

**RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL
TO:**

**CITY OF BREA
1 CIVIC CENTER CIRCLE
BREA, CALIFORNIA 92821
ATTN: CITY CLERK**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM RECORDING FEE PER GOVERNMENT CODE SECTION 6103

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF BREA

AND

LENNAR HOMES OF CALIFORNIA, LLC

REGARDING

**THE GREENBRIAR
RESIDENTIAL DEVELOPMENT PROJECT**

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NOTE: Draft Development Agreement may be further updated prior to the City Council consideration of the Project.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Development Agreement” or “Agreement”) is made and entered into as of _____, 2025 (“Agreement Date”) by and between the CITY OF BREa, a municipal corporation organized and existing under the laws of the State of California (“City”), and Lennar Homes of California, LLC, a California limited liability company (“Developer”). City and Developer are referred to individually as “Party,” and collectively as the “Parties.”

RECITALS

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

A. The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development, and discourage investment in and commitment to comprehensive planning that would make maximum efficient utilization of resources at the least economic cost to the public.

B. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code (the “Development Agreement Legislation”), which authorizes City and a developer having a legal or equitable interest in real property to enter into a binding development agreement, establishing certain development rights in the property.

C. Developer has a legal interest in certain real property consisting of approximately 9.7 acres located at 1698–1700 Greenbriar Land, Brea, as more particularly described in Exhibit A attached hereto, and as diagrammed in Exhibit B attached hereto (the “Property”).

D. Developer intends to develop the Property as a residential community of 180 dwelling units and other uses (defined more fully in Article [____] below as the “Project”).

E. The complexity, magnitude and long-range nature of the Project would be difficult for Developer to undertake if City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project.

F. In addition to other public benefits provided by the Project, the Project will result in development of off-site affordable housing units that exceed the City’s minimum affordable

housing requirements (as further described in Exhibit C). The off-site housing will be developed on a property located at the southeast corner of Mercury Lane and Berry Street (the “Off-Site Property”).

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

H. In addition to the Project Approvals, the Project may require various additional land use and construction approvals, termed Subsequent Approvals (as defined in Section 1.4.6), in connection with development of the Project.

I. On [date], the City of Brea Planning Commission (“Planning Commission”), the initial hearing body for purposes of development agreement review, adopted its recommendation to the City Council regarding approval of this Development Agreement pursuant to Resolution No. [____]. On [date], the City of Brea City Council (“City Council”) adopted its Ordinance No. [____] approving this Development Agreement and authorizing its execution.

J. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Development Agreement is appropriate to eliminate uncertainty regarding Project Approvals (including the Subsequent Approvals), thereby encouraging planning for, investment in and commitment to use and development of the Property; to use and develop the Property for substantial housing, employment, and property tax benefits as well as other public benefits to City; and to contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted.

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

ARTICLE 1.

GENERAL PROVISIONS

1.1 Parties. City. City is the City of Brea, a California municipal corporation.

1.1.2 Developer. Developer is a California limited liability company, with offices located at 2000 Fivepoint, Suite 365, Irvine, California 92618. “Developer,” as used in this

Development Agreement, shall include any permitted assignee or successor-in-interest as herein provided.

1.2 Relationship of Parties. It is understood that the contractual relationship between City and Developer is such that City and Developer are each an independent party and neither is the agent or partner of the other for any purpose whatsoever and neither shall be considered to be the agent or partner of the other for any purpose whatsoever.

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

1.5 Interest of Developer. Developer warrants and represents that, as of the Effective Date, it has or will have legal title to or an equitable interest in the Site; that it has full legal right to enter into this Agreement; and that the persons executing this Agreement on behalf of Developer have been duly authorized to do so.

1.6 Binding Effect of Agreement.

1.6.1 Developer hereby subjects the Property to the covenants, reservations, and restrictions as set forth in this Agreement. City and Developer hereby declare their mutual and specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon each of Developer's successors and assigns in title or interest to the Property. Each and every contract, deed, or other instrument hereinafter executed, covering, or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, reservations, and restrictions expressed in this Agreement, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument.

1.6.2 The parties hereby further declare their understanding and intent that the benefit of such covenants, reservations, and restrictions touch and concern the land by enhancing and increasing the enjoyment and use of the Site by Developer and the future occupants of the Site, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which this Agreement is adopted.

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

1.7.2 Term of the Agreement. The term ("Term") of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for a period of ten (10) years, unless extended or earlier terminated as provided in this Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits of the Project. This Agreement shall terminate with respect to any for-sale residential lot and such lot shall be released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the building(s) on the lot.

1.8 Project Approvals. Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described

below. For purposes of this Development Agreement, the term “Project Approvals” shall mean all of the approvals, plans and agreements described in this Section 1.4.

1.8.1 EIR. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. _____, certified that the Greenbriar Residential Development Project Environmental Impact Report (State Clearinghouse No. _____) pursuant to CEQA and adopted findings in support thereof (the “EIR”).

1.8.2 General Plan Amendments. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. _____, amended the City General Plan (the “General Plan Amendments”) to change the land use designation for the Project from General Commercial to Mixed-Use II.

1.8.3 Zone Change. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved a change in zoning for the Project site from General Commercial (C-G Zone) to Mixed Use (MU-II Zone).

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

1.8.5 Additional Entitlements. On [date], following Planning Commission review and recommendation, and after a duly notice public hearing, the City Council, by Resolution No. [____], approved Vesting Tentative Tract Map No. [____] and Precise Development Review No. [____] pursuant to Section 20.258.010.D of the Brea City Code.

1.8.6 Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals in addition to those listed in Sections 1.4.1 through 1.4.5 above , which may include, without limitation: development plans, amendments to applicable conditional use permits, minor conditional use permits, administrative remedy, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Project Approvals (collectively, “Subsequent Approvals”). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

1.9 Definitions. The capitalized terms used in this Development Agreement shall have the meanings set forth in Appendix I attached hereto.

ARTICLE 2.

PUBLIC BENEFITS

2.1 Public Benefits. In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, City has determined that the Project will, among other public benefits, reduce uncertainties in planning and provide for the orderly development of the Project site; provide new for-sale housing opportunities to attract new residents to the City; provide for affordable housing; and generate new property revenues for the City.

2.2 Affordable Housing.

2.2.1 Number of Affordable Units. The Project shall provide no less than the amount of Affordable Housing identified in Exhibit C, attached hereto. These units shall fulfill the City's Affordable Housing requirement for the Project set forth at Chapter 20.40 of the City Code or any successor ordinance or regulation.

2.2.2 Affordability Restrictions. Developer agrees that it shall cause the affordable units to be income restricted per Health and Safety Code and rented at affordable rents as defined and published by the California Tax Credit Allocation Committee ("CTCAC") of any successor thereto for a minimum of fifty-five (55) years following first occupancy based on AMI for Orange County as determined and published annually by CTCAC for a family of a size appropriate to the unit.

2.2.3 Local Preference. To the maximum extent permitted by applicable law, include all applicable fair housing laws and regulations, Developer shall establish and maintain an interest list based on Brea residency and Brea employment substantially consistent with City's then-current Affordable Housing Guidelines for Brea City Code Chapter 20.40. Developer shall provide at least thirty (30) days' advance notice to households on such interest list prior to any general marketing of such affordable units, all in accordance with the Affordable Housing Agreement. Developer shall cooperate with the City to regularly provide the City with an updated interest list when units become available. The Parties acknowledge and agree that the City shall have no responsibility for maintaining such interest list.

2.2.4 Affordable Housing Agreement. Prior to the issuance of the first building permit for the multi-family development, Developer shall enter into an Affordable Housing Agreement with the City, in a form subject to the approval of the City Attorney for the purpose of guaranteeing the affordability in compliance with this Section, which agreement must result in recorded covenants upon the property to assure affordable rents as required in this Section.

ARTICLE 3.

DEVELOPMENT OF THE PROPERTY

3.1 Development of the Property. The type, density, intensity, configuration of uses allowed, the size and location of buildings and other improvements and provisions for the reservation or dedication of land for public purposes, location of public improvements, including, but not limited to landscaping, irrigation, sidewalk, and drive approaches, together with other terms and conditions of Development applicable to the Project, shall be as set forth in the Project Approvals and this Agreement.

3.2 No Affirmative Obligation To Develop. Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Project at all or in any particular order or manner, or liability in Developer under this Development Agreement if the development fails to occur.

3.3 Timing of Development; Pardee Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals, Developer shall have the right (without obligation) to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, provided, however, that nothing in the forgoing shall relieve Developer from complying with any requirements related to delivery of affordable housing set forth in Exhibit C.

3.4 Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

3.5 Vested Rights. Developer shall have the vested right, as that term is defined under California law applicable to the development of land or property, to develop the Property in accordance with the terms and conditions of the Project Approvals and this Agreement, and City shall have the right to control Development of the Site in accordance with the provisions of the Project Approvals and this Agreement. Except as expressly provided in this Agreement, only those City ordinances, resolutions, codes, rules, regulations and official policies of the City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to Project in effect as of the Effective Date (collectively "Applicable Rules") shall apply to the construction and development of the Project and the Property.

3.6 Applicable Rules, Exclusions. Unless otherwise expressly provided in this Agreement, "Applicable Rules" excludes any City ordinance, resolution, code, rule, regulation or official policy related to: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the amount of any generally applicable Development Impact Fees or Processing Fees charged by the City on a citywide basis; (iv) the control and abatement of nuisances; (v) reasonable requirements to ensure public safety and are made applicable throughout the City; or (vi) the granting of encroachment permits and the conveyance of similar rights and interests that

provide for the use of or the entry upon public property or the exercise of the power of eminent domain.

3.7 Changes in Applicable Rules. Changes to the Applicable Rules adopted or enacted by City after the Effective Date (“Future Rules”) shall not apply to the Project to the extent any such changes conflict with Developer’s vested rights under this Agreement. For these purposes, Future Rules would conflict with Developer’s vested rights under this Agreement if they: (i) materially impede, delay, or increase the cost of developing the Project in conformance with the Project Approvals; or (ii) directly impose new limits or controls on the type, rate, timing, phasing or sequencing of development as allowed under the Project Approvals. Future Rules that conflict with Developer vested rights under this Agreement may nevertheless apply to the Property if consented to in writing by Developer.

3.8 Effect of Changes to State or Federal Laws.

3.8.1 Developer’s vested rights under this Agreement shall not preclude the application to the Project and the Property any changes in City ordinances, regulations, plans, or specifications that are: (i) specifically mandated and required by changes in state or federal laws or regulations as provided in Government Code Section 65869.5 or any successor provision or provisions; (ii) required to ensure access under the Americans with Disabilities Act; or (iii) any and all new health and safety regulations (e.g., fire, building, and seismic, plumbing, and electric codes) that become applicable to the City pursuant to state and federal law.

3.8.2 In the event any changes in state or federal laws prevent or preclude compliance with one or more of the provisions of this Agreement, City and Developer shall upon request of either Party meet in good faith to determine the feasibility of any modification or suspension of this Agreement that may be necessary to comply with such state or federal law and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law.

3.8.3 In the event any changes in state or federal laws operates to frustrate irretrievably and materially the Developer’s vested rights under this Agreement, Developer shall have the right to terminate this Agreement or to challenge such state or federal law (by any method, including litigation); provided that Developer shall hold City harmless and City shall have no obligation under this Agreement to support Developer’s challenge. In the event Developer’s challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise, except that if the Term of this Development Agreement would otherwise terminate during the period of any such challenge and Developer has not commenced with the development of the Project in accordance with this Development Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge.

3.8.4 If any Future Rule or state or federal law expands, extends, enlarges or broadens Developer’s rights to develop the Project, then, (a) if such law is mandatory, the provisions of this Development Agreement shall be modified as may be necessary to comply or

conform with such new law, and (b) if such law is permissive, City will meet and confer with Developer regarding the provisions of this Development Agreement may be modified under the new law. Immediately after enactment of any such new law, upon Developer's request, the Parties shall meet and confer in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to prepare such modification. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Development Agreement, and in the event such challenge is successful, this Development Agreement shall be modified to comply with, or conform to, the new law.

3.9 Conflicts. In the event of an irreconcilable conflict between the provisions of the Project Approvals (on the one hand) and the Applicable Rules (on the other hand), the provisions of the Project Approvals shall apply. In the event of a conflict between the Project Approvals (on the one hand) and this Development Agreement, in particular, (on the other hand), the provisions of this Development Agreement shall control.

3.10 Processing Subsequent Approvals.

3.10.1 Processing of Subsequent Approvals. City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in accordance with the terms of this Development Agreement. City shall not use its authority in considering any application for a discretionary Subsequent Approval to unreasonably prevent or delay development of the Project as set forth in the Project Approvals.

3.10.2 Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent consistent with CEQA, on the specific subject matter of the Subsequent Approval.

3.10.3 Additional Staffing. If, at the such time as Developer submits an application for a Subsequent Approval, City informs Developer that current City staff levels do not permit the prompt review Developer's applications, City may, at the request and sole expense of Developer, hire plan check, inspection and other personnel, or hire additional consultants for such actions, or allocate use of exclusively dedicated staff time, such that the Developer's timeline can be achieved. City and Developer shall consult in good faith regarding the terms of a deposit agreement to cover the cost of any additional staffing.

3.10.4 Conditions of Subsequent Approvals. Nothing in this Agreement shall limit City's authority to impose reasonable conditions on the Subsequent Approvals, including without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules or Project Approvals.

3.11 Developer's Right to Rebuild. If during the Term of this Agreement, it becomes necessary due to natural disaster, changes in seismic requirements renovate or rebuild the Project or should the buildings located within the Project become functionally outdated, within

Developer's sole discretion, due to changes in technology, then Developer shall have the vested right to renovate or rebuild the Project consistent with the Project Approvals and this Agreement.

3.12 Life of Project Approvals and Subdivision Maps.Life of Subdivision Maps. The terms of any subdivision or parcel map for the Property, any amendment or reconfiguration thereto, or any subsequent tentative map, shall be automatically extended such that such tentative maps remain in effect for a period of time coterminous with the term of this Development Agreement. If, however, the terms of any subdivision or parcel map for the Property, any amendment or reconfiguration thereto, or any subsequent tentative map is extended beyond the Term of this Agreement, the Term of this Agreement shall not be automatically extended unless amended as provided in this Agreement.

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

3.12.3 Termination of Agreement. In the event that this Agreement is terminated prior to the expiration of the Term of the Agreement, the term of any subdivision or parcel map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, inclusive of any approved extensions.

3.13 Infrastructure.Infrastructure Phasing Flexibility. Notwithstanding the provisions of any phasing requirements in the Project Approvals, Developer and City recognize that economic and market conditions may necessitate changing the order in which the infrastructure is constructed. Therefore, City and Developer hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals, Developer and City shall collaborate and City shall permit any reasonable modification requested by Developer so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed.]

3.13.2 Infrastructure Capacity. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals, City hereby acknowledges that it will have, and shall reserve, sufficient capacity in its infrastructure, services and utility systems, including, without limitation, traffic circulation, storm drainage, flood control, sewer collection, sewer treatment, sanitation service and, except for reasons beyond City's control, water supply, treatment, distribution and service, as and when necessary to serve the Project as it is developed. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no unreasonable restriction on hookups or service for the Project except for reasons beyond City's control.

3.13.3 Traffic Improvements. In accordance with the Traffic Impact Analysis prepared for the Project, the Developer shall pay its fair-share contribution toward the following

roadway improvements prior to the issuance of the first Certificate of Occupancy for the Project, to the satisfaction of Community Development Director and/or Public Works Director.

Location	Improvement(s)
Associated Road & Shopping Center Drive No. 1	<ul style="list-style-type: none">• Installation of a traffic signal

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

ARTICLE 4.

ADDITIONAL RIGHTS AND OBLIGATIONS OF THE PARTIES; ALLOCATIONS OF RIGHTS AND OBLIGATIONS OF THE PARTIES

4.1 Conveyance of Public Infrastructure. Acceptance; Maintenance. Upon completion of public infrastructure to be completed by Developer, if any, Developer shall offer for dedication to City from time to time as such public infrastructure is completed, and City shall promptly accept from Developer the completed public infrastructure (and release to Developer any bonds or other security posted in connection with performance thereof in accordance with the terms of such bonds), and thereafter City shall maintain the public infrastructure. Developer may offer dedication of public infrastructure in phases and the City shall not refuse to accept such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied.

4.2 Assessment Financing. In the event that Developer, in its sole discretion, elects to form any assessment districts (including without limitation Mello Roos Districts and Landscaping and Lighting Districts), community facilities districts, Geologic Hazard Abatement Districts, and tax exempt financing mechanisms (a “Financing Mechanism”), the City agrees to consider such application in good faith. Ultimate legislative discretion of the approval or disapproval of an application for such a district remains with the City Council.

4.3 Eminent Domain Powers. City agrees to cooperate with Developer in implementing all of the conditions of all Project Approvals, including but not limited to consideration of the use of its eminent domain powers; provided however that the use of eminent domain shall be in the sole and absolute discretion of City and subject to all applicable legal requirements.

4.4 Public Improvements. Developer and City shall each use its best efforts to ensure that all public infrastructure in connection with the Project is (i) designed and constructed in accordance with all applicable City standards, (ii) can be reviewed and accepted by City in the most expeditious fashion possible, and (iii) maintained by City after acceptance, including, without limitation, maintenance of the public parks. Developer (or its affiliates or contractor(s)) shall be responsible for obtaining all permits and approvals necessary for development of the public infrastructure.

4.5 Reimbursement. Nothing in this Agreement precludes City and Developer from entering into any reimbursement agreements for the portion (if any) of the cost of any dedications, public facilities and/or infrastructure that City may require as conditions of the Project Approvals to the extent that they are in excess of those reasonably necessary to mitigate the impacts of the Project.

4.6 Model Homes. Prior to recordation of any final map, City agrees to issue building permits and occupancy certificates for the construction of model homes (and related model home complex structures) that will be used by Developer for the purpose of promoting sales of single family residential units within the Project; provided, however, in no event shall City be required to issue more than fifteen (15) building permits for the construction of model homes, and in no event shall Developer be permitted to sell or transfer any model home until a final map has been recorded on that portion of the Project where the model home is located.

ARTICLE 5.

ANNUAL REVIEW

5.1 Annual Review. The annual review required by California Government Code Section 65865.1 shall be conducted for the purposes and in the manner stated in those laws as further provided herein. As part of that review, City and Developer shall have a reasonable opportunity to assert action(s) that either Party believes have not been undertaken in accordance with this Development Agreement, to explain the basis for such assertion, and to receive from the other Party a justification for the other Party's position with respect to such action(s), and to take such actions as permitted by law. The procedure set forth in this Article shall be used by Developer and City in complying with the annual review requirement. The City and Developer agree that the annual review process shall review compliance by Developer and City with the obligations under this Development Agreement but shall not review compliance with other Project Approvals, provided nothing in this Agreement shall limit City's authority to otherwise review compliance with the Project Approvals.

5.2 Commencement of Process. City's Community Development Director, or their designee, shall commence the annual review process by notifying Developer in writing at least forty-five (45) days prior to the anniversary of the Effective Date each year that the annual review process shall commence as specified in this Section. Failure of Community Development Director to send such notification at least forty-five (45) days prior to the anniversary of the Effective Date shall be deemed to extend the time period in which annual review is required until at least forty-five (45) days after such notice is provided. City's failure to perform an annual review pursuant to the terms of the Article 5 shall not constitute or be asserted as a default by Developer.

5.3 Developer Compliance Letter. Not less than thirty (30) days after receipt of the Community Development Director's notice pursuant to Section 5.2, Developer shall submit a letter to the Community Development Director demonstrating Developer's good faith compliance with the material terms and conditions of this Development Agreement and shall include in the letter a statement that the letter is being submitted to City pursuant to the requirements of Government Code Section 65865.1.

5.4 City Review.

5.4.1 Within thirty (30) days after the receipt of Developer's letter, the Community Development Director shall review Developer's submission and determine whether Developer has, for the year under review, demonstrated good faith compliance with the material terms and conditions of this Development Agreement.

5.4.2 Upon completion of an annual review, the Community Development Director shall submit a report to the City Council setting forth the evidence concerning good faith compliance by Owner with the terms of this Agreement and his recommended finding on that issue. If the Council finds 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. If the Council makes a preliminary finding that Owner has not complied in good faith with the terms and conditions of this Agreement, City shall grant Developer a reasonable period of time to cure the alleged noncompliance, which period may be extended by the Community Development Director if, in their reasonable discretion, finds that Developer is working in good faith to cure their noncompliance and additional time is reasonably necessary.

5.4.3 Upon the end of the cure period, the Community Development Director shall submit a report to the City Council regarding Developer's efforts to cure their noncompliance. If the Council, at public meeting, determines that Developer is in compliance with the material terms and conditions of this Development Agreement, the annual review shall be deemed concluded and City shall, at Developer's request, issue and have recorded a Certificate of Compliance indicating Developer's compliance with the terms of this Development Agreement. If the City Council instead finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms or conditions of this Development Agreement and that Developer is in material breach of this Development Agreement, City may deem Developer in default, provide Developer additional time to cure their non-compliance, or seek any other remedy available to City. The procedures set forth in this Section shall supplement and shall not replace any remedies otherwise available to a defaulting Party under this Agreement or available at law or equity.

ARTICLE 6.

AMENDMENTS

6.1 Amendments to Development Agreement. This Agreement may be amended or canceled, in whole or in part, only by mutual written consent of the parties and then in the manner provided for in Government Code Section 65868, et seq., or successor provisions thereto.

6.2 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in

consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to constitute an amendment to the Agreement. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

6.3 Amendments to Project Approvals. Project Approvals may be amended or modified from time to time in the manner otherwise provided for in state or local law. All amendments to the Project Approvals shall automatically be treated in the same manner as Project Approvals without further action only if none of the conditions described in CEQA Regulation 15162 have occurred.

ARTICLE 7.

DEFAULT, REMEDIES AND TERMINATION

7.1 Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 11.2 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 10.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement (not including any failure by Developer to perform any term or provision of any other Project Approvals) shall constitute an "Event of Default," in the following circumstances:

7.1.1 The defaulting Party does not cure such failure within sixty (60) days (such sixty (60) day period is not in addition to any sixty (60) day cure period under Section 5.7, if Section 5.7 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period; or

7.1.2 Such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

7.2 Notice of Default. Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

7.3 Meet and Confer. During the time periods specified in this Section to cure a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the sixty (60)-day cure period referred to in

Section 7.1 (even if the sixty (60)-day cure period itself is extended pursuant to Section 7.1(ii)) unless the Parties agree otherwise in writing.

7.4 Remedies and Termination. If, after notice and expiration of the cure periods and procedures set forth in Sections 7.1 and 7.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 7.4 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 7.7 herein. In the event that this Development Agreement is terminated pursuant to Section 7.7 herein and litigation is instituted that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

7.5 Legal Action by Parties.Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

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

7.6 Termination.Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.3.

7.6.2 Survival of Obligations. Upon the termination or expiration of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to

any obligation that is specifically set forth as surviving the termination or expiration of this Development Agreement. The termination or expiration of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) for the Project.

ARTICLE 8.

COOPERATION AND IMPLEMENTATION

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

8.2 **Regulation by Other Public Agencies.** Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the Property. To the extent that City, the City Council, the Planning Commission or any other board, agency, committee, department or commission of City constitutes and sits as any other board, agency, commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Agreement. In the event any state or federal resources agency (e.g., California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Regional Water Quality Control Board/State Water Resources Control Board,), in connection with its final issuance of a permit or certification for all or a portion of the Project, imposes requirements that require modifications to the Project, then the Parties will work together in good faith to incorporate such changes into the Project; provided, however, that if Developer appeals or challenges any such permit requirements, then the Parties may defer such changes until the completion of such appeal or challenge.

8.3 **Other Governmental Permits and Approvals; Grants.** Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain (a) such permits and approvals and shall, from time to time, at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, at each stage of the development of the Project; and (b) any grants for the Project for which Developer applies.

8.4 **Indemnification and Legal Challenge.**

8.4.1 To the maximum extent permitted by law, Developer must defend, indemnify, and hold the City and its elected officials, officers, contractors serving as City officials, agents, and employees ("Indemnitees") harmless from liability for damage and/or claims for damage for personal injuries, including death, and claims for property damage, and with respect to all other actions and liabilities for damages caused or alleged to have been caused by reason of Developer's activities in connection with the Development and/or construction of the Project, and which may arise from the direct or indirect operations of Developer or those of Developer's contractors, agents, tenants, employees, or any other persons acting on Developer's behalf, which relate to the Development and/or construction of the Project. This indemnity provision applies to all damages and claims for damage, as described above, regardless of whether or not the City prepared, supplied, or approved the plans, specifications, or other documents for the Project, including any associated public or private improvements.

8.4.2 Without limiting the generality of paragraph 8.4.1, Developer shall also defend, indemnify, and hold the Indemnitees harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from or related to any claims that Developer or Developer's contractors are required to pay prevailing wages pursuant to Labor Code Section 1720 *et seq.*, in connection with the Development of the Project.

8.4.3 Without limiting the generality of paragraph 8.4.1, in the event of any legal action challenging the validity, applicability, or interpretation of any provision of this Agreement, any of the entitlement documents pertaining to the Project including, without limitation, the City's General Plan, Zoning Code, or any other supporting document relating to the Project, Developer shall also indemnify, defend, and hold harmless the Indemnitees with respect to all liability, costs, and expenses incurred by, and/or awarded against, the City or any of the Indemnitees in relation to such action.

8.4.4 With respect to any legal action or claim falling within Developer's defense, indemnity, and hold harmless obligations, the City shall have the right to select counsel of its choice and the parties shall cooperate in the defense. Developer shall provide, and maintain for the duration of such action or claim, a cash deposit to City in an amount or amounts determined by the City Attorney to be reasonably necessary to cover the City's legal fees, costs, and expenses. Developer shall not be entitled to a refund of funds expended from the deposit regardless of the outcome of the action or claim. The City shall refund to Developer any unexpended funds from the deposit within thirty (30) days of any final disposition or full and complete settlement of the action or claim.

8.4.5 In the event of any litigation challenging the effectiveness of this Agreement, or any portion hereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless otherwise ordered by the court. Absent issuance of an injunction, Developer may elect to continue Development under this Agreement pending completion of the litigation but it shall do so at its sole risk, and the City shall not be liable for any loss suffered as a result thereof. City shall take all actions it deems reasonably necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by applicable law, maintain the integrity of the Project Approvals, and

avoid or minimize to the greatest extent possible any material limitation to, or frustration of, Developer's vested rights under this Agreement.

8.4.6 This Section 8.4 shall survive this the expiration or earlier termination of this Agreement.

ARTICLE 9.

TRANSFERS AND ASSIGNMENTS

9.1 Right to Assign. Developer shall have the right to sell, assign or transfer ("Transfer") in whole or in part its rights, duties and obligations under this Development Agreement, to any person or entity at any time during the Term of this Development Agreement without the consent of City; provided, however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so Transferred except through a transfer of the Property. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Development Agreement that are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer's request, City shall cooperate with Developer and any proposed transferee to identify completed obligations and allocate rights, duties and obligations under this Development Agreement and the Project Approvals among the transferred Property and the retained Property.

9.2 Release upon Transfer. Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to Section 9.1, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the Transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (i) Developer has provided to City written notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property transferred. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 9.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

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

ARTICLE 10.

MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

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

10.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or by the Project Approvals and Applicable Rules.

10.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right

(but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice.

10.4 No Supersedure. Nothing in this Article 10 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this Article 10 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 10.3.

10.5 Technical Amendments to this Article 10. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 11. **MISCELLANEOUS PROVISIONS**

11.1 Limitation on Liability. Notwithstanding anything to the contrary contained in this Development Agreement, in no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Development Agreement by Developer, or for any amount which may become due to City under the terms of this Development Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Development Agreement by City or for any amount which may become due to Developer under the terms of this Development Agreement.

11.2 Force Majeure. The Term of this Development Agreement and the Project Approvals and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project, enemy action, riots, insurrections, civil disturbances, wars, terrorist acts, fire, unavoidable casualties, pandemic, government mandated shutdowns or government closure (meaning any of the following events: (a) the governmental offices where any action required under this Agreement (collectively, "Government Offices") are not open for business and any Government Offices' systems are not operational such that such action cannot occur; (b) any other third party is not open for business such that its services required as necessary for a Party to perform obligations under this Agreement cannot be performed; (c) overnight couriers are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that, as part of consummation of financial transactions contemplated hereby cannot occur), litigation involving this Agreement

or the Project Approvals, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Development Agreement and any subdivision map or any of the other Project Approvals shall not include any period of time during which (i) a development moratorium including, but not limited to, a water or sewer moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay either the construction, funding or development of the Project or (iii) there is any mediation, arbitration; litigation or other administrative or judicial proceeding pending involving the Vested Elements, or Project Approvals. The Term of the Project Approvals shall therefore be extended by the length of any development moratorium or similar action; the amount of time any actions of public agencies prevent, prohibit or delay the construction, funding or development of the Project or prevents, prohibits or delays the construction, funding or development of the Project; or the amount of time to finally resolve any mediation, arbitration, litigation or other administrative or judicial proceeding involving the Vested Elements, or Project Approvals. Furthermore, in the event the issuance of a building permit for any part of the Project is delayed as a result of Developer's inability to obtain any other required permit or approval, then the Term of this Development Agreement shall be extended by the period of any such delay.

11.3 Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier) or delivered by nationally recognized overnight courier service to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 11.3.

City: City of [_____]

Attention: City Manager

with copies to: City of [_____]

Attention: City Manager

City of [_____]

Attention: Community Development Director

Developer

Attention: General Counsel

with copies to: Cox, Castle & Nicholson, LLP
2029 Century Park East, Suite 2100
Los Angeles, CA 90067
Attention: Andrew K. Fogg, Esq.

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a “hard” copy is delivered as provided above.

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

11.5 Non-Intended Prevailing Wage Requirements. Nothing in this Development Agreement shall in any way require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement within the Project (a “Non-Intended Prevailing Wage Requirement”). But for the understanding of the Parties as reflected in the immediately preceding sentence, the Parties would not have entered into this Development Agreement based upon the terms and conditions set forth herein. Developer and City have made every effort in reaching this Development Agreement to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. These efforts have been conducted in the absence of any applicable existing judicial interpretation of which the Parties are aware that would indicate that the terms and conditions of this Agreement would result in a Non-Intended Prevailing Wage Requirement. If, despite such efforts, any provision of this Development Agreement shall be determined by the Department of Industrial Relations, the Labor and Workforce Development Agency, or any court of competent jurisdiction to result in a Non-Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties hereby agree that, in such event, at the election of Developer in its sole and absolute discretion, this Development Agreement shall be reformed such that each provision of this Development Agreement that results in the Non-Intended Prevailing Wage Requirement will be removed from this Development Agreement as though such provisions were never a part of the Development Agreement, and, in lieu of such

provision(s), replacement provisions shall be added as a part of this Development Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non-Intended Prevailing Wage Requirement.

11.6 Severability. If any terms or provision(s) of this Development Agreement or the application of any term(s) or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or enforceability would deprive either City or Developer of material benefits derived from this Development Agreement, or make performance under this Development Agreement unreasonably difficult, then City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Development Agreement in a manner that is mutually acceptable to City and Developer. Notwithstanding the foregoing, if any material provision of this Development Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer (in its sole and absolute discretion) may terminate this Development Agreement by providing written notice of such termination to City.

11.7 Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement. Construction of Agreement. This Development Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

11.9 Entire Agreement. This Development Agreement is executed in ____ (__) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of ____ (__) pages including the Recitals, and ____ (__) exhibits and one (1) appendix, attached hereto and incorporated by reference herein, which, together with the Project Approvals, constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits and appendices are as follows:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Affordable Housing Plan
Exhibit D	Definitions

11.10 Estoppel Certificates. Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The Party

receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Either the City Manager or the Community Development Director shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.Recordation. Pursuant to California Government Code Section 65868.5, within ten (10) days after the later of execution of the Parties of this Development Agreement or the Effective Date, the City Clerk shall record this Development Agreement with the Orange County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended, the City Clerk shall record notice of such action with the Orange County Recorder.

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

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

11.14 Applicable Law; Venue. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any action to enforce or contest the validity of this Agreement shall be any court of competent jurisdiction located in the County of Orange, California.

11.15 Attorneys' Fees. Should any legal action be brought by either Party because of a breach of this Development Agreement or to enforce any provision of this Development Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a Party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses, including without limitation, expert witness fees, incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

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

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

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

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

11.20 Conflicts of Interest; Prohibited Interests. Developer warrants and maintains as of the Effective Date of this Agreement that it has no knowledge that any officer or employee of City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Developer. If any information regarding an officer or employee of the City having an interest in this transaction or in the business of Developer as of the Effective Date of this Agreement comes to the knowledge of Developer at any time during the Term of this Agreement, Developer shall immediately make a complete, written disclosure of such interest to the City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws. If the City subsequently is provided information that Developer had knowledge but failed to disclose knowledge of any such interest, and Developer fails to acknowledge such interest within 14 days of notification by the City, Developer's failure shall constitute a breach of the Agreement.

[Signatures Appear on The Following Page]

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

DEVELOPER:

_____, a _____

By: _____
Name: _____
Title: _____

CITY:

CITY OF BREA, a California municipal
corporation

By: _____
Name: _____
Title: _____

ATTESTATION:

By: _____, City Clerk

APPROVED AS TO FORM:

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

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

STATE OF CALIFORNIA

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[Attached]

DRAFT

EXHIBIT B

MAP OF PROPERTY

[Attached]

DRAFT

EXHIBIT C

AFFORDABLE HOUSING PLAN

In accordance with the Project Approvals and this Development Agreement, Developer shall meet requirements of Brea City Code, Chapter 20.40 as set forth below.

Application of the City's Municipal Code would require development of affordable housing units on the Property at one of the following levels:

Municipal Code Options for Rate of Affordable Housing	Resulting Minimum Requirement at Each Optional Level
5% Extremely Low Income	9 Extremely Low Units
10% Very Low Income	18 Very Low Units
15% Low Income	27 Low Income Units
20% Moderate Income	36 Moderate Income Units
30% Workforce Housing	54 Workforce Housing Units

OPTION 1 – OFF SITE AFFORDABLE HOUSING PROJECT

Development Agreement No. 19-01, together with the associated Affordable Housing Agreement and Restrictive Covenant previously provided for the right to develop the Off-Site Property with a five-story building containing 114 multi-family units, including restricted rents between the low and moderate income threshold for 80 residential units for 40 years.

In lieu of providing deed restricted affordable housing on site within the Project, Developer shall acquire and convey the Off-Site Property to an experienced third-party affordable housing developer (the "Affordable Developer") approved by the City, acting reasonably, to allow development of an 100% affordable housing project on the Off-Site Property that meets at least the following standards:

- Total Units: 85, including (i) 68 1-Bedroom, 1-Bath units, (ii) 16 2-Bedroom, 1-Bath units, and (iii) 1 Manager Unit
- Affordability levels:
 - 9 Extremely Low (30% TCAC Rents)
 - 9 Very Low (50% TCAC Rents)
 - 66 Lower (30 @ 60% TCAC Rents and 36 @ 70% TCAC Rents).
- Lower income units shall be restricted to a maximum affordable rent of up to 80% AMI for Orange County as determined and published annually by California Tax Credit Allocation Committee for a family of a size appropriate to the unit.
- To the maximum extent permitted by law, Developer will implement a point system to afford preference for such units based on Brea residency and Brea employment.

- Timing - Developer will include a schedule for construction of the Off-Site Affordable Housing Project pursuant to Brea City Code Chapter 20.40.
- The Off-Site Property is located at the southeast corner of the intersection of Mercury Lane and Berry Street in the City of Brea.

The Off-Site Property is the subject of Development Agreement No. 19-01, recorded against the Off-Site Property on September 1, 2020 as Document No. 2020000458788. In conjunction with Development Agreement No. 19-01, an Affordable Housing Agreement and a Restrictive Covenant for Workforce Housing, were executed against the Off-Site Property on April 25, 2022.

OPTION 2 – ALTERNATIVE CONVEYANCE OF OFF-SITE PROPERTY

In the event that the Project is unable to cause the development of the Off-Site Affordable Housing Project described in Option 1, then the Project shall cause the conveyance of the Off-Site Property to the City for development as an affordable housing project in the City's sole discretion.

OPTION 3 – ON SITE AFFORDABLE HOUSING DEVELOPMENT

In the event that the Project is unable to cause the development of the Off-Site Affordable Housing Project described in Option 1 or cause the transfer of the Off-Site Property described in Option 2, then the Project shall enter into a covenant and agreement providing for deed restricted affordable housing consistent with the requirements of the City's Affordable Housing Ordinance in effect as of the Effective Date, described above.