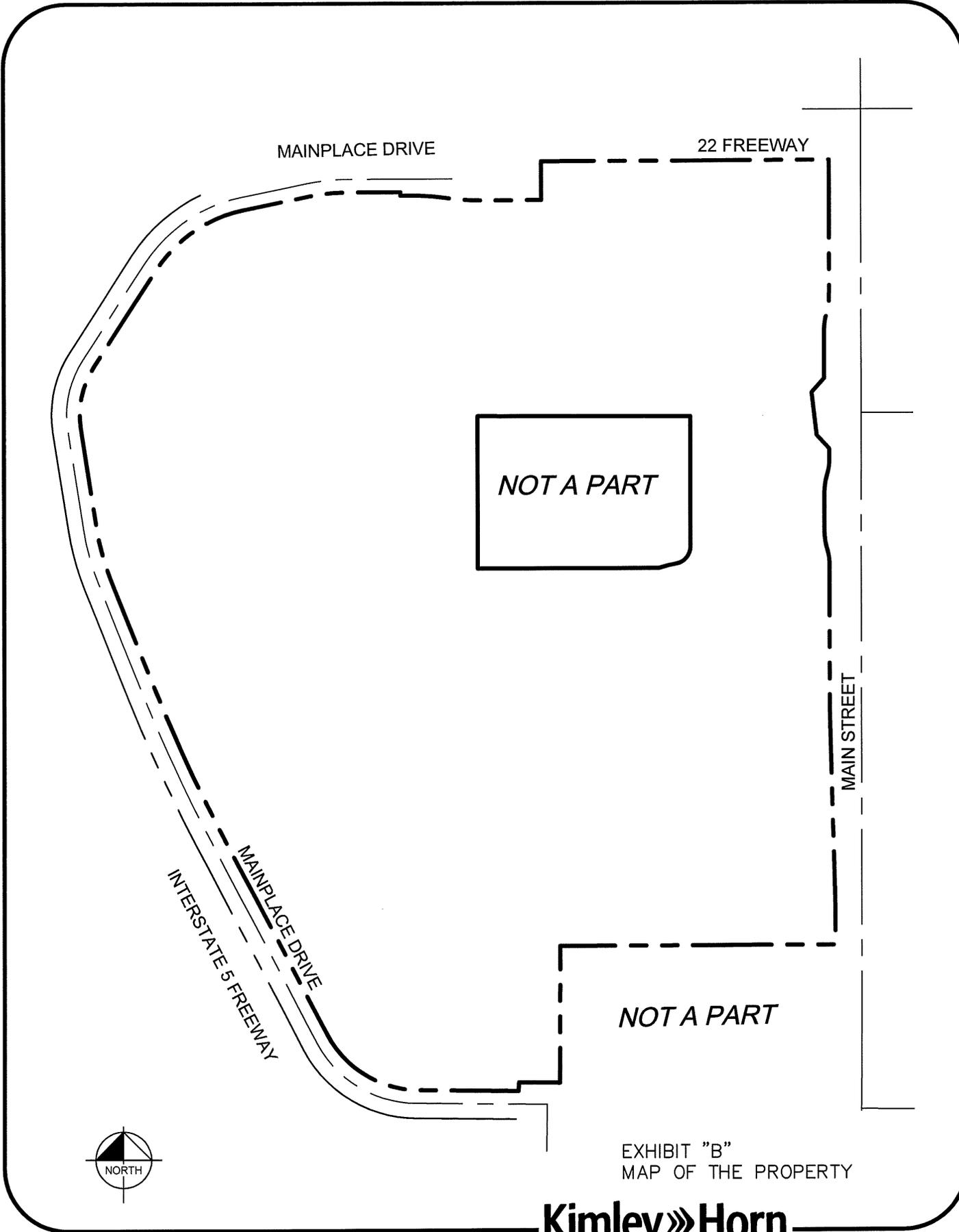
AN EASEMENT FOR ACCESS, LOADING, UNLOADING AND INCIDENTAL PURPOSES THERETO PURSUANT TO THE TERMS OF SECTION II M OF THE AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED JANUARY 24, 1986 RECORDED JANUARY 27, 1986 AS INSTRUMENT NO. 86-35230 OF OFFICIAL RECORDS.

PARCEL C-5:

A PERPETUAL EASEMENT FOR CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, RECONSTRUCTION AND REMOVAL OF IMPROVEMENTS, PURSUANT TO THE TERMS OF SECTION II-N OF IN THE AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT DATED JANUARY 24, 1986 RECORDED JANUARY 27, 1986 AS INSTRUMENT NO. 86-35230 OF OFFICIAL RECORDS.

EXHIBIT "B"

(Map of the Property)



MAINPLACE DRIVE

22 FREEWAY

NOT A PART

MAIN STREET

MAINPLACE DRIVE
INTERSTATE 5 FREEWAY

NOT A PART



EXHIBIT "B"
MAP OF THE PROPERTY

Kimley»Horn

© 2010 KIMLEY-HORN AND ASSOCIATES, INC.
765 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: 714-939-1030 FAX: 714-938-9488

EXHIBIT "C"

Development Plans

Development Plans and entitlement applications as presented in the City Request for Council Action Staff Report Dated June 4, 2019 are incorporated herein by reference. Project entitlements and applications include, but may not be limited to the following entitlements:

1. The Final Environmental Impact Report entitled "Fashion Square Commercial Center Subsequent Final Environmental Impact Report" (State Clearinghouse House No. 1983021103 ("FEIR"))
2. The 1996 Addendum to the FEIR (Environmental Review No. 96-033)
3. The 2019 Addendum to the FEIR (Environmental Review No. 2018-72 and City of Santa Ana Development Project No. 2018-17)
4. The "MainPlace Mall" Specific Plan, dated May 2019, adopted by the City Council on June 4, 2019, by way of Ord. No. NS-2966
5. The Tentative Parcel Map, No. 2018-02 as conditioned, approved by the City Council on June 4, 2019 by way of Resolution No. ___.

EXHIBIT "D"

Development Impact Fees (Estimated)

The estimated amount of Development Impact Fees associated with the project based upon the site plan documentation submitted as part of the Project Approvals include but are not limited to the following fees and deposits; applicable sewer fee, street fee, storm drain fee, traffic fee, deposits, and all applicable fees associated with demolition of existing structures, drainage, site development, and construction are based on actual square footage of any commercial development and number of residential units.

Based on the development contemplated by the Development Plans identified in Exhibit "C," the Development Impact Fees are estimated at:

Fee	Estimated Total
Sewer	\$5,000,000
Capital Facilities Capacity Charges (Orange County Sanitation District Charges)	\$9,000,000
Storm Drain	\$440,000
Traffic	\$7,000,000
Parks & Recreation	\$8,000,000
Fire Facilities Fee	\$2,500,000
Santa Ana Unified/Orange Unified School Fees	\$10,000,000
Estimated Total	\$41,940,000

EXHIBIT "E"

Assignment and Assumption Agreement

(follows behind this cover page)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Santa Ana
20 Civic Center Plaza (M-30)
Santa Ana, CA 92702
Attention: Clerk of the Council

(Space Above For Recorder's Use)

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

This Assignment and Assumption of Development Agreement ("Agreement"), dated as of _____, _____, is entered into by and between _____ ("Assignor") and _____ ("Assignee"), on the other hand, with reference to the following facts:

A. Assignor is a party to that certain Development Agreement dated _____, 2019 and recorded on _____, 2019 as Instrument No. 2019-_____ in the Official Records of the Orange County Recorder (the "DA") for the development of that certain real property more particularly described on **Exhibit "A"** attached hereto (the "Property"). Any capitalized term not otherwise defined herein shall have the meaning ascribed to it in the DA.

B. Assignee is acquiring the Property from Assignor. Upon the Close of Escrow and subsequent conveyance of the Property to the Assignee, Assignor desires to assign the DA pertaining to the Property to Assignee, and Assignee intends to assume all rights and obligations of Assignor, as "Owner," thereunder.

NOW, THEREFORE, the Assignor and Assignee hereby agree as follows:

1. **Assignment and Assumption.**

a. Upon the Close of Escrow and subsequent conveyance of the Property to the Assignee, Assignor assigns to Assignee all of Assignor's right, title and interest in and to the DA relating to the Property. With respect to the Property, Assignor shall indemnify and hold harmless Assignee from any and all liabilities arising from the DA prior to the Close of Escrow.

b. Upon the Close of Escrow and subsequent conveyance of the Property to the Assignee, Assignee accepts such assignment and agrees to unconditionally assume all the duties, obligations, agreements, covenants, and waivers of the Assignor under the DA as to the Property which are to be performed after the Close of Escrow and to keep and perform all covenants, conditions and provisions of the DA during Assignee's period of ownership of the Property and arising on or after the Close of Escrow, including, without limitation, the covenants not to sue and waivers contained in Sections 6.2 and 7.4 of the DA. With respect to the Property, Assignee shall indemnify and hold harmless Assignor from any and all liabilities arising from the DA from and after the Close of Escrow.

2. Counterpart Originals. This Agreement may be executed in several duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages of one or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original agreement. When fully executed, the date of this Agreement shall be the date of execution by the last party to sign.

3. Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of the parties hereto.

4. Recordation. This Agreement shall be recorded in the Official Records of the Orange County Recorder.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

“ASSIGNOR”

By: _____
Name: _____
Its: _____

“ASSIGNEE”

By: _____
Name: _____
Its: _____

City of Santa Ana, having determined that Assignor has complied with the conditions set forth in Section 2.5.1 of the Development Agreement, hereby acknowledges this Assignment and acknowledges that Assignor, having satisfied the conditions to the release of a transferring Owner set forth in Section 2.5.2 of the Development Agreement, shall be released from its obligations under the Development Agreement.

CITY OF SANTA ANA, a California municipal law corporation

By: _____

Executive Director for the Planning
and Building Agency

EXHIBIT "F"

2018 Base Tax Year Values

(follows behind this cover page)

2018 Property Tax Basic Levy and Base Tax Revenues (Estimated)	
2018 Property Tax Basic Levy* (19% of 1% of Assessed Valuation)	\$638,126
2018 Sales Tax (Actual) **	\$1,630,860
Hotel Visitor Tax (None existing on property)	\$0
Business License Tax/ Franchise Tax	\$180,000
UUT (Water)	\$12,700
Total Estimated Base Year Tax Revenues	\$2,461,686

* The FY 2018-19 property tax basic levy for MainPlace Mall is calculated using the 2018 total assessed valuation for the various parcels related to MainPlace Mall, excluding the Macy Parcel (APN 002-221-28) as Centennial does not have ownership of the parcel, multiplied by 1% and by 19% of the 1% ($\$335,856,181 \times 1\% = \$3,358,562.81 \times 19\% = \$638,126$). The City of Santa Ana and the Successor Agency to the former Santa Ana Redevelopment Agency are two of various "Pass-Thru" entities who share in the related property tax basic levy revenue as a result of the assessed valuation of the property.

** Measure X is a voters approved 20-year period sales tax increase in November 2018. Measure X's initial assessment is set at 1.5% in addition to the current 1.0% (2.5% total) starting from 4/1/19 through 3/31/2029 and reducing to 1.0% (2.0% total) starting from 4/1/2029 and sunsets on 3/31/2039. For the purpose of this Agreement, future tax revenues generated by Measure X shall be calculated separately and shall not be a factor for the base year and shall also be excluded from all future calculations. Only the revenues from the current 1% sales tax rate shall be used for the base year and all future calculations. Centennial does not control ownership of the Macy Parcel, the sales tax revenues from the retail operations on this parcel is excluded from the current and all future calculations.

Summary report:	
Litéra® Change-Pro 7.5.0.135 Document comparison done on 5/10/2019	
5:41:26 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://iManage/iManage/31891805/13	
Modified DMS: iw://iManage/iManage/31891805/14	
Changes:	
Add	3
Delete	2
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	5