

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

City of Costa Mesa
PO Box 1200
Costa Mesa, CA 92628-1200
Attn: City Clerk

Space Above This Line for Recorder's Use (Exempt
from Recording Fee per Gov't Code §6103 and §27383)

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF COSTA MESA
AND
THE INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB**

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (the “Amendment”) is entered into as of the _____ day of _____, 2024 (“First Amendment Effective Date”), by and between the CITY OF COSTA MESA (“City”), and the INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, formerly known as the Interinsurance Exchange of the Automobile Club of Southern California (“Owner”). Each party may be referred to individually as “Party” or together as the “Parties”.

RECITALS

A. WHEREAS, pursuant to Section 65864 *et seq.* of the Government Code and the City’s adopted rules and procedures, the Parties entered into that certain Development Agreement dated October 5, 1994 and recorded in the official records of Orange County, California on November 1, 1994, as instrument number 94-0641379 (the “Development Agreement”); and

B. WHEREAS, among other purposes, the City entered into the Development Agreement in furtherance of the City’s policy to support the retention and expansion of businesses located in the City in order to increase employment, maintain a stable tax base, attract new businesses, and promote a diversified, stable, and healthy local economy; and

C. WHEREAS, the assurances provided by the Development Agreement were and remain necessary to provide the certainty which will allow the Owner to make the long-term commitments involved in consolidating its facilities and operations in the City; and

D. WHEREAS, the Project on the Property (as defined and described in the Development Agreement) has not been completed based, in part, by the interruption starting in early 2020 in the Owner’s development and planning caused by the COVID-19 pandemic, uncertainty in space needs caused by the changing trends in remote and hybrid work, uncertainty in the configuration of spaces in buildings due to safety protocols and other changing trends, and the evolving business needs of the Owner, all of which merit additional time to complete the development of the Project; and

E. WHEREAS, extending the term of the Development Agreement and updating specified City fees, with all of the terms and conditions in the Development Agreement otherwise remaining the same, continue to further the City’s policy to support the retention and expansion of businesses located in the City in order to increase employment, maintain a stable tax base, attract new businesses, and promote a diversified, stable, and healthy local economy; and

F. WHEREAS, the best interests of the citizens of Costa Mesa, and the public health, safety and welfare, are served by extending the term of the Development Agreement as provided herein; and

G. WHEREAS, the Amendment and the Project are consistent with the City’s General Plan; and

H. WHEREAS, pursuant to Section 65868 of the Government Code and the City’s adopted rules and procedures, this Amendment has been reviewed by City Staff, the Planning Commission, and the City Council; and

I. WHEREAS, the City and Owner have a mutual interest, based on the Recitals in the Agreement and as set forth herein above, to extend the term of the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for good and valuable consideration, the Parties do hereby agree as follows:

1. Except as expressly defined in this Amendment, all capitalized words and phrases shall have the same meaning ascribed to them in the Development Agreement.

2. The term of the Development Agreement shall be extended for an additional twenty (20) years (“Extension Term”), commencing on November 1, 2024, which is the first day after the last day of the 30-year term set forth in Section 2.3 of the Development Agreement. For purposes of the Agreement, the “term” or “Term” of the Agreement shall include the entire period for which the Development Agreement is operative, including the initial 30-year term and Extension Term.

3. To correct duplicative numbering in Article 2 of the Development Agreement, the second Section numbered “2.4” shall be renumbered to “2.5”, and the Section numbers thereafter in Article 2 shall likewise be renumbered, so that the Sections numbered “2.5” and “2.6” shall be renumbered to “2.6” and “2.7”, respectively.

4. The Owner notice addresses in the Development Agreement in Section 2.7(b), as modified by this Amendment, shall be deleted in their entirety and replaced with the following:

“If to OWNER:

Interinsurance Exchange of the Automobile Club
3333 Fairview Road, A410
Costa Mesa, California 92626
Attn: Vice President, Administrative Services

with copies to:

Interinsurance Exchange of the Automobile Club
3333 Fairview Road, A491
Costa Mesa, California 92626
Attn: General Counsel”

5. The proposed Phase II parking structure location shall be addressed in Section 3.7 of the Development Agreement, relating to changes to the Existing Development Approvals which

shall be deemed “minor,” by adding a new clause as clause (e) and renumbering clause (e) to (f) in the last sentence of Section 3.7, to read as follows:

“Unless otherwise required by law, a change to the Existing Development Approvals shall be deemed ‘minor’ and not require an amendment to this Agreement provided such change does not:

(e) Decrease the setback distance requirements for the proposed Phase II parking structure from the northern property boundary, as set forth in Item #5 (Shade and Shadows) of the Inventory of Mitigation Measures, attached as part of Exhibit “B” to City Council Resolution No. 94-54. (Relocation of the Phase II parking structure shall be proposed further away from the existing residential uses north of the smaller parcel to improve compatibility and to minimize potential adverse impacts of the parking structure proximate to residential units); or,

(f) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.”

Except as amended above, all of the terms and conditions set forth in Section 3.7 of the Development Agreement shall remain in full force and effect.

6. The Development Exactions in Section 3.9(b), clauses (i) and (iii), of the Development Agreement shall be amended as follows:

(a) During the Extension Term as defined above, the first sentence of clause (i) of Section 3.9(b) is amended such that the ADT generated by the second phase of development shall be calculated by multiplying .00989 times the number of square feet of building area to be constructed under the building permit, to read as follows:

“The ADT generated by new development shall be calculated by multiplying .00718 times the number of square feet of building area to be constructed under the building permit; provided, however, that during the Extension Term, the ADT generated by the second phase of development shall be calculated by multiplying .00989 times the number of square feet of building area to be constructed under the building permit.”

Except as amended above, all of the terms and conditions set forth in clause (i) of Section 3.9(b) of the Development Agreement shall remain in full force and effect.

(b) During the Extension Term as defined above, clause (iii) of Section 3.9(b) of the Development Agreement shall be amended by adding the following sentences at

the end of the paragraph, to read as follows:

“Commencing on the Extension Term, the traffic impact fee shall be adjusted to two hundred thirty-five dollars (\$235.00) per ADT. For any building permit issued during the Extension Term, the traffic impact fee shall be the lesser of either \$235 per ADT or the amount per ADT then in effect in accordance with Section 13-274 of the CITY Planning, Zoning and Development Code or successor CITY ordinance.”

Except as amended above, all of the terms and conditions set forth in clause (iii) of Section 3.9(b) of the Development Agreement shall remain in full force and effect.

7. The Development Exactions in Section 3.9(c), clauses (ii) and (iii), of the Development Agreement shall be amended as follows:

(a) During the Extension Term as defined above, the last sentence of clause (ii) of Section 3.9(c) shall be amended so that the modified traffic impact fee of two hundred thirty-five dollars (\$235.00) and provisions applicable during the Extension Term are incorporated into this clause (ii), to read as follows:

“Any such payment by OWNER or refund by CITY shall be made within thirty days of submittal of such traffic study and shall be based on the lesser of either two hundred twenty-eight dollars (\$228.00) (or, during the Extension Term, two hundred thirty-five dollars (\$235.00) per ADT or the amount per ADT then in effect under Section 13-326 (or, during the Extension Term, Section 13-274) of the CITY Planning Zoning and Development Code or any successor CITY ordinance.”

Except as amended above, all of the terms and conditions set forth in clause (ii) of Section 3.9(c) of the Development Agreement shall remain in full force and effect.

(b) During the Extension Term as defined above, the last sentence of clause (iii) of Section 3.9(c) of the Development Agreement shall be amended so that the modified traffic impact fee of two hundred thirty-five dollars (\$235.00) and provisions applicable during the Extension Term are incorporated into this clause (iii), to read as follows:

“Any such payment by OWNER or refund by CITY shall be made within thirty (30) days of submittal of such second traffic study and shall be based on the lesser of two-hundred twenty-eight dollars (\$228.00) (or, during the Extension Term, two hundred thirty-five dollars (\$235.00) per ADT or the amount per ADT then, in effect under Section 13-326 (or, during the Extension Term, Section 13-274) of the CITY Planning, Zoning and

Development Code or any successor CITY ordinance.”

Except as amended above, all of the terms and conditions set forth in clause (iii) of Section 3.9(c) of the Development Agreement shall remain in full force and effect.

8. Except as expressly modified by this Amendment, all of the terms and conditions set forth in the Development Agreement shall remain the same and shall be in full force and effect.

[signatures on next page]

IN WITNESS WHEREOF, Developer and City have executed this Amendment as of the First Amendment Effective Date.

“CITY”
CITY OF COSTA MESA

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

CITY CLERK

By: _____

Name: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Its: _____

“OWNER”
INTERINSURANCE EXCHANGE OF
THE AUTOMOBILE CLUB

Dated: _____

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Its: _____