



City of Huntington Beach Planning and Building Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Jennifer Villasenor, Senior Planner *JW*
DATE: June 28, 2011

SUBJECT: DEVELOPMENT AGREEMENT NO. 11-001 (BOARDWALK MIXED USE PROJECT DEVELOPMENT AGREEMENT)

APPLICANT: Sares-Regis Group, 18825 Bardeen Avenue, Irvine, CA 92714

PROPERTY

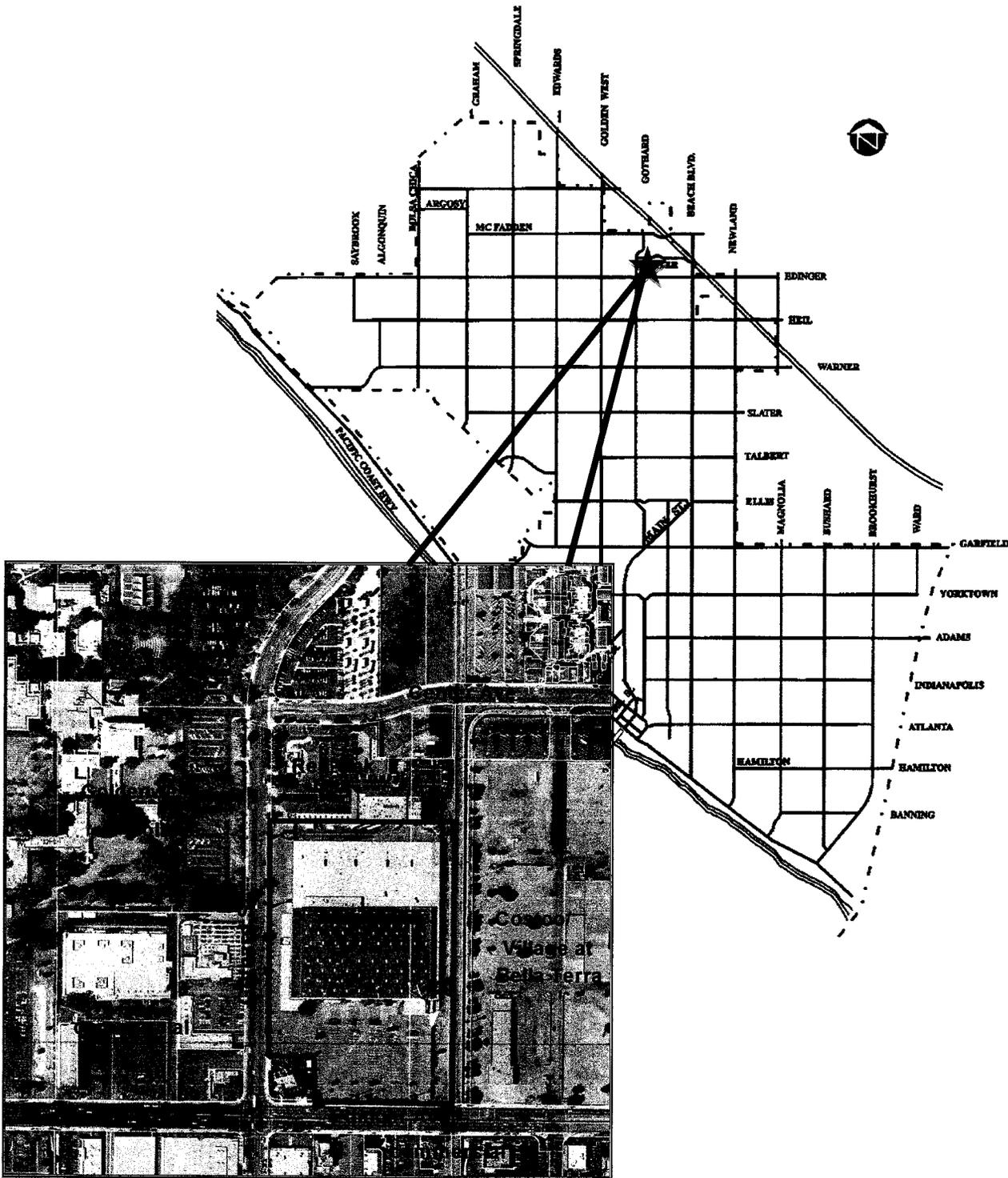
OWNER: Freeway Industrial Park, 2032 La Colina Drive, Santa Ana, CA 92705

LOCATION: 7441 Edinger Avenue, Huntington Beach, CA 92647 (northeast corner of Edinger Avenue and Gothard Street – former Levitz Furniture site)

STATEMENT OF ISSUE:

- ◆ Development Agreement No. 11-001 represents a request for the following:
 - To enter into a Development Agreement between the City of Huntington Beach, Freeway Industrial Park (property owner) and Sares-Regis Group (developer) pursuant to approvals for the Boardwalk Mixed Use Project, a 487 multi-family residential apartment development with 14,500 square feet of ground floor commercial area, including a 4,500 square-foot leasing area, 9,000 square feet of residential recreation amenities, and a 0.5-acre public open space area.

- ◆ Staff's Recommends approval of Development Agreement No. 11-001 based upon the following:
 - Consistency with the General Plan and the Beach and Edinger Corridor Specific Plan (BECSP);
 - Conforms to the provisions of Chapter 246 – *Development Agreements* of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO);
 - Consistency with the approved Boardwalk Mixed Use Project and the Conditions of Approval and Mitigation Measures adopted pursuant to Site Plan Review (SPR) No. 10-004 and Environmental Impact Report (EIR) No. 10-002; and
 - Ensures the mutually beneficial development of the approved project and serves the affordable housing needs of the community by providing 57 on-site affordable housing units, including 10 very-low income units.



**VICINITY MAP
 DEVELOPMENT AGREEMENT NO. 11-001
 SARES-REGIS GROUP MIXED USE PROJECT**

RECOMMENDATION:

Motion to:

“Approve Development Agreement No. 11-001 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) to the City Council for adoption.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Deny Development Agreement No. 11-001 with findings for denial.”
- B. “Continue Development Agreement No. 11-001 and direct staff accordingly.”

PROJECT PROPOSAL:

Development Agreement No. 11-001 represents a request to enter into a Development Agreement between the City of Huntington Beach, Freeway Industrial Park (property owner) and Sares-Regis Group (developer) pursuant to approvals for the Boardwalk Mixed Use Project. The Boardwalk Mixed Use Project site is located within the Beach and Edinger Corridors Specific Plan (BECSP) on a 12-acre site currently developed with a vacant commercial building formerly occupied by Levitz furniture store. The approved project consists of 487 multi-family apartment units, 10,000 square feet of commercial/retail space, 4,500 square feet of leasing office space, 9,000 square feet of resident recreation area and a half-acre public open space area.

On February 8, 2011, the Planning Commission approved Site Plan Review No. 10-004 and EIR No. 10-002 for the Boardwalk Mixed Use Project subject to conditions and mitigation measures. Condition No. 6.c. requires a development agreement to be approved by the City Council and recorded to provide for affordable dwelling units in accordance with Section 2.2.3 of the BECSP and the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) as well as specify required traffic mitigation fees.

Study Session:

The Planning Commission held a study session on Development Agreement No. 11-001 on June 14, 2011. The Planning Commission asked questions related to housing occupancy and project schedule. Commissioner Farley requested information, which is included in the redevelopment section of this report, as to how the income mix for the 57 affordable housing units was established for the project. The applicant and property owner attended the study session. No other members of the public were present for this agenda item.

ISSUES:

Subject Property Land Use, Zoning, and General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	M-sp-d (Mixed Use – Specific Plan Overlay – Design Overlay)	SP-14 (Beach and Edinger Corridors Specific Plan)	Approved 487-unit mixed use project; Vacant Levitz furniture store
North of Subject Property:	M-sp-d	SP-14	General Commercial Uses (A mixed use residential/commercial project is approved)
East of Subject Property (across railroad tracks):	CR-F2-sp-mu-F14 (Commercial Regional – 0.50 Floor Area Ratio (FAR) – Specific Plan Overlay – Mixed Use Overlay – 1.75 Mixed Use FAR: 0.2 Commercial FAR/45 dwelling units/acre)	SP-13 (Bella Terra)	Costco (under construction); Village at Bella Terra Mixed Use Commercial/Residential project (pending approval of Entitlement Plan Amendment)
South of Subject Property (across Edinger Avenue):	M-sp-d	SP-14	General Commercial uses
West of Subject Property (across Gothard Street):	P(RL) Public (Residential Low Density – underlying designation)	PS (Public/Semi-Public)	Goldenwest College

General Plan Conformance:

The project site is located within the Town Center Core and Town Center Neighborhood segments of the Beach and Edinger Corridors Specific Plan. The General Plan land use designation is Mixed Use - Specific Plan Overlay - Design Overlay (M-sp-d). The development agreement is consistent with the following General Plan goals, policies and objectives:

A. Circulation Element

Goal CE 2: Provide a circulation system which supports existing, approved and planned land uses throughout the City while maintaining a desired level of service on all streets and at all intersections.

B. Housing Element

Goal H 2: Provide adequate housing sites to accommodate regional housing needs.

Goal H 3: Assist in development of affordable housing.

Policy H 3.1: Encourage the production of housing that meets all economic segments of the community, including lower, moderate, and upper income households, to maintain a balanced community.

C. Land Use Element

LU Goal 2: Ensure that development is adequately served by transportation infrastructure, utility infrastructure, and public services.

LU Policy 2.1.2: Require that the type, amount, and location of development be correlated with the provision of adequate infrastructure and services (as defined in the Circulation and Public Utilities and Service Elements).

Policy LU 8.1.1: Accommodate land use development in accordance with the patterns and distribution of use and density depicted on the Land Use Plan Map, in accordance with the principles discussed below:

- a. Not applicable
- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.
- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

Goal LU 11: Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 11.1.4: Require the incorporation of adequate onsite open space and recreational facilities to serve the needs of the residents in mixed use development projects.

The development agreement would ensure that the project is developed in accordance with the approved Boardwalk development plan, which provides a housing choice for residents seeking to be within walking distance of school, work, services or entertainment and reduce dependency on their automobile. The development agreement would guarantee that the project provides 57 on-site affordable housing units, including 10 very-low income units. These units would help the City to satisfy its affordable housing obligations while providing housing for various income levels. In addition, the development agreement stipulates the project's monetary contribution for a planned at-grade railroad crossing to provide pedestrian access to the Bella Terra shopping, dining and entertainment uses as well as to enhance connectivity amongst the planned mixed use residential

developments and Goldenwest College in the area, and it reiterates the requirement for on-site public open space. Finally, the development agreement specifies the project's traffic mitigation fees, which would provide the project's fair share contribution for improvements to the circulation system that are necessary to mitigate cumulative traffic impacts from development within the BECSP.

Zoning Compliance:

This Boardwalk Mixed Use Project, as approved pursuant to Site Plan Review No. 10-004, is consistent with the development standards and regulations of the BECSP. Development Agreement No. 11-001 references the approved project and would ensure implementation of the project in accordance with the conditions of approval and mitigation measures adopted for the project.

Urban Design Guidelines Conformance: Not Applicable.

Environmental Status:

The development agreement was included in the scope of the Murdy Commons Mixed Use Project Environmental Impact Report (EIR No. 10-002) certified by the Planning Commission on February 8, 2011.

Environmental Board: Not Applicable.

Coastal Status: Not applicable

Redevelopment Status:

A portion of the project area along the eastern boundary is within a redevelopment project area. The City's Economic Development Department has reviewed the draft development agreement to ensure that affordable housing requirements applicable in the redevelopment area are included in the development agreement and affordable housing agreement. Specifically, and to address Commissioner Farley's study session inquiry, the project must provide a certain percentage (6%) of the total number of units within the redevelopment area for very-low income households.

While the provisions of the BECSP require that the project provide 10 percent of the units as affordable and 15 percent as affordable for those units within a redevelopment area, the affordability levels are to be specified in the development agreement. Thus, the project is required to provide 57 affordable units, which accounts for 15 percent of the total units within the redevelopment project area and 10 percent of the total units outside the redevelopment project area.

The 15 percent affordability requirement in the redevelopment project area states that six percent must be for very-low income households and the remaining nine percent may be for moderate income households. Therefore, the project must provide 10 very-low income units to meet the six percent requirement in the redevelopment project area. The remaining 47 affordable units would be restricted for moderate income households.

Design Review Board: Not applicable

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

Development Agreement No. 11-001 was drafted by the City Attorney's office in coordination with the Planning Division and Economic Development Department. In addition, Development Agreement No. 11-001 is consistent with conditions approved for Site Plan Review (SPR) No. 10-004 and mitigation measures adopted for EIR No. 10-002 for the Boardwalk Mixed Use Project, which was reviewed by the Building Division and Fire, Police, Public Works, Community Services and Economic Development Departments.

Public Notification:

Legal notice was published in the Huntington Beach Independent on June 16, 2011, and notices were sent to property owners of record and occupants within a 1,000 ft. radius of the project site, interested parties, and individuals/organizations that commented on the environmental document. As of June 21, 2011, no communications on Development Agreement No. 11-001 have been received.

Application Processing Dates:

<u>DATE OF COMPLETE APPLICATION:</u>	<u>MANDATORY PROCESSING DATE(S):</u>
May 20, 2011	November 20, 2011 (Within 6 months of complete application)

ANALYSIS:

The BECSP was adopted in March 2010 to enhance the overall economic performance, physical beauty and functionality of the Beach Boulevard and Edinger Avenue Corridors. The BECSP is intended to guide future development and initiate the transformation of the corridors from commercial strip, in many cases underutilized and underperforming, to a pattern of centers and segments with development standards and regulations that reflect the vision of a particular area. When the Boardwalk Mixed Use Project was approved pursuant to the BECSP, Condition No. 6.c. required a development agreement to be approved by the City Council and recorded to provide for affordable dwelling units in accordance with Section 2.2.3 of the BECSP and HBZSO as well as specify required traffic mitigation fees.

Consistency with the BECSP and General Plan

The City is authorized pursuant to California Government Code Section 65864 et.seq. and Chapter 246 of the HBZSO to enter into binding development agreements with persons or entities owning legal interests in real property located within the City. The objective of a development agreement is to provide assurances that an applicant may proceed with a project in accordance with existing policies and standards in place at the time of project approval. The City, property owner and developer, who will acquire a 99-year ground lease from the property owner, desire to enter into a development agreement for the subject site in order to achieve the mutually beneficial development of the property and ensure that the project is developed in accordance with the approved project pursuant to Site Plan Review No. 10-004 and Section 2.2.3 of the BECSP.

The development agreement would be effective for 10 years and vests the developer's right to construct the project pursuant to the terms of the agreement. Development Agreement No. 11-001 refers to the project's "Development Plan," which complies with the BECSP development code, as approved by the

Planning Commission on February 8, 2011. In addition, the development agreement is consistent with the General Plan land use designation for the site insofar as the approved project is consistent with the General Plan land use designation. As discussed in the General Plan Conformance Section of this report, the development agreement would conform to applicable goals and policies of the General Plan.

Affordable Housing

The project is required to provide affordable housing in accordance with the BECSP and conditions of approval for the project. Of the 487 total units, the project will provide 57 affordable units on-site. 10 of the affordable units would be made available to very-low income households and the remaining 47 affordable units would be available to moderate income households. The development agreement stipulates these requirements in addition to a 55-year affordability period and the timing for which the affordable units shall be constructed. The development agreement also includes a separate affordable housing agreement to be recorded, which further specifies details of the affordable units including income requirements, household size and the timing for the affordability period to take effect.

Traffic Fees

The project is required to provide traffic mitigation fees in accordance with mitigation measures adopted pursuant to EIR No. 10-002. The traffic mitigation fees will provide for the project's fair share contribution to circulation system improvements necessary to mitigate traffic impacts resulting from implementation of the BECSP. The development agreement specifies the fee amount and timing for payment. The fees were determined by the City's Public Works Department – Transportation Division based on the project's uses and calculated based on the same methodology utilized for a proposed update to the City's traffic impact fees. The traffic mitigation fees specified in the development agreement represent an approximately 28 percent increase over the fees that would be required pursuant to the City's existing traffic impact fee schedule.

Pedestrian Crossing/ Public Open Space

The conditions of approval for the Boardwalk Mixed Use Project require an at-grade pedestrian crossing over the existing Union Pacific Railroad tracks along the eastern boundary of the project site. The crossing would provide connectivity between the Boardwalk project site and the Bella Terra Specific Plan area and would be accessible to the public. The development agreement obligates the project developer to contribute half, or a fair share, of the costs for the planning, design, permitting and construction of the crossing, not to exceed \$250,000.00. The developer would be required to pay a \$250,000.00 deposit toward the costs of the crossing at the time of building permit issuance for the Boardwalk project. Any unspent portion of the fees would be reimbursed to the developer. The development agreement also reiterates the conditions of approval that require construction of the public open space as a privately maintained area with an easement recorded for public use for as long as the project remains developed and operational.

SUMMARY:

Staff recommends approval of Development Agreement No. 11-001 because it would:

- Conform to applicable goals and policies of the General Plan and the provisions of the BECSP;
- Conform to the provisions of Chapter 246 – *Development Agreements* of the Huntington Beach Zoning and Subdivision Ordinance;

- Ensure development of the Boardwalk Mixed Use Project consistent with the conditions approved for Site Plan Review (SPR) No. 10-004 and mitigation measures adopted for EIR No. 10-002 as approved by the Planning Commission on February 8, 2011; and
- Provide for the construction of needed affordable housing in the City of Huntington Beach.

ATTACHMENTS:

1. Suggested Findings for Development Agreement No. 11-001
2. Draft Ordinance – Boardwalk Development Agreement
3. Site Plan Review No. 10-004 – Notice of Action with Findings, Conditions of Approval and Mitigation Measures

SH:HF:MBB:jv

ATTACHMENT NO. 1

SUGGESTED FINDINGS FOR APPROVAL

DEVELOPMENT AGREEMENT NO. 11-001

SUGGESTED FINDINGS FOR CEQA:

The Planning Commission finds that the development agreement was included in the scope of the Murdy Commons Mixed Use Project Environmental Impact Report (EIR No. 10-002) certified by the Planning Commission on February 8, 2011.

SUGGESTED FINDING FOR APPROVAL – DEVELOPMENT AGREEMENT NO. 11-001:

The development agreement is consistent with the General Plan and Beach and Edinger Corridors Specific Plan (BECSP). Development Agreement No. 11-001 provides for the construction of the Boardwalk Mixed Use Project, which complies with the BECSP development code and was found to conform to the goals and policies of the General Plan as approved by the Planning Commission on February 8, 2011. The development agreement ensures the construction of 57 affordable housing units within the project in accordance with the provisions of the BECSP for a 55-year period. The development agreement is consistent with the following General Plan goals and policies:

A. Circulation Element

Goal CE 2: Provide a circulation system which supports existing, approved and planned land uses throughout the City while maintaining a desired level of service on all streets and at all intersections.

B. Housing Element

Goal H 2: Provide adequate housing sites to accommodate regional housing needs.

Goal H 3: Assist in development of affordable housing.

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Policy LU 8.1.1: Accommodate land use development in accordance with the patterns and distribution of use and density depicted on the Land Use Plan Map, in accordance with the principles discussed below:

- a. Not applicable
- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.
- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

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The development agreement would ensure that the project is developed in accordance with the approved Boardwalk development plan, which provides a housing choice for residents seeking to be within walking distance of school, work, services or entertainment and reduce dependency on their automobile. The development agreement would guarantee that the project provides 57 on-site affordable housing units, including 10 very-low income units. These units would help the City to satisfy its affordable housing obligations while providing housing for various income levels. In addition, the development agreement stipulates the project's monetary contribution for a planned at-grade railroad crossing to provide pedestrian access to the Bella Terra shopping, dining and entertainment uses as well as to enhance connectivity amongst the planned mixed use residential developments and Goldenwest College in the area, and it reiterates the requirement for on-site public open space. Finally, the development agreement specifies the project's traffic mitigation fees, which would provide the project's fair share contribution for improvements to the circulation system that are necessary to mitigate cumulative traffic impacts from development within the BECSP.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

ATTACHMENT #2

ATTACHMENT NO. 2.1

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADOPTING A
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HUNTINGTON
BEACH AND FREEWAY INDUSTRIAL PARK (PROPERTY OWNER)
AND SARES-REGIS GROUP (DEVELOPER)
(DEVELOPMENT AGREEMENT NO. 11-001)**

WHEREAS, the Planning Commission approved Site Plan Review No. 10-004 to develop an approximately 12-acre property located at 7441 Edinger Avenue (Property) with a mixed use project consisting of 487 apartment units, 10,000 square feet of commercial/retail uses, 4,500 square feet of office leasing area and 9,000 square feet of resident recreation area (Project) pursuant to the Beach and Edinger Corridors Specific Plan (BECSP); and

The City Council adopted the Beach and Edinger Specific Plan in March, 2010; and

The City, Property Owner and Developer each mutually desire to enter into a Development Agreement with one another to permit and ensure that the Property is developed in accordance with the approved Site Plan Review No. 10-004 and Section 2.2.3 of the Beach and Edinger Corridors Specific Plan to achieve the mutually beneficial development of the Property.

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That the City Council hereby finds that Development Agreement No. 11-001 conforms to Government Code Section 65864 et. seq. and that:

- a. Development Agreement No. 11-001 is consistent with the Huntington Beach General Plan and the applicable provisions of the BECSP; and
- b. Development Agreement No. 11-001 is consistent with Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) and the Huntington Beach Municipal Code; and
- c. Development Agreement No. 11-001 will not be detrimental to the health, safety and general welfare, and will not adversely affect the orderly development of the property because it is consistent with applicable land use regulations of the BECSP, mitigation measures adopted for the Project in accordance with EIR No. 10-002, and conditions approved for Site Plan Review No. 10-004; and
- d. The City Council has considered the fiscal effect of Development Agreement No. 11-001 on the City and the effect on the housing needs of the region in which the City is situated and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources.

SECTION 2. Based on the above findings, the City Council of the City of Huntington Beach hereby approves Development Agreement No. 11-001 and adopts it by this ordinance pursuant to Government Code Section 65867.5. This action is subject to a referendum.

ATTACHMENT NO. 2.7

SECTION 3. This ordinance shall take effect 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ____ day of _____, 2011.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

Director of Planning and Building

Exhibit A: Development Agreement No. 11-001

ATTACHMENT NO. 2.3

EXHIBIT A

ATTACHMENT NO. 2.4



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

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: Director of Planning and Building

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made in Orange County, California, as of _____, 2011, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (the "City") and Freeway Industrial Park, a California Corporation (the "Property Owner"), and Sares-Regis Group (the "Developer").

RECITALS

- A. The City is authorized pursuant to Government Code sections 65864 through 65869.5 and Huntington Beach Zoning and Subdivision Ordinance (HBZSO) Chapter 246 to enter into binding development agreements with persons or entities owning legal interests in real property located within the City.
- B. Property Owner is the owner of that certain real property more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Developer has an option (the "Option") to acquire a 99 year ground leasehold interest in the Property pursuant to the terms of a ground lease (the "Ground Lease") between Property Owner, as ground lessor, and Developer, as ground lessee. In the event Developer enters into the Ground Lease, Developer intends to develop the Project (as defined below).
- C. The City and Property Owner and Developer each desire to enter into this Agreement affecting the Property in conformance with Government Code section 65864 *et seq.* and HBZSO 246 in order to achieve the mutually beneficial development of the Property in accordance with this Agreement.
- D. The Developer seeks to develop a project on the Property consisting of 487 dwelling units, 9,000 square feet of resident recreation area, 4,500 square feet of leasing office area, and 10,000 square feet of commercial/retail uses, as more particularly set forth in the Development Plan (collectively, the "Project"), attached as Exhibit B and incorporated herein, all in accordance with the Beach and Edinger Corridors Specific Plan, as may be amended from time to time (the

“Specific Plan”) adopted by the City Council of the City (the “City Council”) on March 1, 2010.

- E. The Planning Commission of the City (the “Planning Commission”) certified an environmental impact report (the “EIR”) for the Project on February 8, 2011 and approved the Site Plan Review. The Site Plan Review became effective February 18, 2011.
- F. The City, Property Owner and the Developer each mutually desire to obtain the binding agreement of one another to permit and ensure that the Property is developed strictly in accordance with the provisions of this Agreement.
- G. This Agreement will benefit the Property Owner, Developer and the City by eliminating uncertainty in planning and providing for the orderly development of the Project. Specifically, this Agreement (1) eliminates uncertainty about the validity of exactions to be imposed by the City, (2) provides for the construction of needed affordable housing, (3) ensures that development of the Property occurs within a timeframe generally consistent with that analyzed in the EIR, and (4) generally serves the public interest within the city and the surrounding region.
- H. The Planning Commission and City Council have each given notice of their intention to consider this Agreement, and have each conducted public hearings thereon pursuant to the relevant provisions of the Government Code. The City Council has found that the provisions of this Agreement are consistent with the City’s 1996 General Plan for development within the City, as amended (the “General Plan”), City zoning ordinances, as amended, and the Beach and Edinger Corridors Specific Plan. The Planning Commission and City Council have also specifically considered the impacts and benefits of the Project upon the welfare of the residents of the City and the surrounding region. The City Council has determined that this Agreement is beneficial to the residents of the City and is consistent with the present public health, safety and welfare needs of the residents of the City and the surrounding region.
- I. On _____, the Planning Commission held a duly noticed public hearing on this Agreement.
- J. On _____, the City Council held a duly noticed public hearing on this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City, Property Owner and the Developer agree as follows:

1. **Definitions.**

1.1 “Affordable Dwelling Units” shall mean a Dwelling Unit available at Affordable Rent.

1.2 “Affordable Housing Agreement” shall collectively mean that certain Affordable Housing Rental Agreement (AHRA) by and between the RDA, City, Property Owner and Developer together with all attachments thereto, which was approved as to form as part of this Development Agreement. AHRA shall also include any and all amendments or modifications thereto.

1.3 “Affordable Rent” shall have the same meaning set forth in California Health and Safety Code section 50053, as more specifically set forth in the Agreement Containing Covenants Affecting Real Property to be attached to the Affordable Housing Agreement.

1.4 “Applicable Rules” means the rules, regulations, ordinances and official policies of the City which were in force as of the Effective Date (as defined below), including, but not limited to, the General Plan, the Specific Plan, City zoning ordinances and other entitlements, development conditions and standards, public works standards, subdivision regulations, grading requirements, and provisions related to density, growth management, environmental considerations, and design criteria applicable to the Project. Applicable Rules shall not include building standards adopted by the City pursuant to Health and Safety Code sections 17922 and 17958.5.

1.5 “Area Median Income: shall mean the area median income for the County of Orange (“County”) as published annually by the Department of Housing and Community Development and determined in accordance with the U.S. Department of Housing and Urban Development criteria then in effect and published from time to time. For purposes of this Agreement, the qualifying limits shall be those limits for the County, as set forth in Title 25, California Code of Regulations, section 6932, as that section may be amended, modified or recodified from time to time. If the California Code of Regulations is amended or modified during the term of this Agreement so that such regulations do not specify the area median income from the County, the City and Developer shall negotiate in good faith to determine an equivalent authoritative source which determines median income for the County.

1.6 “City Council” shall mean the City Council of the City.

1.7 “City Manager” shall mean the City Manager of the City.

1.8 “County” shall mean Orange County.

1.9 "Developer" shall mean Sares-Regis Group and any of its successors and assigns to the Ground Lease for the Property.

1.10 "Development Impact Fees" means and includes all fees charged by the City in connection with the application, processing and approval or issuance of permits for the development of property, including, without limitation: application fees; permit processing fees; inspection fees; utility capacity fees; service or connection fees; library/cultural enrichment fees, traffic impact fees; development impact or major facilities fees; park fees; flood control fees; environmental impact mitigation fees; and any similar governmental fees, charges and exactions required for the development of the Project.

1.11 "Discretionary Actions" and "Discretionary Approvals" means those actions and approvals which require the exercise of judgment, or imposition of a condition or obligation, by any officer, employee, review board, commission or department of the City. Discretionary Actions and Discretionary Approvals are distinguished from activities or approvals which merely require any officer, employee, review board, commission or department of the City to determine whether or not there has been compliance with applicable statutes, ordinances, regulations or conditions of approval.

1.12 "Dwelling Unit" shall mean a place in the Project that is legally available to be rented by a person or family.

1.13 "Effective Date" means the date on which the ordinance approving this Agreement has been adopted by the City.

1.14 "Moderate Income Household" means persons and families whose gross incomes do not exceed one hundred twenty percent (120%) of the Area Median Income, adjusted for size.

1.15 "Market Rate Rental Dwelling Unit" shall mean those Dwelling Units in the Project that are not Affordable Dwelling Units nor governed by the Affordable Housing Agreement.

1.16 "Periodic Review" shall have the meaning assigned to such term in Paragraph 10(a).

1.17 "Planning Commission" means the Planning Commission of the City.

1.18 "Project" shall mean that development contemplated pursuant to the Development Plan, attached as Exhibit B, approved by Site Plan Review No. 10-004.

1.19 "RDA" shall mean the Huntington Beach Redevelopment Authority.

1.20 "Specific Plan" shall mean the Beach and Edinger Corridors Specific Plan adopted by the City Council on March 1, 2010, as may be amended from time to time.

1.21 "Subsequent Rules" means the rules, regulations, ordinances and official policies of the City, adopted and becoming operative after the Effective Date, including, but not limited to, the General Plan, the Specific Plan, City zoning ordinances and other entitlements, development conditions and standards, public works standards, subdivision regulations, grading requirements, and other provisions related to density, growth management, environmental considerations, and design criteria. [See also paragraph 3 below.]

1.22 "Very Low Income Household" shall mean persons and families whose gross incomes do not exceed fifty percent (50%) of the Area Median Income, adjusted for size.

2. Term of Agreement. This Agreement shall become operative and commence upon the Effective Date and remain in effect for a term of ten (10) years. Except for continuing obligations regarding affordable housing covenants and requirements, upon the expiration or termination of the term, this Agreement shall be deemed terminated and have no further force and effect.

3. Vested Right to Develop the Project. Subject to Paragraphs 3.3 through 3.8, below, and the Applicable Rules, the City hereby grants to the Property Owner and Developer the vested right to develop the Project on the Property to the extent and in the manner provided in this Agreement. Subject to Paragraphs 3.3 through 3.8, below, any change in the Applicable Rules adopted or becoming effective after the Effective Date (Subsequent Rules) shall not be applicable to or binding upon the Project or the Property. Subject to Paragraphs 3.3 through 3.8, below, this Agreement will bind the City to the terms and obligations specified in this Agreement and will limit, to the degree specified in this Agreement and under state law, the future exercise of the City's ability to regulate development of the Project.

3.1 No Conflicting Enactments. Subject to Paragraphs 3.3 through 3.8, below, neither the City Council nor any department of the City shall enact rules, regulations, ordinances or other measures which relate to the rate, timing, sequencing, density, intensity or configuration of the development of any part of the Project which is inconsistent or in conflict with this Agreement during the term of this Development Agreement.

3.2 Initiative Measures. Subject to Paragraphs 3.3 through 3.8, below, the Property Owner, Developer and City intend that no moratorium or other limitation (whether relating to the rate, timing or sequence of the development of all or any part of the Project and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, certificates of occupancy or other

entitlements shall apply to the Project to the extent such moratorium or other limitation is inconsistent or conflicts with this Agreement.

3.3 Federal or State Laws. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to modify any of the Applicable Rules to the extent necessary to comply with applicable federal or state laws, codes or regulations which preempt local jurisdiction including, by way of example, and without limiting the generality of the foregoing, the California Environmental Quality Act, all building codes, and any safety regulations, but such modifications shall be made only to the extent required thereunder.

3.4 Emergency. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to apply to the Project any development moratorium, limitation on the delivery of City-provided utility services, or other generally applicable emergency rule, regulation, law or ordinance affecting land use: (1) which is based on genuine health, safety and general welfare concerns (other than general growth management issues); (2) which arises out of a documented emergency situation, as declared by the President of the United States, Governor of California, or the Mayor, City Council or City Manager of the City; and (3) based upon its terms or its effect as applied, does not apply exclusively, primarily or disproportionately to the Project or the Property.

3.5 Project Completion. This Agreement and the EIR and associated findings, are based on the expectation that the Project will be constructed as follows: up to 430 Market Rate Rental Dwelling Units, 57 Affordable Dwelling Units and up to 14,500 square feet of commercial/office space will be completed for occupancy during the term of the Agreement.

3.6 Public Health Concerns. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to apply to the Project any generally applicable rule, regulation, law or ordinance which does not affect the land use or development of the Project and which is based on concerns for the public health, safety or general welfare, including, but not limited to, building codes not otherwise preempted by State law.

3.7 New Engineering and Construction Standards. Notwithstanding any provision to the contrary contained herein, the City expressly reserves the right to modify any of the Applicable Rules if the City adopts new and/or amended regulations governing engineering and construction and grading standards and specifications including, without limitation, any and all uniform codes adopted by the City, including local amendments to these codes pursuant to state law allowing for such amendments; provided that such codes are uniformly applied to all new development projects of similar type as the Project within the City and provided further that any such modifications to grading standards can only be imposed prior to grading and any such modifications to

engineering or construction standards can only be applied prior to the initiation of construction. Such codes include, without limitation, the City's Uniform Housing Code, Building Code, Plumbing Code, Mechanical Code, Electrical Code and Fire Code.

3.8 Cooperation and Indemnification. City agrees to cooperate with Property Owner and Developer in all reasonable manners in order to keep this Agreement in full force and effect. Notwithstanding the preceding sentence, in the event any legal action instituted by a third party or other government entity or official challenging the validity of this Agreement, the City and Developer agree to cooperate in defending such action, with the Developer to indemnify the City pursuant to Paragraph 17 of this Agreement. In the event of any litigation challenging the effectiveness of this Agreement or any portion thereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless a court of competent jurisdiction orders otherwise.

4. Development of the Property.

(a) **Permitted Uses.** The Property Owner and Developer agree that the Property shall only be developed in accordance with the Development Plan and any conditions and mitigation measures imposed on the Project through final approval of the Project, and the provisions of this Development Agreement. Notwithstanding anything set forth in this Agreement to the contrary, unless Developer proceed with development of the Property, Property Owner and Developer are not obligated by the terms of this Agreement to affirmatively act to develop all or any portion of the Project, pay any sums of money, dedicate any land, indemnify any party, or to otherwise meet or perform any obligation with respect to the Project, except and only as a condition of development of any portion of the Project.

(b) **Development Standards.** All development and design requirements and standards applicable to the Project shall conform to the Beach and Edinger Corridors Specific Plan, the Huntington Beach Municipal Code, and any Applicable Rules.

(c) **Development Impact Fees.** In addition to the obligations set forth elsewhere in this Agreement, Developer shall be responsible for paying when due all Development Impact Fees in connection with development of the Project at the rates then in effect. Subject to all applicable laws then in effect, City shall have the right: (i) to charge and apply to the Property all Development Impact Fees as may be in effect at the time applicable to the Project; and (ii) to increase or otherwise modify any and all Development Impact Fees applicable to the Project.

Notwithstanding the Development Impact Fee obligation above, required Traffic Impact Fees for the Development Plan shall be satisfied by the payment of \$588,597.00 to the City Traffic Impact Fee Fund. Such payment shall be made

prior to issuance of certificates of occupancy. Payment of the Traffic Impact Fee amount set forth herein shall constitute satisfactory mitigation for Environmental Impact Report No. 10-002 Mitigation Measures 4.13-1 through 4.13-18.

5. Park Fee Credit and In-Lieu Fees.

The City acknowledges, as specified in the Specific Plan, approximately 0.50 acre of the project will consist of public open space. Pursuant to conditions of approval, the public open space shall be available for public use as provided therein so long as the Project is developed and remains operational. Upon recordation of the easement for public use and full improvement of the public open space, City shall grant credit ("ParkFee Credit") to Developer in an amount equal to the sum of the value of the land and costs reasonably incurred by Developer in connection with the engineering and construction of the approximately 0.50 acre. Such Park Fee Credit shall be applied against Park Fees due for development within the Project. To the extent that, at the time of issuance of building permits for any portion of the project, adequate Park Fee Credits do not exist to cover the applicable Park Fees, the City shall not require the payment of Park Fees until the approval of a final inspection for that portion of the project. If at the time of approval of final inspection, adequate Park Fee Credits still do not exist to cover the applicable Park Fees, then Developer shall pay the Park Fees then due to the City. At such time, if it occurs, that adequate Park Fee Credits have accrued to cover amounts previously paid by the Developer to the City for the Park Fees, the City shall refund any excess of amounts paid over credits to the Developer.

6. Affordable Housing.

The Project is subject to the requirement of providing a total of 57 Affordable Dwelling Units, all of which shall be rental units and must remain Affordable Dwelling Units for at least fifty-five (55) years. The City and Developer agree as a condition precedent to Development that an Affordable Housing Agreement be executed to memorialize the terms and conditions of the affordable housing components (Attached Hereto as Exhibit C). The Developer will provide affordable units for rent, which shall be made available as follows: 10 units to and occupied by Very Low Income Households and 47 units made available to and occupied by Moderate Income Households. The Developer agrees to record said affordability covenants and Deed of trust in favor of the City to assure that affordability covenants run with the land and remain in effect for the affordability period. The Developer agrees to comply with all terms and provisions of the Affordable Housing Agreement and its attachments and acknowledges that any default thereunder shall also constitute a default under this Agreement.

Prior to approval of a Final Inspection for the 60th Market Rate Rental Dwelling Unit, Developer shall have completed construction and shall have received all required Final Inspections for two rental Very Low Income Household Affordable Dwelling Units and six rental Moderate Income Household Affordable Dwelling

Units; and concurrent with issuance of a Final Inspection for the 430th Market Rate Rental Dwelling Unit, Developer shall have completed construction and shall have received required Final Inspection for all 57 Affordable Dwelling Units.

7. **Extension of Project Approvals.** Unless a longer term would result under otherwise applicable state law, the term of any permits approved as part of the Project approvals shall be automatically extended for the term of this Agreement.

8. **Additional Developer Obligations:** Developer shall, at the time that a building permit is issued by City for the Development Plan, deposit with the City the amount of \$250,000.00 ("Deposit"), which shall be used to pay for the costs of planning, design, permits and construction of a certain pedestrian path ("the Facility") between the Property and The Village at Bella Terra/Costco property(ies) east of the railroad tracks (as set forth in the Development Plan) and which shall constitute the maximum amount due from Developer for this facility. The Developer's final contribution amount toward the planning, design, permitting and construction of the Facility shall be the lesser of: (i) \$250,000; (ii) 50 percent of the total cost of the Facility; or (iii) Developer's fair share based on the contributions of others that will benefit from the Facility. To the extent Developer's final contribution is less than its Deposit, the remainder portion of the Deposit shall be returned to Developer. The Developer entity that actually posts the Deposit shall be entitled to reimbursement for any unspent portion of the Deposit if construction of the pedestrian path has not commenced prior to expiration of this agreement even if such entity is no longer the Developer of the Project at the time the unspent portion of the Deposit is due to be reimbursed.

9. **Subsequent Discretionary Action and Approval.** The City agrees not to unreasonably withhold, condition or delay any Discretionary Action or Discretionary Approval or other action or approval by the City which may be required by the Project subsequent to the execution of this Agreement. Upon the filing of a complete application and payment of appropriate processing fees by Developer, the City shall promptly commence and diligently schedule and convene all required public hearings in an expeditious manner consistent with the law and process all Discretionary Actions and Discretionary Approvals in an expeditious manner.

10. **Compliance Review.**

(a) **Periodic Review.** Pursuant to Government Code section 65865.1, the City Manager or his or her designee shall, not less than once in every twelve (12) months, review the Project and this Agreement to ascertain whether or not the Developer is in full compliance with the terms of the Agreement (the "Periodic Review").

(b) **Review Procedure.** During a Periodic Review, Developer shall provide information reasonably requested by the City Manager or his or her designee that the Project is being developed in good faith compliance with the terms of this Agreement. If, as a result of a Periodic Review, the City finds and determines on the basis of substantial evidence that the Developer has not complied in good faith with the terms or conditions of this Agreement, the City shall issue a written "Notice of Non-Compliance" to the Developer specifying the grounds therefore and all facts demonstrating such non-compliance. The Developer's failure to cure the alleged non-compliance within sixty (60) days after receipt of the notice, or, if such noncompliance is not capable of being cured within sixty (60) days, the Developer's failure to initiate all actions required to cure such non-compliance within sixty (60) days after receipt of the notice and completion of the cure of such non-compliance within one hundred twenty (120) days, shall constitute a default under this Agreement on the part of the Developer and shall constitute grounds for the termination of this Agreement by the City as provided for below. If requested by Developer, City agrees to provide to Developer a certificate that Developer is in compliance with the terms of this Agreement, provided Developer reimburses City for all reasonable and direct costs and fees incurred by City with respect thereto.

(c) **Termination or Modification for Non-Compliance.** Pursuant to Government Code section 65865.1, if the City Council finds and determines, on the basis of substantial evidence, that the Developer has not complied in good faith with the terms or conditions of this Agreement, the City Council may modify or terminate this Agreement. Any action by the City with respect to the termination or modification of this Agreement shall comply with the notice and public hearing requirements of Government Code section 65867 in addition to any other notice required by law. Additionally, the City shall give the Developer written notice of its intention to terminate or modify this Agreement and shall grant the Developer a reasonable opportunity to be heard on the matter and to oppose such termination or modification by the City.

11. Modification, Amendment, Cancellation or Termination.

11.1 Amendment and Cancellation. Pursuant to Government Code section 65868, this Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City, Property Owner and the Developer or their successors in interest. Public notice of the parties' intention to amend or cancel any portion of this Agreement shall be given in the manner provided by Government code section 65867. Any amendment to the Agreement shall be subject to the provisions of Government Code section 65867.5.

11.2 Modification. The City Planning Director, with the consent of the Developer and the Property Owner, may make minor modifications to the Agreement without the need for formal action by the City's Planning Commission or City Council as long as such modifications do not alter the Term of this Development Agreement, the permitted uses, density or intensity of uses, the

maximum height or size of buildings, provisions for reservations or Dedication of land, conditions, terms, restrictions and requirements relating to Subsequent Discretionary Actions and Approvals, and monetary contributions by Developer.

11.3 Termination By Property Owner. Property Owner shall have the right to unilaterally terminate this Agreement, if Developer fails to execute the Ground Lease for the Property within the prescribed time periods designated in the Option, by sending written notice of such termination to City and Developer. In the event Developer does not enter into the Ground Lease and Property Owner terminates this Agreement, no party shall have any liability to another party under this Agreement.

12. Defaults, Notice and Cure Periods, Events of Default and Remedies.

12.1 Default By the Developer.

12.1.1 Default. If the Developer does not perform its obligations under this Agreement in a timely manner, the City may exercise all rights and remedies provided in this Agreement, provided the City shall have first given written notice to the Developer as provided in Paragraph 17(a) hereof.

12.1.2 Notice of Default. If the Developer does not perform its obligations under this Agreement in a timely manner, the City through the City Manager may submit to the Developer a written notice of default in the manner prescribed in Paragraph 17(a) identifying with specificity those obligations of the Developer under this Agreement which have not been timely performed. Upon receipt of any such written notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of any such written notice of default and shall complete the cure of any such default(s) no later than sixty (60) days after receipt of any such written notice of default, or if such default(s) is not capable of being cured within sixty (60) days, no later than one hundred twenty (120) days after receipt of any such written notice of default, provided the Developer commences the cure of any such default(s) within such sixty (60) day period and thereafter diligently pursues such cure at all times until any such default(s) is cured.

12.1.3 Failure to Cure Default Procedure. If after the cure period provided in Paragraph 12.1.2 has elapsed, the City Manager finds and determines the Developer, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the City's Planning and Building Director shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that the Developer, or its successors, transferees and/or assignees, as the case may be, has not cured a default under this Agreement pursuant to this Paragraph 12, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and

obligations, as the case may be, the Developer, and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council. Such right of appeal shall include, but not be limited to, an objection to the manner in which the City intends to modify this Agreement if the City intends as a result of a default of the Developer, or one of its successors or assigns, to modify this Agreement. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Paragraph 12 or this Agreement shall be construed as modifying or abrogating the City Council's review of Planning Commission actions or limiting the City's rights and remedies available at law or in equity, which shall include (without limitation) compelling the specific performance of the Developer's obligations under this Agreement.

12.1.4 Termination or Modification of Agreements. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council or, where no appeal is taken, after the expiration of the applicable appeal periods described herein. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code sections 65967.5 and 65868, irrespective of whether an appeal is taken as provided herein.

12.1.5 Lender Protection Provisions.

12.1.5.1 Notice of Default. In addition to the notice provisions set forth in Paragraph 12.1.2, the City shall send a copy of any notice of default sent to the Developer or any of its successors or assigns to any lender that has made a loan then secured by a deed of trust against the Property, or a portion thereof, provided such lender shall have (a) delivered to the City written notice in the manner provided in Paragraph 17(a) of such lender's election to receive a copy of any such written notice of default and (b) provided to the City a recorded copy of any such deed of trust. Any such lender that makes a loan secured by a deed of trust against the Property, or a portion thereof, and delivers a written notice to the City and provides the City with a recorded copy of any such deed of trust in accordance with the provisions of this Paragraph 12.1.5.1 is herein referred to as a "Qualified Lender."

12.1.5.2 Right of a Qualified Lender to Cure a Default. The City shall send a written notice of any Developer default to each Qualified Lender. From and after receipt of any such written notice of default, each Qualified Lender shall have the right to cure any such default within the same cure periods as provided to the Developer hereunder. If the nature of any such default is such that a Qualified Lender cannot reasonably cure any such default without being the ground lessee of the Property, or the applicable portion thereof, (as reasonably determined by the City), then so long as the Qualified Lender(s) is (are) diligently proceeding (as reasonably determined by the City) to foreclose the lien of its deed of trust against the ground lessee of the Property, or the applicable portion thereof, and after completing any such foreclosure promptly commences the cure of any such default and thereafter diligently pursues the cure of such default to completion, then such Qualified Lender shall have any additional sixty (60) days following such foreclosure to cure any such default.

12.1.5.3 Exercise of City's Remedies. Notwithstanding any other provision of this Agreement, the City shall not exercise any right or remedy to cancel or amend this Agreement during any cure period.

12.2 Default by the City.

12.2.1 Default. In the event the City does not accept, process or render a decision in a timely manner on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements therefore, or as otherwise agreed to by the City and Developer, or the City otherwise defaults under the provisions of this Agreement, subject to Paragraph 12.3, the Developer shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided the Developer has first complied with the procedures in Paragraph 12.2.2.

12.2.2 Notice of Default. Prior to the exercise of any other right or remedy arising out of a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed under this Agreement. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) no later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided the City shall continuously and diligently pursue each remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City is in default under this Agreement or whether the City has cured the default, or to seek the enforcement of this Agreement, the City and the Developer may submit the matter to negotiation/mediation pursuant to Paragraph 17(n) of this Agreement.

12.3 Monetary Damages. The Developer and City acknowledge that neither the City nor the Developer would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application thereof. Both the City and the Developer agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the City and the Developer agree that neither shall be liable for monetary damages under or with respect to this Agreement or the application thereof and the City and the Developer covenant not to sue for or claim any monetary damages for the breach of any provision of this agreement. This foregoing waiver shall not be deemed to apply to any fees or other monetary amounts specifically required to be paid by the Developer to the City pursuant to this Agreement, including, but not limited to, any amounts due pursuant to Paragraph 17(g) and 17(m). The foregoing waiver shall also not be deemed to apply to any fees or

other monetary amounts specifically required to be paid or credited by the City to the Developer pursuant to this Agreement, including, but not limited to any fee credits specifically required to be credited by City to Developer or its assignee(s).

12.4 No Liability of Property Owner. Notwithstanding anything to the contrary herein, in the event Developer does enter into the Ground Lease for the Property, Property Owner shall not be liable or responsible for any of Developer's obligations under this Agreement or for any default or breach of this Agreement by Developer.

13. Administration of Agreement and Resolution of Disputes. The Developer shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project or the interpretation and administration of this Agreement. All City Council decisions or determinations regarding the Project or the administration of this Agreement shall also be subject to judicial review pursuant to Code of Civil Procedure section 1094.5, provided that, pursuant to Code of Civil Procedure section 1094.6, any such action must be filed in a court of competent jurisdiction not later than ninety (90) days after the date on which the City Council's decision becomes final. In addition, in the event the Developer and the City cannot agree whether a default on the part of the Developer, or any of its successors or assigns, under this Agreement exists or whether or not any such default has been cured, then the City or the Developer may submit the matter to negotiation/mediation pursuant to Paragraph 17(n).

14. Recordation of this Agreement. Pursuant to Government Code section 65868.5, the City Clerk shall record a copy of this Agreement in the Official Records of the County within ten (10) days after the mutual execution of this Agreement.

15. Constructive Notice and Acceptance. Every person or entity 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 Agreement is contained in the instrument by which such person acquired an interest in the Property.

16. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the City, the Developer, the Property Owner and their respective successors and assigns. No other person or entity shall have any right of action based upon any provision of this Agreement.

17. Miscellaneous.

(a) Notices. All notices which are allowed or required to be given hereunder shall be in writing and (1) shall be deemed given and received when personally delivered or (2) shall be sent by registered or certified mail or overnight mail service, addressed to the applicable designated person by one party to the other in writing, and shall be deemed received on the second business day after such mailing.

If to City: City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager
Tel. No.: (714) 536-5575
Fax No.: (714) 536-5233

If to Developer: Sares-Regis Group
18825 Bardeen Avenue
Irvine, CA 92612
Attn: Michael J. Winter
Tel. No. (949) 809-2523
Fax. No. (949) 253-0475

Allen Matkins
1900 Main Street, Suite 500
Irvine, CA 92614
Attn: William R. Devine
Te. No. (949) 553-1313
Fax. No. (949) 553-8354

If to Property Owner: Freeway Industrial Park
2032 La Colina Drive
Santa Ana, CA 92705
Attn: Janette Ditkowsky
Tel. No. (714) 744-4526
Fax. No. (714) 532-9040

Palmieri, Tyler
2603 Main Street, Suite 1300
Irvine, CA 92614
Attn: Robert C. Ihrke
Tel. No. (949) 851-9400
Fax. No. (949) 851-1554

(b) Severability. If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement unless the invalid provision is a material part of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part. In the event any material provision of this Agreement is determined to be invalid, void or voidable, City or Developer may terminate this Agreement.

(c) Entire Agreement; Conflicts. This Agreement represents the entire agreement between the City and the Developer with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the City and the Developer with respect to the matters contained in this Agreement. Should any or all of the provisions of this Agreement be found to be in

conflict with any other provision or provisions found in the Applicable Rules or the Subsequent Applicable Rules, then the provisions of this Agreement shall govern and prevail.

(d) Further Assurances. The City and the Developer agree to perform, from time to time, such further acts and to execute and deliver such further instruments reasonably to effect the intents and purposes of this Agreement, provided that the intended obligations of the City and the Developer are not thereby modified.

(e) Inurement and Assignment. This Agreement shall inure to the benefit of and bind the successors and assigns of the City and the Developer, may be assigned by either the City or the Developer to any party or parties purchasing all or any part of the Property, or any interest therein pursuant to the provisions of this Paragraph 26(e). The specific rights and obligations of this Agreement shall be deemed covenants running with the land that concern and affect Developer's ground leasehold interest in the Property. Prior to Developer's assignment of any rights, duties or obligations under this Agreement, the Developer shall present such information required by the City at its sole discretion to demonstrate to the City's satisfaction that the proposed successor and/or assignee has the financial ability and experience to fulfill those specific rights, duties and obligations under the Agreement that the successor and/or assignee would assume. In addition, the Developer and the proposed assignee shall present to the City a signed agreement delineating the right to use the credits established by this Agreement as between such parties. City shall have the right to approve the proposed successor and/or assignee, provided that the City's approval may not be unreasonably withheld, conditioned or delayed. The provisions of this Paragraph 26(e) shall be self-executing and shall not require the execution or recordation of any further document or instrument.

(f) Negation of Agency. The City and the Developer acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer joint venture's, partners or employer/employee.

(g) Attorney's Fees. In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding shall not be entitled to recover its court costs and reasonable out-of-pocket expenses.

(h) Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(i) Force Majeure. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that any one or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the

reasonable control of the party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor, subcontractor, or consultant to timely perform (so long as Developer is not otherwise in default of any obligation under this Agreement and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, or unusually severe weather. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause.

Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

(j) Paragraph Headings. The paragraph headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(k) Time of Essence. Time is of the essence of this Agreement, and all performances required hereunder shall be completed within the time periods specified. Any failure of performance shall be deemed as a material breach of this Agreement.

(l) Counterparts. This Agreement and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(m) Indemnification. The Developer agrees, as a condition of approval of this Agreement, to indemnify, defend and hold harmless at the Developer's expense, the City, the City Council, and the City's agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of this Agreement, the Specific Plan or EIR to determine the reasonableness, legality or validity of any provision hereof or obligation contained herein. Developer also agrees to indemnify the City, the City Council, and the City's officials, agents and employees for any claims, acts or proceedings relating to the Project's affordable housing requirements, including, but not limited to, any challenge to the City's Housing Element arising from such requirements.

The indemnity described in this section is not subject to the provisions of paragraph 4.a. providing that obligations cease if the Project does not go forward.

The City shall promptly notify the Developer of any such claim, action or proceeding of which the City receives notice, and the City will cooperate fully with the Developer in the defense thereof. The Developer shall provide a defense to the City with counsel

reasonably selected by Developer and City to defend both the City and Developer, and shall reimburse the City for any court costs which the City may be required to pay as a result of any such claim, action or proceeding. The City may, in its sole discretion, participate in the defense of any such claim, action or proceeding at its own expense, but such participation shall not relieve the Developer of the obligations of this Paragraph 25(m).

(n) Hold Harmless Agreement. City and Developer mutually agree to, and shall hold each other and Property Owner and each of the other's elective and appointed councils, boards, commissions, directors, officers, partners, agents, representatives and employees harmless from any liability for damage or claims for personal injury, including death, and from claims for property damage which may arise from the activities of the other's or contractor's, subcontractors, agents, or employees which relate to the Project whether such activities be by City or Developer, or by any of City's or the Developer's contractors, subcontractors, or by any one or more persons indirectly employed by, or acting as agent for Developer, any of Developer's or the City's contractors or subcontractors. City and Developer agree to and shall defend the other and Property Owner and each of the other's elective and appointive councils, boards, directors, commissioners, officers, partners, agents, representatives and employees from any suits or actions at law or in equity for damage caused or alleged to have been caused by reason of the aforementioned activities which relate to the Project.

(o) Alternative Dispute Resolution Procedure.

(1) Dispute. If a dispute arises concerning whether the City or the Developer or any of Developer's successors or assigns is in default under this Agreement or whether any such default has been cured or whether or not a dispute is subject to this Paragraph (a "Dispute"), then such dispute shall be subject to negotiation between the parties to this Agreement, and if then not resolved shall be subject to non-binding mediation, both as set forth below, before either party may institute legal proceedings.

(2) Negotiation. If a Dispute arises, the parties agree to negotiate in good faith to resolve the Dispute. If the negotiations do not resolve the Dispute to the reasonable satisfaction of the parties within 15 days from a written request for a negotiation, then each party shall give notice to the other party identifying an official or executive officer who has authority to resolve the Dispute to meet in person with the other party's designated official or executive officer who is similarly authorized. The designated persons identified by each party shall meet in person for one day within the 20-day period following the expiration of the 15-day period and the designated persons shall attempt in good faith to resolve the Dispute. If the designated persons are unable to resolve the Dispute, then the Dispute shall be submitted to non-binding mediation.

(3) Mediation.

(i) Within 15 days following the designated persons' meeting described in paragraph 17(o)(2), above, either party may initiate non-binding mediation (the "Mediation"), conducted by Judicial Arbitration & Mediation Services, Inc. ("JAMS") or other agreed upon mediator. Either party may initiate the Mediation by written notice to the other party.

(ii) The mediator shall be a retired judge or other mediator, selected by mutual agreement of the parties, and if they cannot agree within 15 days after the Mediation notice, the mediator shall be selected through the procedures regularly followed by JAMS. The Mediation shall be held within 15 days after the Mediator is selected, or a longer period as the parties and the mediator mutually decide.

(iii) If the Dispute is not fully resolved by mutual agreement of the parties within 15 days after completion of the Mediation, then either party may institute legal proceedings.

(iv) The parties shall bear equally the cost of the mediator's fees and expenses, but each party shall pay its own attorneys' and expert witness fees and any other associated costs.

(4) Preservation of Rights. Nothing in this Paragraph shall limit a party's right to seek an injunction or restraining order from a court in circumstances where such equitable relief is deemed necessary by a party to preserve such party's rights.

(p) Reference of California Law. Unless expressly stated to the contrary, all references to statutes herein are to the California codes.

(q) Interpretation. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has independently reviewed this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

IN WITNESS WHEREOF, the City, Property Owner and the Developer hereto have each executed this Agreement as of the date first written above.

Developer: SARES-REGIS GROUP, a California general partnership and/or its assignees
Michael J. Winter
Print: Michael J. Winter
Its: Senior Vice President

Property Owner: Freeway Industrial Park, a California corporation
Janette Trotter Ditekowsky
Print: JANETTE TROTTER DITKOWSKY
Its: Chief Operating Officer

City: City of Huntington Beach, a municipal corporation of the State of California

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

JM City Attorney MV 5-17-11
5-23-11

EXHIBIT A

ATTACHMENT NO. 2.25

EXHIBIT "A"

Legal Description of 7441 Edinger Ave., Huntington Beach, California

PARCEL 1 AS DESCRIBED IN LOT LINE ADJUSTMENT NO. 10-007 RECORDED
MAY 4, 2011 AS INSTRUMENT NO. 2011000225797 OF OFFICIAL RECORDS IN
THE OFFICE OF THE ORANGE COUNTY RECORDER.

EXHIBIT B

ATTACHMENT NO. 2.27

EXHIBIT B

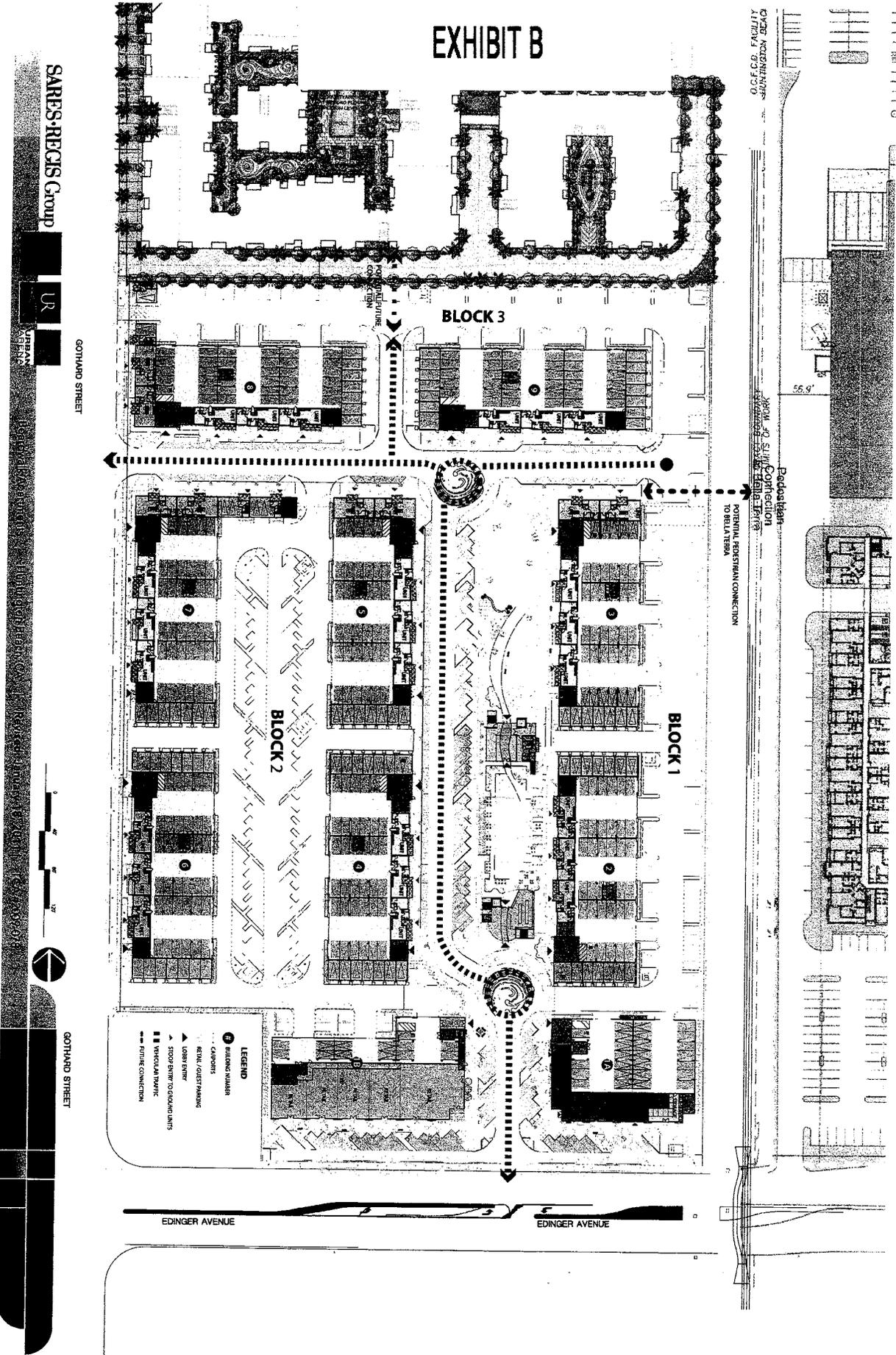


EXHIBIT C

ATTACHMENT NO. 2.29

RECORDING REQUESTED BY)
 AND WHEN RECORDED MAIL TO:)
)
 City of Huntington Beach)
 2000 Main Street)
 Huntington Beach, CA 92648)
 Attn: City Clerk)

(Space above for Recorder's use)
 This document is exempt from recording fees
 pursuant to Government Code Section 27383.

**AFFORDABLE HOUSING AGREEMENT RESTRICTIONS-RENTAL
 (DECLARATION OF CONDITIONS, COVENANTS
 AND RESTRICTIONS FOR PROPERTY)**

This Affordable Housing Agreement and Declaration of Conditions, Covenants and Restrictions for Property (the "Declaration") is made as of _____, 2011, by and between Freeway Industrial Park, a California Corporation (the "Property Owner"), Sares-Regis Group (the "Developer" or the "Covenantor"), and THE CITY OF HUNTINGTON BEACH, a California municipal corporation (the "City") and the REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body corporate and politic (the "Agency"). Collectively, the City and Agency will be referred to as the "Covenantee."

RECITALS

A. Property Owner is the owner of record of that certain real property located at 7441 Edinger Avenue (the "Subject Property"), in the City of Huntington Beach, County of Orange, State of California legally described in the attached "Exhibit A." Developer is the ground lessee of the Subject Property.

B. The Developer seeks to develop a project on the Property consisting of 487 dwelling units, 9,000 square feet of resident recreation area, 4,500 square feet of leasing office area, and 10,000 square feet of commercial/retail uses, as more particularly set forth in the Development Plan (collectively, the "Project") approved by Site Plan Review No. 10-004, attached as Exhibit C and incorporated herein, all in accordance with the Beach and Edinger Corridors Specific Plan, as may be amended from time to time (the "Specific Plan") adopted by the City Council of the City (the "City Council") on March 1, 2010.

C. The City imposed conditions of approval on the Project, in part that Developer provide affordable housing. As part of the plan to provide affordable housing, the City and Developer entered into a Development Agreement which requires as a condition that an Affordable Housing Agreement be executed requiring Developer to provide affordable rental units for a certain period of time. Specifically, the Developer provide 57 units within the Project

available for rent to households earning Moderate or Very Low Income (as those terms are defined in the Development Agreement) for a period of 55 years as further defined herein. The execution and recordation of this Declaration is intended to fully satisfy that condition.

NOW, THEREFORE, the parties hereto agree and covenant as follows:

1. **Affordability Covenants.** Covenantor agrees for itself and its successors and assigns, and every successor to Covenantor's interest in the affordable unit, or any part thereof that the Project approved by Site Plan Review No. 10-004 located at 7441 Edinger Avenue, which consists of 487 units, 57 of which shall be designated as affordable and shall be held subject to this Declaration for fifty-five years from the date the Certificate of Occupancy has been issued by the City as follows:

(a) Qualified Households. Covenantor agrees to make available, restrict occupancy to, and to lease 57 units for the duration of the Affordability Period as defined herein. These 57 units may sometimes be referred to as an "Affordable Unit" or, collectively, the "Affordable Units." Each Affordable Unit shall be occupied by Moderate or Very Low Income Households as those terms are defined in the Development Agreement adjusted for the actual number of persons in the Household that will reside in the Affordable Unit. 10 Affordable Units shall only be occupied by Very Low-Income Households, and 47 Affordable Units shall only be occupied by Moderate-Income Households, adjusted for the actual number of persons in the Household that will reside in the Affordable Units.

As used in this Declaration, the term "Household" shall mean one or more persons, whether or not related, living together in an Affordable Unit that rent or lease any portion of the Affordable Unit.

As used in this Declaration, the term "Covenantor" shall mean Developer, its successors and assigns, and every successor to Developer's interest in the Project, or any part thereof. Property Owner only shall be deemed "Covenantor" if and when Property Owner should become the Owner of the Project during the Affordability Period.

(b) Duration. The term of this agreement shall commence on the date that the Final Inspection for the twenty-ninth affordable unit is approved by the City and will continue for 55 years thereafter ("Affordability Period"). The covenant contained in this Section 1 shall run with the Project and shall automatically terminate and be of no further force or effect upon the expiration of the Affordability Period.

(c) Income Qualification. Prior to the lease of an Affordable Unit to any Household, Covenantor shall submit to the Covenantee a completed income computation and certification form, in such form as is generally used by City in administering its affordable housing program as may be amended from time to time. Covenantor shall certify that, to the best of its knowledge, each Household is a Moderate or Very Low- Income Household that meets the eligibility requirements established for the particular Affordable Unit occupied by such Household. Covenantor shall obtain an income certification from each adult member of the Household and shall certify that, to the best of Covenantor's knowledge, the income of the

Household is truthfully set forth in the income certification form. Furthermore the Covenantor shall, on renewal of the annual lease for the particular Affordable Unit, again obtain income certification from each adult member of the Household and submit to the Covenantee a recertification form that shall certify, to the best of Covenantor's knowledge, each Household is a Moderate or Very Low-Income Household that meets the eligibility requirements established for the particular Affordable Unit occupied by such Household. Covenantor shall verify the income certification of the Household in one or more of the following methods as specifically requested by Covenantee.

(1) Obtain two (2) paycheck stubs from two (2) most recent pay periods for each adult member of the Household.

(2) Obtain a copy of an income tax return certified to be true and complete for the most recent tax year in which a return was filed, for each adult member of the Household.

(3) Obtain an income verification certification from the employer of each adult member of the Household.

(4) Obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the Household receives assistance from such agencies.

(5) Obtain an alternate form of income verification reasonably requested by Covenantee, if none of the above forms of verification is available to Covenanter.

If, after renting an Affordable Unit to an eligible Household, the Household's income increases above the income level permitted for that unit, the Household shall continue to be permitted to reside in such Affordable Unit, for no more than one year.

(d) Determination of Affordable Rent for the Affordable Units. The rent for each Affordable Unit (the "Affordable Rent") shall be adjusted annually by the following formula upon the publication of revised Orange County median income figures by the United States Department of Housing and Urban Development: (i) The Affordable Rent amount for the Very Low-Income units shall not exceed thirty percent (30%) of 50 percent (50%) of the monthly area median income adjusted for the actual number of persons in the Household as determined by California Health and Safety Code Section 50053; (ii) The Affordable Rent amount for the Moderate-Income units shall not exceed thirty percent (30%) of one-hundred twenty% percent (120%) of the monthly area median income adjusted for the actual number of persons in the Household as determined by California Health and Safety Code Section 50053. The income limits and Affordable Rents in effect as of the date of this Agreement are attached hereto as Exhibit "B" and incorporated herein by this reference.

COVENANTOR UNDERSTANDS AND KNOWINGLY AGREES THAT THE MAXIMUM RENTAL PAYMENTS TO BE ESTABLISHED BY THIS FORMULA ARE NOT NECESSARILY EQUAL TO THE FAIR MARKET RENT FOR THE AFFORDABLE UNITS, AND MAY BE ESTABLISHED AT A LEVEL SUBSTANTIALLY BELOW THE FAIR MARKET RENT LEVELS.

COVENANTOR HEREBY AGREES TO RESTRICT THE
AFFORDABLE UNITS ACCORDINGLY.

COVENANTOR'S INITIALS

In the event state law referenced herein is amended, the terms of this Agreement shall automatically be amended to remain consistent with State law.

(e) Annual Report. Within sixty (60) days after the end of each calendar year during the Affordability Period, Covenantor shall submit to Covenantee a report verifying Covenantor's compliance with the provisions of this Declaration ("Annual Report"). Covenantor's final Annual Report shall be submitted to Covenantee within sixty (60) days after the end of the Affordability Period. Each Annual Report shall identify the location of the Affordable Units for the applicable reporting period, the identity of each Household member occupying an Affordable Unit during any portion of such period, the income and family size of each such Household, the Affordable Rent for each of the Affordable Units, and the rent actually charged pursuant to the lease or rental agreement. If Covenantee prescribes a particular form to be utilized by Covenantor in preparing the Annual Report, Covenantor shall utilize said form, provided that it complies substantially with the foregoing requirements.

2. Non-Discrimination Covenants. Covenantor covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, in the use, occupancy, tenure, or enjoyment of the Affordable Unit, nor shall Covenantor itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, or vendees in the Affordable Unit.

Covenantor and its successors and assigns shall refrain from restricting the leasing of the Affordable Unit on the basis of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability, of any person. All such leases shall contain or be subject to substantially the following nondiscrimination or nonsegregation clause:

"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, sexual orientation, creed, ancestry, national or ethnic origin, age, family or marital status, handicap or disability in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation

with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

3. **Use Restrictions.** During the Affordability Period, Covenantor shall be required to take all reasonable steps necessary to ensure that each Household renting an Affordable Unit has knowledge of all terms and conditions of this Declaration by including in each and every lease and rental agreement a clause which incorporates this Declaration by reference and makes this Declaration a part of an attachment to such lease or rental agreement. In addition, during the Affordability Period, each lease or rental agreement for any of the Affordable Units shall contain provisions that the Affordable Unit shall be occupied, used, and maintained as follows:

(a) The Affordable Unit shall be used only for private dwelling purposes, with appurtenant facilities, and for no other purposes;

(b) Household Size. The number of persons that may occupy an Affordable Unit shall be based on unit size:

<u>Unit Size</u>	<u>Household Size</u>
0 bedroom (studio)	2 persons
1 bedroom	3 persons
2 bedrooms	5 persons

(c) the Household shall not permit or suffer anything to be done or kept upon the premises which will increase the rate of insurance on any building, or on the contents thereof, and shall not impair the structural integrity thereof obstruct or interfere with the rights of other occupants, or annoy such occupants by reasonable noises or otherwise, nor shall any Household commit or permit any nuisance on the premises or fail to keep the premises free of rubbish, clippings, and trash or commit or suffer any illegal act to be committed thereon;

(d) The Household shall not sublease any or all parts of the Affordable Unit without prior approval from Covenantor;

(e) The Household shall comply with all of the lawful requirements of all governmental authorities with respect to the premises;

(f) No person shall be permitted to occupy the premises for transient or hotel purposes; and

(g) The Household shall comply in all respects with this Declaration and any failure by the Household to comply with the terms of this Declaration shall be a default under the Household’s lease or rental agreement.

4. **Covenants for Benefit of City and Agency.** All covenants without regard to technical classification or designation shall be binding for the benefit of the Covenantor and

such covenants shall run in favor of Covenantee for the entire period during which time such covenants shall be in force and effect. The Covenantee, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any such action at law or suits in equity or other proper legal proceedings to enforce and to cure such breach to which it or any other beneficiaries of these covenants may be entitled during the term specified for such covenants, except the covenants against discrimination which may be enforced at law or in equity at any time in perpetuity.

5. **Binding on Successors and Assigns** The covenants and agreements established in this Declaration shall, without regard to technical classification and designation, be binding on Covenantor and any successor to Covenantor's right, title, and interest in and to all or any portion of the Project, for the benefit of and in favor of the City of Huntington Beach and the Redevelopment Agency of the City of Huntington Beach. All the covenants contained in this Declaration shall remain in effect for the Affordability Period, and shall automatically terminate and be of no further force or effect after such time. Upon expiration of the Affordability Period, Covenantee agrees to cooperate with Covenantor, at no cost to Covenantee in removing this Declaration of record from the Subject Property.

6. **Counterparts.** This Agreement may be executed in a number of counterparts, each of which shall be an original, but all of which shall constitute one and the same document.

7. **Applicable Law.**

(a) If any provision of this Agreement or portion thereof, or the application of any provision to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby and it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State of California and all applicable HUD Housing Quality Standards and City Codes.

[Signatures and Jurats to Follow]

IN WITNESS WHEREOF, the Covenantee and Covenantor have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of the date set forth above.

PROPERTY OWNER:

FREEWAY INDUSTRIAL PARK, a
California corporation

By: Janette Trotter Ditekowsky
JANETTE TROTTER DITKOWSKY
print name

ITS: Chief Operating Officer

DEVELOPER:

SARES-REGIS GROUP, a California
general partnership and/or its assignees

By: Michael J. Winter
Michael J. Winter
print name

ITS: (circle one) Chairman/President/Vice President

COVENANTEE:

CITY OF HUNTINGTON BEACH,
a California municipal corporation

Mayor

City Clerk

THE REDEVELOPMENT AGENCY OF
THE CITY OF HUNTINGTON BEACH,
a public body corporate and politic

By: _____
Deputy Executive Director

APPROVED AS TO FORM:

JM 5-23-11 City Attorney / Agency Counsel MV 5-17-11

INITIATED AND APPROVED:

Planning Director

REVIEWED AND APPROVED:

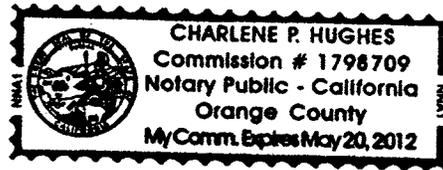
City Manager

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On May 24, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Sanette Ditzkowski personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Charlene P. Hughes
Signature of Notary Public



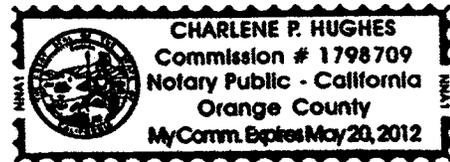
(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE) ss.

On MAY 24, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael J. Winder personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the persons or the entities upon behalf of which the person acted executed the instrument.

WITNESS my hand and official seal.

Charlene P. Hughes
Signature of Notary Public



(SEAL)

EXHIBIT "A"

Legal Description of 7441 Edinger Ave., Huntington Beach, California

PARCEL 1 AS DESCRIBED IN LOT LINE ADJUSTMENT NO. 10-007 RECORDED
MAY 4, 2011 AS INSTRUMENT NO. 2011000225797 OF OFFICIAL RECORDS IN
THE OFFICE OF THE ORANGE COUNTY RECORDER.

EXHIBIT "B"

Current Qualifying Income and Rent Schedule

Very Low (50%)		Moderate (120%)		Comments
Income Limit	Rent Limit	Income Limit	Rent Limit	
1P = \$32,550	1BR - \$930	1P = \$73,250	1BR - \$2,092	1BR - 3 persons
2P = \$37,200	2BR - \$1,161	2P = \$83,700	2BR - \$2,616	2BR - 5 persons
3P = \$41,850	3BR - \$1,255	3P = \$94,200	3BR - \$2,825	
4P = \$46,450		4P = \$104,650		
5P = \$50,200		5P = \$113,000		

Income Restriction Calculations:

Very-Low Income Restrictions (50%):

$\$92,900 \times 50\% \times 70\% = \$32,550$ - 1 person
 $\$92,900 \times 50\% \times 80\% = \$37,200$ - 2 people
 $\$92,900 \times 50\% \times 90\% = \$41,850$ - 3 people
 $\$92,900 \times 50\% \times 100\% = \$46,450$ - 4 people
 $\$92,900 \times 50\% \times 108\% = \$50,200$ - 5 people

Median Income - \$92,900
 (round to closest \$50)

Moderate Income Restrictions (120%):

$\$87,200 \times 120\% \times 70\% = \$73,250$ - 1 person
 $\$87,200 \times 120\% \times 80\% = \$83,700$ - 2 people
 $\$87,200 \times 120\% \times 90\% = \$94,200$ - 3 people
 $\$87,200 \times 120\% \times 100\% = \$104,650$ - 4 people
 $\$87,200 \times 120\% \times 108\% = \$113,000$ - 5 people

Median Income - \$87,200
 (round to closest \$50)

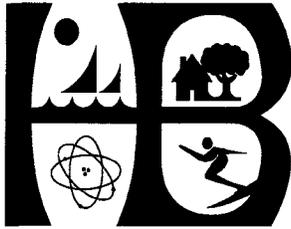
Rent Restriction Calculations:

Very Low Rent Restriction (50%):

$\$37,200 \times 30\% / 12 = \930 for 2 people
 $\$46,450 \times 30\% / 12 = \$1,161$ for 4 people
 $\$50,200 \times 30\% / 12 = \$1,255$ for 5 people

Moderate Rent Restriction (120%):

$\$83,700 \times 30\% / 12 = \$2,092$ for 2 people
 $\$104,650 \times 30\% / 12 = \$2,616$ for 4 people
 $\$113,000 \times 30\% / 12 = \$2,825$ for 5 people



Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

NOTICE OF ACTION

February 9, 2011

Sares-Regis Group
18825 Bardeen Avenue
Irvine, CA 92714

SUBJECT: SITE PLAN REVIEW NO. 10-004 (BOARDWALK MIXED USE PROJECT)

APPLICANT: Sares-Regis Group, 18825 Bardeen Avenue, Irvine, CA 92714

PROPERTY

OWNER: Freeway Industrial Park, 2032 La Colina Drive, Santa Ana, CA 92705

REQUEST: To develop a mixed use project consisting of 487 apartment units, 10,000 square feet of ground-floor commercial area, 4,500 square feet of leasing office area, a 0.50-acre public open space area, private recreation amenities and associated infrastructure and site improvements on the 12-acre project site.

LOCATION: 7441 Edinger Avenue, Huntington Beach, CA 92647 (northeast of the intersection of Edinger Avenue and Gothard Street – former Levitz Furniture site)

DATE OF

ACTION: February 8, 2011

On Tuesday, February 8, 2011, the Huntington Beach Planning Commission took action on your application, and your application was **conditionally approved**. Attached to this letter are the findings and conditions of approval.

Please be advised that the Planning Commission reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Beach and Edinger Corridors Specific Plan and Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Specific Plan and Zoning and Subdivision Ordinance requirements.

Under the provisions of the Beach and Edinger Corridors Specific Plan, the action taken by the Planning Commission becomes final at the expiration of the appeal period. As specified in the Beach and Edinger Corridors Specific Plan, the property owner or a City Council member may file a written notice of appeal to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of Three Thousand, Forty Five Dollars (\$3,045.00). In your case,

the last day for filing an appeal and paying the filing fee is Friday, February 18, 2011 at 5:00 PM.

Provisions of the Beach and Edinger Corridors Specific Plan are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.

"Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020."

If you have any questions, please contact Jennifer Villasenor, the project planner, at JVillasenor@surfcity-hb.org or (714) 374-1661 or the Planning Division Zoning Counter at (714) 536-5271.

Sincerely,

Scott Hess, AICP, Secretary
Planning Commission

By:



Mary Beth Broeren, Planning Manager

SH:MBB:JV:kdc

Attachment:

1. Findings and Conditions of Approval – SPR No. 10-004
2. Mitigation Monitoring and Reporting Program – EIR No. 10-002

c: Honorable Mayor and City Council
Chair and Planning Commission
Fred A. Wilson, City Manager
Scott Hess, Director of Planning and Building
Bill Reardon, Division Chief/Fire Marshal
Mike Vigliotta, Deputy City Attorney III
Debbie DeBow, Principal Civil Engineer
Mark Carnahan, Inspection Manager
Jennifer Villasenor, Senior Planner
Property Owner
Project File

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

SITE PLAN REVIEW NO. 10-004

FINDINGS FOR APPROVAL – SITE PLAN REVIEW NO. 10-004:

1. Site Plan Review No. 10-004 for the construction of a mixed use development consisting of 487 multi-family residential units and 14,500 square feet of commercial area and associated improvements including a 0.5-acre public open space area, will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The mixed-use residential and retail development, with the recommended conditions of approval, incorporates architectural and design elements that provide maximum compatibility of design with the existing and anticipated development surrounding the project site, promotes pedestrian accessibility, and promotes the image of the Huntington Beach “Surf City” lifestyle. Structures on the project site are four stories in height and feature enhanced building materials and colors, building recesses and façade offsets, and variation in massing composition. The project’s conformance to the Beach and Edinger Corridors Specific Plan (BECSP) further ensures that the form, height, and architectural design convey an overall high level of quality. New streetscapes that incorporate public sidewalks and landscaping areas will ensure connectivity with the adjacent developments and provides maximum accessibility to the 0.5-acre public open space area.
2. The project will not adversely affect the Circulation Plan of the BECSP. The project will provide new streets and improvements to existing streets pursuant to the BECSP development code. The improvements to Edinger Avenue and Gothard Street as well as the new streets create more compact blocks to establish a public realm that focuses on pedestrians rather than vehicles. The streets provide connectivity to the existing street network and allow for extension of vehicular and pedestrian access as future developments are proposed. The new streets provide two-way drive aisles consistent with the City standard and feature on-street parking on both sides and public frontage treatments incorporating minimum six-foot wide sidewalks, street trees and planting areas. The project also provides for pedestrian and bicycle connections to adjacent developments to the north and south and would pay fees commensurate with the project’s contribution of traffic on the area-wide roadway system.
3. The proposed mixed use development will comply with the provisions of the BECSP development code as specified in the Town Center – Core and Town Center – Neighborhood segments. In addition, the project meets all applicable provisions of Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance. The proposed project meets code requirements in terms of building height, massing and volume, setbacks, landscaping, streetscapes, public and private open space, parking and building placement.
4. The granting of the site plan review will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use – Specific Plan Overlay – Design Overlay on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:

A. Air Quality Element

Goal AQ 1: Improve regional air quality by a) decreasing reliance on single occupancy vehicular trips, b) increasing efficiency of transit, c) shortening vehicle trips through a more efficient jobs-housing balance and a more efficient land use pattern, and d) increasing energy efficiency.

Policy AQ 1.10.1: Continue to require the utilization and installation of energy conservation features in all new construction.

B. Circulation Element

Goal CE 2: Provide a circulation system which supports existing, approved and planned land uses throughout the City while maintaining a desired level of service on all streets and at all intersections.

Objective CE 3.2: Encourage new development that promotes and expands the use of transit services.

Policy CE 6.1.6: Maintain existing pedestrian facilities and require new development to provide pedestrian walkways and bicycle routes between developments, schools, and public facilities.

C. Growth Management Element

Policy GM 1.1.7: Ensure that new development site design incorporates measures to maximize policing safety and security.

Policy GM 2.1.4: Ensure that new development site design incorporates measures to maximize fire safety and prevention.

D. Housing Element

Goal H 2: Provide adequate housing sites to accommodate regional housing needs.

Goal H 3: Assist in development of affordable housing.

Policy H 2.2: Facilitate the development of mixed use projects in appropriate commercial areas, including stand-alone residential development (horizontal mixed use) and housing above ground floor commercial uses (vertical mixed use). Establish mixed use zoning regulations.

Policy H 3.1: Encourage the production of housing that meets all economic segments of the community, including lower, moderate, and upper income households, to maintain a balanced community.

E. Land Use Element

Goal LU 4: Achieve and maintain high quality architecture, landscape, and public open spaces in the City.

Goal LU 4.2.4: Require that all development be designed to provide adequate space for access, parking, supporting functions, open space, and other pertinent elements.

Goal LU 7: Achieve a diversity of land uses that sustain the City's economic viability, while maintaining the City's environmental resources and scale and character.

Goal LU 8: Achieve a pattern of land uses that preserves, enhances, and establishes a distinct identity for the City's neighborhoods, corridors, and centers.

Policy LU 8.1.1: Accommodate land use development in accordance with the patterns and distribution of use and density depicted on the Land Use Plan Map, in accordance with the principles discussed below:

- a. Not applicable
- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.
- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

Goal LU 9: Achieve the development of a range of housing units that provides for the diverse economic, physical, and social needs of existing and future residents of Huntington Beach.

Policy LU 9.1.4: Require that recreational and open space amenities be incorporated in new multi-family developments and that they be accessible to and of sufficient size to be usable by all residents.

Goal LU 11: Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 11.1.2: Limit commercial uses in mixed use development projects to those uses that are compatible with the residences.

Policy LU 11.1.4: Require the incorporation of adequate onsite open space and recreational facilities to serve the needs of the residents in mixed use development projects.

Policy LU 11.1.5: Require that mixed use developments be designed to mitigate potential conflicts between the commercial and residential uses, considering such issues as noise, lighting, security, and truck and automobile access.

Policy LU 11.1.6: Require that the ground floor of structures that horizontally integrate housing with commercial uses locate commercial uses along the street frontage (housing may be located to the rear and/or on upper floors).

Policy LU 11.1.7: Require that mixed use development projects be designed to achieve a consistent and high quality character, including the consideration of the:

- a. Visual and physical integration among the commercial and residential uses (Plates LU-3 and LU-4);
- b. Architectural treatment of building elevations to convey the visual character of multiple building volumes and individual storefronts and residential units

F. Noise Element

Policy N 1.2.1: Require, in areas where noise levels exceed an exterior L_{dn} of 60 dB(A) and an interior L_{dn} of 45 dB(A), that all new development of "noise sensitive" land uses, such as housing, health care facilities, schools, libraries, and religious facilities, include appropriate buffering and/or construction mitigation measures that will reduce noise exposure to levels within acceptable limits.

Policy N 1.2.3: Require development, in all areas where the ambient noise level exceeds an L_{dn} of 60 dB(A), to conduct an acoustical analysis and incorporate special design measures in their construction, thereby, reducing interior noise levels to the 45 dB (A) L_{dn} level.

Policy N 1.5.1: Require that commercial and residential mixed use structures minimize the transfer or transmission of noise and vibration from the commercial land use to the residential land use. The design measures may include: (1) the use of materials which mitigate sound transmission; or (2) the configuration of interior spaces to minimize sound amplification and transmission.

G. Recreation and Community Services Element

Policy RCS 2.1.1: Maintain the current park per capita ratio of 5.0 acres per 1,000 persons, which includes the beach in the calculation.

H. Urban Design Element

Goal UD 1: Enhance the visual image of the City of Huntington Beach.

Objective UD 1.3: Strengthen the visual character of the City's street hierarchy in order to clarify the City's structure and improve Citywide identity.

Policy UD 1.1.3: Require a consistent design theme and/or landscape design character along the community's corridors that reflects the unique qualities of each district. Ensure that streetscape standards for the major commercial corridors, the residential corridors, and primary and secondary image corridors provide each corridor with its own identity while promoting visual continuity throughout the City.

I. Utilities Element

Objective U 1.2: Ensure that existing and new development does not degrade the City's surface waters and groundwater basins.

Objective U 1.3: Minimize water consumption rates through site design, use of efficient systems, and other techniques.

Policy U 1.3.2: Continue to require the incorporation of water conservation features in the design of all new and existing uses such as the use of native plants, low flow toilets and water efficient appliances.

The project would provide a mixed use, urban infill development with 487 rental units increasing housing options for diverse household types, promoting alternative modes of transportation, creating a local sense of place, reducing infrastructure and maintenance costs, and allowing for more efficient use of land resources. The area has a variety of complementary uses that are critical to any vibrant community such as regional commercial and entertainment uses, employment centers, a transit hub, and a community college. Because of its location and unique features, the site would be appropriate in accommodating an infill development that provides almost 500 residential units to support and promote these existing uses in a compact design compatible with the surrounding area. In doing so, multiple sustainable development principles are achieved, resulting in the social and economic well-being of the area. The project provides a housing choice for residents seeking to be within walking distance of school, work, services or entertainment, reduce dependency on their automobile, have access to multiple amenities for an active and mobile lifestyle, or live in an environmentally-conscious development that decreases pollution and environmental degradation.

The proposed project would accommodate and is designed to appeal to different age groups, income levels, and household types. The project is required to meet the City's affordable housing obligations providing 57 on-site affordable units, including 10 very-low income units. The development promotes the use of transit services as an alternative to reliance on the automobile as the primary mode of transportation. Because the project is located in close proximity to different activities and uses, it provides opportunities and convenience for many households to use alternate travel modes such as walking and biking to complete their daily routines and run errands. The structures of the proposed project are designed to convey a high quality visual image and character and ensure compatibility of residential and commercial uses. The project is designed with retail storefronts on the ground level and residential units above, incorporating design elements, building materials, and colors to differentiate and complement the residential and commercial components of the project. The project site provides the ideal location for the project to incorporate connectivity elements and public amenities within the proposed mix of retail and residential uses to activate and integrate the urban environment and revitalize community life in the surrounding area.

The proposed project incorporates architectural and design principles to provide a pedestrian-oriented scale and ensure maximum design compatibility with existing and proposed developments, including the Village at Bella Terra and the Red Oak mixed use project. Structures on the project site utilize high quality exterior materials, articulated building volumes, and variety in building composition through the use of enhanced colors and materials, balconies, building recesses, awnings and cantilevered decks. The project complies with the development standards and design guidelines of the BECSP, which ensure that form, height, and treatment convey an overall high level of quality. Project buildings are sited close to streets with building entries and stoops fronting onto the public sidewalk. The project also provides a 0.5-acre public open space programmed for active users and public gatherings large enough to accommodate the needs of residents of the proposed and surrounding developments.

The project has been designed to be sensitive to issues related to mixed use developments. The project proposes to attenuate noise from HVAC systems and existing and proposed commercial uses as well as roadway noise. The project provides new streets and drive aisles that meet Fire code standards for emergency access. Laundry areas are located inside the residential units and trash rooms are located within the interior tuck-under parking garages. Residential parking areas would be well-lit and secured from public and commercial parking areas. In addition, the project would comply with California's recently adopted Cal Green Building Code and proposes to exceed Title 24 energy performance standards by 15 percent through installation of efficient heating and cooling systems, Energy Star-rated bathroom ventilation, energy efficient windows and lighting as part of the project's green building/sustainable features. The project would comply with the BECSP and other City codes to reduce water consumption and stormwater runoff. Finally, the project will incorporate sustainable site development strategies, utilize water savings features, emphasize recycling of resources and materials and maximize indoor environmental quality through design features and community policies.

CONDITIONS OF APPROVAL – SITE PLAN REVIEW NO. 10-004:

1. The site plan, floor plans and elevations of Site Plan Review No. 10-004 received January 18, 2011, shall be the conceptually approved design except as amended by the conditions specified herein.
2. Comply with all mitigation measures adopted for the project in conjunction with Environmental Impact Report No. 10-002.
3. At least 14 days prior to any grading activity, the property owner/developer shall provide notice in writing to property owners of record and tenants of properties within a 500-foot radius of the project site as noticed for the public hearing. The notice shall include a general description of planned grading activities and an estimated timeline for commencement and completion of work and a contact person name with phone number. Prior to issuance of the grading permit, a copy of the notice and list of recipients shall be submitted to the Planning and Building Department.
4. Prior to issuance of a precise grading permit, the following shall be completed:
 - a) A sewer study shall be prepared and submitted to Public Works for review and approval. The project is proposing to sewer to the sanitary sewer system on Gothard Street. This system, which flows southerly to Heil Avenue and westerly to Goldenwest where it connects to a 36 inch OCSD trunk line, has been identified as deficient in the ultimate buildout condition of the Beach Edinger Corridor Specific Plan (BECSP). If the sewer study shows that the proposed project triggers that deficiency, the developer shall be required to upgrade the system per the recommendations of the BECSP and could be reimbursed proportionally as other future contributing developments within the corridor are developed. If the proposed development does not trigger the anticipated deficiency, the property owner/developer shall be required to pay their fair-share portion for the future upgrade of the sewer system.
 - b) A street improvement plan shall be submitted to the Planning and Building and Public Works Departments for review and approval. All design and their construction shall be per the City Standard codes and street configuration and specifications of

the Beach and Edinger Corridors Specific Plan. The frontage along Edinger Avenue shall comply with the "Classic Boulevard" configuration and the frontage along Gothard Street shall comply with the "Neighborhood Street" configuration.

- c) An interim parking and building materials storage plan shall be submitted to the Planning Division to assure adequate parking and restroom facilities are available for employees, customers and contractors during the project's construction phase and that adjacent properties will not be impacted by their location. The plan shall also be reviewed and approved by the Fire Department and Public Works Department. The property owner/developer shall obtain any necessary encroachment permits from the Department of Public Works.
 - d) Blockwall/fencing plans (including a site plan, section drawings, and elevations depicting the height and material of all retaining walls, walls, and fences) consistent with the grading plan shall be submitted to and approved by the Planning Division. Double walls shall be prohibited. Prior to construction of any new walls, a plan must be submitted identifying the removal of any existing walls next to the new walls, and shall include approval by property owners of adjacent properties. The plans shall identify materials, seep holes and drainage.
5. Prior to submittal for building permits, the following shall be completed:
- a. One set of project plans and one 8 ½ inch by 11 inch set of all colored renderings, elevations, and materials sample and color palette, revised pursuant to Condition of Approvals and Code Requirements, shall be submitted for review, approval and inclusion in the entitlement file, to the Planning Division.
 - b. Zoning entitlement conditions of approval, code requirements identified herein and code requirements identified in separately transmitted memorandum from the Departments of Fire and Public Works shall be printed verbatim on one of the first three pages of all the working drawing sets used for issuance of building permits (architectural, structural, electrical, mechanical and plumbing) and shall be referenced in the sheet index. The minimum font size utilized for printed text shall be 12 point.
 - c. Submit three (3) copies of the site plan and floor plans and the processing fee to the Planning Division for addressing purposes after street name approval by the Fire Department.
 - d. Contact the United States Postal Service for approval of mailbox location(s).
 - e. The property owner/developer shall submit an itemized value of the half-acre public open space area including development costs subject to review by the Community Services Department.
 - f. An "Acceptance of Conditions" form shall be properly executed by the developer and an authorized representative of the owner of the property, recorded with the County Recorder's Office, and returned to the Planning Division for inclusion in the entitlement file. Conditions of approval shall remain in effect in the recorded form in perpetuity, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
 - g. The property owner/developer shall submit a report, prepared by an accredited third party, that the project plans have been prepared in accordance with the criteria to achieve a Build It Green GreenPoint-Rated certification. The property

owner/developer shall also provide proof of retention of a third party rater to ensure that the project is constructed according to all specifications as they relate to the criteria of the GreenPoint Rated program.

6. Prior to issuance of a building permit the following shall be completed:
- a) The property owner/developer shall provide a Landscape Maintenance License Agreement to address the continuing maintenance and liability for all landscaping, irrigation, furniture and enhanced hardscape that encroaches into the Edinger Avenue and Gothard Street Rights-of-Way. The agreement shall describe all aspects of maintenance such as enhanced sidewalk cleaning, trash cans, disposal of trash, signs, tree or palm replacement and any other aspect of maintenance that is warranted by the development plan improvements proposed. The agreement shall state that the property ownership shall be responsible for all costs associated with maintenance, repair, replacement, liability and fees.
 - b) The final design of the half-acre public open space area, including a detailed, scaled site plan, including a listing and samples of the park amenities such as tot lot, shade structures, and fitness stations and public access directional signage, shall be reviewed and approved by the Community Services Commission. Any changes to the major park amenities such as tot equipment or sports courts shall be approved by the Community Services Department and may be referred back to the Community Services Commission.
 - c) A Development Agreement shall be approved by the City Council and recorded. The Agreement shall provide for affordable dwelling units in accordance with the Beach and Edinger Corridors Specific Plan (BECSP) and the Huntington Beach Zoning and Subdivision Ordinance as well as required traffic mitigation fees. The number and location of units and affordability terms shall be set forth in the Development Agreement.
 - d) The final project plans shall be designed such that an at-grade pedestrian and bicycle connection meeting ADA access requirements can be accommodated between Buildings 8 and 9 to provide future pedestrian and bicycle access to the property to the north. The design and width of the future accessway shall be submitted to the Planning Division subject to review and approval by the Planning and Building and Public Works Departments. The property owner/developer shall provide an irrevocable offer to dedicate a reciprocal accessway between the subject site and adjacent northerly property. The property owner/developer shall be responsible for accommodating necessary improvements to implement the reciprocal accessway pursuant to an agreement with the adjacent property owner/developer. The legal instrument shall be submitted to the Planning Division a minimum of 30 days prior to building permit issuance. The document shall be approved by the Planning Division and City Attorney as to form and content and, when approved, shall be recorded with the County Recorder prior to Building final building permit approval. A copy of the recorded document shall be filed with the Planning Division for inclusion in the entitlement file prior to final building permit approval. The recorded agreement shall remain in effect in perpetuity, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.

- e) The property owner/developer shall provide an irrevocable offer to dedicate a reciprocal accessway between the subject site and adjacent westerly property. The design, location and width of the accessway(s) shall be reviewed and approved by the Planning Division and Public Works Department. Accessway design shall consist of vehicular, pedestrian and bicycle access and landscaping. In the event the adjacent property west of the subject site develops, pursuant to the development, zoning and design standards of the Beach and Edinger Corridors Specific Plan, the developer and future developer of the adjacent property (if the developer entity is different from the subject property) shall be responsible for making the necessary improvements to implement the reciprocal accessway. The cost of such improvements shall be shared between the developer and future developer as negotiated between the two parties. The legal instrument shall be submitted to the Planning Division a minimum of 30 days prior to building permit issuance. The document shall be approved by the Planning Division and City Attorney as to form and content and, when approved, shall be recorded with the County Recorder prior to Building final building permit approval. A copy of the recorded document shall be filed with the Planning Division for inclusion in the entitlement file prior to final building permit approval. The recorded agreement shall remain in effect in perpetuity, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
- f) A public art element, approved by the Design Review Board, Director of Planning and Building, and the Cultural Services Supervisor, shall be depicted on the plans. Public Art shall be innovative, original, and of artistic excellence; appropriate to the design of the project; and reflective of the community's cultural identity (ecology, history, or society).

7. Prior to occupancy of the first dwelling unit and/or commercial tenant, the following shall be completed:

- a) A half-acre public open space area shall be improved prior to occupancy of the first dwelling unit of Buildings 2 or 3. The location of the public open space shall be in accordance with the conceptually approved plans pursuant to Site Plan Review No. 10-004. An easement for public use of the half-acre public open space and access thereto shall be recorded with the County and held in perpetuity. Maintenance of the public open space area shall be the responsibility of the property owner/developer and included in the required Maintenance License Agreement.
- b) At least four parking spaces (including one ADA accessible space) shall be reserved for the public open space area during standard City park/facility hours. The parking spaces shall be provided adjacent to the public open space area within the on-street parking spaces along the new north-south street. The location and hours of the parking spaces shall be depicted on the Building plans and subject to review and approval by the Community Services Department and Planning Division.
- c) Enhanced paving materials shall be provided at all vehicular entrances and pedestrian connections.
- d) A Parking Management Plan, approved by the property owner/developer shall be submitted for review and approval by the Planning Division. Said plan shall depict designated (residents/ tenants / employees / guests / public/ customers / carpooling) parking space locations.

- e) The property owner/developer shall submit proof of registration with the GreenPoint Rated program and a checklist of how certification is proposed to be achieved. Within 45 days of final building permit approval, the property owner/developer shall provide a final report by an accredited third party stating that the project has achieved GreenPoint Rated certification and provide the City with evidence of said certification.
8. An at-grade pedestrian connection meeting ADA access requirements shall be provided on-site along the east property line to connect to a future at-grade bridge across the railroad tracks and flood control channel to the property to the east. The access point shall be a minimum of 10 feet wide and be located along the east property line at a preferred point between Building 3 and Building 9. The precise location of the connection shall be determined by the Director of Planning and Building, in collaboration with the property owner/developer and the property owner/developer of the property to the east, at the time the property to the east submits for Building plan check.
10. The developer or developer's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project property owner/developer if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the property owner/developer of any claim, action or proceeding and should cooperate fully in the defense thereof.

CITY OF HUNTINGTON BEACH **MURDY COMMONS**

Final Environmental Impact Report

SCH No. 2010111025

EIR No. 10-002

Mitigation Monitoring and Reporting Program

Prepared for
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January 2011

ATTACHMENT NO. 3.13

Mitigation Monitoring and Reporting Program

A. INTRODUCTION

The Final Environmental Impact Report for Murdy Commons Project (State Clearinghouse # 2010111025) identified mitigation measures to reduce the adverse effects of the project in the areas of: aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, public services, transportation/traffic, utilities and service systems, and climate change.

The California Environmental Quality Act (CEQA) requires that agencies adopting environmental impact reports ascertain that feasible mitigation measures are implemented, subsequent to project approval. Specifically, the lead or responsible agency must adopt a reporting or monitoring program for mitigation measures incorporated into a project or imposed as conditions of approval. The program must be designed to ensure compliance during applicable project timing, e.g. design, construction, or operation (Public Resource Code §21081.6). Code Requirements (CRs) that were identified in the Draft EIR are required to be implemented as a result of existing City code and are not considered mitigation measures. Therefore, CRs would be implemented for the Murdy Commons Project but these do not require monitoring activity, and are not included in this Mitigation Monitoring and Reporting Program (MMRP).

The MMRP shall be used by the City of Huntington Beach staff responsible for ensuring compliance with mitigation measures associated with the Murdy Commons Project. Monitoring shall consist of review of appropriate documentation, such as plans or reports prepared by the party responsible for implementation or by field observation of the mitigation measure during implementation.

The following table identifies the mitigation measures by resource area. The table also provides the specific mitigation monitoring requirements, including implementation documentation, monitoring activity, timing and responsible monitoring party. Verification of compliance with each measure is to be indicated by signature of the mitigation monitor, together with date of verification.

The Project Applicant and the Applicant's Contractor shall be responsible for implementation of all mitigation measures, unless otherwise noted in the table.

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
4.1 AESTHETICS						
BECSP MM4.1-2 Proposed new structures shall be designed to maximize the use of non-reflective façade treatments, such as matte paint or glass coatings. Prior to issuance of building permits for the proposed project, the Applicant shall indicate provision of these materials on the building plans.	Building plans	Review and approve building plans for inclusion	Plan check prior to issuance of building permit	Planning		
4.2 AIR QUALITY						
BECSP MM4.2-1 Project applicants shall require by contract specifications that all diesel-powered equipment used will be retrofitted with after-treatment products (e.g., engine catalysts). Contract specifications shall be included in project construction documents, which shall be reviewed by the City of Huntington Beach prior to issuance of a grading permit.	Contract language and notes on grading plans	Review and approve contract specifications and grading plans for inclusion	Plan check prior to issuance of a grading permit	Planning		
BECSP MM4.2-2 Project applicants shall require by contract specifications that all heavy-duty diesel-powered equipment operating and refueling at the project site use low-NOx diesel fuel to the extent that it is readily available and cost effective (up to 125 percent of the cost of California Air Resources Board diesel) in the South Coast Air Basin (this does not apply to diesel-powered trucks traveling to and from the project site). Contract specifications shall be included in project construction documents, which shall be reviewed by the City of Huntington Beach prior to issuance of a grading permit.	Contract language and notes on grading plans	Review and approve contract specifications and grading plans for inclusion	Plan check prior to issuance of a grading permit	Planning		
BECSP MM4.2-3 Project applicants shall require by contract specifications that construction equipment engines be maintained in good condition and in proper tune per manufacturer's specification for the duration of construction. Contract specifications shall be included in project construction documents, which shall be reviewed by the City of Huntington Beach prior to issuance of a grading permit.	Contract language and notes on grading plans	Review and approve contract specifications and grading plans for inclusion	Plan check prior to issuance of a grading permit	Planning		

ATTACHMENT NO. 3.15

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>BECSP MM4.2.4 Project applicants shall require by contract specifications that construction operations rely on the electricity infrastructure surrounding the construction site rather than electrical generators powered by internal combustion engines. Contract specifications shall be included in project construction documents, which shall be reviewed by the City of Huntington Beach prior to issuance of a grading permit.</p>	<p>Contract language and notes on grading plans</p>	<p>Review and approve contract specifications and grading plans for inclusion</p>	<p>Plan check prior to issuance of a grading permit</p>	<p>Planning</p>		
<p>BECSP MM4.2.5 As required by South Coast Air Quality Management District Rule 403—Fugitive Dust, all construction activities that are capable of generating fugitive dust are required to implement dust control measures during each phase of project development to reduce the amount of particulate matter entrained in the ambient air. These measures include the following:</p> <ul style="list-style-type: none"> ■ Application of soil stabilizers to inactive construction areas ■ Quick replacement of ground cover in disturbed areas ■ Watering of exposed surfaces three times daily ■ Watering of all unpaved haul roads three times daily ■ Covering all stock piles with tarp ■ Reduction of vehicle speed on unpaved roads ■ Post signs on-site limiting traffic to 15 miles per hour or less ■ Sweep streets adjacent to the project site at the end of the day if visible soil material is carried over to adjacent roads ■ Cover or have water applied to the exposed surface of all trucks hauling dirt, sand, soil, or other loose materials prior to leaving the site to prevent dust from impacting the surrounding areas ■ Install wheel washers where vehicles enter and exit unpaved roads onto paved roads to wash off trucks and any equipment leaving the site each trip 	<p>Contract language and notes on grading plans</p>	<p>Review and approve contract specifications and grading plans for inclusion</p>	<p>Plan check prior to issuance of a grading permit</p>	<p>Planning</p>		

ATTACHMENT NO. 3.16

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
BECSP MM4.2-6 Project applicants shall require by contract specifications that construction-related equipment, including heavy-duty equipment, motor vehicles, and portable equipment, shall be turned off when not in use for more than 30 minutes. Diesel-fueled commercial motor vehicles with gross vehicular weight ratings of greater than 10,000 pounds shall be turned off when not in use for more than 5 minutes. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.	Contract language and notes on grading plans and construction plans	Review and approve contract specifications and grading plans and construction plans for inclusion	Plan check prior to issuance of a grading permit	Planning		
BECSP MM4.2-7 Project applicants shall require by contract specifications that construction parking be configured to minimize traffic interference during the construction period and, therefore, reduce idling of traffic. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.	Contract language and notes on grading plans and construction plans	Review and approve contract specifications and grading plans and construction plans for inclusion	Plan check prior to issuance of a grading permit	Planning		
BECSP MM4.2-8 Project applicants shall require by contract specifications that temporary traffic controls are provided, such as a flag person, during all phases of construction to facilitate smooth traffic flow. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.	Contract language and notes on grading plans and construction plans	Review and approve contract specifications and grading plans and construction plans for inclusion	Plan check prior to issuance of a grading permit	Planning		
BECSP MM4.2-9 Project applicants shall require by contract specifications that construction activities that would affect traffic flow on the arterial system be scheduled to off-peak hours (10:00 AM to 4:00 PM). Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.	Contract language and notes on grading plans and construction plans	Review and approve contract specifications and grading plans and construction plans for inclusion	Plan check prior to issuance of a grading permit	Planning		
BECSP MM4.2-10 Project applicants shall require by contract specifications that dedicated on-site and off-site left-turn lanes on truck hauling routes be utilized for movement of construction trucks and equipment on site and off site to the extent feasible during construction activities. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.	Contract language and notes on grading plans and construction plans	Review and approve contract specifications and grading plans and construction plans for inclusion	Plan check prior to issuance of a grading permit	Planning		

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>BECSP MM4.2-11 Upon issuance of building or grading permits, whichever is issued earlier, notification shall be mailed to owners and occupants of all developed land uses within 300 feet of a project site within the Specific Plan providing a schedule for major construction activities that will occur through the duration of the construction period. In addition, the notification will include the identification and contact number for a community liaison and designated construction manager that would be available on site to monitor construction activities. The construction manager shall be responsible for complying with all project requirements related to PM₁₀ generation. The construction manager will be located at the on-site construction office during construction hours for the duration of all construction activities. Contract information for the community liaison and construction manager will be located at the construction office, City Hall, the police department, and a sign on site.</p>	<p>Mail to owners & occupants within 300 feet of project site a notice regarding major construction activities</p>	<p>Obtain confirmation that mailing to owners & occupants took place</p>	<p>Plan check prior to issuance of a grading or building permits, whichever occurs earlier</p>	<p>Planning</p>		
<p>BECSP MM4.2-12 Project applicants shall require by contract specifications that the architectural coating (paint and primer) products used would have a VOC rating of 125 grams per liter or less. Contract specifications shall be included in the proposed project construction documents, which shall be reviewed and approved by the City of Huntington Beach.</p>	<p>Contract language and notes on construction plans</p>	<p>Review and approve contract specifications and construction plans for inclusion</p>	<p>Plan check prior to issuance of a building permit</p>	<p>Planning</p>		
<p>BECSP MM4.2-13 Project applicants shall require by contract specifications that materials that do not require painting be used during construction to the extent feasible. Contract specifications shall be included in the proposed project construction documents, which shall be reviewed and approved by the City of Huntington Beach.</p>	<p>Contract language and notes on construction plans</p>	<p>Review and approve contract specifications and construction plans for inclusion</p>	<p>Plan check prior to issuance of a building permit</p>	<p>Planning</p>		
<p>BECSP MM4.2-14 Project applicants shall require by contract specifications that pre-painted construction materials be used to the extent feasible. Contract specifications shall be included in the proposed project construction documents, which shall be reviewed and approved by the City of Huntington Beach.</p>	<p>Contract language and notes on construction plans</p>	<p>Review and approve contract specifications and construction plans for inclusion</p>	<p>Plan check prior to issuance of a building permit</p>	<p>Planning</p>		

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Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
	<p>permit, if nests are found, developer shall submit plans identifying nest locations and limits of construction activities.</p>					
4.4 CULTURAL RESOURCES						
<p>In the event that the applicant or property owner does not move forward with the proposed project in good faith prior to the existing buildings on site reaching an age of 45 years, or a new entitlement is requested on the project site after the Levitz building reaches an age of 45 years, the following mitigation measure would apply:</p> <p>BECSP MM4.4-1 Prior to development activities that would demolish or otherwise physically affect buildings or structures 45 years old or older or affect their historic setting, the project applicant shall retain a cultural resource professional who meets the Secretary of the Interior's Professional Qualifications Standards for Architectural History to determine if the project would cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5 of the CEQA Guidelines. The investigation shall include, as determined appropriate by the cultural resource professional and the City of Huntington Beach, the appropriate archival research, including, if necessary, an updated records search of the South Central Coastal Information Center (SCCIC) of the California Historical Resources Information System and a pedestrian survey of the proposed development area to determine if any significant historic-period resources would be adversely affected by the proposed development. The results of the investigation shall be documented in a technical report or memorandum that identifies and evaluates any historical resources within the development area and includes recommendations and methods for eliminating or reducing impacts on historical resources. The technical report or memorandum shall be submitted to the City of Huntington Beach for approval. As determined necessary by the City, environmental</p>	<p>Proof of retention of an historical resource professional to determine potential significance of structure 45 years old or older</p>	<p>Verify retention of qualified historical resource professional</p>	<p>Plan check prior to issuance of demolition or grading permit, whichever occurs earlier</p>	<p>Planning</p>		

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>documentation (e.g., CEQA documentation) prepared for future development within the project site shall reference or incorporate the findings and recommendations of the technical report or memorandum. The project applicant shall be responsible for implementing methods for eliminating or reducing impacts on historical resources identified in the technical report or memorandum.</p>						
<p>BECSP MM4.4-2(b) If evidence of an archaeological site or other suspected historical resource as defined by CEQA Guidelines Section 15064.5, including darkened soil representing past human activity ("midden"), that could conceal material remains (e.g., worked stone, fired clay vessels, faunal bone, hearths, storage pits, or burials) are discovered during any project-related earth-disturbing activities (including projects that would not encounter undisturbed soils), all earth-disturbing activity within 100 feet of the find shall be halted and the City of Huntington Beach shall be notified. The project applicant shall retain an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for Archaeology to assess the significance of the find. Impacts to any significant resources shall be mitigated to a less-than-significant level through data recovery or other methods determined adequate by the archaeologist and that are consistent with the Secretary of the Interior's Standards for Archaeological Documentation. Any identified cultural resources shall be recorded on the appropriate DPR 523 (A-L) form and filed with the appropriate information Center.</p>	<p>Proof of retention of archaeological professional to determine if a substantial adverse change would occur to an archaeological resource</p>	<p>Verify retention of qualified archaeological professional, preparation of technical report, if necessary; no adverse impacts to archaeological resources will occur</p>	<p>During grading</p>	<p>Planning</p>		
<p>BECSP MM4.4-3(b) Should paleontological resources (i.e., fossil remains) be identified at a particular site during project construction, the construction foreman shall cease construction within 100 feet of the find until a qualified professional can provide an evaluation. Mitigation of resource impacts shall be implemented and funded by the project applicant and shall be conducted as follows:</p> <ol style="list-style-type: none"> 1. Identify and evaluate paleontological resources by intense field survey where impacts are considered high 2. Assess effects on identified sites 3. Consult with the institutional/academic paleontologists conducting research investigations within the geological formations that are slated to be impacted 	<p>Proof of retention of paleontological professional to determine if a substantial adverse change would occur to an paleontological resource</p>	<p>Verify retention of qualified paleontological professional, preparation of technical report, if necessary; no adverse impacts to paleontological resources will occur</p>	<p>During grading</p>	<p>Planning</p>		

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>4. Obtain comments from the researchers</p> <p>5. Comply with researchers' recommendations to address any significant adverse effects where determined by the City to be feasible</p> <p>In considering any suggested mitigation proposed by the consulting paleontologist, the City of Huntington Beach staff shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, applicable policies and land use assumptions, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation for paleontological resources is carried out.</p>						
4.5 GEOLOGY AND SOILS						
<p>BECSP MM4.5-1 Future development in the Beach Boulevard and Edinger Avenue Corridors Specific Plan area shall prepare a grading plan to contain the recommendations of the final soils and geotechnical report. These recommendations shall be implemented in the design of the project, including but not limited to measures associated with site preparation, fill placement, temporary shoring and permanent dewatering, groundwater seismic design features, excavation stability, foundations, soil stabilization, establishment of deep foundations, concrete slabs and pavements, surface drainage, cement type and corrosion measures, erosion control, shoring and internal bracing, and plan review.</p>	Notes on grading plan and building plans	Review and approve grading and building plans for inclusion of final soils and geotechnical recommendations	Plan check prior to issuance of a grading permit	Public Works Building and Safety		

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
4.6 HAZARDS AND HAZARDOUS MATERIALS						
<p>BECSP MM4.6-1 Prior to the issuance of grading permits on any project site, the site developer(s) shall:</p> <ul style="list-style-type: none"> ■ Investigate the project site to determine whether it or immediately adjacent areas have a record of hazardous material contamination via the preparation of a preliminary environmental site assessment (ESA), which shall be submitted to the City for review. If contamination is found the report shall characterize the site according to the nature and extent of contamination that is present before development activities precede at that site. ■ If contamination is determined to be on site, the City, in accordance with appropriate regulatory agencies, shall determine the need for further investigation and/or remediation of the soils conditions on the contaminated site. If further investigation or remediation is required, it shall be the responsibility of the site developer(s) to complete such investigation and/or remediation prior to construction of the project. ■ If remediation is required as identified by the local oversight agency, it shall be accomplished in a manner that reduces risk to below applicable standards and shall be completed prior to issuance of any occupancy permits. ■ Closure reports or other reports acceptable to the Huntington Beach Fire Department that document the successful completion of required remediation activities, if any, for contaminated soils, in accordance with City Specification 431-92, shall be submitted and approved by the Huntington Beach Fire Department prior to the issuance of grading permits for site development. No construction shall occur in the affected area until reports have been accepted by the City. 	<p>Preparation of technical documentation to address site-specific hazards; Risk Management Plan and Site Health and Safety Plan</p>	<p>Review and approve any demolition or grading plans for inclusion, whichever occurs earlier</p>	<p>Plan check prior to issuance of demolition or grading permits, whichever occurs earlier</p>	<p>Fire</p>		

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>BECSP MM4.6-2 In the event that previously unknown or unidentified soil and/or groundwater contamination that could present a threat to human health or the environment is encountered during construction of the proposed project, construction activities in the immediate vicinity of the contamination shall cease immediately. If contamination is encountered, a Risk Management Plan shall be prepared and implemented that (1) identifies the contaminants of concern and the potential risk each contaminant would pose to human health and the environment during construction and post-development and (2) describes measures to be taken to protect workers, and the public from exposure to potential site hazards. Such measures could include a range of options, including, but not limited to, physical site controls during construction, remediation, long-term monitoring, post-development maintenance or access limitations, or some combination thereof. Depending on the nature of contamination, if any, appropriate agencies shall be notified (e.g., City of Huntington Beach Fire Department). If needed, a Site Health and Safety Plan that meets Occupational Safety and Health Administration requirements shall be prepared and in place prior to commencement of work in any contaminated area.</p>	<p>Risk Management Plan and Site Health and Safety Plan</p>	<p>Review and approve any grading plans for inclusion</p>	<p>Plan check prior to issuance of any grading permit and during construction</p>	<p>Fire</p>		
<p>BECSP MM4.6-3 Prior to the issuance of grading permits, future development in the Specific Plan shall comply with HBFD City Specification No. 429, Methane District Building Permit Requirements. A plan for the testing of soils for the presence of methane gas shall be prepared and submitted by the Applicant to the HBFD for review and approval, prior to the commencement of sampling. If significant levels of methane gas are discovered in the soil on the future development project site, the Applicant's grading, building and methane plans shall reference that a sub-slab methane barrier and vent system will be installed at the project site per City Specification No. 429, prior to plan approval. If required by the HBFD, additional methane mitigation measures to reduce the level of methane gas to acceptable levels shall be implemented.</p>	<p>Methane Testing Plan Notes on building and methane plans</p>	<p>Review and approval of testing plan Review and approve building and methane gas plans for appropriate documentation</p>	<p>Prior to commencement of sampling Prior to issuance of any grading permit and during construction</p>	<p>Fire Fire</p>		

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>BECSP MM4.6-4 To ensure adequate access for emergency vehicles when construction activities would result in temporary lane or roadway closures, the developer shall consult with the City of Huntington Beach Police and Fire Departments to disclose temporary lane or roadway closures and alternative travel routes. The developer shall be required to keep a minimum of one lane in each direction free from encroachments at all times on perimeter streets accessing the project site. At any time only a single lane is available, the developer shall provide a temporary traffic signal, signal carriers (i.e., flagpersons), or other appropriate traffic controls to allow travel in both directions. If construction activities require the complete closure of a roadway segment, the developer shall coordinate with the City of Huntington Beach Police and Fire Departments to designate proper detour routes and signage indicating alternative routes.</p>	<p>Prepare construction roadway plans</p>	<p>Plan check prior to grading or building permits, whichever occurs earlier</p>	<p>Prior to approval of grading or building permits, whichever occurs earlier</p>	<p>Fire, Police</p>		
4.7 HYDROLOGY AND WATER QUALITY						
<p>Mitigation measure BECSP MM4.7-1 was modified to reflect that the proposed project which includes rental residential units will not have a homeowners association (HOA). As such, the mitigation measure was changed, as appropriate, to ensure that either the Applicant or the future property manager would be responsible for the same actions.</p> <p>BECSP MM4.7-1 City of Huntington Beach shall require Applicants for new development and significant redevelopment projects within the Specific Plan area, including the proposed project, to prepare a project Water Quality Management Plan (WQMP) in accordance with the DAMP requirements and measures described below and with all current adopted permits. The WQMP shall be prepared by a Licensed Civil Engineer and submitted for review and acceptance prior to issuance of a Precise Grading or Building permit.</p> <p>BMPs in the WQMP shall be designed in accordance with the Municipal NPDES Permit, Model WQMP, Technical Guidance Documents, DAMP, and City of Huntington Beach LIP. As noted in the Specific Plan, all development projects shall include site design and source control BMPs in the project WQMP. Additionally, new development or significant redevelopment projects and priority projects shall include Low Impact Development (LID) principles to reduce runoff to a level consistent with</p>	<p>Water Quality Management Plan</p>	<p>Review and approve WQMP</p>	<p>Prior to receiving a precise grading permit</p>	<p>Public Works</p>		

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>the maximum extent practicable and treatment control BMPs in the WQMP.</p> <p>If permanent dewatering is required and allowed by the City, the developer shall submit an application to RWQCB and follow the procedures as stated in Order No R8-2009-0003. The Applicant shall include a description of the dewatering technique, discharge location, discharge quantities, chemical characteristics of discharged water, operations and maintenance plan, and W/DID number for proof of coverage under the De Minimus Threat General Permit or copy of the individual WDR in the WQMP. Additionally, the WQMP shall incorporate any additional BMPs as required by the City Public Works Department.</p> <p>The WQMP shall include the following additional requirements:</p> <p><u>Project and Site Characterization Requirements</u></p> <ul style="list-style-type: none"> ■ Entitlement Application numbers and site address shall be included on the title sheet of the WQMP ■ In the project description section, explain whether proposed use includes on-site food preparation, eating areas (if not please state), outdoor activities to be expected, vehicle maintenance, service, washing cleaning (if prohibited on site, please state) ■ All potential pollutants of concern for the proposed project land use type as per Table 7.11-1 of the Orange County Model Water Quality Management Plan shall be identified ■ A narrative describing how all potential pollutants of concern will be addressed through the implementation of BMPs and describing how site design BMP concepts will be considered and incorporated into the project design shall be included ■ Existing soil types and estimated percentages of perviousness for existing and proposed conditions shall be identified ■ In Section I of the WQMP, state verbatim the Development Requirements from the Planning Department's letter to the Applicant ■ A site plan showing the location of the selected treatment control BMPs and drainage areas shall be included in the WQMP 						

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<ul style="list-style-type: none"> ■ A Geotechnical Report shall be submitted to address site conditions for determination of infiltration limitations and other pertinent characteristics. <p><u>Project-Based Treatment Control BMPs</u></p> <ul style="list-style-type: none"> ■ Infiltration-type BMPs shall not be used unless the Geotechnical Report states otherwise. Depth to seasonal high groundwater is determined to provide at least a 10-foot clearance between the bottom of the BMP and top of the water table. ■ Wet swales and grassed channels shall not be used because of the slow infiltration rates of project site soils, the potentially shallow depth to groundwater, and water conservation needs ■ If proprietary Structural Treatment Control devices are used, they shall be sited and designed in compliance with the manufacturers design criteria ■ Surface exposed treatment control BMPs shall be selected such that standing water drains or evaporates within 24 hours or as required by the County's vector control ■ Excess stormwater runoff shall bypass the treatment control BMPs unless they are designed to handle the flow rate or volume from a 100-year storm event without reducing effectiveness. Effectiveness of any treatment control BMP for removing the pollutants of concern shall be documented via analytical models or existing studies on effectiveness. ■ The project WQMP shall incorporate water efficient landscaping using drought tolerant, native plants in accordance with Landscape and Irrigation Plans as set forth by the Applicant (see below) ■ Pet waste stations (stations that provide waste pick-up bags and a convenient disposal container protected from precipitation) shall be provided and maintained ■ Building materials shall minimize exposure of bare metals to stormwater. Copper or Zinc roofing materials, including downspouts, shall be prohibited. Bare metal surfaces shall be painted with non- 						

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>lead-containing paint</p> <p>The following BMPs shall not be used because they have not been shown to be effective in many situations. Therefore, unless sufficient objective studies and review are available and supplied with the WQMP to correctly size devices and to document expected pollutant removal rates the WQMP shall not include:</p> <ul style="list-style-type: none"> ■ Hydrodynamic separator type devices as a BMP for removing any pollutant except trash and gross particulates ■ Oil and Grit separators <p>Any Applicant proposing development in the Specific Plan Area is encouraged to consider the following BMPs:</p> <ul style="list-style-type: none"> ■ Sand filters or other filters (including media filters) for rooftop runoff ■ Dry swales. A dry swale treatment system could be used if sufficient area, slope gradient, and length of swale could be incorporated into the project design. Dry swales could remove substantial amounts of nutrients, suspended solids, metals, and petroleum hydrocarbons ■ Other proprietary treatment devices (if supporting documentation is provided) <p><u>Non-Structural BMPs</u></p> <p>The WQMP shall include the following operations and maintenance BMPs under the management of an applicant or property manager, where applicable. The Applicant shall fund and implement an operational and maintenance program that includes the following:</p> <ul style="list-style-type: none"> ■ The Applicant shall dictate minimum landscape maintenance standards and tree trimming requirements for the total project site. Landscape maintenance shall be performed by a qualified landscape maintenance company or individual in accordance with a Chemical Management Plan detailing chemical application methods, chemical handling procedures, and worker training. Pesticide application shall be performed by a certified applicator. No chemicals shall be stored on-site unless in a covered and contained area and in accordance with an approved Materials Management Plan. Application rates shall not exceed labeled rates for pesticides, and shall not exceed soil test 						

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<p>rates for nutrients. Slow release fertilizers shall be used to prevent excessive nutrients in stormwater or irrigation runoff.</p> <ul style="list-style-type: none"> ■ The Applicant or property manager shall have the power and duty to establish, oversee, guide, and require proper maintenance and tree trimming procedures per the ANSI A-300 Standards as established by the International Society of Arborist. The Applicant or property manager shall require that all trees be trimmed by or under the direct observation/direction of a licensed/certified Arborist for the entire area. The Applicant shall establish minimum standards for maintenance for the total community, and establish enforcement thereof for the total community. The property manager shall rectify problems arising from incorrect tree trimming, chemical applications, and other maintenance within the total community. ■ Landscape irrigation shall be performed in accordance with an Irrigation Management Plan to minimize excess irrigation contributing to dry- and wet-weather runoff. Automated sprinklers shall be used and be inspected at least quarterly and adjusted yearly to minimize potential excess irrigation flows. Landscape irrigation maintenance shall be performed in accordance with the approved irrigation plans, the City Water Ordinance and per the City Arboricultural and Landscape Standards and Specifications. ■ Proprietary stormwater treatment systems maintenance shall be in accordance with the manufacturer's recommendations. If a nonproprietary treatment system is used, maintenance shall be in accordance with standard practices as identified in the current CASQA (2003) handbooks, operations and maintenance procedures outlined in the approved WQMP, City BMP guidelines, or other City-accepted guidance. ■ Signage, enforcement of pet waste controls, and public education would improve use and compliance, and therefore, effectiveness of the program, and reduce the potential for hazardous materials and other pollution in stormwater runoff. The Applicant shall prepare and install appropriate signage, disseminate information to residents and retail businesses, and include pet waste controls (e.g., requirements for pet waste cleanup, pet activity area restrictions, pet waste 						

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<p>disposal restrictions) in the any agreement, tenant lease (regarding rental property) or Conditions, Covenants, and Restrictions (regarding for-sale property).</p> <ul style="list-style-type: none"> ■ Street sweeping shall be performed at an adequate frequency to prevent build up of pollutants (see http://www.fhwa.dot.gov/environment/ultraurb/ubump3p7.htm / for street sweeping effectiveness). ■ The Applicant shall develop a maintenance plan for BMPs and facilities identifying responsible parties and maintenance schedules and appropriate BMPs to minimize discharges of contaminants to storm drain systems during maintenance operations. ■ Reporting requirements: the Applicant or property manager shall prepare an annual report and submit the annual report to the City of Huntington Beach documenting the BMPs operations and maintenance conducted that year. The annual report shall also address the potential system deficiencies and corrective actions taken or planned. <p><u>Site Design BMPs</u></p> <p>Any Applicant proposing development in the Specific Plan Area is required to incorporate LID principles as defined in the Municipal NPDES Permit and is encouraged to consider the following BMPs, if allowed in accordance with the Geotechnical Report and limitations on infiltration BMPs:</p> <ul style="list-style-type: none"> ■ Use of porous concrete or asphalt (if acceptable to the Geotechnical Engineer and where infiltration will not adversely affect groundwater) or other pervious pavement for driveways, paths, sidewalks, and courtyards/open space areas, to the maximum extent practicable, would reduce pollutants in stormwater runoff as well as provide some detention within the material void¹ space. If porous paver blocks are used, they shall be adequately maintained to provide continued porosity (effectiveness) ■ Incorporation of rain gardens or cisterns to reuse runoff for landscape 						

¹ Void space is the empty space between individual particles.

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<p>irrigation</p> <ul style="list-style-type: none"> ■ Green roofs to reduce runoff and treat roof pollutants ■ Site design and landscape planning to group water use requirements for efficient irrigation 						
<p>BECSP MM4.7-2 The City of Huntington Beach shall require that any Applicant prepare a Groundwater Hydrology Study to determine the lateral transmissivity of area soils and a safe pumping yield such that dewatering activities do not interfere with nearby water supplies. The Groundwater Hydrology Study shall make recommendations on whether permanent groundwater dewatering is feasible within the constraints of a safe pumping level. The Applicant's engineer of record shall incorporate the Hydrology Study designs and recommendations into project plans. If groundwater dewatering is determined allowable by the City, the Applicant shall submit an application to the RWQCB for dewatering purposes, per the De Minimus Permit Number R8-2009-0003. If safe groundwater dewatering is determined to not be feasible, permanent groundwater dewatering shall not be implemented. The City Director of Public Works, OCWD, and other regulatory agencies shall approve or disapprove any permanent groundwater dewatering based on the Groundwater Hydrology Study and qualified Engineers' recommendations.</p>	Groundwater Hydrology Study	Review and approve Groundwater Hydrology Study	Prior to issuance of a precise grading permit	Public Works		

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>BECSP MMA.7-3 The City of Huntington Beach shall require that the Applicant's Licensed Civil Engineer for each site-specific development prepare a Hydrology and Hydraulic Study to identify the effects of potential stormwater runoff from the specific development on the existing storm drain flows for the 10-, 25-, and 100-year design storm events. The drainage improvements shall be designed and constructed as required by the Department of Public Works to mitigate impact of increased runoff due to development, or deficient, downstream systems. Design of all necessary drainage improvements shall provide mitigation for all rainfall event frequencies up to a 100-year frequency. The Applicant shall design site drainage and document that the proposed development would not increase peak storm event flows over the existing 25-year storm flows, which must be established by the hydrology study. If the analysis shows that the City's current drainage system cannot meet the volume needs of the project runoff, the applicant shall be required to attenuate site runoff to an amount not to exceed the existing 25-year storm. As an option, the applicant may choose to explore low-flow design alternatives, downstream attenuation or detention, or upgrade the City's stormwater system to accommodate the impacts of the new development, at no cost to the City. The Hydrology and Hydraulic Study shall also incorporate all current adopted Municipal NPDES Permit and City requirements for stormwater flow calculations and retention/detention features in effect at the time of review.</p>	<p>Hydrology and Hydraulics Study</p> <p>Precise final grading and street improvement plans and studies</p>	<p>Review and approve study</p> <p>Inspect project site; verify that drainage is in accordance with approved plans and that required detention/storm drain system improvements have been implemented.</p>	<p>Prior to issuance of a precise grading permit</p> <p>Following grading, excavation, and installation of utilities</p>	<p>Public Works</p> <p>Public Works</p>		
<p>BECSP MMA.7-4 The City of Huntington Beach shall require that adequate capacity in the storm drain system is demonstrated from the specific development site discharge location to the nearest main channel to accommodate discharges from the specific development. If capacity is demonstrated as adequate, no upgrades will be required. If capacity is not adequate, the City of Huntington Beach shall identify corrective action(s) required by the specific development Applicant to ensure adequate capacity. Corrective action could include, but is not limited to:</p> <ul style="list-style-type: none"> ■ Construction of new storm drains, as identified in the MPD or based on the Hydrology and Hydraulic Study, if the Hydrology and Hydraulic Study identifies greater impacts than the MPD ■ Improvement of existing storm drains, as identified in the MPD or based on the Hydrology and Hydraulic Study, if the Hydrology and 	<p>Hydrology and Hydraulics Study</p>	<p>Review and approve study</p>	<p>Prior to issuance of a precise grading permit</p>	<p>Public Works</p>		

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<i>Mitigation Measure</i>	<i>Implementation Documentation</i>	<i>Monitoring Activity</i>	<i>Timing</i>	<i>Responsible Monitor</i>	<i>Compliance Verification Signature</i>	<i>Date</i>
<p>Hydraulic Study identifies greater impacts than the MPD</p> <ul style="list-style-type: none"> ■ In-lieu fees to implement system-wide storm drain infrastructure improvements ■ Other mechanisms as determined by the City Department of Public Works ■ For nonresidential areas, if redevelopment would result in an impervious fraction of less than 0.9 and does not increase the directly connected impervious area compared to existing conditions, runoff is expected to remain the same or less than as assessed in the MPD and only MPD improvements would be required <p>Because some storm drain system constraints may be located far downgradient from the actual development site, several properties may serve to contribute to system capacity constraints. Therefore, the City Department of Public Works shall assess each site development and system characteristics to identify the best method for achieving adequate capacity in the storm drain system. Drainage assessment fees/districts to improve/implement storm drains at downstream locations or where contributing areas are large are enforced through Municipal Code (Section 14.20).</p> <p>The City Department of Public Works shall review the Hydrology and Hydraulic Study and determine required corrective action(s) or if a waiver of corrective action is applicable. The site-specific development Applicant shall incorporate required corrective actions into their project design and/or plan. Prior to receiving a Certificate of Occupancy or final inspection, the City Department of Public Works shall ensure that required corrective action has been implemented.</p>						
4.8 LAND USE AND PLANNING						
None						
4.9 NOISE						
BECSP MM4.9-1 Project applicants shall require by contract specifications that the following construction best management practices (BMPs) be implemented by contractors to reduce construction noise	Contract language and notes on grading	Review and approve contract specifications,	Plan check prior to issuance of a grading permit	Planning		

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<p>levels:</p> <ul style="list-style-type: none"> ■ Two weeks prior to the commencement of construction, notification must be provided to surrounding land uses within 300 feet of a project site disclosing the construction schedule, including the various types of activities that would be occurring throughout the duration of the construction period ■ Ensure that construction equipment is properly muffled according to industry standards and be in good working condition ■ Place noise-generating construction equipment and locate construction staging areas away from sensitive uses, where feasible ■ Schedule high-noise-producing activities between the hours of 8:00 AM and 5:00 PM to minimize disruption on sensitive uses, Monday through Saturday; schedule pile-driving activities between the hours of 8:00 AM and 4:00 PM on Mondays through Fridays only ■ Implement noise attenuation measures, which may include, but are not limited to, temporary noise barriers or noise blankets around stationary construction noise sources ■ Use electric air compressors and similar power tools rather than diesel equipment, where feasible ■ Construction-related equipment, including heavy-duty equipment, motor vehicles, and portable equipment, shall be turned off when not in use for more than 10 minutes ■ Construction hours, allowable workdays, and the phone number of the job superintendent shall be clearly posted at all construction entrances to allow for surrounding owners and residents to contact the job superintendent; if the City or the job superintendent receives a complaint, the superintendent shall investigate, take appropriate corrective action, and report the action taken to the reporting party <p>Contract specifications shall be included in the proposed project construction documents, which shall be reviewed by the City prior to issuance of a grading permit.</p>	<p>and building plans</p>	<p>grading and building plans for inclusion</p>				

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
BECSP MM4.9-2 Project applicants shall require by contract specifications that construction staging areas along with the operation of earthmoving equipment within the project area would be located as far away from vibration and noise sensitive sites as possible. Contract specifications shall be included in the proposed project construction documents, which shall be reviewed by the City prior to issuance of a grading permit.	Contract language and notes on grading plans	Review and approve grading plans for inclusion	Prior to issuance of a grading permit	Planning		
BECSP MM4.9-3 Project applicants shall require by contract specifications that heavily loaded trucks used during construction would be routed away from residential streets. Contract specifications shall be included in the proposed project construction documents, which shall be reviewed by the City prior to issuance of a grading permit.	Contract language and notes on grading and building plans	Review and approve grading and building plans for inclusion	Prior to issuance of a grading permit	Building & Safety		
BECSP MM4.9-4 Project applicants shall provide proper shielding for all new HVAC systems used by the proposed residential and mixed-use buildings to achieve a noise attenuation of 15 dBA at 50 feet from the equipment.	Contract language and notes on building plans	Review and approve building plans for inclusion	Prior to issuance of a building permit	Planning		
BECSP MM4.9-5 Prior to issuance of building permits, project applicants shall submit an acoustical study for each development, prepared by a certified acoustical engineer. Should the results of the acoustical study indicate that that exterior (e.g., patios and balconies) and interior noise levels would exceed the standards set forth in the City of Huntington Beach Municipal Code Sections 8.40.050 through 8.40.070, the project applicant shall include design measures that may include acoustical paneling or walls to ensure that noise levels do not exceed City standards. Final project design shall incorporate special design measures in the construction of the residential units, if necessary.	Acoustical Study	Review and approval of study and building plans for inclusion any special design measures	Prior to issuance of building permits	Planning		
4.10 POPULATION AND HOUSING						
None	—	—	—	—	—	—

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
4.11 PUBLIC SERVICES						
BECSPP MM4.11-1 Subject to the City's annual budgetary process, which considers available funding and the staffing levels needed to provide acceptable response time for fire and police services, the City shall provide sufficient funding to maintain the City's standard, average level of service through the use of General Fund monies.	Budget sufficiently to maintain standard level of fire and police protection	Review at annual budgetary discussions; Review currently standard levels	Prior to issuance of building permits	Planning		
4.12 RECREATION						
None						
4.13 TRANSPORTATION/TRAFFIC						
BECSPP MM4.13-1 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a separate westbound right turn lane to the intersection of Beach Boulevard at Warner Avenue. Implementation of this improvement would require Caltrans approval.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSPP MM4.13-2 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of dual northbound and southbound left turn lanes to the intersection of Beach Boulevard at Garfield Avenue. Implementation of this improvement would require Caltrans approval.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSPP MM4.13-3 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a fourth northbound through lane to the intersection of Brookhurst Street at Adams Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSPP MM4.13-4 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a separate northbound right turn lane to the intersection of Brookhurst Street at Adams Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSPP MM4.13-5 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a fourth southbound through lane to the intersection of Brookhurst Street at Adams Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		

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BECSP MM4.13-6 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a fourth eastbound through lane to the intersection of Brookhurst Street at Adams Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-7 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a fourth westbound through lane to the intersection of Brookhurst Street at Adams Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-8 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution to allow a right turn overlap for a westbound right turn at the intersection of Brookhurst Street at Adams Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-9 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution to allow a right turn overlap for a northbound right turn at the intersection of Brookhurst Street at Adams Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-10 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a fourth northbound through lane to the intersection of Beach Boulevard at Edinger Avenue. Implementation of this improvement would require Caltrans approval.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-11 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a third westbound through lane to the intersection of Beach Boulevard at Edinger Avenue. Implementation of this improvement would require Caltrans approval.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-12 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a separate southbound right-turn lane to the intersection of Beach Boulevard at Bolsa Avenue. Implementation of this improvement would require Caltrans and City of Westminster approval.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
BECSP MM4.13-13 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a second westbound left turn lane to the intersection of Beach Boulevard at Talbert Avenue. Implementation of this improvement would require Caltrans approval.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-14 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a de facto westbound right turn lane to the intersection of Beach Boulevard at Talbert Avenue. Implementation of this improvement would require Caltrans approval.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-15 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the conversion of a separate westbound right-turn lane to a de facto right-turn lane at the intersection of Newland Street at Warner Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-16 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a third westbound through lane to the intersection of Newland Street at Warner Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-17 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a separate southbound right-turn lane to the intersection of Beach Boulevard at McFadden Avenue. Implementation of this improvement would require Caltrans and City of Westminster approvals.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
BECSP MM4.13-18 For future projects that occur within the Specific Plan area, the project applicant(s) shall make a fair share contribution for the addition of a separate northbound right-turn lane to the intersection of Beach Boulevard at McFadden Avenue. Implementation of this improvement would require Caltrans and City of Westminster approvals.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
Project MM4.13-19 Ensure adequate sight distance from the two driveways on Gothard Street per standard engineering requirements. At the time of the project site-plan submittal, a formal review of the sight distances will be performed. This may include a reduction in potential on-street parking spaces from that proposed.	Contract language and notes on construction plans	Review construction plans for inclusion	Plan check prior to issuance of building permit	Public Works		

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>Project MM4.13-20 Provide adequate width for parking maneuvers to occur without blocking the curb lane. This shall include a 10-foot buffer lane in addition to the 8-foot parking lane. If this area is striped with a bike lane, the remainder of the space shall serve as clearance (e.g., 6 feet for bikes plus 4 feet of clearance), to mitigate impacts to cyclists.</p>	<p>Contract language and notes on construction plans</p>	<p>Review construction plans for inclusion</p>	<p>Plan check prior to issuance of building permit</p>	<p>Public Works</p>		
<p>Project MM4.13-21 "No Pedestrian Crossing" signs shall be posted along Gothard Street for the extent of the on-street parking area to address potential jaywalking.</p>	<p>Contract language and notes on construction plans</p>	<p>Review construction plans for inclusion</p>	<p>Plan check prior to issuance of certificate of occupancy</p>	<p>Public Works</p>		
4.14 UTILITIES						
<p>BECSP MM4.14-1 The components of future projects in the Specific Plan area shall incorporate the following measures to ensure that conservation and efficient water use practices are implemented per project. Project proponents, as applicable, shall:</p> <ul style="list-style-type: none"> ■ Require employees to report leaks and water losses immediately and shall provide information and training as required to allow for efficient reporting and follow up ■ Educate employees about the importance and benefits of water conservation ■ Create water conservation suggestion boxes, and place them in prominent areas ■ Install signs in restrooms and cafeterias that encourage water conservation ■ Assign an employee to evaluate water conservation opportunities and effectiveness ■ Develop and implement a water management plan for its facilities that includes methods for reducing overall water use ■ Conduct a water use survey to update current water use needs (processes and equipment are constantly upgrading, thus changing the need for water in some areas) 	<p>Notes on construction plans and conditions, covenants and restrictions (CC&Rs), as applicable</p>	<p>Review construction plans prior to issuance of building permits; Review CC&Rs prior to final inspection</p>	<p>Prior to issuance of building permits; Prior to final inspection</p>	<p>Building & Safety, Planning</p>		

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<ul style="list-style-type: none"> ■ Repair leaks; check the water supply system for leaks and turn off unnecessary flows ■ Utilize water-efficient irrigation systems and drought tolerant plant palette and insure that sprinklers are directing water to landscape areas, and not to parking lots, sidewalks or other paved areas ■ Adjust the irrigation schedule for seasonal changes ■ Install low-flow or waterless fixtures in public and employee restrooms ■ Instruct cleaning crews to use water efficiently for mopping ■ Use brooms, squeegees, and wet/dry vacuums to clean surfaces before washing with water; do not use hoses as brooms; sweep or blow paved areas to clean, rather than hosing off (applies outside, not inside) ■ Avoid washing building exteriors or other outside structures ■ Sweep and vacuum parking lots/sidewalks/window surfaces rather than washing with water ■ Switch from "wet" carpet cleaning methods, such as steam, to "dry," powder methods; change window-cleaning schedule from "periodic" to "as required" ■ Set automatic optic sensors on icemakers to minimum fill levels to provide lowest possible daily requirement; ensure units are air-cooled and not water-cooled ■ Control the flow of water to the garbage disposal ■ Install and maintain spray rinsers for pot washing and reduce flow of spray rinsers for prewash ■ Turn off dishwashers when not in use—wash only full loads ■ Scrape rather than rinse dishes before washing ■ Operate steam tables to minimize excess water use ■ Discontinue use of water softening systems where possible 						

ATTACHMENT NO. 3.39

Mitigation Monitoring and Reporting Program

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<ul style="list-style-type: none"> ■ Ensure water pressure and flows to dishwashers are set a minimum required setting ■ Install electric eye sensors for conveyer dishwashers ■ Install flushometer (tankless) toilets with water-saving diaphragms and coordinate automatic systems with work hours so that they don't run continuously ■ Use a shut-off nozzle on all hoses that can be adjusted down to a fine spray so that water flows only when needed ■ Install automatic rain shutoff device on sprinkler systems 						
4.15 CLIMATE CHANGE						
<p>BECSP MM4.15-1 The City shall require by contract specifications that all diesel-powered equipment used would be retrofitted with after-treatment products (e.g., engine catalysts and other technologies available at the time construction commences) to the extent that they are readily available and cost effective when construction activities commence. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.</p>	Contract language and notes on grading plans and construction plans	Review and approve contract specifications and grading plans and construction plans for inclusion	Plan check prior to issuance of a grading permit	Planning		
<p>BECSP MM4.15-2 The City shall require by contract specifications that alternative fuel construction equipment (i.e., compressed natural gas, liquid petroleum gas, and unleaded gasoline) would be utilized to the extent feasible at the time construction activities commence. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.</p>	Contract language and notes on grading plans and construction plans	Review and approve contract specifications and grading plans and construction plans for inclusion	Plan check prior to issuance of a grading permit	Planning		
<p>BECSP MM4.15-3 The City shall require by contract specifications that developers within the project site use recycled and/or locally available building materials, to the extent feasible, such as concrete, stucco, and interior finishes, for construction of the project and associated infrastructure.</p>	Contract language and notes on construction plans	Review and approve contract specifications and construction plans for inclusion	Plan check prior to issuance of a building permit	Planning		

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>MM4.15-4 The City shall require developers within the project site to establish a construction management plan with Rainbow Disposal to divert a target of 50 percent of construction, demolition, and site clearing waste.</p>	<p>Contract language and notes on grading plans and construction plans</p>	<p>Review and approve contract specifications and grading plans and construction plans for inclusion</p>	<p>Plan check prior to issuance of a grading or building permit, whichever occurs earlier</p>	<p>Planning</p>		
<p>MM4.15-5 The City shall require by contract specifications that construction equipment engines will be maintained in good condition and in proper tune per manufacturer's specification for the duration of construction. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.</p>	<p>Contract language and notes on grading plans and construction plans</p>	<p>Review and approve contract specifications and grading plans and construction plans for inclusion</p>	<p>Plan check prior to issuance of a grading permit</p>	<p>Planning</p>		
<p>MM4.15-6 The City shall require by contract specifications that construction-related equipment, including heavy-duty equipment, motor vehicles, and portable equipment, shall be turned off when not in use for more than 5 minutes. Diesel-fueled commercial motor vehicles with gross vehicular weight ratings of greater than 10,000 pounds shall be turned off when not in use for more than 5 minutes. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City of Huntington Beach.</p>	<p>Contract language and notes on grading plans and construction plans</p>	<p>Review and approve contract specifications and grading plans and construction plans for inclusion</p>	<p>Plan check prior to issuance of a grading permit</p>	<p>Planning</p>		
<p>MM4.15-7 The City shall require that any new development within the Specific Plan area provide signs within loading dock areas clearly visible to truck drivers. These signs shall state that trucks cannot idle in excess of five minutes per trip.</p>	<p>Contract language and notes on construction plans</p>	<p>Review and approve contract specifications and construction plans for inclusion</p>	<p>Plan check prior to issuance of a building permit</p>	<p>Planning</p>		
<p>MM4.15-8 The City shall require by contract specifications that electrical outlets are included in the building design of future loading docks to allow use by refrigerated delivery trucks. Future project-specific Applicants shall require that all delivery trucks do not idle for more than 5 minutes. If loading and/or unloading of perishable goods would occur for more than five minutes, and continual refrigeration is required, all refrigerated delivery trucks shall use the electrical outlets to continue powering the truck refrigeration units when the delivery truck engine is turned off.</p>	<p>Contract language and notes on construction plans</p>	<p>Review and approve contract specifications and construction plans for inclusion</p>	<p>Plan check prior to issuance of a building permit</p>	<p>Planning</p>		

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Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM4.15-9 The City shall require that any new development within the project site provide a bulletin board or kiosk in the lobby of each proposed structure that identifies the locations and schedules of nearby transit opportunities.	Contract language and notes on construction plans	Review construction plans for inclusion	Plan check prior to issuance of certificate of occupancy	Planning		