INTEROFFICE MEMORANDUM

To: **Planning Commission**

From: **Carrie Tai, Director of Economic and Development Services**
Chris Yeager, Senior Planner

Date: **June 9, 2025**

Subject: **Agenda Item NB-2 Hive Live**

Please find attached the draft Development Agreement, in connection with agenda item PH-2. The scope of the Planning Commission's review is focused on the Public Benefits section of the proposal, in Exhibit C. Staff, along with the City Attorney's office, will continue to work with the applicant on language refinements as part of the preparation for the future City Council meeting.

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF COSTA MESA

AND

LEGACY/COLLIER RESIDENTIAL, LLC

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APPENDIX I

DEFINITIONS

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Development Agreement" or "Agreement") is made and entered into as of _____ ("Agreement Date") by and between the CITY OF COSTA MESA, a municipal corporation organized and existing under the laws of the State of California ("City"), and LEGACY/COLLIER RESIDENTIAL, 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 an equitable interest in certain real property consisting of approximately 14.25 acres located in the City, as more particularly described in Exhibit A attached hereto, and as diagrammed in Exhibit B attached hereto (the "Property").

D. The Hive Creative Office, Inc., a Delaware corporation, is the fee owner of the Property (the "Fee Owner").

E. Developer intends to develop the Property as a mixed-use community of 1,050 dwelling units, 3,692 square feet of retail uses, and 335,958 square feet of open space (defined more fully in Article [ ] below as the "Project").

F. Anduril Industries, Inc. holds a Right of First Offer Rider ("ROFO") for an approximately 4.68-acre portion of the Property (Parcel 1, as described below in Section 1.2.1). The Project Approvals (as defined in Section 1.4), specifically the North Costa Mesa Specific Plan, contemplates development of that specific portion of the Property with either (a) residential uses in conjunction with the Project, or (b) approximately 70,128 square feet of office space. The Project includes the option to develop Parcel 1 with approximately 70,128 square feet of office space, as reflected in the Vested Entitlements, as defined in Section 3.2.

G. The Property is currently developed with the 182,520-square foot Hive Creative Office Campus and the former Los Angeles Chargers practice field. Notwithstanding anything to

the contrary in the CMMC, including but not limited Table 13-204: (1) in the case of the unintentional damage and/or whole or partial destruction of any structure located on the Property existing as of the Effective Date, such structure may be repaired, restored and/or replaced to its pre-damage or pre-destruction intensity (floor area ratio), use, setback, lot coverage, height, parking ratio, open space, and landscaping; and (2) any structure located on the Property may be structurally altered, improved and/or maintained, including alterations, improvements and maintenance that extend the use or life of the such structures, provided however that such alterations, improvements and/or maintenance may not result in the expansion of an existing nonconforming use or physically enlarge the structures.

H. 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. Furthermore, while City may approve other projects after the Agreement Date that place a burden on City's infrastructure, it is the intent and agreement of the Parties that Developer's right to build and occupy the Project, as set forth in the Project Approvals (as defined in Section 1.4), shall not be diminished as a result of such other projects and that Developer's cost to develop the Project shall not be increased as a result of such other projects.

I. City is desirous of advancing the socioeconomic interests of City and its residents by promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding City's property tax base. City is also desirous of gaining the Public Benefits (as defined in Section 2.1) of the Project, which are in addition to those dedications, conditions and exactions required by laws or regulations and as set forth in this Development Agreement, and which advance the planning objectives of, and provide benefits to, City.

J. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of Costa Mesa General Plan (the "General Plan") and will implement City's stated General Plan policies; (3) City will receive substantially increased property tax and sales tax revenues; (4) City will benefit from increased employment opportunities for residents of City created by the Project; and (5) City will receive Public Benefits (as defined in Section 2.1) provided by the Project for the residents of City.

K. 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 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.

L. 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.

M. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in City's General Plan.

N. On [date], the City of Costa Mesa Planning Commission ("Planning Commission"), the initial hearing body for purposes of development agreement review, recommended approval of this Development Agreement pursuant to Resolution No. [ ]. On [date], the City of Costa Mesa City Council ("City Council") adopted its Ordinance No. [ ] approving this Development Agreement and authorizing its execution.

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

P. The terms and conditions of this Development Agreement have undergone extensive review by City staff, its Planning Commission and its City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the City General Plan, the Development Agreement Legislation, and the City Development Agreement Regulations and, further, the City Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

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

ARTICLE 1.
GENERAL PROVISIONS

1.1 Parties.

1.1.1 City. City is a California municipal corporation, with offices located at 77 Fair Drive, Costa Mesa, California 92626. "City," as used in this Development Agreement, shall include City and any assignee of or successor to its rights, powers and responsibilities.

1.1.2 Developer. Developer is a California corporation, with offices located at 3337 Susan Street, Suite 250, Costa Mesa, California 92626. "Developer," as used in this Development Agreement, shall include any permitted assignee or successor-in-interest as herein provided.

1.2 Property Subject to this Development Agreement.

1.2.1 Property. All of the Property, as described in Exhibit A and shown in Exhibit B, shall be subject to this Development Agreement. The Property is comprised of three-separate parcels:

i. *Parcel 1*: 203,958 square feet, 4.68 acres.

ii. *Parcel 2*: 193,386 square feet, 4.44 acres.

iii. *Parcel 3*: 223,460 square feet, 5.13 acres.

1.3 Term.

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

1.3.2 Term of the Agreement. The term ("Term") of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for a period of twenty (20) years, unless extended or earlier terminated as provided in this Agreement. The "Commencement of Construction" within 20 years from the Effective Date constitutes vesting for purposes of the Development 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.

1.3.3 Extensions. Two 5-year extensions are possible, as follows:

a. *First Extension*: Automatically granted upon Commencement of Construction of no less than three hundred (300) total dwelling units, provided that Developer is not in default of the Development Agreement and that the units have been constructed within 10 years of the adoption of the Agreement.

b. *Second Extension*: Automatically granted upon Commencement of Construction no less than six hundred (600) total dwelling units (inclusive of 300 units from First

Extension), provided that Developer is not in default of the Development Agreement and that the units have been constructed within 15 years of the adoption of the Agreement.

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

1.4.1 EIR. The Environmental Impact Report (State Clearinghouse No. 2024060115), which was prepared pursuant to CEQA, was recommended for certification by the Planning Commission on [date], by Resolution No. _____, and certified with findings by the City Council on [date], by Resolution No. _____ (certifying EIR) and Resolution No. _____ (adopting findings) (the "EIR").

1.4.2 General Plan Amendments. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved amendments to the City General Plan (the "General Plan Amendments"), which changed the designation of the Parcel 1 to Urban Center Commercial and the designation of Parcels 2 and 3 to High Density Residential.

1.4.3 Specific Plan. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved amendments to the *North Costa Mesa Specific Plan* ("NCMSP" or "Specific Plan").

1.4.4 Zoning Amendment. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. [_____], approved amendments to the CMMC (the "Zoning Amendments"), which changed the zoning of Parcel 1 to Planned Development Commercial and the zoning of Parcels 2 and 3 to Planned Development Residential – North Costa Mesa.

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

1.4.6 Master Plan. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. [_____], approved the Project's Master Plan.

1.4.7 Tentative Parcel Map. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. [_____], approved the Tentative Parcel Map No. [_____].

1.4.8 Density Bonus Agreement. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution N. [_____], approved the Density Bonus Agreement.

1.4.9 Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Sections 1.4.1 through 1.4.5 above , which may include, without limitation: development plans, amendments to applicable redevelopment plans, conditional use permits, 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.

1.5 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, Developer will provide the public benefits ("Public Benefits") described in Exhibit C, which are over and above those dedications, conditions and exactions required by laws or regulations.

ARTICLE 3.
DEVELOPMENT OF THE PROPERTY

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

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

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

3.2.2 The North Costa Mesa Specific Plan on the Agreement Date ("Applicable NCMSP");

3.2.3 The CMMC on the Agreement Date ("Applicable Zoning Ordinance"). However, notwithstanding anything to the contrary in the CMMC, including but not limited Table 13-204: (1) in the case of the unintentional damage and/or whole or partial destruction of

any structure located on the Property existing as of the Effective Date, such structure may be repaired, restored and/or replaced to its pre-damage or pre-destruction intensity (floor area ratio), use, setback, lot coverage, height, parking ratio, open space, and landscaping; and (2) any structure located on the Property may be structurally altered, improved and/or maintained, including alterations, improvements and maintenance that extend the use or life of the such structures, provided however that such alterations, improvements and/or maintenance may not result in the expansion of an existing nonconforming use or physically enlarge the structures;

3.2.4 Any City modifications to the California Building Code, and any City ordinances that interpret these codes or the City Building Code, where such ordinances establish construction standards that are intended to be applied ministerially to the construction of improvements on private property and public infrastructure ("Applicable Local Building Code Modifications"), subject to Section 3.4.2(c)(ii).

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

3.2.6 The Project Approvals, including the Development Agreement and the Public Benefits specified therein, as they may be amended from time to time upon Developer's consent (such consent to be granted at the sole discretion of Developer) and City's approval of the amendment in accordance with Section 6.4.2 of this Agreement; and are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (the "Vested Elements"). City hereby agrees to be bound with respect to the Vested Elements, subject to Developer's compliance with the terms and conditions of this Development Agreement. The intent of this Section 3.2 is to cause all development rights which may be required to develop the Project in accordance with the Project Approvals to be deemed to be "vested rights" as that term is defined under California law applicable to the development of land or property and the right of a public entity to regulate or control such development of land or property, including, without limitation, vested rights in and to building permits and certificates of occupancy.

3.3 Development Construction Completion.

3.3.1 Timing of Development; *Pardee* Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals, Developer shall have the right (without obligation) 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.

3.3.2 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.

3.3.3 No Other Requirements. 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.

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

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

3.4.2 Changes in Applicable Rules; Future Rules.

a. To the extent any changes in the Applicable Rules, or any provisions of future General Plans, Specific Plans, Zoning Ordinances or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referenda, resolution, policy, order, moratorium, or other means, adopted by the City Council, Planning Commission, or any other board, commission, agency, committee, or department of City, or any officer or employee thereof, or by the electorate) of City (collectively, "Future Rules") are not in conflict with the Vested Elements, such Future Rules shall be applicable to the Project. To the extent that Future Rules conflict with the Vested Elements, they shall not apply to the Project and the Vested Elements shall apply to the Project, except as provided in Section 3.4.2(c) herein.

b. To the maximum extent permitted by law, City shall prevent any Future Rules from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City shall not support, adopt or enact any Future Rule, or take any other action which would violate the express provisions or spirit and intent of this Agreement or the Project Approvals. Developer reserves the right to challenge in court any Future Rule that would conflict with the Vested Elements or this Agreement or reduce the development rights provided by this Agreement.

c. Future Rule that conflicts with the Vested Elements shall nonetheless apply to the Property if, and only if (i) consented to in writing by Developer; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) required by changes in State or Federal law as set forth in Section 3.4.3 below; (iv)

it consists of changes in, or new fees permitted by, Section 3.6; (v) it consists of revisions to, or new Building Regulations to the extent required by the then current version of the California Building Code; or (vi) it is otherwise expressly permitted by this Development Agreement.

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

3.4.3 Changes in State or Federal Laws. In accordance with California Government Code Section 65869.5, in the event that state or federal laws or regulations enacted after the Effective Date ("State or Federal Law") prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall 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 and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law. In such an event, this Development Agreement together with any required modifications shall continue in full force and effect. In the event that the State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation) the State or Federal Law preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such 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 (a) not commenced with the development of the Project in accordance with this Development Agreement as a result of such challenge or (b) been unable to satisfy the criteria for any extension pursuant to Section 1.3.3 as a result of such challenge, the Term shall be extended for the period of any such challenge.

3.4.4 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.

3.5 Processing Subsequent Approvals.

3.5.1 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, including, but not limited to, the following:

a. The processing of applications for and issuance of all discretionary approvals requiring the exercise of judgment and deliberation by City, including without limitation, the Subsequent Approvals;

b. The holding of any required public hearings;

c. The processing of applications for and issuing of all ministerial approvals requiring the determination of conformance with the Applicable Rules, including, without limitation, site plans, development plans, land use plans, grading plans, improvement plans, building plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, demolition permits, grading permits, improvement permits, wall permits, building permits, lot line adjustments, encroachment permits, conditional and temporary use permits, sign permits, certificates of use and occupancy and approvals and entitlements and related matters as may be necessary for the completion of the development of the Property ("Ministerial Approvals"). Notwithstanding the above, for all project phases, the City shall provide expedited plan checks and expedited re-checks, with the Developer paying applicable fees for expedited review.

i. City agrees that it shall complete its first review of building plans/permit applications within thirty (30) working days of Developer's submittal of plans to the City. City's second review of resubmitted plans shall be completed within fifteen (15) working days of resubmittal. To the extent there are outstanding comments after the City's third review of plans, and prior to any second resubmittal of plans by Developer, the Parties will meet to discuss any outstanding comments. After such meeting, City will complete its review Developer's resubmitted plans within six (6) working days.

ii. Developer may submit an "at-risk" building plan check prior to obtaining entitlement approval, to provide simultaneous review. Developer shall pay for applicable review.

3.5.2 Pre-Submittal Coordination. The Parties agree that pre-submittal coordination and meetings are imperative to the timely processing of Subsequent Approvals. Therefore, the Parties agree to work cooperatively to keep each Party apprised of the status of planned submittals and schedule, as warranted, meetings in anticipation of such submittals and after submittals to discuss status and coordination on the City's review of the Subsequent Approvals and implementation of the Project. Developer may request that the City participate in plan check coordination meetings to ensure that all comments are understood prior to submitting or resubmitting. These meetings will include the applicant team and applicable staff from individual departments as needed. The Owner shall notify staff 30 days prior to submittal to confirm necessary submittal content.

3.5.3 Scope of Review of Subsequent Approvals. City will use its best efforts to anticipate and communicate to Developer issues and concerns that may arise in connection with any application prior to the application submittal if possible and as early as feasible in the permit process. Developer will use its best efforts to keep City informed of development applications as they mature, and anticipate and communicate issues of mutual concern prior to submittal of permit applications. By approving the Project Approvals, City has made a final policy decision

that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions. The scope of the review of applications for Subsequent Approvals shall be limited to a review of substantial conformity with the Vested Elements and the Applicable Rules (except as otherwise provided by Section 3.4), and compliance with CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Approval for the Project.

3.5.4 Any future entitlements requiring City Council review will be processed within three regularly scheduled City Council meetings past the final Planning Commission project recommendation. This is based on any/all required applicant information provided in a timely manner

3.5.5 Construction Processing/Review. Once construction commences, Developer may request and the City will provide same-day inspections when needed to ensure construction progress. Developer shall request same-day inspections prior to 8:00 a.m.

a. *Coordination Meetings*: Developer may request construction coordination meetings with City staff from applicable departments to ensure the Project is progressing as needed during construction.

3.6 Development Fees, Exactions; and Conditions.

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

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

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

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

b. Any Impact Fees levied against or applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq.* ("AB 1600"). Developer retains all rights set forth in California Government Code Section 66020. Nothing in this Development Agreement shall diminish or eliminate any of Developer's rights set forth in such section.

3.6.4 Conditions of Subsequent Approvals.

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

b. No conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the Project Approvals and the MMRP. In addition, any and all conditions imposed on Subsequent Approvals for the Project must comply with Sections 3.6.2 and 3.6.3 herein.

c. Upon Developer's request, City shall cooperate with Developer (a) to locate any new easements required for the Project so as to minimize interference with development and operation of the Project, and (b) in Developer's efforts to relocate or remove easements to facilitate development and operation of the Project.

3.7 Infrastructure.

3.7.1 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 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.

3.7.2 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, electric service, 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 restriction on hookups or service for the Project except for reasons beyond City's control.

3.8 Taxes and Assessments.

3.8.1 Assessment Districts or Other Funding Mechanisms. City is unaware of any pending efforts to initiate, or consider applications for new or increased assessments covering the Property, or any portion thereof. City understands that long-term assurances by City concerning fees, taxes and assessments were a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay long-term fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts covering all or any portion of the Property. Subject to the provisions of Section 3.6 above, City may impose new taxes and assessments, other than Impact Fees, on the Property in accordance with the then-applicable laws, but only if such taxes or assessments are adopted by or after City-wide voter or City-wide landowner approval of such taxes or assessments and are equally imposed on other land and projects of the same category within the jurisdiction of City, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property vis-à-vis the other land and projects within City's jurisdiction or the portion of City's jurisdiction subject to the assessment. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event as assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities that are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Developer under the Project Approvals, such fees or assessments to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such fees or assessments to be paid by Developer under the Project Approvals.

3.9 Life of Project Approvals and Subdivision Maps.

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

3.9.2 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.

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

3.10 Further CEQA Environmental Review.

3.10.1 Reliance on Project EIR. The EIR, which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire Project as it is described in the Project Approvals. Nothing in this Development Agreement shall be construed to require CEQA review of Ministerial Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on the EIR to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration or subsequent or supplemental EIR unless required by CEQA and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the MMRP or specifically required by the Applicable Rules.

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 possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City shall conduct such CEQA review as expeditiously as possible. The cost and implementation of any additional mitigation measures or conditions requiring public improvements and/or public infrastructure may be imposed on the Subsequent Approvals for the Project as a result of such CEQA process only to the extent otherwise permitted by Section 3.6 of this Development Agreement. In the event that CEQA review of a Subsequent Approval for the Project pursuant to this Section 3.10.2 identifies any additional mitigation measures or conditions that are not permitted by Section 3.6 of this Development Agreement, then City, at its election, shall, either: (a) cause the implementation of such mitigation measures or conditions at no cost and expense to Developer and in an expeditious manner; or (b) to the extent permitted by law, approve the Subsequent Approval without such mitigation measures or conditions being required (where such approval creates the requirement for preparation of an environmental impact report and the adoption of a statement of overriding considerations, City shall prepare such documentation at no cost and expense to Developer and in an expeditious manner). If City is not permitted to impose the cost of mitigation measures or conditions pursuant to Section 3.6, it shall not instead impose taxes or assessments on the Property to cover any portion of the cost of such mitigation measures or conditions, unless such taxes or assessments are permitted pursuant to Section 3.8.

3.11 Building Regulations. "Building Regulations" consist of the California Building Code and the City Building Code and any ordinances which interpret these codes where such ordinances establish construction standards that are intended to be applied ministerially to the construction of improvements on private property and public infrastructure. Building Regulations applicable to building and construction throughout the City at the time Developer applies for the applicable permits for construction of any portion of the Project shall be applicable to the building and construction authorized by such permit, except if such Building

Regulations conflict in any manner with the Vested Elements. In the event of such conflict, the particular Building Regulation which is in conflict with the Vested Elements shall not apply to or govern development or construction of the Project unless it is determined by City to be required by the most current version of the California Building Code. In the event of a dispute as to whether or not the particular Building Regulation in conflict with the Vested Elements is required by the most current version of the California Building Code, Developer shall have the right to have the City Council hear such dispute and make a determination evidenced through findings of fact based on substantial evidence as to whether such Building Regulation is so required by the current applicable version of the California Building Code.

ARTICLE 4.
ADDITIONAL RIGHTS AND OBLIGATIONS OF THE PARTIES; ALLOCATIONS OF RIGHTS AND OBLIGATIONS OF THE PARTIES

4.1 Conveyance of Public Infrastructure.

4.1.1 Acceptance; Maintenance. Upon completion of any and all public infrastructure to be completed by Developer, 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.

4.1.2 Assessment Financing. City agrees to cooperate with Developer in the formation of any assessment districts (including without limitation Mello Roos Districts and Landscaping and Lighting Districts), community facilities districts, Geologic Hazard Abatement Districts, tax exempt financing mechanisms (a "Financing Mechanism") that Developer in its sole discretion may elect to initiate related to the Project as and when so requested by Developer.

4.2 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.

4.3 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.

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. Developer shall be responsible for reimbursing the costs associated with the annual review including staff time and any other resources required.

5.2 Commencement of Process. The City Manager, 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 Section 5.1. Failure of the City Manager to send such notification 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. The City Council may, in addition, order a special review of compliance no more than once a year.

5.3 Developer Compliance Letter. Not less than thirty (30) days after receipt of the City Manager's notice pursuant to Section 5.2, Developer shall submit a letter to the City Manager 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 Manager Review. Within thirty (30) days after the receipt of Developer's letter, the City Manager, or their designee, 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.

5.5 Development Services Director Compliance Finding. If the City Manager, or their designee, finds that Developer has so complied, the City Manager shall schedule the annual review for the next available meeting of the Planning Commission and shall prepare a staff report to the Planning Commission, which shall include, in addition to Developer's letter, (i) a demonstration of City's good faith compliance with the material terms and conditions of this Development Agreement; and (ii) the City Manager's recommendation that the Planning Commission find Developer to be in good faith compliance with the material terms and conditions of this Development Agreement.

5.6 City Manager Noncompliance Finding. If the City Manager (or the Planning Commission, on review of the City Manager's recommendation pursuant to Section 5.5) finds and determines that there is substantial evidence that Developer has not complied in good faith

with the material terms and conditions of this Development Agreement and that Developer is in material breach of this Development Agreement for the year under review, the City Manager shall issue and deliver to Developer a written "Notice of Default" specifying in detail the nature of the failures in performance that the City Manager (or Planning Commission) claim constitutes material noncompliance, all facts demonstrating substantial evidence of material noncompliance , and the manner in which such noncompliance may be satisfactorily cured in accordance with the Development Agreement. In the event that the material noncompliance is an Event of Default pursuant to Article 7 herein, the Parties shall be entitled to their respective rights and obligations under both Articles 5 and 7 herein, except that the particular entity allegedly in default shall be accorded only one of the sixty (60)-day cure periods referred to in Sections 5.7 and 7.1 herein.

5.7 Cure Period. If the City Manager or Planning Commission finds that Developer is not in compliance, the City Manager shall grant a reasonable period of time for Developer to cure the alleged noncompliance. The City Manager shall grant a cure period of at least sixty (60) days and shall extend the sixty (60) day period if Developer is proceeding in good faith to cure the noncompliance and additional time is reasonably needed. At the conclusion of the cure period, the City Manager shall either (i) find that Developer is in compliance and refer the matter to the Planning Commission as specified in Section 5.5; or (ii) find that Developer is not in compliance and refer the matter to the Planning Commission as specified in Section 5.8.

5.8 Referral of Noncompliance to Planning Commission. The City Manager shall refer the alleged default to the Planning Commission if Developer fails to cure the alleged noncompliance to the Development Services Director's reasonable satisfaction during the prescribed cure period and any extensions thereto. The City Manager shall refer the alleged noncompliance to the Planning Commission if Developer requests a hearing before the Planning Commission. The City Manager shall prepare a staff report to the Planning Commission which shall include, in addition to Developer's letter, (i) demonstration of City's good faith compliance with the terms and conditions of this Development Agreement; (ii) the Notice of Default; and (iii) a description of any cure undertaken by Developer during the cure period.

5.9 Delivery of Documents. At least five (5) days prior to any City hearing regarding Developer's compliance with this Development Agreement, City shall deliver to Developer all staff reports and all other relevant documents pertaining to the hearing.

5.10 Planning Commission Compliance Finding. If the Planning Commission, following a noticed public hearing pursuant to Section 5.5 or 5.8, determines that Developer is in compliance with the material terms and conditions of this Development Agreement, and that determination is not appealed to the City Council, the annual review shall be deemed concluded. 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.

5.11 Planning Commission Noncompliance Finding; Referral to City Council. If the Planning Commission, at a properly noticed public hearing pursuant to Section 5.5 or 5.8, 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, Developer shall have a reasonable time

determined by the Planning Commission to meet the reasonable terms of compliance approved by the Planning Commission, which time shall be not less than fifteen (15) days. If Developer does not complete the terms of compliance within the time specified, the Planning Commission shall forward its recommendations to the City Council and the City Council shall hold a public hearing regarding termination or modification of this Development Agreement. Notification of intention to modify or terminate this Development Agreement shall be delivered to Developer by certified mail containing: (i) the time and place of the City Council hearing; (ii) a statement as to whether City proposes to terminate or modify this Development Agreement and the terms of any proposed modification; and (iii) any other information reasonably necessary to inform Developer of the nature of the proceedings. At the time of the hearing, Developer shall be given an opportunity to be heard. The City Council may impose conditions to the action it takes as necessary to protect the interests of City; provided that any modification or termination of this Development Agreement pursuant to this provision shall bear a reasonable nexus to, and be proportional in severity to the magnitude of, the alleged breach, and in no event shall termination be permitted except in accordance with Article 7 herein.

5.12 Relationship to Default Provisions. The above procedures shall supplement and shall not replace that provision of Section 7.4 of this Development Agreement whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Default and following the procedures set forth in said Section 7.4.

ARTICLE 6.
AMENDMENTS

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

6.2 Amendments to or Cancellation of Development Agreement. This Development Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing in accordance with the provisions of the Development Agreement Legislation and the City Development Agreement Regulations. Review and approval of an amendment to this Development Agreement shall be strictly limited to consideration of only those provisions to be added or modified. No amendment, modification, waiver or change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that expressly refers to this Development Agreement and signed by the duly authorized representatives of both Parties. All amendments to this Development Agreement shall automatically become part of the Project Approvals.

6.3 Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that substantially conforming 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 6.3 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 6.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

6.4 Amendments to Project Approvals. Notwithstanding any other provision of this Development Agreement, Developer may seek and City may review and grant amendments or modifications to the Project Approvals (including the Subsequent Approvals) subject to the following (except that the procedures for amendment of this Development Agreement are set forth in Section 6.2 herein).

6.4.1 Amendments to Project Approvals. Project Approvals (except for this Development Agreement the amendment process for which is set forth in Section 6.2) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer (at its sole discretion) and in accordance with Section 3.4. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Section 3.4. The City shall not request, process or consent to any amendment to the

Project Approvals that would affect the Property or the Project without Developer's prior written consent.

6.4.2 Administrative Amendments. Upon the request of Developer for an amendment or modification of any Project Approval, the Planning Director or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Development Agreement and the Applicable Rules. If the Planning Director or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Development Agreement and the Applicable Rules, the amendment or modification shall be determined to be an "Administrative Amendment," and the Planning Director or his/her designee may approve the Administrative Amendment, without public notice or a public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, variations in the location of structures that do not substantially alter the design concepts of the Project, substitution of comparable landscaping for any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the Project, amendments to the master sign program, and minor adjustments to a subdivision map or the Property legal description shall be deemed to be minor amendments or modifications. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Rules and this Agreement.

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," (i) if such 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 (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for

purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

7.2 Meet and Confer. During the time periods specified in Section 7.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the sixty (60)-day cure period referred to in Section 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.

7.3 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, subject to compliance with the requirements set forth in Section 7.6.3, may 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.

7.4 Legal Action by Parties.

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

7.4.2 No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Development Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in

connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

7.5 Effects of Litigation. In the event that litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Development Agreement, then Developer shall have no obligations whatsoever under this Development Agreement. In the event that any payment(s) have been made by or on behalf of Developer to City pursuant to the obligations contained in Section 3.6, City shall give to Developer a refund of the monies remaining in any segregated City account into which such payment(s) were deposited, if any, along with interest which has accrued, if any. To the extent the payment(s) made by or on behalf of Developer were not deposited, or no longer are, in the segregated City account, City shall give Developer a credit for the amount of said payment(s) as determined pursuant to this Section 7.5, along with interest, if any, that has accrued, which credit may be applied by Developer to any costs or fees imposed by City on Developer in connection with construction or development within or outside the Property. Developer shall be entitled to use all or any portion of the credit at its own discretion until such time as the credit has been depleted. Any credits due to Developer pursuant to this Section 7.5 may, at Developer's own discretion, be transferred by Developer to a third party for application by said third party to any costs or fees imposed by City on the third party in connection with construction or the development of property within City, whether or not related to the Project. In the event that Developer has already developed or is developing a portion of the Project at the time of any invalidation of the Development Agreement, then any such refund or credit shall be limited to the amount paid by Developer that exceeds, on a pro rata basis, the proportion and uses of the Property retained by Developer to the entire Property. This Section 7.5 shall survive the termination or expiration of this Development Agreement.

7.6 Termination.

7.6.1 Expiration of Term. Except as otherwise provided, the Development Agreement shall terminate after (a) expiration of the Term (including applicable extensions); (b) entry of final judgment by a court of competent jurisdiction setting aside or annulling adoption of the Development Agreement ordinance and/or the Master Plan; (c) a timely adoption of a referendum measure overriding or repealing the Development Agreement ordinance and/or the Master Plan; (d) issuance of the Project's final certificate of occupancy; or (e) receipt of Developer's written notice voluntarily terminating the Development Agreement, provided that said notice is received prior to the issuance of the first demolition permit implementing the Master Plan and that the entitlements have been abandoned.

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.

7.6.3 Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in the Development Agreement Legislation and there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to Article 5 herein or this Article 7 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Development Agreement is terminated only with respect to that portion of the Property to which the default applies. Compliance with the procedures set forth in Sections 7.1 through 7.3 and 7.7.3 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 *et seq.*) including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code Section 910.

ARTICLE 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.

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 Cooperation in the Event of Legal Challenge.

8.4.1 The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

8.4.2 Developer shall indemnify the City from any third-party challenge to the Development Agreement or the Project Approvals. In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, or the Project Approvals for the Project, Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own counsel, and to control its participation and conduct in the litigation in all respects permitted by law. If both Parties elect to defend, the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. City agrees to give prompt notice to Developer with respect to any action filed or claim made against City no later than the earlier of (i) ten (10) days after valid service of process as to any filed action, (ii) or immediately upon the City's receipt of a petitioner's election to prepare the administrative record or any notice of a case management conference to discuss the administrative record pursuant to Public Resources Code section 21167.6(b), and City shall not respond to any such petitioner election or notice of case management conference without first notifying Developer in writing and affording Developer a reasonable amount of time to confer with City regarding such response, or (iii) fifteen (15) days after receiving written notification of the assertion of such claim, which City has good reason to believe is likely to give rise to a claim for indemnification under this Section 8.4 by the Developer. Developer and City shall each have sole discretion to terminate its defense at any time. The City shall not settle any third party litigation of Project Approvals without Developer's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

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

8.6 State, Federal or Case Law. Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be

consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

8.7 Defense of Agreement. City shall take all actions that are 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.

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. The City Attorney shall reasonably approve the form of the assumption and assignment agreement.

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, provided that Mortgagee. shall have an additional fifteen (15) days (with respect to monetary defaults only) or an additional thirty (30) days (with respect to non-monetary defaults), or such reasonable period of time beyond thirty (30) days, if such non-monetary default is not susceptible to being cured within such thirty (30) days, beyond the applicable cure period set forth in this Development Agreement within which to cure or to commence the curing of such default as therein provided during which additional period this Development Agreement shall remain in full force and effect (nothing contained herein shall obligate a Mortgagee to cure a default, it being understood that any election to cure a default shall be at the Mortgagee's sole option). In case of a default that is not susceptible of being cured by the Mortgagee, this Development Agreement will remain in full force and effect if Mortgagee institutes proceedings to acquire title to the Property by foreclosure or otherwise, and diligently prosecutes the same to completion. If the Mortgagee, or its nominee, or a purchaser at a foreclosure sale, or by deed in lieu of foreclosure, shall cure all defaults which are susceptible of being cured by such Mortgagee, or by such purchaser, as the case may be, then the defaults of any prior holder of the defaulting Developer's interest hereunder that are not susceptible of being cured by such Mortgagee or by such purchaser shall no longer be deemed to be defaults hereunder. This Development Agreement shall not be amended or modified without Mortgagee's consent.

10.4 Limitation of Liability. No Mortgagee shall be liable or obligated to perform the obligations of Developer under this Development Agreement unless and until such Mortgagee becomes the owner of Developer's interest in the Property by foreclosure, assignment, transfer in lieu of foreclosure, or otherwise or except to the extent such Mortgagee undertakes to perform and continues to perform Developer's obligations hereunder. Thereafter, such Mortgagee and its successors and assigns shall each remain liable for the obligations of Developer only so long as such Mortgagee or its successors or assigns is the owner of Developer's interest in the Property. Any such Mortgagee shall be entitled to all of the rights and privileges of Developer under this Development Agreement and shall have the right to assign in the same manner as the Developer.

10.5 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.

10.6 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, unavailability of labor beyond the control of the Party seeking the delay, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of 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), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy 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 Costa Mesa 77 Fair Drive Costa Mesa, CA 92626 (714) 754-5245 Attention: City Manager
with copies to:	Jones & Mayer 3777 N. Harbor Blvd Fullerton, CA 92835 (714) 446-1400 Attention: Kimberly Hall Barlow
Developer	Tim O'Brien Legacy/Collier Residential, LLC 3337 Susan Street, Suite 250 Costa Mesa, CA 92626
with copies to:	Cox, Castle & Nicholson, LLP 3121 Michelson Drive, Suite 200 Irvine, CA 02612 Attention: Sean Matsler
Fee Owner	XXXX
with copies to:	XXXX

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. 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.

11.8 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 (l) 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	Public Benefits
Exhibit D	Impact Fees
Appendix I	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 Planning 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.

11.11 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 [ ] County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended, the City Clerk shall record notice of such action with the [ ] 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. This Development Agreement shall be construed and enforced in accordance with the laws of the State of 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.

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.

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

DEVELOPER:

LEGACY/COLLIER RESIDENTIAL, LLC, a California limited liability company

By:_____
Name:_____
Title:_____

FEE OWNER:

THE HIVE CREATIVE OFFICE, INC., a Delaware corporation

By:_____
Name:_____
Title:_____

CITY:

CITY OF COSTA MESA, a California municipal corporation

By:_____
Name:_____
Title:_____

ATTESTATION:

By: _____, City Clerk

APPROVED AS TO FORM:

By: _____, City Attorney

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On __ _____, 20__ before me, _____ (here insert name 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 of Notary Public

[Seal]

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On __ _____, 20__ before me, _____ (here insert name 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 of Notary Public

[Seal]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[Attached]

EXHIBIT B

MAP OF PROPERTY

[Attached]

EXHIBIT C

PUBLIC BENEFITS

All terms not defined herein shall have the meaning ascribed to them in the Development Agreement to which this Exhibit C is attached to and a part thereof.

City has determined that the Project presents certain public benefits and opportunities that are advanced by City and Developer entering into this Agreement.

1. Affordable Housing: The Developer will exceed the City's Affordable Housing Ordinance (CMMC Chapter XVII) by reserving 11.8% of the Project's "base density" units for "low income" households, as that term is defined in Health & Safety Code Section 50079.5. The Project proposes 844 "base density" units, which results in 105 low income units. However, Anduril Industries, Inc. holds a Right of First Offer Rider ("ROFO") for an approximately 4.68-acre portion of the Property (Parcel 1, as described below in Section 1.2.1). If exercised, the ROFO would prevent the development of residential units on Parcel 1. Therefore, if the ROFO is exercised, the Parties agree that the requirement to reserve 11.8% of the "base density" units shall be proportionally reduced to reflect the total number of base units actually constructed. The term "base density" and "base units constructed" mean the total of units proposed/constructed, less 20%, which 20% reduction reflects the Project's density bonus.

2. Public Access Easements and Rail Trail: The Project will incorporate public art and an open plaza at the southeast corner of the Property, as shown on the Project Approvals. The Project will also include paseos that will provide access to the "Rail Trail" on the western edge of the Property. Developer will grant public access easements over on-site paseos (as identified in Exhibit X), including access gates to Rail Trail. The Rail Trail public access points will be open seven (7) days a week, from dawn to dusk.

3. Electric Vehicle Charging/Infrastructure: A minimum of 20% of all parking stalls located within the parking structures shall include Level 2 electric vehicle ("EV") charging capability adjacent to the individual stall. A minimum of 40% of all parking stalls located within the parking structures shall be Level 2 EV ready with sufficient electrical infrastructure to enable the installation of EV chargers. The Project will be required to provide additional EV parking should the applicable California Building Code (at the time of building permit submittal) require more than the Development Agreement.

4. Developer Reimbursement Account: Prior to issuance of any permits, Developer shall submit to City a payment of fifty thousand ($50,000) to cover the cost of Development Agreement administration, compliance, staff review for administrative plan modifications that do not require discretionary review, outside consultant fees, and City Attorney reviews. Developer shall not be responsible for any Development Agreement administration costs beyond fifty thousand ($50,000). At the completion of all phases of the Project, any remaining balance shall be released back to Developer.

5. Electric Appliances: All residential units within the Project shall utilize electric appliances in the kitchens for stoves, ovens, and other equipment, and for dryers.

6. Public Benefit Fee: Developer will pay to the City a Public Benefit Fee of $4,285 per dwelling unit, with fifty percent (50%) of any applicable fee due at issuance of building permits and the remaining fifty percent (50%) due at issuance of certificate of occupancy. The fee shall be paid on a per building permit/certificate of occupancy basis. The $4,285/unit fee equals approximately $4,500,000 for the entire Project, assuming buildout of 1,050 units, to be allocated by the City in its discretion, but conceptually as follows:

a. Citywide Bicycle/Pedestrian Infrastructure: $1,000,000.

b. Citywide Community Drainage: $500,000.

c. Police and Animal Services: $1,500,000.

d. Fire and Rescue Services: $1,500,000.

The Public Benefit Fee shall increase annually at 3%, except that (a) the increase shall not apply to fees for phases/buildings permitted/constructed during the first ten (10) years after the Effective Date; and (b) phases/buildings that are permitted/constructed ten (10) years after the Effective Date would pay their pro rata share of the fee along with their accrued increases for years 1 through 10 and subsequent years.

EXHIBIT D

IMPACT FEES

All terms not defined herein shall have the meaning ascribed to them in the Development Agreement to which this Exhibit D is attached to and a part thereof.

1. The following Impact Fees shall apply to the Project as provided in Section ____ of this Development Agreement:

[*List*]