



City of Huntington Beach Planning and Building Department

STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Jane James, Senior Planner *JJ*
DATE: October 25, 2011

SUBJECT: DEVELOPMENT AGREEMENT NO. 08-001 (Continued From the October 11, 2011 Meeting With the Public Hearing to be Opened - The Village at Bella Terra Development Agreement)

**APPLICANT/
PROPERTY**

OWNER: Becky Sullivan, BTDJM Phase II Associates, LLC, 922 Laguna Street, Santa Barbara, CA 93101

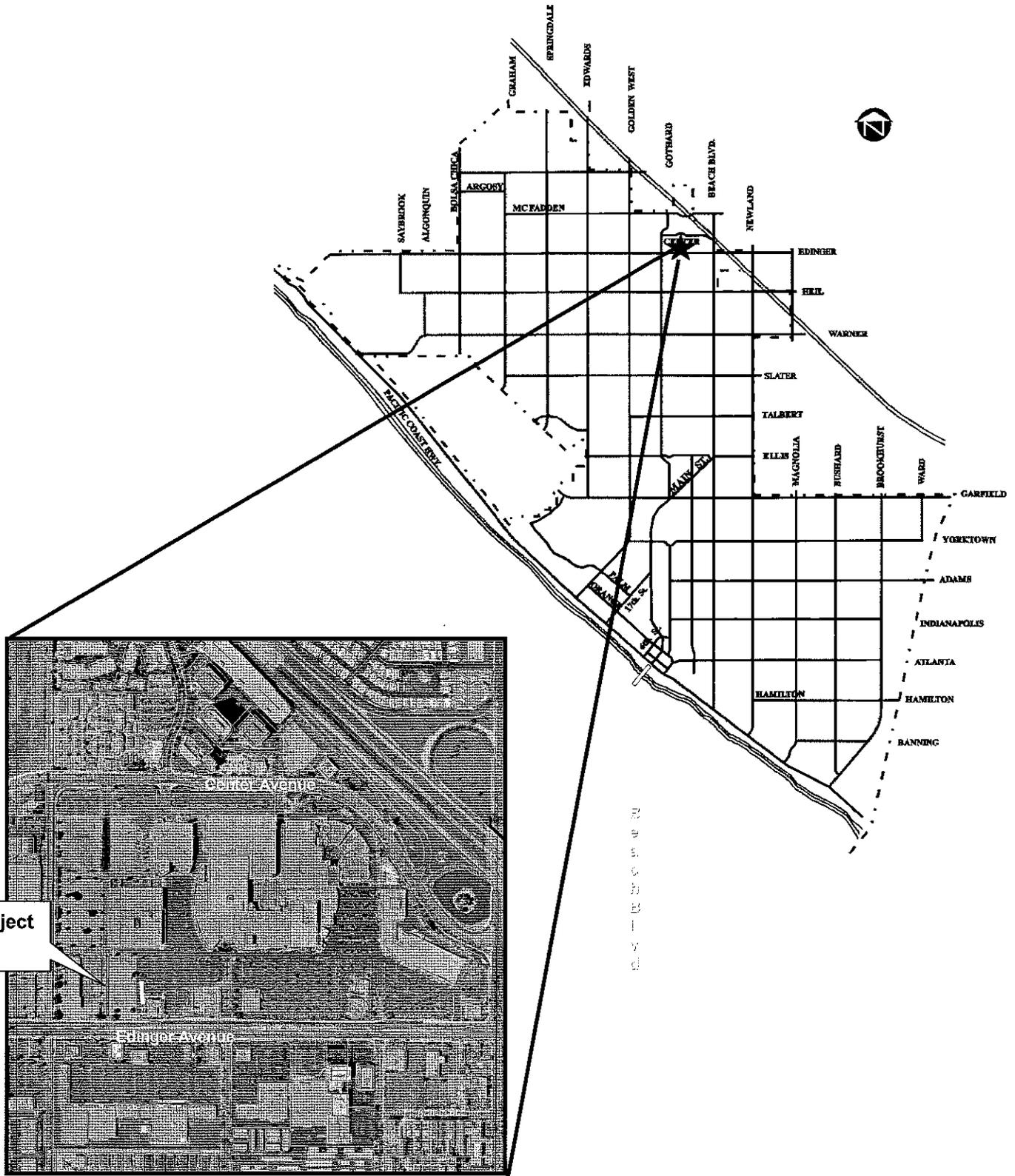
LOCATION: 7601 Edinger Avenue, Huntington Beach, CA 92647 (north side of Edinger Avenue, east of Union Pacific Rail Road and west of existing Bella Terra development)

STATEMENT OF ISSUE:

- ◆ Development Agreement No. 08-001 represents a request for the following:
 - To enter into a Development Agreement between the City of Huntington Beach and BTDJM Phase II Associates, LLC that will afford certain benefits to the property owner for a ten year term as they relate to approvals for The Village at Bella Terra mixed use project, a 467 multi-family residential development with 30,000 square feet of ground floor retail and restaurant uses.

The project was continued from the October 11, 2011 meeting, at the applicant's request.

- ◆ Staff Recommends approval of Development Agreement No. 08-001 based upon the following:
 - Consistency with the goals and policies of the General Plan and the provisions of Specific Plan No. 13;
 - Conforms to the provisions of Chapter 246 – *Development Agreements* of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO);
 - Consistency with the approved Village at Bella Terra mixed use project and the Conditions of Approval and Mitigation Measures adopted pursuant to Site Plan Review (SPR) No. 10-001, Entitlement Plan Amendment No. 11-002, Environmental Impact Report (EIR) No. 07-003 as approved by the Planning Commission on October 14, 2008 and Addendum to EIR No. 07-003 as considered by the Planning Commission on August 24, 2010; and
 - Ensures the mutually beneficial development of the approved project and serves the needs of the surrounding community by providing for street improvements on Center Avenue.



VICINITY MAP

**DEVELOPMENT AGREEMENT NO. 2008-001
 (THE VILLAGE AT BELLA TERRA – MIXED USE - 7601 EDINGER AVENUE)**

RECOMMENDATION:

Motion to:

“Approve Development Agreement No. 08-001 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. 08-001 with findings for denial.”
- B. “Continue Development Agreement No. 08-001 and direct staff accordingly.”

PROJECT PROPOSAL:

Development Agreement No. 08-001 represents a request by BTDJM to enter into a Development Agreement between the City of Huntington Beach and BTDJM Phase II Associates, LLC pursuant to Chapter 246 of the HBZSO and California Government Code Section 65864 et.seq. The proposed Development Agreement will provide assurances to the property owner/developer that The Village at Bella Terra mixed use project approved for the 10.40-acre site (formerly occupied by the Montgomery Wards automotive repair building and the associated parking lot) can proceed in accord with applicable approvals, thus vesting certain development rights in the property.

The proposed Development Agreement will afford certain benefits and protections to the property owner/developer that would otherwise not be applicable to the project. In summary, the property owner/developer requests several considerations in the development agreement as follows:

- Ten year term (DA Section 2.3);
- City to provide cooperation with processing amendments to the DA, the approved development plan, any future development plans, and process Lot Line Adjustment requests on an “administrative approval” basis only (DA Section 3.1.3);
- Extend the life of Tentative Tract Map No. 17261 for ten years and agree to process multiple final maps (DA Section 3.1.3);
- Right to construct approved project and development shall not be subject to future new fees that may be adopted during the term of the agreement although existing fees applicable to the project may be modified (DA Section 3.2.1);
- Delay payment of For Sale Project Park and Recreation fees until units are actually sold at a future unknown date; in the meantime, developer will pay Rental Project Park and Recreation fees (DA Sections 5.1, 5.1.1, and 5.1.2);
- Defines the applicable conversion regulations should the residential units be rented prior to creation of a common interest development pursuant to California Civil Government Code Section 1352 (DA Section 5.1.4).

History:

On August 24, 2010, the Planning Commission approved General Plan Amendment (GPA) No. 10-001, Zoning Text Amendment (ZTA) No. 10-001, and Site Plan Review (SPR) No. 10-001 for The Village at Bella Terra – Costco Wholesale, facilitating the development of a regional commercial big-box retail with

gasoline service station and mixed-use retail and residential project. In general, this project amended the planning areas within Specific Plan (SP) No. 13, established warehouse sales outlets and gasoline service stations as permitted uses, created corresponding design and development standards for such uses, and approved development of a 154,113 square foot Costco Wholesale store with associated 16-pump gas station and a mixed-use development consisting of 467 residential units and 30,000 square feet of general retail and restaurant uses. The project requires elevation of the site in accordance with floodplain regulations resulting in the import of 32,810 cubic yards of fill soil. The approximately 24 acre master plan site is located between Edinger Avenue and Center Avenue, just west of the existing Bella Terra mall, and just east of the Union Pacific rail road line. The Development Agreement covers only the mixed use residential and retail development on the southern portion of the site and does not include the Costco warehouse or the Costco fuel facility.

The Planning Commission's action on SPR No. 10-001 was final and no appeals were filed. On September 20, 2010, the City Council approved GPA No. 10-001 and ZTA No. 10-001, concluding the legislative actions required for the proposed project. Subsequently, on February 23, 2011, the Planning Commission approved Tentative Tract Map No. 17261 for condominium purposes for The Village mixed use portion of the site. On April 8, 2011, the Director approved Entitlement Plan Amendment No. 2011-002 to amend the size and shape of the residential parking structure to reduce the walking distance to each unit, amend the interior courtyard spaces and recreational amenities, reorient the westerly units to face north and south, and add one additional level of residential above the retail. The project details remain the same at 467 residential units and 29,500 square feet of retail/restaurant uses. The Village at Bella Terra is subject to provide 15% of the total 467 units (71 units) as affordable housing units pursuant to the conditions of approval and the existing Affordable Housing Agreement.

Study Session:

The Planning Commission held a study session on Development Agreement No. 08-001 on September 27, 2011. The Planning Commission asked questions related to the estimated cost of improvements for Center Avenue and requested a cost/benefit analysis of the development agreement. This issue is further discussed in the Analysis section. Discussion ensued regarding future development fees and exactions that may apply to the property over the term of the development agreement. Staff would like to clarify that existing permit and impact fees may be raised or lowered in the future and the project would be subject to the fee amount in effect at the time payment is triggered. However, the project will not be subject to any new fees or exactions that may be adopted in the future. The development agreement has been revised to clarify this issue (DA Section 3.2.1). The applicant/property owner and their legal counsel attended and spoke during the study session. No other members of the public spoke regarding this agenda item.

ISSUES:

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

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property	CR-F2-sp-mu-(F14) (Regional Comm'l-0.5-FAR-Specific Plan Overlay-Mixed Use Overlay-1.75 FAR [MU-0.07{C}/45 du/acre])	Specific Plan No. 13-Bella Terra Huntington Beach - Area B	Vacant (recently demolished Montgomery Ward store and auto repair)
North of Subject Property	CR-F2-sp-mu-(F14) (Regional Comm'l-0.5-FAR-Specific Plan Overlay-Mixed Use Overlay-1.75 FAR [MU-0.2{C}/45 du/acre])	Specific Plan No. 13-Bella Terra Huntington Beach – Area A	Vacant (recently demolished Montgomery Ward store, auto repair, and Mervyn’s store)
West of Subject Property (across railroad tracks) and South (across Edinger Ave)	M-sp (Mixed Use-Specific Plan Overlay)	Specific Plan No. 14 –Beach and Edinger Corridors Specific Plan	North - Old World Village; West - Approved for 487-units and 14,500 square feet of commercial space (former Levitz) and College Country Center (Approved for Amstar/Red Oak mixed use residential/commercial project); and South - Retail
East of Subject Property	CR-F2-sp-mu (F9) (Regional Comm'l-0.50 FAR-Specific Plan Overlay-Mixed Use Overlay-1.5 FAR [MU-0.5{C}/25 du/acre])	Specific Plan No. 13-Bella Terra Huntington Beach	Bella Terra Mall

General Plan Conformance:

The project site is located within Specific Plan No. 13 and the General Plan land use designation is CR-F2-sp-mu-(F14) (Regional Commercial-0.5-FAR-Specific Plan Overlay-Mixed Use Overlay-1.75 FAR [MU-0.02{C}/45 du/acre]). The development agreement is consistent with the following General Plan goals, policies and objectives:

A. Urban Design Element

Goal UD 1.1: Enhance the visual image of the City of Huntington Beach.

B. 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.

Policy LU 10.1.15: Require that regional commercial developments be designed to convey the visual sense of an integrated center by consideration of the following principles:

- a. Use of multiple building volumes and masses and highly articulated facades to reduce the visual sense of large scale "boxes";
- b. Use of roofline or height variations to visually differentiate the building massing and incorporation of recesses and setbacks on any elevation above the second floor above grade;
- c. Siting of a portion of the buildings in proximity to their primary street frontage to convey a visual relationship to the street and sidewalks;
- d. Design of the exterior periphery of the structures to contain shops, restaurants, display windows, and other elements that provide visual interest to parking areas and the street elevation;
- e. Inclusion of a "public square" as a gathering place of public activity in multi-tenant regional centers;
- f. Clear identification of building entrances;
- g. Use of landscape that provides a three-dimensional character;
- h. Encourage the provision of public art;
- i. Inclusion of consistent and well-designed signage integrated with the building's architectural character, including pedestrian-oriented signage; and
- j. Design of parking structures to be visually integrated with the commercial buildings.

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.

Implementation Program I-LU 7: Where appropriate, the City may use Development Agreements as binding implementation tools. Development Agreements are authorized by State law to enable a city to enter into a binding contract with a developer that assures the city as to the type, character, and quality of development and additional “benefits” that may be contributed and assures the developer that the necessary development permits will be issued regardless of changes in regulations.

The development agreement would ensure that the project is developed in accordance with the approved Village at Bella Terra development plan, consisting of a mixed use, high density development. The resulting project increases housing options for diverse household types, promotes alternative modes of transportation, creates a local sense of place, reduces infrastructure and maintenance costs, and allows for more efficient use of land resources. Through the approved Affordable Housing Agreement, the project is required to meet affordable housing obligations providing the equivalent of 15 percent of the units as affordable. Additionally, the terms of the agreement specify that the developer would be responsible for community improvements beyond the typical obligations of the project in the form of additional street improvements along Center Avenue. Finally, the benefits of the development agreement include assurances that if the property owner proceeds with construction, then the high quality mixed use project as approved under recent entitlements will be implemented, payment of for-sale park and recreation fees will be collected if the units are sold at a future date, and tenant notification and first right of refusal to buy will be provided if the rental units are converted to for-sale units.

Zoning Compliance:

The Village at Bella Terra mixed use project, as approved pursuant to Site Plan Review No. 10-001 and Entitlement Plan Amendment No. 11-002, is consistent with the development standards and regulations of Specific Plan No. 13. Development Agreement No. 08-001 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 Village at Bella Terra Environmental Impact Report (EIR No. 07-03) certified by the Planning Commission on October 14, 2008 and Addendum to EIR No. 07-03 considered by the Planning Commission on August 24, 2010.

Environmental Board: Not Applicable.

Coastal Status: Not applicable

Redevelopment Status:

The project site is within a redevelopment project sub-area. In October 2010, BTDJM Phase II Associates, LLC and the City of Huntington Beach Redevelopment Agency entered into an Affordable Housing Agreement. The City's Economic Development Department has reviewed the draft development agreement to ensure consistency with that existing agreement and with other provisions of Redevelopment Law. Through the approved Affordable Housing Agreement, BTDJM is providing 43 moderate and 28 very low income housing units on site and will be reimbursed by the Agency for the construction of the units.

Design Review Board: Not applicable

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

Development Agreement No. 08-001 was drafted by outside counsel for the Redevelopment Agency in coordination with the City Attorney's Office, Planning & Building Department, Public Works Department, and Economic Development Department. In addition, Development Agreement No. 08-001 is consistent with conditions approved for Site Plan Review (SPR) No. 10-001 and mitigation measures adopted for EIR No. 07-001 and Addendum to EIR No. 07-001 for The Village at Bella Terra 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 September 29, 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 previously commented on the environmental document or project entitlements. The applicant submitted a letter on October 3, 2011 describing their opposition to the requirement to repair/repave Center Avenue (Attachment No. 5). The applicant also submitted a request for continuance to the October 25, 2011 meeting on October 3, 2011. The Planning Commission

granted the request for continuance with the public hearing to be opened. As of October 18, 2011, no other communications on Development Agreement No. 08-001 have been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION:

September 2, 2011

MANDATORY PROCESSING DATE(S):

March 2, 2012 (Within 6 months of complete application)

ANALYSIS:

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 and property owner/developer desire to enter into a development agreement for the subject site for a term of ten years in order to achieve the mutually beneficial development of the property and ensure that the project is developed in accordance with the approved SPR No. 10-001 and EPA No. 2011-002.

The Planning Commission determines whether the agreement is consistent with the General Plan and on the basis of their findings, recommends either approval, modification, or disapproval of the proposed development agreement to the City Council. The City Council may approve the requested development agreement after making the following findings: that the agreement is consistent with the General Plan and any Specific Plan; that the agreement is consistent with the HBZSO, the Municipal Code, and the State Subdivision Map Act; that the agreement will not be detrimental to the health, safety and general welfare, and will not adversely affect the orderly development of property; and finally, that the City Council has considered the fiscal effect of the development agreement on the City and the effects 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. This analysis includes a discussion of the items the Planning Commission should consider.

Consistency with General Plan and Zoning

The development agreement's consistency with the General Plan is analyzed in the General Plan Conformance Section above.

Specific Plan No. 13 (SP 13) was adopted in July 2000 and modified several times, most recently in September 2010 to enhance the overall economic performance, physical beauty and functionality of the Bella Terra property. SP 13 is intended to guide future development, establish regional commercial uses, and allow mixed use residential and retail components within an overall Italian Village lifestyle center. The Planning Commission determined that approval of The Village at Bella Terra - Costco Warehouse and Fuel Facility project was consistent with the goals and requirements of the General Plan and SP 13. Subsequently, the site layout and mixed use residential and retail component was revised and approved by the Director through Entitlement Plan Amendment No. 2011-006 in April 2011. The revised plans were also deemed in compliance with the General Plan and Specific Plan No. 13.

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. 08-001 refers to the project's "Development Plan," which complies with the SP 13 development code, as approved by the Planning Commission in August 2010 and the revised plan approved by the Director in April 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, through implementation of the “Development Plan,” the development agreement would conform to applicable goals and policies of the General Plan.

Special Considerations

The applicant filed the development agreement application so that they could be afforded certain benefits and protections that are summarized under Project Proposal section of this Staff Report.

General Plan Implementation Program *I-LU-7 Development Agreements* states, “Where appropriate, the city may use Development Agreements as binding implementation tools. Development Agreements are authorized by State law to enable a city to enter into a binding contract with a developer that assures the city as to the type, character, and quality of development and additional ‘benefits’ that may be contributed and assures the developer that the necessary development permits will be issued regardless of changes in regulations.” In consideration of the proposed Development Agreement and the advantages it provides to the developer, the developer is asked to provide “additional benefits” that exceed what would normally be required or conditioned on the project pursuant to City’s codes, ordinances, policies, General Plan, State Law, Redevelopment Law, and CEQA (i.e., subdivision exactions, impact fees, conditions of approval, and mitigation measures).

Therefore, the City requests the following considerations:

- As a benefit to the City, Developer shall construct off-site public improvements consisting of repair of curb, gutter and sidewalk, and repaving the full width of Center Avenue between the 405 Freeway off-ramp and the signalized private access driveway into Bella Terra/Bella Terra Towers as well as the north side of Center Avenue between the private access drive and the railroad tracks on the westerly boundary of the site (DA Section 4.1.1);
- As previously stipulated in the 2010 Affordable Housing Agreement between BTDJM Phase II Associates, LLC and the Redevelopment Agency, Developer shall contribute \$250,000 toward construction of a pedestrian path between Bella Terra and the Boardwalk development. The additional language in the DA further specifies that the funds may be used toward planning, design, permit fees and construction of the off-site bridge (DA Section 4.1.2).

Staff supports all the terms, provisions, and special considerations of the development agreement requested by the property owner/developer identified in the Project Proposal section above.

Cost/Benefit of Proposed Development Agreement

At the Study Session, the Planning Commission requested further information on the costs and benefits of the proposed development agreement. One of the costs identified is the repair and replacement of the north side of Center Avenue along the Costco frontage and the repair and replacement of both sides of Center Avenue between the Costco frontage and the I-405 off-ramps. The street improvements on the south side of Center Avenue along the Costco frontage are Costco’s responsibility, pursuant to their project conditions of approval. The applicant estimates the cost of the street improvement work at \$500,000 and Public Works Department concurs with this cost estimate. Since the street improvements were not part of the approved entitlements they should be considered a benefit to the City and cost to developer and have been identified as such in the proposed development agreement. On October 3, 2011

the applicant/property owner responded to the Planning Commission's request and submitted a letter citing their opposition to the Center Avenue improvements request by the City.

Additional benefits to the developer are having an approved project and approved subdivision for ten years with assurances provided by the development agreement that future zoning and land use laws and fees will not be imposed even if the project has not been constructed. The Subdivision Map Act only allows for this additional extension of the recordation of the Tract Map through development agreements.

The HBZSO requires payment of in-lieu For-Sale Park and Recreation Fees at recordation of a final map. Staff agrees to the developer's request to delay For-Sale Project Park and Recreation fees until the units are actually sold and to accept payment of the Rental Project Park and Recreation fees in the meantime because ultimately the fees will be collected. The applicant/property owner will realize a financial benefit by delaying the payment of condominium park and recreation fees and instead paying rental fees until the units are sold. The Rental Park and Recreation fees are calculated on a fee per square foot method. Based on the proposed mixed use project the Rental Park and Recreation fees are estimated at approximately \$600,856. The For-Sale Park and Recreation fees are based upon current property values. In the absence of a property value appraisal, the City's real estate management staff has provided a land value estimate and staff calculated the estimated For-Sale Park and Recreation fees between \$10 million on the low end and \$14 million on the high end. The Development Agreement states that the property owner/developer will be obligated to pay the difference between the Rental Park and Recreation fee paid and the For-Sale Park and Recreation fee in effect at the time the units become available for sale.

Finally, a cost to the developer and benefit to the City is the \$250,000 contribution towards a pedestrian path between Bella Terra and the Boardwalk development. It should be noted that this obligation is already required by the Affordable Housing Agreement. The developer is obligated to contribute these funds even without this proposed development agreement. The additional language in the development agreement is simply requested by staff to describe that the funds may be used toward planning, design, and permit fees in addition to utilizing the funds towards construction of the bridge.

The terms of the agreement, including the items discussed above, will not be detrimental to the health, safety, and well-being of the surrounding community and do not take away from the high quality nature of the project. Overall, staff supports the proposed terms of the development agreement and agrees with the protections and benefits afforded to the developer. Staff recommends the Planning Commission approve the proposed Development Agreement No. 2008-001 along with the requirement to repair and repave Center Avenue because it ensures development of a high quality mixed use project in response to economic and market conditions and because a public benefit in terms of street improvements is included.

SUMMARY:

Staff recommends approval of Development Agreement No. 08-001 because it:

- Is consistent with the goals and policies of the General Plan and the provisions of Specific Plan No. 13;
- Conforms to the provisions of Chapter 246 – Development Agreements of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO);
- Is consistent with the approved Village at Bella Terra mixed use project and the Conditions of Approval and Mitigation Measures adopted pursuant to Site Plan Review (SPR) No. 10-001, Entitlement Plan Amendment No. 11-002, Environmental Impact Report (EIR) No. 07-003 as

approved by the Planning Commission on October 14, 2008 and Addendum to EIR No. 07-003 as considered by the Planning Commission on August 24, 2010; and

- Ensures the mutually beneficial development of the approved project and serves the needs of the surrounding community by providing for street improvements on Center Avenue.

ATTACHMENTS:

1. Suggested Findings for Approval - Development Agreement No. 08-001
2. Draft Ordinance No. _____ Development Agreement No. 08-001
3. Site Plan Review No. 10-004 – Notice of Action dated August 25, 2010 with Findings, Conditions of Approval and Mitigation Measures
4. Entitlement Plan Amendment No. 11-002 – Notice of Action dated April 8, 2011 with Findings and Conditions of Approval
5. Letter from Jeffrey Oderman, Rutan & Tucker, LLP on behalf of BTDJM Phase II Associates, LLC dated October 3, 2011.

SH:HF:MBB:JJ:kd

ATTACHMENT NO. 1

SUGGESTED FINDINGS FOR APPROVAL

DEVELOPMENT AGREEMENT NO. 2008-001

SUGGESTED FINDINGS FOR CEQA:

The Planning Commission finds that the development agreement was included in the scope of The Village at Bella Terra Environmental Impact Report (EIR No. 07-003) certified by the Planning Commission on October 14, 2008 and Addendum to EIR No. 07-03 considered by the Planning Commission on August 24, 2010.

SUGGESTED FINDING FOR APPROVAL – DEVELOPMENT AGREEMENT NO. 2008-001:

The development agreement is consistent with the General Plan and Specific Plan No. 13. Development Agreement No. 2008-001 provides for the construction of The Village at Bella Terra mixed use project, which complies with the SP 13 development code and was found to conform to the goals and policies of the General Plan as approved by the Planning Commission on August 24, 2010 and amended under Entitlement Plan Amendment No. 2011-002 as approved by the Director of Planning and Building on April 8, 2011. The development agreement ensures the construction of the approved project under the 10-year term. The development agreement is consistent with the following General Plan goals and policies:

A. Urban Design Element

Goal UD 1.1: Enhance the visual image of the City of Huntington Beach.

B. 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.

Policy LU 10.1.15: Require that regional commercial developments be designed to convey the visual sense of an integrated center by consideration of the following principles:

- a. Use of multiple building volumes and masses and highly articulated facades to reduce the visual sense of large scale “boxes”;
- b. Use of roofline or height variations to visually differentiate the building massing and incorporation of recesses and setbacks on any elevation above the second floor above grade;
- c. Siting of a portion of the buildings in proximity to their primary street frontage to convey a visual relationship to the street and sidewalks;
- d. Design of the exterior periphery of the structures to contain shops, restaurants, display windows, and other elements that provide visual interest to parking areas and the street elevation;
- e. Inclusion of a “public square” as a gathering place of public activity in multi-tenant regional centers;
- f. Clear identification of building entrances;
- g. Use of landscape that provides a three-dimensional character;
- h. Encourage the provision of public art;
- i. Inclusion of consistent and well-designed signage integrated with the building’s architectural character, including pedestrian-oriented signage; and
- j. Design of parking structures to be visually integrated with the commercial buildings.

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.

Implementation Program I-LU 7: Where appropriate, the City may use Development Agreements as binding implementation tools. Development Agreements are authorized by State law to enable a city to enter into a binding contract with a developer that assures the city as to the type, character, and quality of development and additional “benefits” that may be contributed and assures the developer that the necessary development permits will be issued regardless of changes in regulations.

The development agreement would ensure that the project is developed in accordance with the approved Village at Bella Terra development plan, consisting of a mixed use, high density development. The resulting project increases housing options for diverse household types, promotes alternative modes of transportation, creates a local sense of place, reduces infrastructure and maintenance costs, and allows for more efficient use of land resources. Through the approved Affordable Housing Agreement, the project is required to meet affordable housing obligations providing the equivalent of 15 percent of the units as affordable. Additionally, the terms of the agreement specify that the developer would be responsible for community improvements beyond the typical obligations of the project in the form of additional street improvements along Center Avenue. Finally, the benefits of the development agreement for this mixed use project include assurances that the mixed use project will be built, payment of for-sale park and recreation fees will be collected if the units are sold at a future date, and tenant notification and first right of refusal to buy will be provided if the rental units are converted to for-sale units.

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.

ORDINANCE NO. _____

DRAFT

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HUNTINGTON BEACH AND BTDJM PHASE II ASSOCIATES, LLC (PROPERTY OWNER) (DEVELOPMENT AGREEMENT NO. 08-001)

WHEREAS, the Planning Commission approved Site Plan Review No. 10-001 to develop an approximately 10.4-acre property located at 7601 Edinger Avenue (Property) with a mixed use project consisting of 467 apartment units, 30,000 square feet of retail/restaurant uses, a shared use of parking, and a three foot, nine inch retaining wall along the west property line (Project) pursuant to Specific Plan No. 13 (SP 13); and

The City and Property owner each mutually desire to enter into a development agreement with one another, known as Development Agreement No. 08-001 (attached hereto as Exhibit A, and incorporated by this reference), to permit and ensure that the Property is developed in accordance with the approved Site Plan Review No. 10-001 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. 08-001 conforms to Government Code Section 65864 et. seq. and that:

a. Development Agreement No. 08-001 is consistent with the Huntington Beach General Plan and the applicable provisions of Specific Plan No. 13.

b. Development Agreement No. 08-001 is consistent with Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) and the Huntington Beach Municipal Code.

c. Development Agreement No. 08-001 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 Specific Plan No. 13, mitigation measures adopted for the Project in accordance with Addendum EIR No. 07-003, and conditions approved for Site Plan Review No. 10-001.

d. The City Council has considered the fiscal effect of Development Agreement No. 08-001 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. 08-001 and adopts it by this ordinance pursuant to Government Code Section 65867.5. This action is subject to a referendum.

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:

INITIATED AND APPROVED:

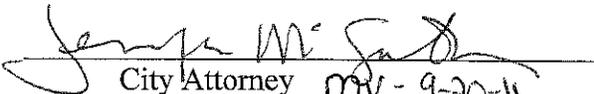
City Clerk

Director of Planning and Building

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager



City Attorney MV-9-20-11
9.26.11

Attachment:
Exhibit A Development Agreement No. 08-001

EXHIBIT A

ATTACHMENT NO. 2.3

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Space Above This Line for Recorder's Office Use Only

(Exempt from Recording Fee per Gov. Code §§ 6103 and 27383)

DEVELOPMENT AGREEMENT
(VILLAGE AT
BELLA TERRA PROJECT)

by and between

CITY OF HUNTINGTON BEACH

and

BTDJM PHASE II ASSOCIATES, LLC

ATTACHMENT NO. 2.4

TABLE OF CONTENTS

	Page
1. Definitions.....	5
2. General Provisions.....	9
2.1 Binding Covenants.....	9
2.2 Interest of DEVELOPER.....	9
2.3 Term.....	9
2.4 Transfers and Assignments.....	10
2.4.1 Restrictions on DEVELOPER’s Right to Assign.....	10
2.4.2 CITY’s Fee.....	11
2.4.3 No Waiver.....	11
2.4.4 Rights of Successors and Assigns.....	12
3. Development Provisions.....	12
3.1 Vesting.....	12
3.1.1 Project.....	12
3.1.2 Limits on Development.....	12
3.1.3 Entitlements, Permits, and Approvals - Cooperation.....	13
3.1.3.1 Processing.....	13
3.1.3.2 Other Permits.....	13
3.1.3.3 Tentative Map Extensions.....	13
3.1.3.4 Vesting Tentative Maps.....	13
3.1.3.5 Lot Line Adjustments.....	13
3.1.3.6 Multiple Final Maps.....	13
3.1.3.7 Intentionally Omitted.....	13

3.1.3.8	Processing of Future Development Approvals	14
3.2	Reserved Authority	14
3.2.1	Future Changes in Development Exactions; Conditions on Future Development Approvals	14
3.2.2	Construction Codes	14
3.2.3	State and Federal Laws and Regulations	15
3.2.4	Suspension of Development in Order to Protect Health and Safety	15
3.3	Amendment of Development Agreement	15
3.3.1	Initiation of Amendment	15
3.3.2	Procedure	15
3.3.3	Consent	15
4.	Public Benefits	15
4.1	Public Benefits	15
5.	Miscellaneous Obligations of the Parties	16
5.1	Park Fee and Future Condominium Sale Issues	16
5.1.1	Payment of Rental Park Fees Upon Issuance of Building Permits	17
5.1.2	Payment of For-Sale Project Park Fees Upon Sale of Condo Units	17
5.1.3	Security for Owed Fees	17
5.1.4	Applicable Conversion Regulations	18
5.1.5	Indemnity and Payment of Fees in the Event of Successful Challenge	18
5.1.6	No Waiver	18
6.	Indemnification	18
7.	Relationship of Parties	18

8.	Amendment or Cancellation of Agreement.....	19
9.	Periodic Review of Compliance with Agreement.....	19
9.1	Periodic Review.....	19
9.2	Good Faith Compliance.....	19
9.3	Failure to Conduct Annual Review.....	19
9.4	Initiation of Review by City Council.....	19
9.5	Administration of Agreement.....	19
10.	Events of Default: Remedies and Termination.....	20
10.1	Default.....	20
10.2	Procedure Regarding Defaults.....	20
	10.2.1 Notice Required.....	20
10.3	Right to Cure.....	20
10.4	Delay Not a Waiver.....	20
10.5	Time to Cure.....	20
10.6	Termination of Agreement.....	21
10.7	Default During Annual Review.....	21
10.8	Institution of Legal Actions.....	21
10.9	Limitation on Damages Remedy Against Developer.....	21
10.10	No Damages Relief Against City.....	21
10.11	Limitation on Cross-Defaults.....	21
10.12	Estoppel Certificates.....	22
11.	Waivers, Delays, and Extensions of Performance Deadlines.....	22
11.1	No Waiver.....	22
11.2	Third Parties.....	23
11.3	Force Majeure.....	23

11.4	Notice of Delay.....	23
12.	Notices.....	23
13.	Intentionally Omitted.....	24
14.	Recording.....	24
15.	Effect of Agreement on Title.....	24
15.1	Effect on Title.....	24
15.2	Encumbrance Permitted.....	24
15.3	Rights of Lenders.....	24
16.	Severability of Terms.....	25
17.	Subsequent Amendment to Authorizing Statute.....	25
18.	Rules of Construction and Miscellaneous Terms.....	26
18.1	Interpretation and Governing Law.....	26
18.2	Section Headings.....	26
18.3	Gender.....	26
18.4	Time of Essence.....	26
18.5	Recitals.....	26
18.6	Entire Agreement.....	26
19.	Not for Benefit of Third Parties.....	26
20.	Relationship to AHA.....	26
21.	Cooperation in Event of Legal Challenge.....	26

EXHIBITS

EXHIBIT A	-	LEGAL DESCRIPTION
EXHIBIT B	-	SITE MAP
EXHIBIT C	-	PAVING AREA MAP
EXHIBIT D	-	SITE PLAN FOR PEDESTRIAN PATH
EXHIBIT E	-	ASSIGNMENT OF PAYMENTS
EXHIBIT F	-	APPLICABLE CONVERSION REGULATIONS

DEVELOPMENT AGREEMENT
(VILLAGE AT BELLA TERRA PROJECT)

This DEVELOPMENT AGREEMENT (VILLAGE AT BELLA TERRA PROJECT) (the "Agreement") is dated for reference purposes only as of the ____ day of _____, 2011, and is being entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation, organized and existing under the laws of the State of California ("CITY"), and BTDJM PHASE II ASSOCIATES, LLC, a Delaware limited liability company ("DEVELOPER"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Legislation") and Article XI, Section 2, of the California Constitution. CITY and DEVELOPER are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

This Agreement is predicated upon the following facts:

A. California Development Agreement Legislation authorizes the CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: ensure high quality development in accordance with comprehensive plans; provide certainty in the approval of development projects so as to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules, and regulations, subject to the applicable conditions of approval, in order to strengthen the public planning process and encourage private participation in comprehensive planning and reduce the private and public economic costs of development; and encourage and provide for the development of public infrastructure and amenities to support the development of new housing and commercial projects.

B. DEVELOPER is the fee owner of that certain real property consisting of approximately 10.40 acres of land area located at 7601 Edinger Avenue in the northern portion of the City of Huntington Beach, County of Orange, State of California, that City has designated as General Plan Sub-area 5B and Specific Plan 13 Area B and that is more particularly described in the Legal Description in Exhibit "A" attached hereto and made a part hereof (the "Property") and depicted in the Site Plan in Exhibit "B" attached hereto and made a part hereof.

C. DEVELOPER desires to develop the Property as a mixed-use residential and commercial development commonly known as The Village at Bella Terra (the "Project") in accordance with the provisions of this Agreement, the "Development Plan" described herein, and other applicable regulations of the City of Huntington Beach and other governmental agencies having jurisdiction over the Property and the Project.

D. CITY and DEVELOPER have negotiated this Agreement in order to create a beneficial development project and a physical environment that will conform to and complement the goals of CITY's General Plan, including being sensitive to human needs and values, and facilitate efficient traffic circulation. By its approval and execution of this Agreement, CITY has

determined that CITY (including, without limitation the existing and future residents of CITY) will receive the following direct and indirect extraordinary benefits from the implementation of this Agreement:

1. DEVELOPER shall construct/install certain improvements (the "Off-site Public Improvements") as provided herein, that will provide substantial benefits to CITY and its residents; and

2. DEVELOPER shall contribute TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) towards the planning, design, permit fees and construction of a certain pedestrian path between the Property and an adjacent property with APN 142-074-03 and 142-074-04 (referenced hereinafter as "the Levitz Parcel"), at the time a building permit is issued for Development of the Levitz Parcel if such permit is issued during the Term of this Agreement.

E. DEVELOPER will provide the Affordable Housing in accordance with that certain AFFORDABLE HOUSING AGREEMENT ("AHA") entered into as of October 4, 2010, by and between the AGENCY and DEVELOPER.

F. DEVELOPER and CITY have taken the following actions with respect to this Agreement and the Project on or before the Effective Date of this Agreement:

1. on November 17, 2008, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Resolution No. 1625 certifying the Environmental Impact Report (the "Project EIR") for the original Village at Bella Terra project (the "Original Project") that at that time was proposed to be developed on approximately 15.85 acres of land area comprising the Property and a portion of the adjacent General Plan Sub-area 5A and Specific Plan 13 Area B (the "Original Project Site"), approving a Mitigation Monitoring Program with respect thereto, and making certain findings and determinations with respect to the Original Project, including the adoption of a statement of overriding considerations;

2. on November 17, 2008, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Resolution No. 2008-69 approving General Plan Amendment (GPA) No. 07-001 amending the Land Use Element of CITY's General Plan relating to the Original Project Site to change the designation of the Original Project Site from CR-F2-sp-mu (F9) (Regional Commercial) to CR-F2-sp-mu (F14) and authorize the following changes to the permitted land uses of the Original Project Site: (a) allow horizontally integrated mixed-use development in addition to the previously allowed vertical mixed-use development; (b) increase the allowable residential density from the previously allowed 25 dwelling units per acre (DU/acre) up to a maximum of 45 DUs/acre (with limitations specified below); (c) reduce the allowable commercial floor area ratio (FAR) from the previously authorized maximum of 0.5 to 0.2; (d) increase the allowable total building FAR from the previously authorized maximum of 1.5 to 1.75 (1,208,245 square feet of total commercial and residential development); and (e) increase the maximum number of stories of buildings from the previously authorized maximum of 4 stories to 6 stories;

3. on November 17, 2008, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Resolution No. 2008-70 approving Specific Plan No. 13 (Zoning Text Amendment No. 07-002), which amends Specific Plan (SP) 13 applicable to the Original Project Site to allow residential uses on the Original Project Site consistent with GPA No. 07-001, establish residential design and development standards, and provide for development standards for commercial uses, including without limitation development standards applicable to parking, setbacks, and building heights, to be evaluated in accordance with the Specific Plan for the Original Project Site;

4. on March 15, 2010, DEVELOPER submitted an application to CITY to further amend the General Plan (GPA No. 10-001) and Specific Plan No. 13 (Zoning Text Amendment No. 10-001) in the following respects: (a) to realign the dividing line between General Plan Sub-areas 5A and 5B and Specific Plan 13 Areas A and B by increasing the size of General Plan Sub-area 5A and Specific Plan 13 Area A from 41.06 acres to 46.51 acres and by correspondingly decreasing the size of General Plan Sub-area 5B and Specific Plan 13 Area B from 15.85 acres to 10.40 acres; (b) by adding "big box" retail and fuel station uses and design and development standards to the commercial uses and design and development standards for General Plan Sub-area 5A and Specific Plan 13 Area A; (c) to increase the maximum amount of authorized commercial development in General Plan Sub-area 5A and Specific Plan 13 Area A; (d) to retain the mixed-use overly within the 10.4 acres of land area encompassed by the downsized General Plan Sub-area 5B and Specific Plan 13 Area B (i.e., on the Property that is the subject of this Agreement); and (e) to decrease the maximum number of authorized residential units in General Plan Sub-area 5A and Specific Plan 13 Area B from seven hundred thirteen (713) to four hundred sixty-eight (468) and to decrease the maximum amount of authorized commercial development in General Plan Sub-area 5B and Specific Plan 13 Area B from one hundred thirty-eight thousand eighty-five (138,085) square feet to thirty thousand (30,000) square feet;

5. on March 15, 2010, DEVELOPER submitted an application to CITY for Site Plan Review No. 10-001 for the establishment, maintenance and operation of a 154,113 square foot Costco with tire sales/installation center, outside food service, and 16-pump gas station on approximately 8.2 acres of land within the reconfigured General Plan Sub-area 5A and Specific Plan 13 Area A;

6. on June 16, 2010 DEVELOPER submitted an application to CITY for additional development under Site Plan Review No. 10-001 for the establishment, maintenance and operation of 467 multi-family residential units; an additional 30,000 square feet of mixed use retail and restaurants; a shared use of parking, and; a 3'-9" retaining wall along the western boundary to be developed in General Plan Sub-area 5B and Specific Plan 13 Area B (i.e., on the Property);

7. on August 24, 2010, after a duly noticed and conducted public hearing, the Planning Commission of CITY adopted a motion (i) recommending that the City Council approve amendments to the General Plan and Specific Plan 13 (Zoning Text Amendment [ZTA] 10-001 referred to in Recital F.4) and (ii) approving Site Plan Review No. 10-001

with findings and conditions of approval (and subject to a condition of approval stipulating that the Site Plan Review would not become effective until the General Plan Amendment and Zoning Text Amendment were approved by the City Council);

8. on September 20, 2010, the City Council of CITY determined pursuant to CEQA (defined in Section 1 of this Agreement) that the Project EIR prepared and certified for the Original Project adequately addresses all of the environmental impacts of the Original Project, as revised by the application(s) referred to in Recitals E.4, E-5, and E-6, that none of the circumstances warranting the preparation of a Supplemental EIR or Supplement to the previously certified EIR set forth in Public Resources Code Section 21166 and State CEQA Guidelines Section 15162 are present, that minor technical changes or additions to the Project EIR are appropriate, and that, accordingly, an Addendum to the Project EIR is sufficient to comply with CEQA;

9. on September 20, 2010, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Resolution Nos. 2010-67 and 2010-68 approving, respectively, General Plan Amendment (GPA) No. 10-001 and Zoning Text Amendment (ZTA) No. 10-001;

10. on February 23, 2011, after a duly noticed and conducted public hearing, the Planning Commission of CITY approved Tentative Tract Map No. 17261 for condominium purposes with certain findings and conditions of approval;

11. on _____, 2011, following a duly noticed and conducted public hearing, the Planning Commission of CITY recommended to the City Council that it approve this Agreement; and

12. on _____, 2011, after a duly noticed and conducted public hearing, the City Council of CITY adopted its Ordinance No. ____ (hereinafter the "Authorizing Ordinance") finding and determining that this Agreement is consistent with CITY's General Plan and Specific Plan 13 (as amended by GPA No. 10-001 and ZTA No.10-001) and approving and authorizing the execution of this Agreement.

G. Notwithstanding that some of the DEVELOPER and CITY actions referred to in Recital F relate in whole or in part to real property that is outside the boundaries of the Property (i.e., the real property included in General Plan Sub-area 5A and Specific Plan 13 Area A as of the Effective Date), this Agreement is intended to apply solely and exclusively to the Property (i.e., the real property included in General Plan Sub-area 5B and Specific Plan 13 Area B as of the Effective Date).

H. In consideration of the substantial public improvements and benefits to be provided by DEVELOPER and the Project, and in order to strengthen the public planning process and reduce the economic risk of development, by this Agreement CITY intends to provide to DEVELOPER the assurance, subject to all of the terms and conditions of this Agreement, that it can proceed with Development of the Project for the Term of this Agreement pursuant to the terms and conditions of this Agreement and in accordance with the CITY's General Plan and other applicable ordinances, policies, rules, and regulations of CITY and other

governmental agencies having jurisdiction over the Property and the Project existing as of the Effective Date.

I. Pursuant to Section 65867.5 of the California Government Code, i.e., Development Agreement Legislation, the City Council has found and determined that: (i) this Agreement and the Development Plan for the Project are consistent with CITY's General Plan and the Specific Plan applicable to the Property, implement the goals and policies of CITY's General Plan, and provide balanced and diversified land uses and impose appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within the City of Huntington Beach, (ii) this Agreement is in the best interests of and not detrimental to the public health, safety, and general welfare of CITY and its residents; (iii) adopting this Agreement is consistent with CITY's General Plan and constitutes a present exercise of CITY's police power; and (iv) this Agreement is being entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Legislation.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Legislation, as it applies to CITY, pursuant to Article XI, Section 2 of the California Constitution, and in consideration of the foregoing recitals of fact, all of which are expressly incorporated into this Agreement, the mutual covenants set forth in this Agreement, and for the further consideration described in this Agreement, the Parties agree as follows:

1. Definitions.

The following words and phrases are used as defined terms throughout this Agreement and each defined term shall have the meaning set forth below:

"AGENCY" means the City of Huntington Beach Redevelopment Agency, a public body, corporate and politic.

"AHA" means that certain Affordable Housing Agreement, dated October 4, 2010, by and between DEVELOPER and AGENCY. AHA as used herein shall mean, refer to and include the AHA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the AHA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the AHA.

"Authorizing Ordinance" means Ordinance No. _____ approving this Agreement.

"Block" means no less than one hundred (100) residential units.

"CEQA" means the California Environmental Quality Act (Public Resources Code § 21000 et seq.), the State CEQA Guidelines promulgated by the Secretary for Resources thereunder (California Code of Regulations, § 15000 et seq.), and the local CEQA Guidelines approved or adopted by CITY.

“CITY” means the City of Huntington Beach, a California municipal corporation, duly organized and existing under the Constitution and laws of the State of California.

“City Council” means the duly elected and constituted city council of CITY.

“Construction Codes” means laws and/or regulations governing engineering and construction standards and specifications, including without limitation, uniform building, electrical, energy, fire, housing, mechanical, and plumbing codes that govern construction standards in all jurisdictions throughout the State of California, as the same may be modified from time to time by CITY pursuant to local ordinance, as and to the extent permitted by applicable California law.

“Default” has the meaning ascribed to that term in Section 10.1 or 10.2 of this Agreement, as applicable.

“Develop” or “Development” or “Developing” means the improvement of the Property for purposes consistent with the Development Plan, including, without limitation: subdividing, grading, the construction and installation of the Off-site Public Improvements, the construction of structures and buildings, and the installation of landscaping, all in accordance with the provisions of this Agreement, but does not include the maintenance, repair, reconstruction, or redevelopment of any building, structure, improvement, or facility after the initial construction and completion thereof.

“DEVELOPER” means BTDJM Phase II Associates, LLC, a Delaware limited liability company, and all of its assignees and successors in interest which are expressly permitted by this Agreement.

“DEVELOPER Deed of Trust” means a mortgage, deed of trust, or any other security instrument recorded against the Property or a separate legal parcel or parcels within the Property to secure DEVELOPER’s obligation to repay a loan for the acquisition of the Property (or portion thereof), Development of the Project (or applicable portion thereon), and payment of overhead, financing, marketing, maintenance, and related costs pertaining thereto, including without limitation any amendment or refinancing of a loan provided for such purpose and any permanent or take-out loan relating thereto.

“Development Agreement Legislation” means Sections 65864 through 65869.5 of the California Government Code as it exists as of the Effective Date.

“Development Exactions” means any of the following: (i) any requirement of CITY for the dedication of land (including without limitation through the encumbrance of land with an easement or use restriction in favor of a public agency, the public, or a private non-profit entity); (ii) any requirement of CITY for the construction or installation of public improvements or facilities, whether located on or off of the Property and including without limitation improvements or facilities located on land that is encumbered with an easement or use restriction in favor of a public agency, the public, or a private non-profit entity; (iii) any requirement of CITY that all or any portion of the Property be included in one or more Financing Districts and/or be subject to the payment of any special taxes, assessments, or fees, of whatever amount

and however denominated, in order to provide any such public improvements, facilities, or services in conjunction with Development or to lessen, offset, mitigate, or compensate for the impacts of Development on the environment or other public interests; and (iv) any requirement of CITY imposing any fee or charge, by whatever name called, in addition or in lieu of any of the items listed in clauses (i)-(iii), inclusive, or to mitigate the impacts of the Project on CITY or the community. As used herein, the term "Development Exactions" does not include generally applicable fees or charges imposed by CITY on developers/builders to pay or reimburse CITY for its actual and reasonable administrative and payroll costs incurred in processing and reviewing plans and permits and inspecting work performed in the Development of real property, including without limitation performing required reviews under CEQA.

"Development Plan" means the plan for developing the Project on the Property in accordance with this Agreement, the Development Plan Approvals, and the Future Development Approvals. The Future Development Approvals automatically shall become a part of the Development Plan and shall be included within the scope of DEVELOPER's vested rights provided for in this Agreement (subject to the limitations and exceptions to such vesting rights set forth herein) without the need for any amendment of this Agreement when the same are issued or approved by CITY and become final and effective. Each of the documents memorializing the Development Plan is (or will be) maintained in the official records of CITY and shall be utilized whenever required to interpret or apply this Agreement.

"Development Plan Approvals" means all of the land use, development, and building approvals of the City Council relating to the Property and the Development Plan, including the Future Development Approvals (when the same are issued or approved by CITY and become final and effective). As of the Effective Date of this Agreement, the Development Plan Approvals consist of all of the City Council's actions with respect to the Property referred to in Recital F of this Agreement and, to the extent not inconsistent with the foregoing and to the extent applicable to the Project and the Property and adopted and in effect as of the Effective Date, all other provisions of CITY's General Plan, Zoning Ordinance, Specific Plan 13 and Subdivision Ordinance, and Construction Codes. Notwithstanding any other provision set forth in this Agreement to the contrary, the term Development Plan Approvals is not intended to apply to CITY's actions that pertain solely to real property not included within the boundaries of the 10.40-acre Property described in Recital B and Exhibit "A" hereto, including without limitation the 8.2-acre Costco site within GPA Sub-area 5A and Specific Plan 13 Area A that is referred to in Recital F.5 of this Agreement.

"Effective Date" means the date the Authorizing Ordinance becomes effective.

"End User" means a buyer, assignee, or transferee of one or more individual or subdivided unit(s)/lot(s) of the Property obtaining such unit(s) or lot(s) for the purpose of occupying or using such lots or units for its own purposes and not for use in the trade or business of further development, subdivision, or sale. The term "End User" includes, but is not limited to, any homeowner's association, merchants' association, or like entity formed with respect to any portion of the Property which owns some interest in the Property, homeowners, tenants, commercial building owners, and owners of multi-family residential units.

"For-Sale Park Fee" means the park and dedication in-lieu fees required by Section

254.08 of the Huntington Beach Zoning and Subdivision Ordinance and City Council resolution in effect at the time that Developer sells a Condo Unit in accordance with Section 5.1.2.

“Future Development Approvals” means those permits and approvals that DEVELOPER must obtain from CITY after the Effective Date of this Agreement as a prerequisite to its right to develop and use the Property and the Project in accordance with this Agreement, including without limitation one or more tentative tract or parcel maps, final tract or parcel maps, condominium plans/maps, use permits, variances, grading/excavation permits, building permits, and occupancy permits.

“Off-Site Public Improvements” means repair of curb, gutter and sidewalk, and repaving of Center Street, in the areas designated in Exhibit “C”, attached hereto and made a part hereof (“Paving Work Areas”).

“On-Site Improvements” means physical infrastructure improvements or facilities that are or will be located on the Property. Certain On-Site Improvements may be specifically addressed in this Agreement.

“Party” means either CITY or DEVELOPER, as the context dictates, and “Parties” means CITY and DEVELOPER.

“Planning Commission” means the duly appointed and constituted planning commission of CITY.

“Project” means the development on the Property that is referred to in Recitals C and F and the definition of “Development Plan.” As used in this Agreement, the term “Project” expressly excludes development of the real property located in General Plan Sub-area 5A and Specific Plan 13 Area A as of the Effective Date.

“Project EIR” means that certain environmental impact report certified by the City Council of CITY prior to the Effective Date of this Agreement that is referred to in Recital F.1 above, including without limitation the adopted Mitigation Monitoring Program for the Project approved in conjunction therewith and the Addendum to the Project EIR that was considered by the City Council of CITY and is referred to in Recitals F.7 and F.8 above.

“Property” means the real property described in Recital B and Exhibit “A” attached hereto. The term “Property” does not include General Plan Sub-area 5A or Specific Plan 13 Area A, as the same were re-configured by the City Council actions referred to in Recital F.8 above.

“Rental Park Fee” means the park fees required by Section 230.20 of the Huntington Beach Zoning and Subdivision Ordinance and City Council resolution in effect at the time that Developer obtains a building permit for any Block of Rental Units in accordance with Section 5.1.1.

“Term” means the period of time that this Agreement remains in effect with respect to the Property or any portion thereof, as provided in Section 2.3.

“Transfer” has the meaning ascribed to that term in Section 2.4.1 of this Agreement.

2. General Provisions.

2.1 Binding Covenants. To the maximum extent permitted by law, the provisions of this Agreement shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Agreement shall bind and inure to the benefit of the Parties and all permitted successors in interest to the Parties hereto.

2.2 Interest of DEVELOPER. As of the date this Agreement is being executed by the Parties, DEVELOPER represents that it is the legal owner of the Property.

2.3 Term. This Agreement shall remain in effect during the Term. As used herein, the “Term” shall mean the period of time commencing upon the Effective Date and terminating at 11:59 PM on the tenth (10th) anniversary of the Effective Date; subject, however, to the following exceptions: (i) nothing in this Section 2.3 is intended to limit or restrict CITY’s right to terminate this Agreement at an earlier time pursuant to Section 10.6, if applicable; (ii) if a referendum petition challenging CITY’s approval of this Agreement or any of the Development Plan Approvals approved by CITY on or before the Effective Date is qualified for the ballot, the last day of the Term of this Agreement shall be extended by the number of days between the thirtieth (30th) day after the Effective Date and the date that the results of the referendum election are certified denying said challenge and upholding the validity and enforceability of this Agreement or said challenged Development Plan Approval(s); (iii) if a lawsuit is filed challenging the validity or enforceability of this Agreement or any of the Development Plan Approvals approved by CITY on or before the Effective Date, the last day of the Term of this Agreement shall be extended by the number of days between the thirtieth (30th) day after the Effective Date and the date that the lawsuit is dismissed with prejudice (and the time for any appeal of said dismissal has expired), a final binding written settlement agreement is executed by all parties to the litigation that upholds the validity and enforceability of this Agreement and all of the Development Plan Approvals challenged in said lawsuit, or a final non-appealable judgment is entered in said lawsuit that upholds the validity and enforceability of this Agreement and all of the Development Plan Approvals challenged in said lawsuit; (iv) DEVELOPER’s indemnity obligation set forth in the first sentence of Section 6 shall remain in effect and shall apply to any claims arising prior to the otherwise applicable expiration date or termination date of this Agreement until said indemnity obligation has been fully performed and DEVELOPER’s indemnity obligation set forth in the last sentence of Section 6 shall commence immediately upon the full execution and delivery of this Agreement, prior to the Effective Date; (v) except with respect to DEVELOPER’s rights and obligations set forth in Sections 3.1.3.3, 3.1.3.6, 4.1.4, 4.1.5, 4.1.6, and 5.1 (including all subsections), which shall survive and remain in effect for the full ten (10) year term set forth herein, as said 10-year term may be extended or shortened in accordance with clauses (i)-(iii) of this sentence, this Agreement shall terminate as to any separate legal lot(s) or parcel(s) within the Property upon which residential units are constructed upon completion of Development with respect to said lot(s) or parcel(s) pursuant to the terms of this Agreement and CITY’s issuance of all required occupancy permits or final inspections, as applicable, and acceptance of all dedications and improvements required to complete such Development; (vi) except with respect to DEVELOPER’s rights and obligations set forth in

Sections 3.1.3.3, 3.1.3.6, 4.1.4, 4.1.5, 4.1.6, and 5.1 (including all subsections), which shall survive and remain in effect for the full ten (10) year term set forth herein, as said 10-year term may be extended or shortened in accordance with clauses (i)-(iii) of this sentence, this Agreement shall terminate as to any non-residential lot(s) or parcel(s) within the Property, upon the completion of Development with respect to said lot(s) or parcel(s) pursuant to the terms of this Agreement and CITY's issuance of all required occupancy permits or final inspections, as applicable, and acceptance of all dedications and improvements required to complete such Development; and (vii) if a court of competent jurisdiction issues a final non-appealable judgment or order invalidating this Agreement or declaring this Agreement to be unenforceable the Term of this Agreement shall expire on the date said judgment or order becomes final.

The termination of this Agreement in its entirety or with respect to a particular lot(s) or parcel(s) shall not affect any right or duty of DEVELOPER arising from a source other than this Agreement.

In the event this Agreement terminates in its entirety or with respect to a particular lot(s) or parcel(s), and notwithstanding any other provision set forth herein, upon request by DEVELOPER, City, any End User, or any other permitted successor or assignee of either of them, CITY shall cooperate, at no cost to CITY, in executing in recordable form a document prepared by the requesting party that confirms the termination of this Agreement with respect to the Property or applicable portion thereof.

In the event this Agreement terminates in its entirety or with respect to a particular lot(s) or parcel(s), and notwithstanding any other provision set forth herein, DEVELOPER AGREES that it is not entitled to any damages from the City as further provided herein.

2.4 Transfers and Assignments.

2.4.1 Restrictions on DEVELOPER's Right to Assign. The qualifications and identities of the persons and entities comprising DEVELOPER are of particular concern to CITY. It is because of these qualifications and identities of the persons and entities comprising DEVELOPER that CITY is entering into this Agreement with DEVELOPER. Accordingly, prior to the termination of this Agreement with respect to any separate legal lot or parcel within the Property, DEVELOPER shall not, without the prior written approval of CITY, voluntarily or involuntarily do any of the following (collectively, a "Transfer"): (i) transfer or assign or make any total or partial conveyance of the Property; (ii) transfer or assign all or any part of DEVELOPER's rights or obligations set forth in this Agreement with respect to the Property; (iii) authorize or permit a change in the ownership, management, or control of DEVELOPER (which, for purposes of this Agreement, shall be defined to mean a transfer of either (A) more than twenty-five percent (25%) of the beneficial ownership interest in DEVELOPER as of the Effective Date or (B) in the event DEVELOPER is or becomes a limited liability company or a general or limited partnership, a transfer of the identity of the member or partner with management responsibility for DEVELOPER; or (iv) authorize or permit any voluntary or involuntary successor in interest of DEVELOPER to acquire any rights or powers under this Agreement with respect to said lot or parcel.

Notwithstanding the foregoing, the following shall not be considered to be a Transfer and

shall not require CITY approval for any purpose under this Agreement: (i) a transfer or assignment to any entity or entities in which DEVELOPER or any combination of persons or entities directly or indirectly owning a minimum of fifty-one percent (51%) of the beneficial interest in DEVELOPER as of the Effective Date directly or indirectly maintains a minimum of fifty-one percent (51%) of the ownership interest and management control; (ii) transfers of stock in a publicly traded corporation or the ownership interests in any real estate investment trust; (iii) transfers in trust for the benefit of family members; (iv) transfers occurring due to the death or mental or physical incapacity of the transferor; (v) a transfer for financing purposes to the holder of a DEVELOPER Deed of Trust; (vi) a sale, conveyance, or transfer of the applicable lot(s) or parcel(s) at foreclosure or a conveyance thereof in lieu of a foreclosure pursuant to a foreclosure thereof by the holder of any DEVELOPER Deed of Trust; and (vii) the sale, ground lease, or lease of a lot or parcel within the Property, or a building or portion of a building situated thereon, to an End User, provided that the closing date for any such sale or the commencement date for any such lease, as applicable, does not occur until after DEVELOPER completes construction of the Off-Site Public Improvements and the portion of the Project situated thereon (excluding any minor non-life safety "punch list" items and, with respect to any non-residential lots or parcels, any tenant improvements).

DEVELOPER shall deliver written notice to CITY requesting approval of any Transfer that requires CITY approval hereunder. CITY shall not unreasonably withhold, condition, or delay any such approval. In the event CITY desires that DEVELOPER submit information to CITY to assist CITY in making its decision, CITY shall notify DEVELOPER what information is so desired within ten (10) business days after receipt of DEVELOPER's request for approval and DEVELOPER shall furnish the requested information to CITY at no expense to CITY. In considering whether it will grant approval to any such Transfer, CITY shall consider such factors as (i) the financial strength and capability of the proposed assignee/transferee to perform DEVELOPER's then executory obligations hereunder and (ii) the proposed assignee/transferee's experience and expertise in the planning, financing, and development of similar projects. No Transfer, including an assignment or transfer pursuant to clause (i) of the preceding paragraph which does not require CITY approval hereunder, but excluding assignments and transfers pursuant to clauses (ii)-(vi) of the preceding paragraph, shall be effective unless and until the proposed assignee/transferee executes and delivers to CITY an agreement in a form reasonably satisfactory to the City Attorney of CITY assuming the obligations of the assignor/transferor which have been assigned. As of the effective date of any such permitted assignment or transfer, the assignor shall be released from any further liability to CITY under this Agreement and CITY agrees to cooperate with the assignor in executing any documents that may be reasonably requested by the assignor to confirm such release.

2.4.2 CITY's Fee. DEVELOPER agrees to reimburse CITY for CITY's reasonable costs and attorneys' fees incurred in connection with the processing and documentation of any requested Transfer which requires CITY's approval hereunder, in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) for each Transfer (which amount shall be adjusted by the escalation in the Consumer Price Index from the Effective Date of this Agreement to the date of the request for Transfer).

2.4.3 No Waiver. The acceptance by CITY of any payment due hereunder from

any other person shall not be deemed to be a waiver by CITY of any provision of this Agreement or to be a consent to any Transfer. Consent by CITY to one or more Transfers of this Agreement shall not operate as a waiver or estoppel to the future enforcement by CITY of its rights pursuant to the provisions of this Agreement.

2.4.4 Rights of Successors and Assigns. During the Term of this Agreement, any and all permitted successors and assignees of DEVELOPER shall have all of the same rights, benefits, and obligations of DEVELOPER under this Agreement.

3. Development Provisions.

3.1 Vesting.

3.1.1 Project. Subject to all of the terms and conditions of this Agreement, CITY covenants that DEVELOPER has and shall have the vested right to develop the Project on the Property consistent with the Development Plan and the Development Plan Approvals. Except as expressly set forth in this Agreement, including without limitation Section 3.2 hereof, DEVELOPER's vested rights set forth in this Agreement shall apply to and supersede any inconsistent or conflicting CITY action taken after the Effective Date of this Agreement, whether such action is taken by the City Council, a commission, board, agency, official, employee, or agent of CITY, or by CITY's voters by means of their reserved power of initiative. It is understood and agreed that CITY and AGENCY are separate public agencies and that CITY's covenants set forth herein are not intended to be and are not binding on AGENCY.

3.1.2 Limits on Development. The California Supreme Court held in *Pardee Construction Company v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties to address certain limits on a city's ability to condition, restrict, or regulate a development allowed a later-adopted initiative to restrict the development. This Agreement is intended to cure that deficiency by expressly addressing the timing for the Development, the vested rights afforded by this Agreement, and the scope of CITY's reserved authority described in Section 3.2 hereof. In this regard, DEVELOPER shall have the vested right to Develop the various components of the Project and at such time as DEVELOPER deems appropriate within the exercise of its subjective business judgment, subject to any restrictions on such matters as may be set forth in the Development Plan and Development Plan Approvals and the express terms and conditions set forth in this Agreement. No future amendment of any CITY law and no future adoption of any CITY law or other action that purport to limit the scope or timing of Development of the Project in a manner inconsistent with the foregoing, whether the same are adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property. In particular, but not by way of limitation of the foregoing, no numerical restriction on the number of residential building permits or on the amount of non-residential development adopted or approved by CITY after the Effective Date of this Agreement, whether by the City Council or by CITY's voters through the initiative or referendum process, shall apply to the Property or the Project during the Term of this Agreement. Notwithstanding the foregoing, nothing in this Section 3.1 shall limit or restrict CITY's reserved authority as described in Section 3.2.

3.1.3 Entitlements, Permits, and Approvals - Cooperation.

3.1.3.1 Processing. CITY agrees that it shall process, pursuant to CITY's regular procedures, complete applications for the Future Development Approvals and, if applicable, complete applications for amendments to this Agreement, to the Development Plan Approvals, and to any of the Future Development Approvals (after the same have been initially approved).

3.1.3.2 Other Permits. CITY further agrees to reasonably cooperate with DEVELOPER, at no cost to CITY, in securing any County, State, and Federal permits or authorizations which may be required in connection with Development of the Property that are consistent with the Development Plan and Development Plan Approvals; provided, that nothing in this Section 3.1.3.2 shall be deemed to require CITY's assumption of any obligations under any said permits or authorizations.

3.1.3.3 Tentative Map Extensions. Pursuant to the provisions of Section 66452.6(a) of the Government Code, any tentative subdivision map or tentative parcel map approved in connection with development of the Property shall remain in full force and effect for the greater of (i) the Term of this Agreement or (ii) the maximum term for such map permitted under Section 66452.6 of the Government Code. CITY agrees that any extension of a map authorized by this Agreement shall occur automatically upon the date any such map would otherwise expire and that DEVELOPER shall not be required to submit an application or any other request to CITY for any such extension to occur or to be valid and enforceable.

3.1.3.4 Vesting Tentative Maps. If any tentative or final subdivision or parcel map approved in connection with Development of the Property is a vesting map under the Subdivision Map Act (Government Code Section 66410 et seq.) and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to DEVELOPER to Develop the Project, then and to that extent the rights and protections afforded to DEVELOPER under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement to the maximum extent permitted by law. Except as set forth immediately above, the provisions of this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

3.1.3.5 Lot Line Adjustments. Adjustments to lot lines required for purposes beneficial to the Project shall be processed on an "administrative approval" basis only; provided, however, that nothing herein shall be deemed to allow an amendment to any specific plan boundary(ies) through an administrative approval.

3.1.3.6 Multiple Final Maps. Subject to Section 5.1 (including all subsections) hereof, CITY agrees that, pursuant to the provisions of Section 66463.1 of the Government Code, DEVELOPER may file concurrently or consecutively one or more final maps relating to the Property and any tentative tract or parcel map; provided, however that each map shall apply to no less than a Block.

3.1.3.7 Intentionally Omitted.

3.1.3.8 Processing of Future Development Approvals. City shall cooperate in good faith with DEVELOPER and process DEVELOPER's applications for the Future Development Approvals as long as such applications are consistent with the Development Plan, the Development Plan Approvals, and the terms and conditions set forth in this Agreement. At such time that a Future Development Approval is approved, that Future Development Approval shall constitute for all purposes a Development Plan Approval hereunder.

3.2 Reserved Authority.

3.2.1 Future Changes in Development Exactions; Conditions on Future Development Approvals. Notwithstanding any other provision set forth in this Agreement to the contrary, in addition to and without limiting the rights of CITY in Sections 3.2.2, 3.2.3, and 3.2.4, CITY reserves the right after the Effective Date of this Agreement to (i) change its Development Exactions applicable to the Property and the Project and to impose conditions under CEQA on any required Future Development Approvals in order to mitigate the Project's significant impacts on the environment, if any, and (ii) require payment of any fees required by any county, state or federal regulations and/or statutes that are applicable to the Property and the Project ("Non-City Fees"), subject to the following limitations:

(i) except for any Non-City Fees, no such future changes in any of CITY's Development Exactions or conditions on any required Future Development Approvals applicable to the Project shall be inconsistent with the Development Plan Approvals or this Agreement, nor shall any such future changes materially jeopardize or impair the rights of DEVELOPER thereunder;

(ii) No change in or increase to any Development Exactions applicable to the Property and no conditions placed on any Future Development Approvals shall apply to the Property except to the extent the same shall be applicable to similarly situated properties or projects on a citywide or areawide basis; and

(iii) except for any Non-City Fees, CITY shall not require the Project or the Property to pay or contribute to Development Exactions that are not in effect as of the Effective Date with respect to the affected portion of the Property.

(iv) notwithstanding anything to the contrary herein, nothing herein shall be deemed to prevent the City from raising any existing fees generally applicable to similarly situated properties or projects on a citywide or areawide basis; Developer shall be subject to such fees at the time that the fees are triggered; provided, however, that, except as to Non-City Fees, Developer shall not be subject to any new City fees that are not in existence as of the Effective Date of this Agreement.

3.2.2 Construction Codes. This Agreement shall not prevent CITY from applying to the Project new or amended Construction Codes and other new or amended codes relating to fire protection, water quality, wastewater, and other public health and safety measures that are adopted or made applicable to the Property after the Effective Date of this Agreement or local amendments to such codes, as long as the same standards and requirements set forth in any

such new or amended codes or local amendments thereto are applicable to all similarly situated developments within the City of Huntington Beach.

3.2.3 State and Federal Laws and Regulations. DEVELOPER shall comply with all applicable state and federal laws and regulations, provided that nothing in this Agreement shall be deemed to limit or restrict the right of DEVELOPER to contest or challenge the validity of any such laws or regulations or their applicability to the Property or the Project.

3.2.4 Suspension of Development in Order to Protect Health and Safety. Nothing in this Agreement shall be construed to be in derogation of CITY's police power to suspend the right of DEVELOPER to develop all or any portion of the Project in order to protect the public health and safety (e.g., in the event of the unavailability of adequate water, wastewater treatment, or storm drainage facilities). In the event that CITY determines that the public health or safety require a suspension of DEVELOPER's right to develop all or any portion of the Project, the scope of the suspension shall be limited to the extent determined by CITY to be reasonably necessary to protect the public health or safety, and the term of the suspension shall be limited to the period of time during which the public health or safety concern continues.

3.3 Amendment of Development Agreement.

3.3.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement; provided, however, that no agreements or modifications shall apply to or be binding upon the Property or separate legal parcel(s) within the Property unless the same shall have been set forth in writing and approved and executed both by CITY and the fee owner(s) of the affected parcel(s).

3.3.2 Procedure. The procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

3.3.3 Consent. Any amendment to this Agreement shall require the written consent of all affected Parties. A Party shall not be deemed to be an affected Party for purposes of this Section 3.3.3 unless the amendment to this Agreement alters, jeopardizes, or impairs the rights or obligations of said Party. No amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by the duly authorized representatives of all affected Parties.

4. Public Benefits.

4.1 Public Benefits. In consideration for the vesting rights accorded to DEVELOPER under Section 3 hereof, the Project/DEVELOPER shall provide the following extraordinary benefits to the public (the "Public Benefits"):

4.1.1 DEVELOPER shall construct/install the Off-Site Public Improvements prior to occupancy of the first residential unit within the Project; provided, however, that if the first residential unit within the Project is not occupied by the third (3rd) anniversary of the Effective Date of this Agreement, DEVELOPER may defer completion of the Off-Site Public

Improvements to a time no later than prior to occupancy of the first residential unit within the Project by filing, no later than three (3) years from the Effective Date of this Agreement (“Deadline”), a performance bond from a California licensed surety with rating not less than [rating] in the amount of 100% of the estimated construction cost of the Off-Site Public Improvements and a labor and materials bond from a California licensed surety with rating not less than [rating] in the amount of 50% of the estimated construction costs of the Off-Site Public Improvements (collectively, “the Bonds”). The Bonds shall name CITY as obligee. CITY may act on the Bond, in its sole and absolute discretion, if the Off-Site Public Improvements are not completed by the Deadline. The Off-Site Public Improvements shall be completed in accordance with the provisions of Chapter 255 of the City’s Zoning Code, as the same may be amended during the Term.

4.1.2 DEVELOPER shall deposit with the Agency, if the AHA is in effect, or the City, if the AHA is not in effect, the amount of TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO CENTS (\$250,000) (“Deposit”), which shall be used to pay for the City’s and/or any responsible party’s costs of planning, design, permits, and construction of a certain pedestrian path between the Property and the Levitz Parcel (referenced hereinafter as “the Pedestrian Path”) as indicated in the Site Plan in Exhibit “D” attached hereto and made a part hereof. The Deposit shall be due and payable during the Term of this Agreement no later than fifteen (15) days after the latest of the following dates: (i) site control necessary to allow for construction/installation and operation of the Pedestrian Path is obtained; (ii) CITY’s issuance of the first building permit for Development of the Levitz Parcel; and (iii) CITY’s delivery of written notice to DEVELOPER that the conditions to payment of the Deposit in clauses (i)-(ii), inclusive, have been satisfied and payment of the Deposit is due. Developer shall be entitled to reimbursement for any unspent portion of the Deposit if construction of the Pedestrian Path has not commenced prior to the end of the Term.

5. Miscellaneous Obligations of the Parties.

5.1 Park Fee and Future Condominium Sale Issues.

Pursuant to Sections 3.1.3.3 and 3.1.3.6 of this Agreement and otherwise applicable provisions of law, DEVELOPER has advised CITY that it intends to develop the residential units within the Project to condominium standards (“Condo Project”), record a final map for a common interest development, initially rent the residential units, and thereafter create the common interest development pursuant to California Civil Code Section 1352 (through recordation of a declaration and a condominium plan) and sell the condominium units to third party purchasers, with the timing of DEVELOPER’s creation of the common interest development and such sale program depending upon future market conditions that DEVELOPER cannot predict at this time. During the Term of this Agreement, DEVELOPER reserves the right in its sole and absolute discretion to determine when, if at all, it will create a common interest development and commence the sale of condominium units. The CITY makes no representation as to the legal effect of such proposed development and/or steps necessary to effectuate said property use and sale. DEVELOPER shall submit the declaration and condominium plan to the City for its written approval no less than ninety (90) days prior to recordation. The contents of the declaration shall conform to the requirements set forth in California Civil Code section 1353.

The CITY's written approval shall not be unreasonably withheld. The CITY's failure to provide a written approval within ninety (90) days shall be deemed as an approval. The CITY's approval rights shall survive termination of this Agreement. The requirement that DEVELOPER submit the declaration and condominium plan to the City for its written approval no less than ninety (90) days prior to recordation is also a condition to Tentative Tract Map No. 17261.

5.1.1 Payment of Rental Park Fees Upon Issuance of Building Permits. The Parties agree that, subject to Section 5.1.2, DEVELOPER shall pay to City the Rental Park Fee as a condition to issuance of any building permit for a Block or Blocks of residential dwelling units within the Condo Project which shall be initially rented upon completion of construction ("Rental Units"). The amount of the Rental Park Fee shall be based upon the number of Rental Units that are authorized by the building permit that is being issued.

5.1.2 Payment of For-Sale Project Park Fees Upon Sale of Condo Units. The Parties further agree that after DEVELOPER creates a common interest development for one or more Blocks of residential units within the Condo Project (referenced hereinafter as "Condo Units") and thereafter commences to sell one or more Condo Units within a Block or Blocks of the Condo Project, prior to and as a condition to DEVELOPER's right to sell any of the Condo Units within said Block or Blocks, and in the event that For-Sale Park Fees are greater than the Rental Park Fees paid by Developer for said Block or Blocks, DEVELOPER shall pay to CITY the difference, if any, between the applicable For-Sale Project Park Fee then in effect at the time of DEVELOPER'S first sale of one or more of the Condo Units and the Rental Project Park Fee previously paid to CITY for the corresponding Rental Units within said Block(s) (collectively, the "Owed Fees"); provided, however, that DEVELOPER shall either (i) pay all Owed Fees, if any, no later than the date that is six (6) months prior to the end of the Term, or (ii) record such documents as are legally required to rescind and terminate the creation of the common interest development for the applicable Block(s) of the Condo Project for which the Owed Fees have not been paid (collectively, the "Map for Rental Units") to reflect the conversion from Condo Units to rental units and, in such event, the Map for Rental Units shall be approved by City and recorded no later than (30) days prior to the end of the Term. Notwithstanding the foregoing, if at the time DEVELOPER pays the Rental Project Park Fee the applicable Rental Project Park Fee and the For-Sale Project Park Fee are the same, it shall be conclusively presumed that DEVELOPER's payment of the Rental Project Park Fee pursuant to Section 5.1.1 constitutes complete satisfaction of DEVELOPER's park fee obligation and no Owed Fees shall be due or payable. In the event that the For-Sale Park Fees are less than the Rental Park Fees paid by Developer at the time of the issuance of a building permit for any Block or Blocks, Developer shall not be entitled to any reimbursement of Rental Park Fees paid by Developer. Developer's payment of Owed Fees shall be determined on a Block basis, regardless of the actual number Condo Units sold within a Block. So, for example, if Developer sells only one unit within a Block, the Owed Fees would be for the entire Block.

5.1.3 Security for Owed Fees. To secure payment of the Owed Fees, if any, and any indemnity afforded under Section 5.1.5 hereof, DEVELOPER hereby grants a security interest in and to any payments required to be made to DEVELOPER under the AHA, as set forth in the Assignment of Payments attached hereto as Exhibit "E," which shall be executed concurrently with this Agreement and made a part hereof.

5.1.4 Applicable Conversion Regulations. If DEVELOPER creates a common interest development for the Condo Project and sells Condo Units, DEVELOPER shall comply with all requirements deemed "Applicable" in Exhibit "F", attached hereto and made a part hereof, including any modifications to such requirements as set forth in Exhibit "F"; provided, however, that if the initial rental and occupancy of the Rental Units within a block does not begin until after creation of the common interest development pursuant to California Civil Code Section 1352 and inclusion of such Rentals Units in said common interest development, then DEVELOPER shall only be required to comply with California Government Code Section 66459.

5.1.5 Indemnity and Payment of Fees in the Event of Successful Challenge. In addition to any other indemnities provided by DEVELOPER under this Agreement, DEVELOPER shall indemnify CITY for any fees and costs, including without limitation attorneys' fees and court costs, resulting from DEVELOPER's failure to comply with state and/or federal relocation and/or noticing requirements related to the Condo Project. In the event of a successful challenge to this Agreement, based upon deferment of payment of fees granted by CITY to DEVELOPER under Section 5.1 hereof, DEVELOPER shall pay all Owed Fees then in effect upon the recording of the final map for the Condo Project or any portion thereof.

5.1.6 No Waiver. The Parties acknowledge and agree that this paragraph is intended to interpret and apply existing law and does not constitute a waiver or reduction of DEVELOPER's fee obligation to pay park fees.

6. Indemnification.

Except to the extent of the gross negligence or willful misconduct of CITY and its agents, officers, contractors, attorneys, and employees (the "Indemnified Parties"), DEVELOPER shall indemnify, defend, and hold harmless the Indemnified Parties from and against each and every claim, action, proceeding, cost, fee, legal cost, damage, award or liability of any nature arising from damages or claims for damages which arise from the acts or omissions of DEVELOPER or any of its contractors, subcontractors, agents, employees or other persons acting on DEVELOPER's behalf in connection with the Project. The duties of DEVELOPER under this Section 6 are solely subject to and conditioned upon an Indemnified Party's written request to DEVELOPER to defend and/or indemnify such Indemnified Party. Without in any way limiting the provisions of this Section 6, the Parties hereto agree that this Section 6 shall be interpreted in accordance with the provisions of California Civil Code Section 2778 in effect as of the Effective Date. DEVELOPER further agrees, as a condition of approval of this Agreement, to indemnify, defend and hold harmless, at DEVELOPER's expense, the Indemnified Parties from and against any claim, action, proceeding, cost, fee, legal cost, damage, award, or liability of any nature arising from claim, action, or proceeding initiated by a third party to attack, review, set aside, void, or annul the approval of this Agreement or any of the Development Plan Approvals or to determine the legality or validity of any provision hereof or obligation contained herein.

7. Relationship of Parties.

The contractual relationship between CITY and DEVELOPER is such that DEVELOPER is an independent contractor and not an agent or employee of CITY. CITY and DEVELOPER

hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with the Property shall be construed as making CITY and DEVELOPER joint venturers or partners.

8. Amendment or Cancellation of Agreement.

Without limiting Section 10, this Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties in the manner provided for in Government Code Section 65868. No amendment or modification of this Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each Party hereto. This provision shall not limit any Party's remedies as provided by Section 10.

9. Periodic Review of Compliance with Agreement.

9.1 Periodic Review. CITY and DEVELOPER shall review this Agreement at least once every 12-month period from the date this Agreement is executed. CITY shall notify DEVELOPER in writing of the date for review at least thirty (30) days prior thereto. Such periodic review shall be conducted in accordance with Government Code Section 65865.1.

9.2 Good Faith Compliance. During each periodic review, DEVELOPER shall be required to demonstrate good faith compliance with the terms of this Agreement. DEVELOPER agrees to furnish such reasonable evidence of good faith compliance as CITY, in the exercise of its reasonable discretion, may require. 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.

9.3 Failure to Conduct Annual Review. Provided that such failure is not through any fault of DEVELOPER, the failure of CITY to conduct the annual review shall not be a Default by DEVELOPER, nor shall any such failure alter, suspend, or terminate either of the Parties' other rights and obligations hereunder. Further, DEVELOPER shall not be entitled to any remedy for a failure by CITY to conduct this annual review.

9.4 Initiation of Review by City Council. In addition to the annual review, the City Council may at any time initiate a review of this Agreement by giving written notice to DEVELOPER. Within thirty (30) days following receipt of such notice, DEVELOPER shall submit evidence to the City Council of DEVELOPER good faith compliance with this Agreement and such review and determination shall proceed in the same manner as is provided in Sections 9.1 and 9.2 and the Development Agreement Legislation for the annual review. The City Council shall initiate its review pursuant to this Section 9.4 only if it has probable cause to believe CITY's general health or safety is at risk as a result of specific acts or failures to act by DEVELOPER.

9.5 Administration of Agreement. Any final decision by the CITY's staff concerning the interpretation and administration of this Agreement and Development of the Property in accordance herewith may be appealed by DEVELOPER to the City Council, provided that any such appeal shall be filed with the City Clerk within ten (10) days DEVELOPER receives

written notice that the staff decision is final. The City Council shall render, at a noticed public hearing, its decision to affirm, reverse, or modify the staff decision within thirty (30) days after the appeal is so filed.

10. Events of Default: Remedies and Termination.

10.1 Default. Subject to Section 10.2, failure by any Party to perform any term or provision of this Agreement required to be performed by such Party shall constitute an event of default ("Default"). For purposes of this Agreement, a Party claiming another Party is in Default shall be referred to as the "Complaining Party" and the Party alleged to be in default shall be referred to as the "Party in Default." A Complaining Party shall not exercise any of its remedies as the result of such Default unless it first gives notice to the Party in Default as provided in Section 10.2 and the Party in Default fails to cure such Default within the applicable cure period. The parties acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Developer for any breach or default thereof. As such, the parties agree that in no event shall Developer be entitled to recover damages against City for breach or default of this Development Agreement.

10.2 Procedure Regarding Defaults.

10.2.1 Notice Required. The Complaining Party shall give written notice of Default to the Party in Default, specifying the Default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any Default nor shall it change the time of Default.

10.3 Right to Cure. The Party in Default shall diligently endeavor to cure, correct, or remedy the matter complained of, provided such cure, correction, or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter).

10.4 Delay Not a Waiver. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

10.5 Time to Cure. If a Default occurs, prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such Default. If the Default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged Default is such that it cannot practicably be cured within such 30 day period, the cure shall be deemed to have occurred within such 30 day period if (i) the cure is commenced at the earliest practicable date following receipt of the notice; (ii) the cure is diligently prosecuted to completion at all times thereafter; (iii) at the earliest practicable date (in no event later than 30 days after the curing Party's receipt of the notice), the curing Party provides written notice to the

other Party that the cure cannot practicably be completed within such 30 day period; and (iv) the cure is completed at the earliest practicable date. In no event shall the Complaining Party be precluded from exercising remedies if a Default is not cured within one hundred eighty (180) days after the first notice of Default is given.

10.6 Termination of Agreement. Subject to the foregoing, if a Party in Default fails to cure a Default in accordance with the foregoing, the Complaining Party, at its option, may terminate this Agreement, and/or institute legal proceedings pursuant to this Agreement.

10.7 Default During Annual Review. Without limitation, evidence of a Default may arise in the course of the regularly scheduled annual review described in Section 8 of this Agreement.

10.8 Institution of Legal Actions. Subject to the provisions of Sections 10.1 and 10.2 relating to notices of Default and times to cure and the provisions of Sections 10.9 and 10.10 limiting certain remedies of the Party in Default, in addition to any other rights or remedies it may have, either Party to this Agreement may institute legal action to cure, correct, or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement except that DEVELOPER shall have no damages remedies against CITY.

10.9 Limitation on Damages Remedy Against Developer. Notwithstanding any other provision set forth in this Agreement to the contrary, in no event shall CITY be entitled to recover as an element of its damages for a DEVELOPER Default any amount to compensate it for "lost" anticipated tax revenues of any kind (whether property taxes, property tax increment revenues, sales taxes, business license fees, or otherwise) resulting from DEVELOPER's delay in completion of the Project or its decision not to proceed to Develop or all a portion of the Project.

10.10 No Damages Relief Against City. Developer acknowledges that the City would not have entered into this Agreement if the City were to be liable in damages under or with respect to this Agreement or the application thereof. Consequently, and except for the payment of attorneys' fees and other litigation expenses, in accordance with Section 13, the City shall not be liable in damages to Developer or to any successor in interest to Developer, and Developer covenants on behalf of itself and its successors in interest not to sue for or claim any damages:

- (i) for any non-monetary Default of, or which arises out of, this Agreement;
- (ii) for the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or
- (iii) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

10.11 Limitation on Cross-Defaults. In the event the legal parcels comprising the

Property are from time to time owned by more than one person or legal entity (each a “DEVELOPER” hereunder), each DEVELOPER shall be jointly and severally liable to CITY for completion of the obligations set forth under 4.1.4, 4.1.5, 4.1.6, and 5.1 (including all subsections), hereof. Otherwise, however, a DEVELOPER shall be obligated to CITY to perform only those obligations set forth in this Agreement that pertain to the separate legal parcel(s) owned by that particular DEVELOPER and in the event another DEVELOPER is in Default hereunder with respect to another separate legal parcel(s) comprising another part of the Property CITY’s rights and remedies hereunder (including without limitation the remedy to terminate this Agreement and/or seek legal or equitable relief) shall be limited to the DEVELOPER and the portion of the Property as to which such Default exists.

10.12 Estoppel Certificates. Either Party or the holder or prospective holder of a mortgage or deed of trust secured by an interest in any portion of the Property (a “holder”) may at any time during the Term of this Agreement deliver written notice to the other Party requesting an estoppel certificate (the “Estoppel Certificate”) stating to the extent such is the case:

- (i) the Agreement is in full force and effect and is a binding obligation of the Parties;
- (ii) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments;
- (iii) no Default exists hereunder, nor would any Default exist with the passage of time or the giving of notice, or both, or, if a Default or failure does exist, the nature thereof and the actions required to be taken by the non-performing Party to cure the Default or prevent the same from occurring; and
- (iv) any other matter affecting the status of the rights and obligations of the Parties hereunder as to which the requesting Party or the holder may reasonably inquire.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party or holder within thirty (30) days after receipt of the request, provided that such request is consistent with this Section 10.11. The City Manager or any person designated by the City Manager may sign Estoppel Certificates on behalf of CITY. The managing member, managing general partner, President, or other authorized representative of DEVELOPER may sign on behalf of any DEVELOPER. An Estoppel Certificate may be relied on by the holder and by Development Transferees.

The requesting Party or party benefitting from the mortgage or deed of trust shall reimburse the other Party for all reasonable and direct costs and fees incurred by such Party with respect to the preparation and delivery of the Estoppel Certificate.

11. Waivers, Delays, and Extensions of Performance Deadlines.

11.1 No Waiver. Failure by a Party to insist upon the strict performance of any of the

provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party hereto, shall not constitute a waiver of such Party's right to demand strict compliance by the other Party in the future for the same, similar, or any different Default.

11.2 Third Parties. The Parties' respective performance obligations hereunder shall not be delayed or excused because of any act or failure to act by a third person, except as provided in Section 11.3.

11.3 Force Majeure. Notwithstanding any other provision set forth in this Agreement to the contrary, DEVELOPER shall not be deemed to be in Default to the extent that DEVELOPER's failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond DEVELOPER's control, unreasonable delays in the issuance of any of the Future Development Approvals or other governmental permits or approvals required for the Project, or third-party litigation, or any other causes that are without the fault and beyond the reasonable control of DEVELOPER.

11.4 Notice of Delay. DEVELOPER shall give notice to CITY of any delay which DEVELOPER believes to have occurred as a result of the occurrence of any of the events described in Section 11.3. In no event, however, shall notice of a delay of any length be given later than thirty days after the end of the delay or thirty days before the end of the Term, whichever comes first.

12. Notices.

All notices required or provided for under this Agreement shall be in writing and delivered in person or sent either by certified mail, postage prepaid, return receipt requested, or by overnight delivery by a reputable independent delivery service (such as Federal Express) that provides a receipt documenting the time and circumstances of delivery. Notices required to be given to CITY shall be addressed as follows:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attention: City Manager and City Attorney

with a copy to:

Kane, Ballmer & Berkman
515 S. Figueroa Street, Suite 1850
Los Angeles, CA 90071
Attention: Susan Cola

Notices required to be given to DEVELOPER shall be addressed as follows:

BTDJM Phase II Associates, LLC
c/o DJM Capital Partners, Inc.

922 Laguna Street
Santa Barbara, CA 93101
Attention: Lindsay Parton

with a copy to:

Rutan & Tucker, LLP
611 Anton Blvd., 14th Floor
Costa Mesa, CA 92626
Attention: Jeffrey M. Oderman, Esq.

Any notice given as required herein shall be deemed given only if in writing and delivered or sent in accordance with the foregoing procedures (with mailed delivery confirmed by written receipt). A Party may change its address for notices by giving notice in writing to the other Party as required herein and thereafter notices shall be addressed and transmitted to the new address.

CITY shall additionally provide written notice of any Default by DEVELOPER to the holder of any mortgage or deed of trust secured by all or any interest in the Property which (i) delivers a written notice to CITY requesting such notices and (ii) provides CITY with such holder's address (es) for notice purposes.

13. Intentionally Omitted.

14. Recording.

This Agreement and any amendment or cancellation hereto shall be recorded against the Property at no cost to CITY, in the Official Records of Orange County by the City Clerk within the period required by Section 65868.5 of the Government Code. Notwithstanding the foregoing, in no event shall any failure or delay in recording this Agreement and any amendment to this Agreement limit or restrict the validity or enforceability of this Agreement.

15. Effect of Agreement on Title.

15.1 Effect on Title. The Parties agree that this Agreement shall not continue as an encumbrance against any portion of the Property as to which this Agreement has terminated.

15.2 Encumbrance Permitted. The Parties hereto agree that this Agreement shall not prevent or limit the right of DEVELOPER, at its sole discretion, to encumber the Property or any portion thereof or any improvement thereon by a DEVELOPER Deed of Trust; provided, however, that any such DEVELOPER Deed of Trust shall be subordinate to this Agreement, and provided further that if any portion of the Property to be dedicated or transferred to CITY pursuant to this Agreement shall be subject to any DEVELOPER Deed of Trust, such DEVELOPER Deed of Trust shall be released or reconveyed prior to the dedication or transfer.

15.3 Rights of Lenders. The holder of any DEVELOPER Deed of Trust shall be entitled to the following rights and privileges:

(a) Any holder of a DEVELOPER Deed of Trust which has submitted a request in writing to CITY in the manner specified herein for giving notices shall be entitled to receive written notification from CITY of any Default of DEVELOPER in the performance of DEVELOPER's obligations under this Agreement.

(b) If CITY timely receives a request from the holder of a DEVELOPER Deed of Trust requesting a copy of any notice of Default given to DEVELOPER under the term of this Agreement, CITY shall provide a copy of that notice to the holder within ten (10) days of sending the notice of default to DEVELOPER. The holder shall have the right, but not the obligation, to cure the Default during the remaining cure period allowed DEVELOPER under this Agreement. If the Default is of a type that can only be remedied by the holder of the DEVELOPER Deed of Trust after obtaining possession of the Property (or applicable portion thereof as to which the holder's security interest relates) and if such holder commences the process to obtain possession within ninety (90) days after its receipt of the notice of Default, proceeds with commercially reasonable diligence to obtain possession, and cures the Default within the same period of time after obtaining possession that DEVELOPER would have had to complete such cure after its receipt of CITY's initial notice of Default to DEVELOPER, then the holder's cure of DEVELOPER's Default shall be deemed to constitute a timely cure hereunder.

(c) The holder of any DEVELOPER Deed of Trust who comes into possession of the Property or any part thereof pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property or part thereof subject to the terms of this Agreement; provided in no event shall any such holder or its successors or assigns be entitled to a building permit or occupancy certificate until all fees and other monetary obligations due under this Agreement have been paid to CITY and all otherwise applicable conditions to such permit or certificate have been satisfied.

16. Severability of Terms.

If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby if the tribunal finds that the invalidity was not a material part of consideration for the affected Party or Parties. The covenants contained herein are mutual covenants. The covenants contained

herein constitute conditions to the concurrent or subsequent performance by each Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

17. Subsequent Amendment to Authorizing Statute.

This Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation in effect as of the Effective Date. Accordingly, to the extent that subsequent amendments to the Development Agreement Legislation would affect the provisions of this Agreement, such amendments shall not be applicable to this Agreement unless necessary for this Agreement to be enforceable or required by law or unless this Agreement is modified pursuant to the provisions set forth in this Agreement and Government Code Section 65868 as in effect on the Effective Date.

18. Rules of Construction and Miscellaneous Terms.

18.1 Interpretation and Governing Law. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the internal laws of the State of California, with regard to conflict of laws rules. The Parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of CITY, and in particular, CITY's police powers. In this regard, the Parties understand and agree that this Agreement is a current exercise of CITY's police powers and except as expressly provided for herein this Agreement shall not be deemed to prevent the future exercise by CITY of its lawful governmental powers over the Property.

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

18.3 Gender. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

18.4 Time of Essence. Time is of the essence regarding each provision of this Agreement as to which time is an element.

18.5 Recitals. All Recitals set forth herein are incorporated in this Agreement as though fully set forth herein.

18.6 Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties with respect to the subject matter hereof, and this Agreement supersedes all previous negotiations, discussions, and agreements between and among the Parties with respect thereto.

19. Not for Benefit of Third Parties.

This Agreement and all provisions hereof are for the exclusive benefit of CITY and DEVELOPER (including without limitation authorized assignees or transferees of BTDJM Phase II Associates LLC) and shall not be construed to benefit or be enforceable by any third party, excepting only to the extent of the limited rights provided to the holders of one or more DEVELOPER Deeds of Trust in all or a portion of the Property.

20. Relationship to AHA.

DEVELOPER acknowledges and agrees that (i) nothing in this Agreement is intended or shall be interpreted to supersede, limit, modify, reduce or restrict DEVELOPER's obligations set forth in the AHA and any related housing agreements entered into by and between DEVELOPER and AGENCY with respect to the affordable housing units referred to therein.

21. Cooperation in Event of Legal Challenge.

In the event of any legal action instituted by a third party (not a Party to this Agreement) or any governmental entity or official (other than CITY or an official of CITY) challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending said action; provided, however, DEVELOPER shall indemnify, defend (by counsel reasonably acceptable to CITY), and hold harmless CITY from all litigation expenses, including reasonable attorneys' fees and costs, arising out of any legal action instituted by such third party (not a Party to this Agreement), or other governmental entity or official (other than CITY or an official of CITY) challenging any of the Development Plan Approvals. CITY shall promptly notify DEVELOPER of any such action and CITY shall cooperate in the defense thereof.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year dated below.

“CITY”

CITY OF HUNTINGTON BEACH,
a municipal corporation

Dated: _____, 2010

By: _____

Name:
Title: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

“DEVELOPER”

BTDJM PHASE II ASSOCIATES LLC,
a Delaware limited liability company

Dated: _____, 2010

By: _____

Name:
Title:

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____,
Notary Public, personally appeared _____

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____,
Notary Public, personally appeared _____

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[SEAL]

EXHIBIT A

ATTACHMENT NO. 2.39

**LEGAL DESCRIPTION
PARCEL 3**

In the City of Huntington Beach, County of Orange, State of California, being Parcel 3 of Lot Line Adjustment No. 10-006, recorded _____ as Instrument No. _____ of Official Records, in the office of the County Recorder of said county.



Rory S. Williams, L.S. No. 6654
Date: 5/20/11

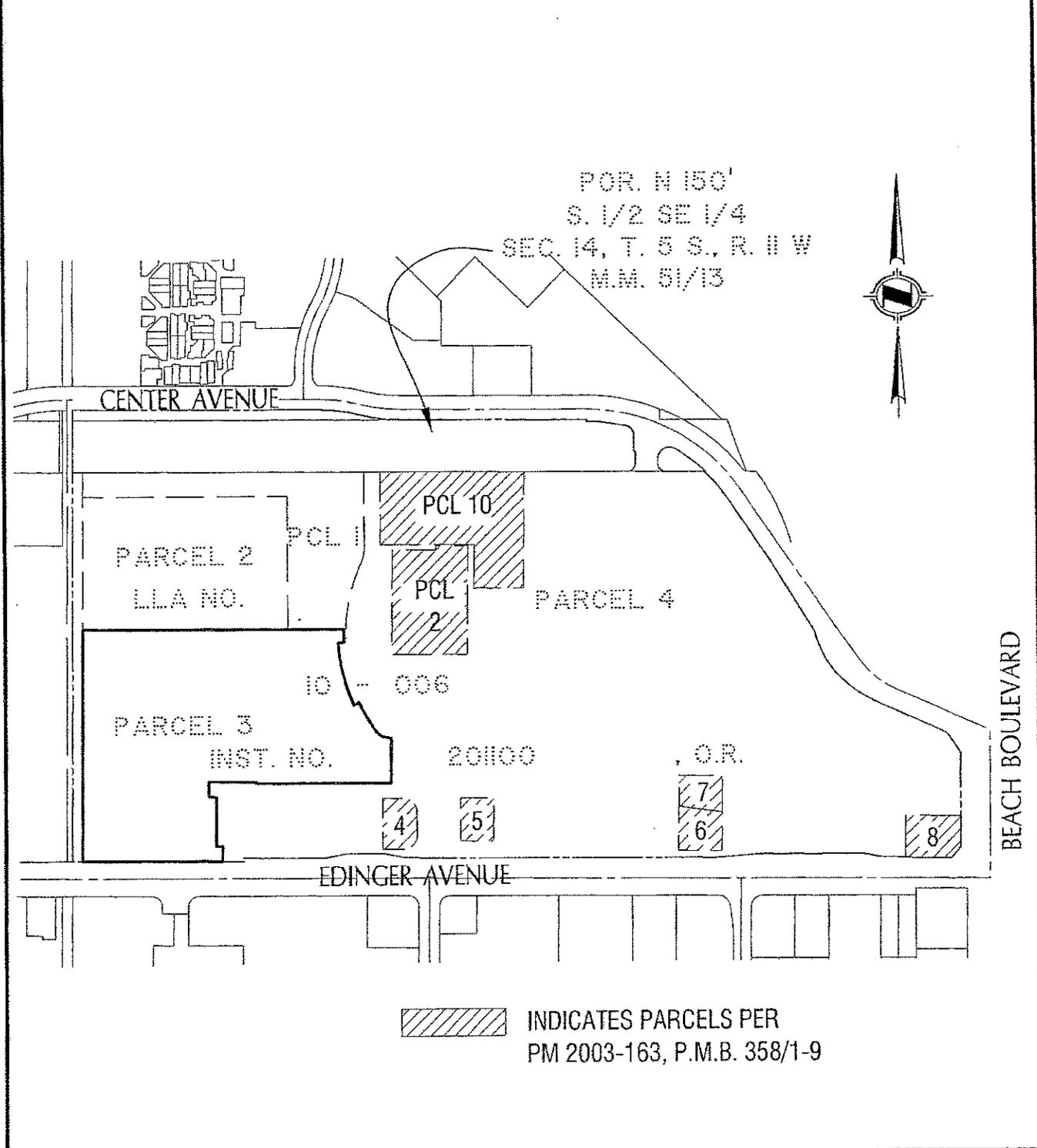


May 20, 2011
WO No. 3337-1X
Page 1 of 2
H&A Legal No. 7711
By: R. Williams
Checked By: L. Gaston

ATTACHMENT NO. 2.40

PARCEL 3

Sketch to Accompany Legal Description



POR. N 150'
S. 1/2 SE 1/4
SEC. 14, T. 5 S., R. 11 W
M.M. 51/13

 INDICATES PARCELS PER
PM 2003-163, P.M.B. 358/1-9

 HUNSAKER & ASSOCIATES IRVINE, INC. PLANNING ■ ENGINEERING ■ SURVEYING Three Hughes • Irvine, CA 92618 • PH: (949) 583-1010 • FX: (949) 583-0759		PARCEL 3 CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA	
DATE: 05-20-11	REV. DATE: -	DWG. By: R. WILLIAMS	CHK'd By: L. GASTON
FILE: I:\BELLA TERRA\LD\7711\SHT01.dwg	SCALE: 1" = 400'	W.O. 3337-1X	
		H&A LEGAL No. 7711	SHEET 2 OF 2

ATTACHMENT NO. 2.41

EXHIBIT B

ATTACHMENT NO. 2.42

SITE SUMMARY

UNIT MIX	PLAN	TYPE	S.F.	# OF UNITS
	S1	STUDIO	609	12
	S2	STUDIO	650	32
	S3	STUDIO	592	10
	S4	STUDIO	643	8
	A1	1BR/1BA	702	46
	A2	1BR/1BA	733	32
	A3	1BR/1BA	762	38
	A4	1BR/1BA	762	53
	A5	1BR/1BA	799	23
	A6	1BR/1BA	822	5
	B1	2BR/2BA	1,012	32
	B2	2BR/2BA	1,127	12
	B3	2BR/2BA	1,146	91
	C1	3BR/2BA	1,365	8
	C2	3BR/2BA	1,410	22
	A1	1BR/1BA EXTENDED	762	6
	A3+L	1BR+LOFT/1BA	1,187	10
	A5M+D	1BR+DEN/1BA	1,022 avg.	12
	B3+L	2BR+LOFT/1BA	1,365	12
	B3M	2BR/2BA EXTENDED	1,251	3
TOTAL				467

RETAIL SUMMARY

BLDG. A	17,500 SF Retail
BLDG. B	6,000 SF Retail
BLDG. C	6,000 SF Retail

PARKING SUMMARY

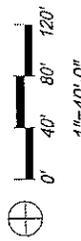
STUDIO/1BR (287)	1 STALL/UNIT	287
2BR (150)	1.5 STALLS/UNIT	225
3BR (30)	2.0 STALLS/UNIT	60
GUEST	0.2/UNIT	94
		666

COMMON OPEN SPACE

REQUIRED: 90 SF/UNIT X 467 UNITS = 42,030 SF
 PROVIDED: 43,062 SF COURTYARD SPACE
 +6,505 SF 15% OF OVERALL REQUIREMENT
 49,568 SF

PRIVATE OPEN SPACE

REQUIRED: 60 SF/UNIT
 PROVIDED: MIN. 60SF/UNIT
 (SEE UNIT PLANS)



01.31.2011

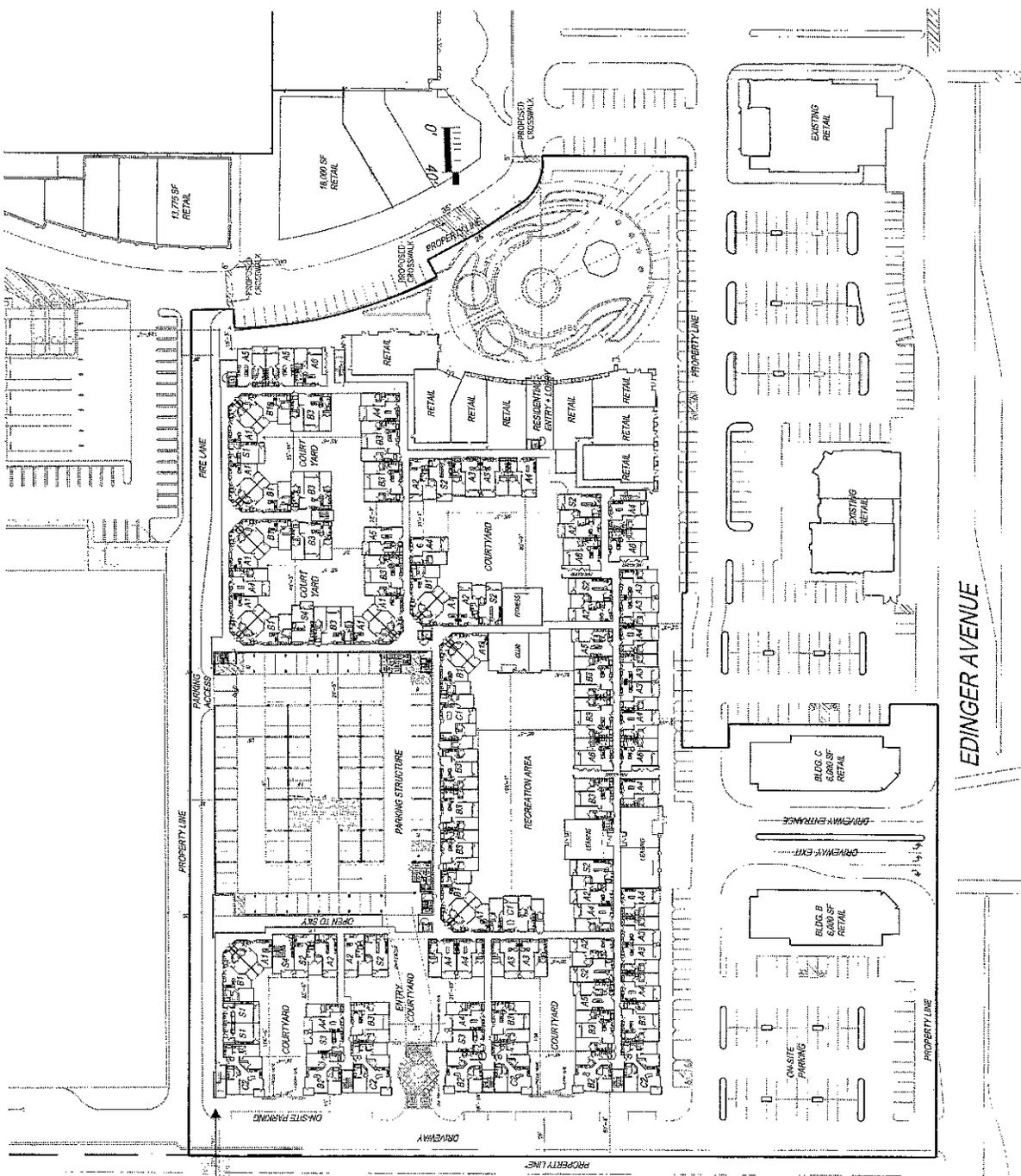
CONCEPTUAL SITE PLAN - A1.1

Z/ISSN REV. 09.15.2011 01/31/2011

DIN DEVELOPMENT
 EXPANSION, INC.
 922 LAGUNA ST., SANTA BARBARA, CA 93101



ARCHITECTS ORANGE
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 558-9960



LEGAL DESCRIPTION: PARCEL 1 OF PARCEL MAP 86-200, PMB 255/40-45, RECORDS OF ORANGE COUNTY, CITY OF HUNTINGTON BEACH, ORANGE COUNTY/CALIFORNIA

*PROPERTY LINE SHOWN REFLECTS THE SUBDIVISION BOUNDARY. THE SITE IS ALSO SUBJECT TO A ZONE BOUNDARY.

THE VILLAGE AT BELLA TERRA HUNTINGTON BEACH, CA

ATTACHMENT NO. 2.43

EXHIBIT C

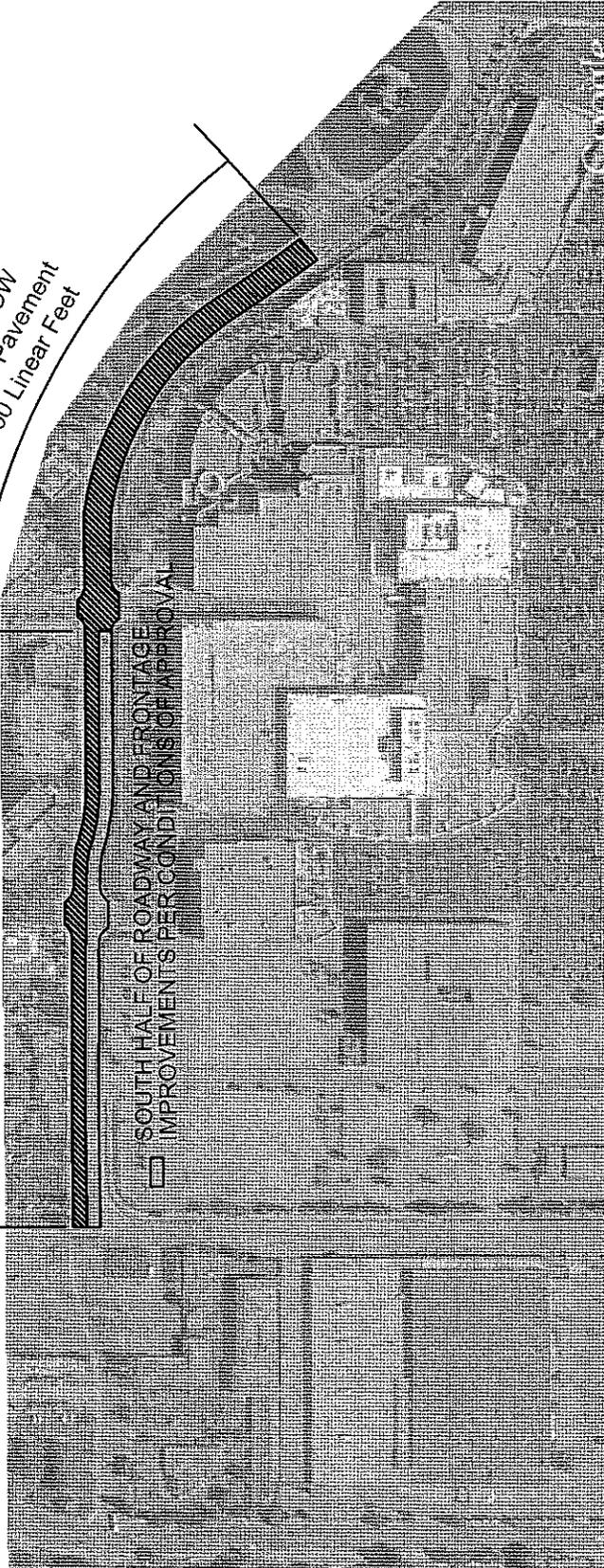
ATTACHMENT NO. 2.44

Exhibit 'C'

R&R North Half
70' Wide ROW
31' Wide Pavement
1,300 Linear Feet

R&R Full Width
70' Wide ROW
54' Wide Pavement
1,000 Linear Feet

SOUTH HALF OF ROADWAY AND FRONTAGE
IMPROVEMENTS PER CONDITIONS OF APPROVAL



PROPOSED CENTER AVE STREET IMPROVEMENTS

EXHIBIT D

ATTACHMENT NO. 2.46

04.08.11

SITE SUMMARY

UNIT MIX	TYPE	S.F.	# OF UNITS
FLAN	STUDIO	509	12
S1	STUDIO	590	32
S2	STUDIO	590	32
S3	STUDIO	592	10
S4	STUDIO	643	6
A1	1BR/1BA	702	46
A2	1BR/1BA	733	32
A3	1BR/1BA	782	38
A4	1BR/1BA	782	53
A5	1BR/1BA	799	23
A6	1BR/1BA	822	5
B1	2BR/2BA	1,012	32
B2	2BR/2BA	1,127	12
B3	2BR/2BA	1,146	91
C1	3BR/2BA	1,365	8
C2	3BR/2BA	1,410	22
A1	1BR/1BA EXTENDED	762	6
A3+L	1BR+LOFT/1BA	1,167	10
A5M+O	1BR+DEN/1BA	1,022	12
B3+L	2BR+LOFT/1BA	1,365	12
B3M	2BR/2BA EXTENDED	1,251	3
TOTAL			487

RETAIL SUMMARY

BLDG A	17,500 SF Retail
BLDG B	6,000 SF Retail
BLDG C	6,000 SF Retail

PARKING SUMMARY

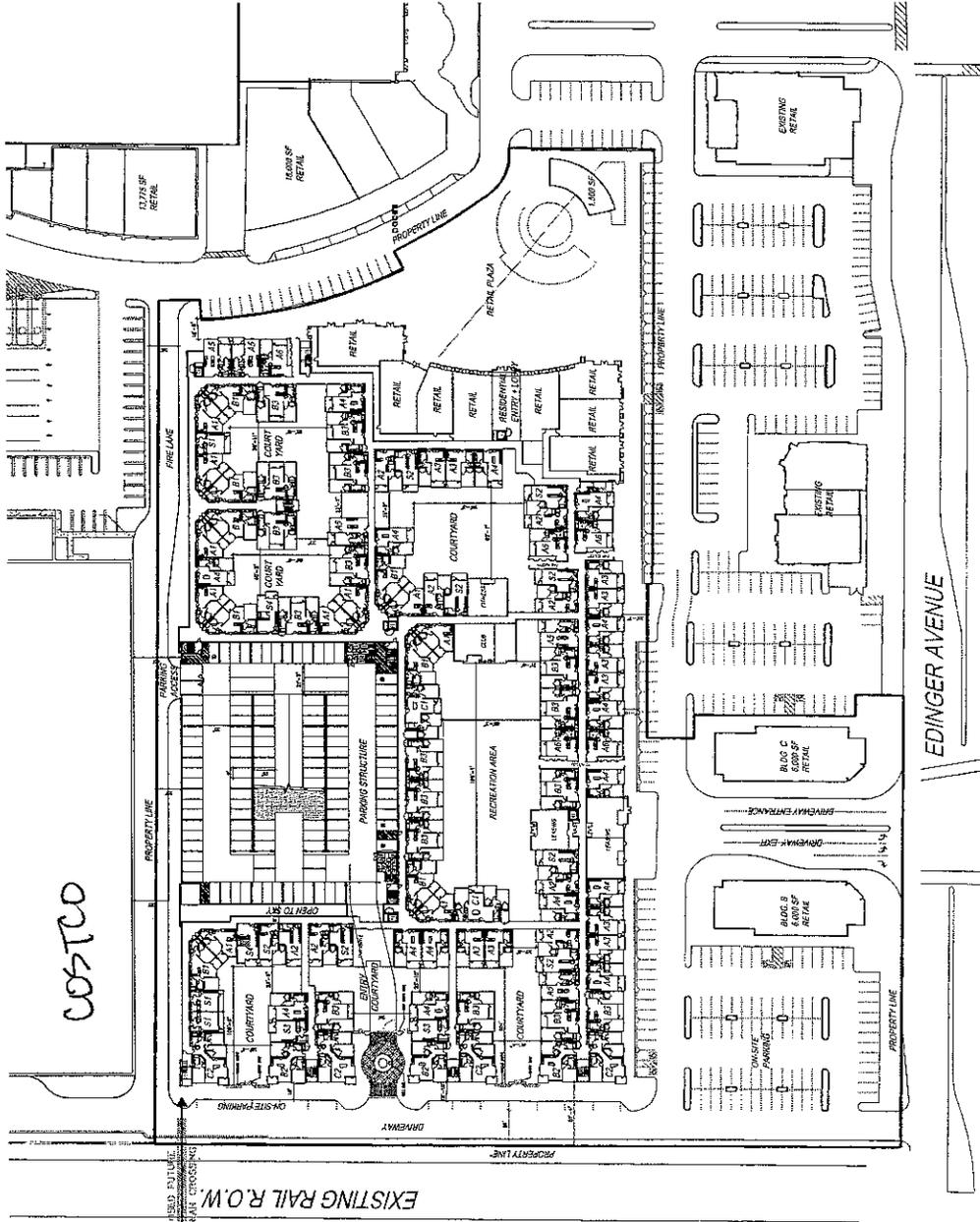
STUDIO/1BR (287)	1 STALL/UNIT	287
2BR (160)	1.5 STALLS/UNIT	255
3BR (30)	2.0 STALLS/UNIT	60
GUEST	0.2/UNIT	94
TOTAL		696

COMMON OPEN SPACE

REQUIRED: 90 SF/UNIT X 487 UNITS = 42,030 SF
 PROVIDED: 43,032 SF COURTYARD SPACE
 +5,305 SF 15% OF OVERALL REQUIREMENT
 49,338 SF

PRIVATE OPEN SPACE

REQUIRED: 80 SF/UNIT
 PROVIDED: MIN. 60 SF/UNIT
 (SEE UNIT PLANS)



LEGAL DESCRIPTION: PARCEL 1 OF PARCEL MAP 86-200, PMB 25540-45, RECORDS OF ORANGE COUNTY, CITY OF HUNTINGTON BEACH, ORANGE COUNTY, CALIFORNIA

*PROPERTY LINE SHOWN REFLECTS THE SUBDIVISION BOUNDARY. THE SITE IS ALSO SUBJECT TO A ZONE BOUNDARY.

THE VILLAGE AT BELLA TERRA HUNTINGTON BEACH, CA



1"=40'-0"

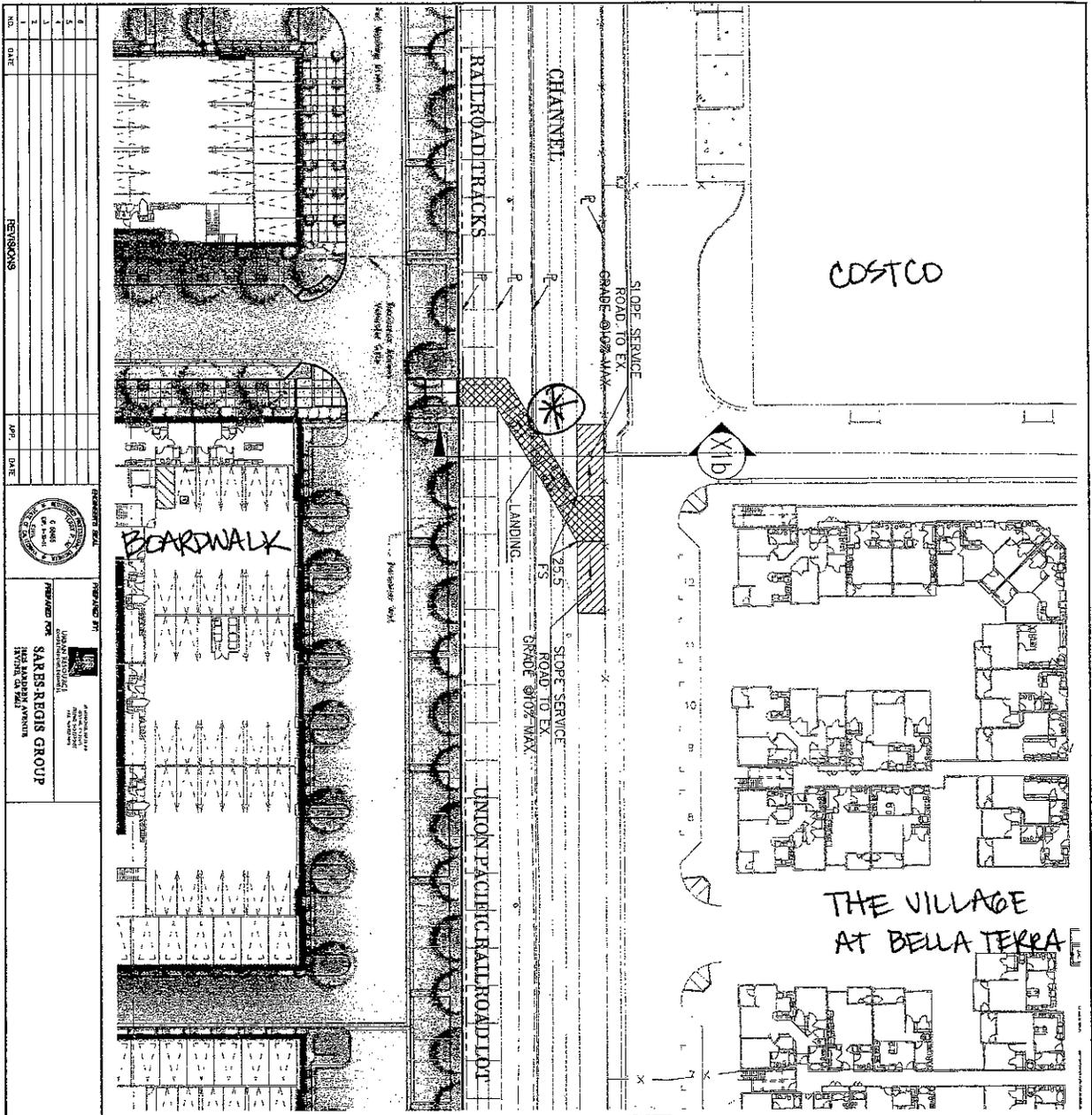
CONCEPTUAL SITE PLAN - A.1.1

28.6.2011

DIM DEVELOPMENT PARTNERS, INC.
 922 LAGUNA ST., SANTA BARBARA, CA 93101



ARCHITECTS ORANGE
 144 NORTH ORANGE ST., ORANGE, CALIFORNIA 92666 (714) 529-5980



NO.	DATE	REVISIONS
1		
2		
3		
4		
5		
6		

PREPARED BY: SARES-REGIS GROUP
 1800 RAYBURN AVENUE
 IRVINE, CA 92614

BOARDWALK APARTMENTS
 PEDESTRIAN CROSSING
 CITY OF HUNTINGTON BEACH
 PUBLIC WORKS DEPARTMENT

SHEET 2 OF 2

* Angle of bridge modified
 see Public Works
 sketch dated
 03.30.2011

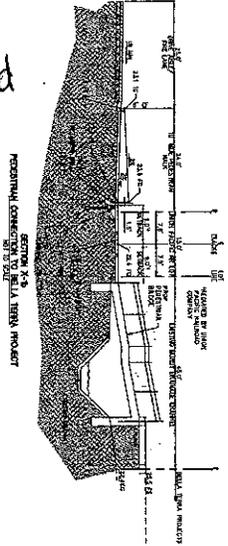
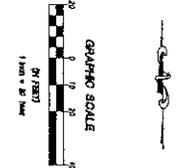


EXHIBIT E

ATTACHMENT NO. 2.49

OFFICIAL BUSINESS
Document entitled to free recording
per Government Code Section 6103

Recording Requested By and
When Recorded Mail to:

City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648
Attention: Development Director

Space above this line for Recorder's use only

ASSIGNMENT OF PAYMENTS

by

BTDJM PHASE II ASSOCIATES, LLC, a Delaware limited liability company
("DEVELOPER"),

as Assignor

to

CITY OF HUNTINGTON BEACH, a municipal corporation, organized and existing under the
laws of the State of California ("CITY"),

as Assignee

Assignment of Payments

This Assignment of Payments is made as of the _____ day of _____, 2010, by BTDJM PHASE II ASSOCIATES, LLC, a Delaware limited liability company ("DEVELOPER" as "Assignor"), whose address is 922 Laguna Street, Santa Barbara, California 93101, to CITY OF HUNTINGTON BEACH, a municipal corporation, organized and existing under the laws of the State of California ("CITY" as "Assignee"), whose address is 2000 Main Street, Huntington Beach, CA 92648.

Article I Definitions.

As used in this Assignment, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Agency" means the City of Huntington Beach Redevelopment Agency, a public body, corporate and politic.

"Assignee" means Assignee and its successors and assigns.

"Assignment" means this Assignment of Payments, as it may be modified from time to time in accordance with the terms hereof.

"City" means the City of Huntington Beach.

"AHA" means that certain Affordable Housing Agreement, dated _____, 2010, by and between DEVELOPER and GENCY. AHA as used herein shall mean, refer to and include the AHA, as well as any riders, exhibits, addenda, implementation agreements, amendments and attachments thereto (which are hereby incorporated herein by this reference) or other documents expressly incorporated by reference in the AHA. Any capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the AHA.

"Default" means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Assignment.

"Development Agreement" means that certain DEVELOPMENT AGREEMENT (VILLAGE AT BELLA TERRA PROJECT) entered into by and between the Assignee and Assignor, and executed concurrently herewith, pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Legislation") and Article XI, Section 2, of the California Constitution.

"Expenses" means all fees, charges, costs and expenses of any nature whatsoever incurred after an Event of Default in exercising or enforcing any rights, powers and remedies provided in this Assignment, including attorneys' fees and court costs.

“Land” means the real property described in Exhibit A attached hereto and made a part hereof.

“Laws” means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other governmental authority having jurisdiction as may be in effect from time to time.

“Lien” means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

“Notice” means a notice, request, consent, demand or other communication given in accordance with the provisions of Section 12 of the Development Agreement.

“Obligations” means all present and future debts, obligations and liabilities of Assignor to the Assignee arising pursuant to, and/or on account of, Section 5.1 of the Development Agreement. “Payments” means any payments owed by Agency to Developer under Attachment No. 7 (Schedule of Feasibility Gap Payments) of the AHA.

“Person” means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any governmental authority or any other entity.

“State” means the State of California.

Article II Granting Clauses; Condition of Grant.

Section 2.1 Absolute Assignment of Payments.

In order to secure the prompt payment and performance of the Obligations, Assignor absolutely and unconditionally assigns the Payments to Assignee. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Assignor to Assignee of all of Assignor’s right, title and interest in and to the Payments. So long as no Event of Default shall exist, however, and so long as Assignor is not in default in the performance of any Obligations, Assignor shall have a license (which license shall terminate automatically upon the occurrence of an Event of Default or a default by Assignor under the Development Agreement) to collect, but not prior to accrual, Payments.

Section 2.2 Termination of Assignment.

Upon satisfaction of all Obligations, the absolute assignments set forth in Section 2.1 above shall automatically terminate and become null and void and Assignee shall execute such documents as Assignor may reasonably require to evidence such termination.

Article III
Representations and Warranties.

Assignor hereby represents and warrants to Assignee that it has all requisite power and authority to execute and deliver this Assignment and perform its obligations hereunder and that this Assignment has been duly authorized, executed and delivered.

Article IV
Affirmative Covenants.

Section 4.1 Assignment of Payments.

Assignor shall not enter into any assignment or pledge of Payments with any Persons without the prior written consent of Assignee.

Article V
Events of Default.

The occurrence or happening, from time to time, of any one or more of the events described in Section 10 of the Development Agreement shall constitute an Event of Default hereunder.

Article VI
Rights and Remedies.

Upon the happening of any Event of Default, Assignee shall have the right, in addition to any other rights or remedies available to Assignee under applicable Laws, to exercise any one or more of the following rights, powers or remedies:

Section 6.1 Collection of Payments.

Upon the City's determination that an occurrence of an Event of Default has taken place or likely thereto, the license granted to Assignor to collect the Payments shall be automatically and immediately revoked, without further notice to or demand upon Assignor. Assignor hereby irrevocably authorizes and directs the Agency to pay all Payments to Assignee instead of to Assignor, upon receipt of written notice from Assignee, without the necessity of any inquiry of Assignor and without the necessity of determining the actual existence or non-existence of an Event of Default. Assignor hereby appoints Assignee as Assignor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the City's determination of an occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Assignor's name or in Assignee's name: (a) to receive electronic transfers, and/or endorse all checks and other instruments received in payment of the Payments and to deposit the same in any account selected by Assignee; (b) to give receipts and releases in relation thereto; and (c) to institute, prosecute and/or settle actions for the recovery of the Payments from Agency. Any Payments received shall be applied first to pay all Expenses and next in reduction of the other Obligations. Assignor

shall pay, on demand, to Assignee, the amount of any deficiency between (i) the Payments received by Assignee, and (ii) all Expenses incurred.

Section 6.2 Application of Proceeds.

Unless otherwise provided by applicable Laws, all proceeds received by Assignee from the exercise of any of its rights and remedies hereunder shall be applied first to pay all Expenses and next in reduction of the other Obligations, in such manner and order as Assignee may elect.

Article VII
Miscellaneous.

Section 7.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Assignee as provided for in this Assignment, or in the Development Agreement shall be cumulative and concurrent, and the exercise or beginning of the exercise by Assignee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Assignee of any or all such other rights, powers or remedies.

Section 7.2 No Waiver by Assignee.

No course of dealing or conduct by or among Assignee and Assignor and/or the Agency shall be effective to amend, modify or change any provisions of this Assignment, AHA or the Development Agreement, or amend, modify, or change any rights or obligations of the respective parties thereunder. No failure or delay by Assignee or Agency to insist upon the strict performance of any term, covenant or agreement of this Assignment, AHA or the Development Agreement, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Assignee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, Assignee shall not be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Assignee may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Assignment, without in any way impairing or affecting the Lien created hereby or the priority of this Assignment over any subordinate Lien. Assignee may resort to the security or collateral described in this Assignment in such order and manner as Assignee may elect in its sole discretion.

Section 7.3 Successors and Assigns.

All of the grants, covenants, terms, provisions and conditions of this Assignment shall run with the Land and shall apply to and bind the successors and assigns of Assignor (including any permitted subsequent owner of the Property), and inure to the benefit of Assignee, its successors and assigns.

Section 7.4 Amendments.

This Assignment may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 7.5 Severability.

In the event any one or more of the provisions of this Assignment shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event the provisions of the AHA or Development Agreement operates or would prospectively operate to invalidate this Assignment, then and in either of those events, at the option of Assignee, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of this Assignment shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 7.6 Notices.

All Notices required or which any party desires to give hereunder shall be in writing and shall be given in the manner, and to the addresses specified in Section 12 of the Development Agreement.

Section 7.7 Governing Law.

This Assignment shall be construed, governed and enforced in accordance with the Laws in effect from time to time in the State (without regard to its conflicts of law principles).

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of the day and year first written above.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year dated below.

[SIGNATURES ON FOLLOWING PAGE]

ATTACHMENT NO. 2.55

Dated: _____, 2011

“ASSIGNEE”

CITY OF HUNTINGTON BEACH,
a municipal corporation

By: _____

Name: _____

Title: Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney *MV-10-17-11*

Dated: _____, 2011

“ASSIGNOR”

BTDJM PHASE II ASSOCIATES LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA

COUNTY OF ORANGE

On _____, 2010, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

My Commission Expires:

Exhibit A

Legal Description

In the City of Huntington Beach, County of Orange, State of California, being those portions of Parcel 1 of Parcel Map No. 86-200, as shown on a map filed in Book 255, Pages 40 through 45, inclusive, of Parcel Maps and Parcel 9 of Parcel Map No. 2003-163, as shown on a map filed in Book 358, Pages 1 through 9, inclusive, of Parcel Maps, both in the office of the County Recorder of said county, described as follows:

Beginning at the intersection of the west line of said Parcel 1 and a line parallel with and 9.00 feet northerly from the south line of said Parcel 1; thence along said west line, North 00°16' 24" East 663.70 feet; thence South 89°32'20" East 757.12 feet to a non-tangent curve concave northeasterly having a radius of 472.00 feet, a radial line to the beginning of said curve bears North 87°57'14" West; thence southerly 321.30 feet along said curve through a central angle of 39°00'07" to a compound curve concave northeasterly having a radius of 46.00 feet; thence southeasterly 42.13 feet along said curve through a central angle of 52°28'34"; thence South 89°25'55" East 5.63 feet; thence South 0°27'54" West 125.83 feet; thence North 89°32'06" West 488.99 feet; thence South 0°27'54" West 220.01 feet to said parallel line; thence along said parallel line, North 89°32'06" West 404.95 feet to the Point of Beginning.

EXHIBIT F

ATTACHMENT NO. 2.59

EXHIBIT "F"
HB RESIDENTIAL CONDOMINIUM CONVERSION STANDARDS

A summary of all the requirements listed under Chapter 235 Residential Condominium Conversion standards is listed below with a staff recommendation for inclusion into the proposed development agreement. Also, a list of the Subdivision Map Act sections is included at the end.

ISSUE AREA	HBZSO SECTION	REQUIREMENT	APPLICABILITY	COMMENTS
Affordable	235.04	Conversion of lower or moderate rental housing developed with federal, state, or local assistance is prohibited	Not Applicable	
Physical elements report	235.06.A.1-5	Reports describing all physical elements of the project and recommended improvements.	Not Applicable	
CC&Rs	235.06.B	Rules to be applied on behalf of any owners.	Applicable	
Conveyance of units	235.06.B	"	Applicable	
Assignment of parking	235.06.B	"	Applicable	
Assignment of storage	235.06.B	"	Applicable	
Common maintenance	235.06.B	"	Applicable	
Fees assessment	235.06.B	"	Applicable	
Maintenance of utility lines and services	235.06.B	"	Applicable	
Conversion plan	235.06.C	Specific info regarding demographic and financial characteristics of the project.	Not Applicable	
Date of construction	235.06.C.1	"	Not Applicable	
Description of major repair	235.06.C.1	"	Not Applicable	
Use of project	235.06.C.2	"	Not Applicable	
Ownership of land	235.06.C.3	"	Not Applicable	
Sq ft of each unit	235.06.C.4	"	Not Applicable	

Rental rate history	235.06 C.5.	"	"	Not Applicable
Monthly vacancy rate	235.06 C.6.	"	"	Not Applicable
List of tenants, etc.	235.06 C.7.	Complete list of number of tenants and type of tenant households to be submitted.	"	Applicable
Tenants over 62	235.06 C.7.a.	"	"	Applicable
Family size	235.06 C.7.b.	"	"	Applicable
Disabled persons	235.06 C.7.c.	"	"	Applicable
Length of residence	235.06 C.7.d.	"	"	Applicable
Low and moderate and if receiving federal or state subsidies	235.06 C.7.e.	"	"	Applicable
Proposed price/unit	235.06 C.8.	Financial information to be provided.	"	Applicable
Proposed HOA budget	235.06 C.9.	"	"	Applicable
Type of financing and incentives	235.06 C.10.	"	"	Applicable
Method to assure affordability	235.06 C.11.	"	"	Applicable
Signed notices from each tenant of notice to convert	235.06 C.12.	Certified letter	"	Applicable
Vacancy rate analysis -- 12 months, citywide	235.06 D.	Specific info regarding Citywide vacancy rates	"	Not Applicable
Acceptance of reports by PC	235.06 E.	"	"	Not Applicable
Min. construction standards	235.08	Construction standards	"	Not Applicable
Comply with health and safety violations	235.08 A.	"	"	Not Applicable
				Project will meet min. standards upon construction

ATTACHMENT NO. 2.61

Draft stops in attics	235.08 A.1.	"	"	Not Applicable	"	"	
Electrical branch circuits	235.08 A.2.	"	"	Not Applicable	"	"	
Smoke detectors	235.08 A.3.	"	"	Not Applicable	"	"	
GFCI protection	235.08 A.4.	"	"	Not Applicable	"	"	
Comply with Zoning	235.08 B.	"	"	Not Applicable	"	"	
Parking	235.08 B.	"	"	Not Applicable	"	"	
Landscaping	235.08 B.	"	"	Not Applicable	"	"	
Refurbish and Restore	235.08 C.	"	"	Not Applicable	"	"	
Affordable Housing	235.08 D.	Increases affordability to 25% (from 15% now) for low and mod. with min. 20% to low for 60 years. Max sales price shall not exceed 2.5 x median income. Max rent shall keep units w/in low-moderate.					
Tenant Benefits	235.10			Not Applicable		Tenants will sign a disclosure statement when they rent	
Notices of Intent	235.10 A.	Pursuant to government code					Not Applicable
Public Hearings	235.10 B.1.	Notify of hearing					Not Applicable
Final Map	235.10 B.2.	Notify within 10 days of final map approval plus notify of DRE application					Covered under state law
Tenant Discounts	235.10 C.	First right of refusal to purchase the occupied unit at a discount of price offered to general public					Applicable as modified Applicable only for 1 st right of refusal for 90 days; tenant discount will not apply
Vacation of Units	235.10 D.	At least 120 days to vacate or until expiration of tenant's lease; tenant may terminate lease with 30 days notice					Increase to 180 days to vacate to match Gov't Code Section 66427.1 F. and specify that time period is triggered upon recordation of Final Map
No Increase in Rent	235.10 E.	No increase 2 months prior or two years after filing application					No rent shall increase within 180 days time to vacate as stipulated in 235.10 D. above

Lifetime Lease		All Non-Purchasing tenants over 62 years or disabled shall receive lifetime lease; with no rent increase for 2 years after filing	Not Applicable	No lifetime lease required but no rent increases as described above
Moving Expenses	235.10 F.	\$\$ = to 3x monthly rent for relocation if relocating after City approval of conversion	Not Applicable	Tenants will sign a disclosure statement when they rent
Relocation Assistance	235.10 G.	Provide assistance for 4 months after TTM approval.	Not Applicable	
		Non-purchasing tenants receive 12 months relocation time if 1) low or mod income, or 2) minor children in school	Applicable as modified	Min. 12 month relocation time shall be provided upon recordation of Final Map
Discrimination	235.10 H.	No discrimination based on race, color, creed, national origin, sex, or age in CC&Rs	Applicable	
Effect on low-mod income housing	235.12	PC to consider health and safety, whether units serves low or mod income, need and demand for increases in lower cost home ownership	Not applicable	Affordable housing restrictions will continue to apply to for sale units
Bonus for low-mod income housing	235.14	City to consider density bonus or other incentives when applicant agrees to provide 33% as low or mod income units	Not Applicable	
Findings	235.16	PC findings for approval	Not Applicable	
	235.16 A.	SMA and other code requirements met	Not Applicable	Compliance with Subdivision Map Act, General Plan, and zoning will be required upon issuance of building permit

235.16 B.	Consistent with General Plan and specific plan	Not Applicable	"
235.16 C.	Conversion will conform to code	Not Applicable	"
235.16 D.	High standard of appearance, quality, safety	Not Applicable	"
235.16 E.	Will not displace significant percentage of low-mod, disabled, or senior tenants;	Not Applicable	Tenants will sign a disclosure statement when they rent
235.16 F.	Will not delete significant number of low-mod rental units	Not Applicable	Affordable housing restrictions will apply to for sale units
235.16 G.	Units have been rentals for at least 5 years	Not Applicable	
235.16 H.	Applicant has not engaged in coercive, retaliatory action regarding tenants	Not Applicable	
	Project is not located in coastal zone or if is in CZ then it is not a visitor serving use (hotel)	Not Applicable	

SUBDIVISION MAP ACT

The following Subdivision Map Act sections shall be applicable, modified slightly since TTM has already been approved, and included in the DA:

ISSUE AREA	SMA SECTION	REQUIREMENT	STAFF RECOMMENDATION	COMMENTS
Notifications	66427.1	1) Each tenant and each person applying for rental to receive all notices. A) Written notice of intent to convert 60 days prior to filing TTM.	Applicable with modifications	B)-F) applicable

- B) 10 days written notice of application to DRE that tenant's right to purchase begins with issuance of final DRE report.
- C) Written notification of final public report from DRE within 5 days of DRE action.
- D) Written notification within 10 days after FM approval.
- E) 180 days notice of intent to convert prior to termination of tenancy
- F) Exclusive right to purchase for 90 days

Also, if rental agreement in different language then notices shall be in same language.

Notification; Moving Expenses; First Month's Rent

66452.17
Min. 60 days prior to filing TTM give notice to each person applying for rental of unit of plans to convert. Failure to give notice requires subdivider to pay each prospective tenant:

Applicable with modifications

TTM already filed so tenants will sign a disclosure statement when they rent. Compensation only required if owner fails to give notice.

- 1) Actual moving expenses up to \$1,100
- 2) 1st month rent on new unit up to \$1,100

City can require greater compensation by ordinance or charter.

Notification
66452.18
Min. 60 days prior to filing TTM give notice to existing tenants of plans to convert.

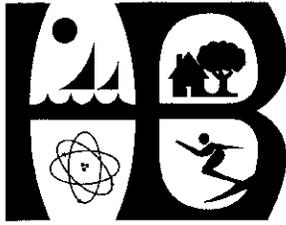
Not applicable

Tenants will sign disclosure statement when they rent

Notification of intent to convert 66452.19 Written notice of intent to convert 180 days prior to termination of tenancy and include:
Date of TTM approval, 180 days to vacate. Applicable

Notification after DRE report and Right to Purchase 66452.20 Written notice required within 5 days of DRE report giving tenants 90 days to purchase. Applicable

Notification after FM and rental; Assistance Required if Fail to Notify 66459 If FM approved and owner rents out units, prior to sale, shall give notice: 1) unit is approved for sale and your lease may be terminated; 2) min. 90 days prior to sale further notice will be provided; 3) will have 1st right to purchase for 90 days.
Unit shall not be referred to as "apartment" in lease docs.
If owner fails to give notice then must provide moving expenses and 1st month rent (same as 66452.17 above) Applicable



Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

NOTICE OF ACTION

August 25, 2010

SUBJECT: SITE PLAN REVIEW NO. 10-001 (THE VILLAGE AT BELLA TERRA – COSTCO)

APPLICANT: Becky Sullivan, BTDJM Phase II Associates, LLC, 922 Laguna Street, Santa Barbara, CA 93101

PROPERTY OWNER: Becky Sullivan, BTDJM Phase II Associates, LLC, 922 Laguna Street, Santa Barbara, CA 93101

Southern California Edison, Dino J. LaBanca, 2131 Walnut Grove Avenue, G03, 2nd Floor, Rosemead, CA 91770

LOCATION: 7601 Edinger Avenue (between Edinger Avenue and Center Avenue, west of existing Bella Terra development and east of Union Pacific Railroad)

DATE OF ACTION: April 24, 2010

On Tuesday, April 24, 2010, the Huntington Beach Planning Commission took action on your application, and your application was **conditionally approved**. Attached to this letter are the revised findings and revised 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 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 Zoning and Subdivision Ordinance requirements.

Under the provisions of the Bella Terra Specific Plan (SP. 13), the action taken by the Planning Commission becomes final at the expiration of the appeal period. As specified in SP 13, 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 Two Thousand, Seven Hundred Four Dollars (\$2,704.00). In your case, the last day for filing an appeal and paying the filing fee is September 3, 2010 at 5:00 PM.

Page Two
Site Plan Review No. 10-001
Notice of Action
August 25, 29010

Provisions of the Huntington Beach Zoning and Subdivision Ordinance 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 Jane James, the project planner, at jjames@surfcity-hb.org or (714) 536-5596 or the Planning and Building Department Zoning Counter at (714) 536-5271.

Sincerely,

Scott Hess, Secretary
Planning Commission

By:



Herb Fauland, Planning Manager

SH:HF:JJ:jr

Attachment:

1. Findings and Conditions of Approval – SPR No. 10-001
2. Public Works Conditions of Approval – SPR No. 10-001
3. Revised Mitigation Monitoring and Reporting Program – Addendum to EIR No. 07-003

c: Honorable Mayor and City Council
Chair and Planning Commission
Fred A. Wilson, City Administrator
Scott Hess, Director of Planning and Building
Bill Reardon, Division Chief/Fire Marshal
Mike Vigliotta, Deputy City Attorney III
Debbie DeBow, Principal Civil Engineer
Gerald Caraig, Permit-Plan Check Manager
Jane James, Senior Planner
Property Owner
Project File

ATTACHMENT NO. 3.2

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

SITE PLAN REVIEW NO. 10-001

FINDINGS FOR APPROVAL – SITE PLAN REVIEW NO. 10-001:

1. Site Plan Review No. 10-001 for the establishment, maintenance and operation of the 154,113 sq ft Costco with tire sales/installation center, outside food service, and 16-pump gas station; 467 multi-family residential units; an additional 30,000 sq ft of mixed use retail and restaurants; a shared use of parking, and; a 3'-9" retaining wall along the western boundary, 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 regional commercial use and the mixed-use residential and retail development, with the recommended conditions of approval, incorporates architectural and design principles to help ensure maximum compatibility of design with the existing Bella Terra, promote pedestrian-friendly entries and uses, and promote the use of high quality exterior materials. Structures on the project site would vary in heights in order to provide variety to the roofline and to reduce overall building massing. Development standards and design guidelines in Specific Plan No. 13 ensure that form, height, and development convey an overall high level of quality. Landscaping and paving patterns will be compatible with the adjacent Bella Terra development and the project will contain gathering places for public activity.
2. The site plan review will be compatible with surrounding uses because circulation patterns effectively move passenger vehicles and delivery trucks around the site; adequate parking for the proposed development will be included; the conditions will ensure monitoring of future parking conditions; a high level of quality architecture is proposed with the mixed use portion of the building and will be incorporated, via conditions of approval, on the warehouse and sales outlet; the overall project will incorporate sustainable building practices to maximize energy efficiency, and the Costco building will be equivalent to LEED certified.
3. The proposed 154,113 sq ft Costco with tire sales/installation center, outside food service, and 16-pump gas station; 467 multi-family residential units; an additional 30,000 sq ft of mixed use retail and restaurants; a shared use of parking, and; a 3'-9" retaining wall along the western boundary will comply with the provisions of Specific Plan No. 13 and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance. The proposed project meets code requirements in terms of building height, setbacks, landscaping, common and private open space, and with conditions imposed may include reciprocal access for pedestrian and bicycle connections from the westerly adjacent property to the Bella Terra development.
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 CR-F2-sp-mu (F9) (Regional Commercial) for Area A and CR-F2-sp-mu (F14) (Regional Commercial) for Area B on the

subject property. In addition, it is consistent with the following goals and policies of the General Plan:

A. Circulation Element

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.

B. Growth Management Element

Policy GM 3.1.8: Promote traffic reduction strategies including alternate travel modes, alternate work hours, and a decrease of vehicle trips throughout the city.

C. Housing Element

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.

Goal H 5: Provide equal housing opportunity.

D. 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.

Policy LU 10.1.15: Require that regional commercial developments be designed to convey the visual sense of an integrated center by consideration of the following principles:

- a. Use of multiple building volumes and masses and highly articulated facades to reduce the visual sense of large scale "boxes";
- b. Use of roofline or height variations to visually differentiate the building massing and incorporation of recesses and setbacks on any elevation above the second floor above grade;
- c. Siting of a portion of the buildings in proximity to their primary street frontage to convey a visual relationship to the street and sidewalks;
- d. Design of the exterior periphery of the structures to contain shops, restaurants, display windows, and other elements that provide visual interest to parking areas and the street elevation;
- e. Inclusion of a "public square" as a gathering place of public activity in multi-tenant regional centers;
- f. Clear identification of building entrances;
- g. Use of landscape that provides a three-dimensional character;
- h. Encourage the provision of public art;
- i. Inclusion of consistent and well-designed signage integrated with the building's architectural character, including pedestrian-oriented signage; and
- j. Design of parking structures to be visually integrated with the commercial buildings.

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.

E. Noise Element

Policy N 1.3.10: Require that mechanical equipment, such as air conditioning units or pool equipment, comply with the City's Noise Ordinance and Zoning and Subdivision Ordinance.

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.

F. Urban Design Element

Goal UD 1.1: Enhance the visual image of the City of Huntington Beach

G. Utilities Element

Objective U 5.1: Ensure that adequate natural gas, telecommunication, and electrical systems are provided.

The proposed amendments to the General Plan land use designation and Specific Plan 13 are a mechanism to achieve the goals of economic growth and sustainable development. The amendments would allow for a regional commercial business along with a mixed use, high density development thereby 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 large scale commercial and entertainment uses, employment centers, a transit hub, and a college. Because of its location and unique features, the site would be appropriate in accommodating an infill development that includes a regional commercial draw and a mixed-use project that is higher in density and 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 benefits of mixed use developments include creating better places to live, work, and play, reducing dependence on the automobile, and lessening pollution and environmental degradation.

The proposed project would be a regional commercial warehouse and sales outlet along with a mixed-use high-density development that offers a wide range of retail and housing opportunities and options, accommodating different age groups, income levels, and household types. The project is required to meet the City and California State Redevelopment Law for affordable housing obligations providing the equivalent of 15 percent of the units as affordable.

In addition, the mixed-use component provides a concentration of living, shopping, entertainment, and employment opportunities within walking distance of the existing Bella Terra lifestyle development. 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 errands.

The proposed project, with the recommended conditions of approval, incorporates architectural and design principles to help ensure maximum compatibility of design with the existing Bella Terra, promote pedestrian-friendly entries and uses, and promote the use of high quality exterior materials. Structures on the project site would vary in heights in order to provide variety to the roofline and to reduce overall building massing. Development standards and design guidelines in Specific Plan No. 13 ensure that form, height, and treatment of future development convey an overall high level of quality. Maximum setbacks are established so that buildings are sited close to streets, the project will contain gathering places for public activity, and public amenities are required. Therefore, development at the project site would not conflict with the above General Plan goals and policies.

CONDITIONS OF APPROVAL – SITE PLAN REVIEW NO. 10-001:

1. The **Costco** site plan, floor plans, and elevations received and dated August 9, 2010 shall be the conceptually approved design with the following modifications:
 - a. An at-grade pedestrian connection with ADA access, shall be provided on-site along the west property line to connect to a future at grade bridge across the railroad tracks and flood control channel to the property to the west. The access point shall be a minimum of 10 feet wide and be located along the west property line at a point between 225 feet and 655 feet north of Edinger Avenue. The precise location of the connection shall be determined by the Director of Planning and Building, in collaboration with the applicant and the owner/developer of the property to the west, at the time the property to the west is approved for development.
 - b. The 40 foot wide area between the south side of Costco and the residential parking garage shall be designed to accommodate a minimum 26 foot wide fire lane as well as an architecturally pleasing pedestrian walkway. The pedestrian walkway shall include enhanced landscaping, decorative hardscape, lighting, benches and other appropriate amenities to encourage pedestrian and bicycle activity. The required fire lane should be constructed of a driveable surface, subject to the approval of the Fire Chief.
 - c. Revise the proposed circulation and traffic pattern in the drive aisle immediately north of the existing parking structure so that it remains a two-way drive aisle. Accordingly, the proposed angled parking should be revised to angle toward westbound traffic or be revised to 90 degree stalls with proper back-up space. Revise the proposed sign in this parking area to read “Costco Member Parking During Store Hours.”
 - d. Amend parking stalls to meet minimum required overall dimensions to achieve no stall less than 17 feet in length with maximum two foot overhang into adjacent planter and 26 foot back-up space for all 90 degree stalls. In any place where the stall overhangs into a required planter, the planter width shall provide the minimum width required (three feet planter for parking areas less than 100 feet long or five feet planter for parking areas greater than 100 feet long), without relying on the vehicle overhang area.
 - e. Provide a mechanism, such as removable bollards, to close the gap along the east side of the proposed gas station. The proposed design shall be decorative in nature and consistent with colors and materials established at Bella Terra mall.
 - f. The main store entrance shall be embellished to improve it as the main focal point. Embellishments may consist of raising the roof height, increasing architectural projections, and providing richer accent materials instead of split face and smooth face concrete masonry units for wall materials. Other embellishments proposed by the applicant’s architect may also be acceptable (**DRB Recommendation**).
 - g. Additional building projections shall be incorporated on the north elevation. The projections shall also include a return to the roof area for a three-dimensional appearance instead of a flat plane (**DRB Recommendation**).

- h. The proposed texture clad metal panels shall include a smooth stucco finish instead of a rough stucco finish **(DRB Recommendation)**.
 - i. The split face and smooth face concrete masonry units as the predominant exterior building material on the north and east elevations shall be revised to include or be accented with other exterior building materials, such as, brick, wood, sandstone, other native stone, smooth stucco, smooth plaster, tile, or other decorative material as listed in the Specific Plan **(DRB Recommendation)**.
 - j. Enhanced paving materials, lighting, signage, and landscaping pattern and materials at driveway entrances and pedestrian connections should match existing color and materials found at Bella Terra Phase I. Enhanced paving materials at the store entrance shall be consistent with color, pattern, and design elements found at Bella Terra Phase I but may be stamped and scored concrete in lieu of pavers **(DRB Recommendation)**.
 - k. The design of the metal pipe shopping cart corrals within the parking lot should be improved for architectural consistency with materials and colors found at Bella Terra Phase I **(DRB Recommendation)**.
 - l. The design of the shopping cart corrals within the parking structure shall be designed so carts do not roll out and appropriate signage directing patrons to the cart return area is provided.
 - m. The width of all parking spaces adjacent to a wall more than forty-two (42) inches in height shall be increased by three feet for a total clear parking stall width of twelve feet.
 - n. Revise the site plan to amend the note located south of the Costco building from "Proposed parking structure with apartments above," to "Proposed parking structure."
 - o. A four foot high decorative wrought iron fence with shepherd hooks or other design elements to discourage climbing over, shall be installed on top of the three foot, nine inch high retaining wall along the west property line, subject to approval of the Police Department and Planning and Building Department.
2. **The Village at Bella Terra Mixed Use Retail and Residential** site plan, floor plans, and elevations received and dated June 17, 2010 shall be the conceptually approved design with the following modifications:
- a. An at-grade pedestrian connection with ADA access, shall be provided on-site along the west property line to connect to a future at grade bridge across the railroad tracks and flood control channel to the property to the west. The access point shall be a minimum of 10 feet wide and be located along the west property line at a point between 225 feet and 655 feet north of Edinger Avenue. The precise location of the connection shall be determined by the Director of Planning and Building, in collaboration with the applicant and the owner/developer of the property to the west, at the time the property to the west is approved for development.
 - b. The 40 foot wide area between the south side of Costco and the residential parking garage shall be designed to accommodate a minimum 26 foot wide fire lane as well as an architecturally pleasing pedestrian walkway. The pedestrian walkway shall include enhanced landscaping, decorative hardscape, lighting, benches and other appropriate

- amenities to encourage pedestrian and bicycle activity. The required fire lane should be constructed of a driveable surface, subject to the approval of the Fire Chief.
- c. Provide continuation of the pedestrian walkway along the north side of the northeast corner of the residential units, then south to the "outdoor living room" space of the mixed use retail buildings.
 - d. Post "No Trucks (Except Refuse Collection) Beyond This Point," at southwest corner of residential.
 - e. Residential parking shall be assigned and provided within the proposed residential parking structure behind a secured gated entry. The ground floor of the residential parking garage shall provide a minimum of 84 out of the 94 required guest parking spaces. The remaining required guest parking spaces may be located on upper floors of the parking garage if accessible through call system on the residential gates or in the surface parking lot adjacent to the residential building.
 - f. All residential units shall meet the minimum 500 square feet of interior floor area requirement.
 - g. All residential floor plans shall demonstrate a minimum of 60 square feet of private open space with no dimension less than six feet.
 - h. Ramp slopes in the parking garage shall be redesigned to meet the maximum slope permitted by code. Transition ramps which are also used as back-up space for parking stalls shall have a maximum slope of 5 percent. The maximum slope for transition ramps with no adjacent parking spaces shall be 10 percent. A ramp used for ingress and egress to a public street shall have a transition section at least 16 feet long and a maximum slope of 5 percent.
 - i. Any parallel parking stalls shall be designed to meet the minimum maneuverable area between every two stalls as required by HBZSO Chapter 231.
 - j. Provide bicycle parking as required by HBZSO Chapter 231.
 - k. The width of all parking spaces adjacent to a wall more than forty-two (42) inches in height shall be increased by three feet for a total clear parking stall width of twelve feet.
3. Any buildings required to be LEED Silver Certified shall follow the appropriate progression steps and submittal forms, as recommended by LEED and the City's Energy Project Manager, throughout the plan check, permit issuance, and construction phases of the project.
 4. Prior to issuance of grading permits, the following shall be completed:
 - a. At least 14 days prior to any grading activity, the applicant/developer shall provide notice in writing to property owners of record and tenants of properties within a 1,000-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.

5. Prior to submittal for building permits, the following shall be completed:
 - a. Submit a copy of the revised site plans, floor plans, and elevations pursuant to Condition No. 1 and Condition No. 2 for review and approval and inclusion in the entitlement file to the Planning and Building Department and submit digital photographs of all colored renderings, elevations, materials sample board to the Planning and Building Department for inclusion in the entitlement file.
 - b. All venting and mechanical systems for any restaurants shall be designed and constructed to minimize potential odor impacts to the residential units above or surrounding the ground floor commercial uses. Any external venting or mechanical equipment not screened to the satisfaction of the City shall be subject to review and approval by the Design Review Board prior to submittal of building permits.
6. Final building permits for the Costco commercial structure(s) cannot be issued, until the following has been completed:
 - a. Evidence of LEED Silver Certification or the equivalent for the 154,113 square foot Costco building has been verified by the applicant and all associated records and documentation shall be submitted to the Planning and Building Department and maintained for public review and inspection.
7. Final building permits for Village at Bella Terra Mixed Use Retail and Residential 1 structure(s) cannot be issued, until the following has been completed:
 - a. Evidence of LEED Silver Certification for a minimum 1,000 square foot building has been applied for and/or completed.
 - b. In addition to the structures to be LEED Silver certified, incorporating sustainable or "green" building practices into the design of all other proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/index.cfm?fuseaction=guidelines>).
8. All Mitigation Measures outlined in the Mitigation Monitoring Program (Attached) for EIR No. 07-03 and Addendum to EIR No. 07-03 shall be adhered to.
9. The use shall comply with the following:
 - a. Costco's hours of operation shall be limited to:
 - 1) Warehouse and Tire Sales/Installations: Monday through Friday 10:00 AM to 8:30 PM; Saturday 9:30 AM to 6:00 PM; and Sunday 10:00 AM to 6:00 PM. The Warehouse may open at 9:00 AM for business members only.
 - 2) Fuel Facilities: Monday through Friday 6:00 AM to 9:30 PM; Saturday 6:00 AM to 7:00 PM; and Sunday 6:00 AM to 6:00 PM.

These hours are not intended to regulate nighttime stocking or delivery activities; however, all stocking activities outside of regular store hours shall take place on the interior of the store only. Deliveries by large Costco trucks, outside of normal store hours, shall take place only via trucks sealed at designated loading docks; deliveries by smaller vendor trucks may occur at the receiving door on the west side of the building. Any request to operate outside of these hours requires an Entitlement Plan Amendment application and an update to the traffic impact study conducted for Addendum to EIR No. 07-03.

- b. Costco shall direct large delivery trucks and fuel station delivery trucks to access the site from Center Avenue and follow the truck turning radius plan submitted with the conceptually approved plans dated August 9, 2010. All trucks shall utilize designated truck routes when arriving at or departing from the site.
- c. All Bella Terra management employees, all Bella Terra tenant (retail, restaurant, and office) employees, and all Costco employees shall park on the top two levels of the six-level parking structure located on the north side of Bella Terra Area A. If the top two levels of the parking structure are full, employees shall park on other levels of the parking structure in descending order and in the most remote areas of the surface parking lot only as a last resort. In no case shall any employees park in the surface lot, containing approximately 557 spaces, to the north and northeast of the Costco building.
- d. In the event The Village at Bella Terra Mixed-Use Residential and Retail project does not begin construction within one month of the completion of demolition of the Montgomery Ward store and auto repair building, the site shall be hydroseeded for erosion control. Provision of temporary parking subject to approval by the Planning and Building Department and Public Works Department is also acceptable.
- e. Any re-use of the Costco site or request for future demising walls for the purpose of separating new tenant spaces within the Costco building shall require approval of a Site Plan Review by the Director of Planning and Building. Re-use of the site or building requires an Entitlement Plan Amendment application, an update to the traffic impact study conducted for Addendum to EIR No. 07-03, and an update to the approved Parking Management Plan.
- f. There shall be no outside storage of storage containers or bins, vehicles, vehicle parts, equipment, or trailers. The occasional display of vehicles for sale through Costco's vehicle sales program is acceptable. There shall be no outside storage of pallets or trash compactors unless located behind screen walls.
- g. All prospective residential tenants should be provided with a disclosure regarding the mixed use nature of the project and this information shall be available in the leasing office and advertising literature. All potential residents should be required to sign a waiver or disclosure form that it is understood that The Village of Bella Terra is a mixed use project and that uses such as, restaurant, live entertainment, and alcohol sales, etc. may be established on the ground floor of the building.
- h. Each residential unit shall receive assign parking space(s), equal to the number of spaces required per the unit's bedroom count, within the residential parking garage. Parking space numbers shall not match unit numbers for safety purposes.

i. An on-site parking survey shall be conducted by a licensed traffic engineer to determine the parking demand in relation to the parking supply, prior to any one of the following events:

- 1) One year after the issuance of the Costco Certificate of Occupancy; or
- 2) The parking ratio falls below 4.2 spaces/1,000 square feet due to a reduction of spaces or an increase in demand; or
- 3) Any re-use or re-tenanting of any major anchor space. The term major anchor space shall be defined as any space greater than 70,000 square feet, including the movie theater

The parking surveys shall consist of hourly counting Wednesday through Sunday for two consecutive weeks between the hours of 9:00 AM to 10:00 PM. If the survey demonstrates that the on-site parking is more than 95% occupied, at least three times per week, for a duration of at least two hours, then the property owner shall prepare a Parking Management Plan (PMP) and submit the PMP to the Planning and Building Department for approval. The PMP shall propose means for mitigating any identified on-site parking deficiency, including one or more of the following: re-striping parking spaces to add parking spaces, if feasible; expanding the on-site valet parking program; converting common areas not used for parking to parking uses, if feasible; providing employee parking at an offsite location with a shuttle service; promoting employee carpooling or alternative transportation options; or other option identified by the property owner and acceptable to the City. The parking management strategies, such as valet or shuttle service, shall only be implemented on the days of the week that the parking surveys reveal greater than 95% occupancy.

10. The development services departments (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning and Building may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18.
11. Site Plan Review No. 10-001 shall not become effective until the City Council approves General Plan Amendment No. 10-001 and Zoning Text Amendment No. 10-001.

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.



**HUNTINGTON BEACH
PUBLIC WORKS DEPARTMENT
SUGGESTED CONDITIONS OF APPROVAL**

DATE: AUGUST 16, 2010

PROJECT NAME: COSTCO WHOLESALE AND MIXED USE

PLANNING APPLICATION NO. PLANNING APPLICATION NO. 2010-061

ENTITLEMENTS: GENERAL PLAN AMENDMENT NO. 2010-001, ZONING TEXT AMENDMENT NO. 2010-001, SITE PLAN REVIEW NO. 2010-001, ENVIRONMENTAL ASSESSMENT NO. 2010-003

DATE OF PLANS: AUGUST 9, 2010 (COSTCO) & JUNE 17, 2010 (MIXED USE)

PROJECT LOCATION: 7601 EDINGER AVENUE, HUNTINGTON BEACH (APN: 142-073-26)

PLAN REVIEWER: *BMJ* BOB MILANI, SENIOR CIVIL ENGINEER

TELEPHONE/E-MAIL: 714-374-1735 / BOB.MILANI@SURFCITY-HB.ORG

PROJECT DESCRIPTION: **GPA:** AMEND SIZES OF SUBAREAS 5A AND 5B OF THE GENERAL PLAN; **ZTA:** AMEND SIZES OF AREA A AND B OF SPECIFIC PLAN NO. 13 AND ADD TIRE SALES/ INSTALLATION AND GAS STATION AS PERMITTED USES; **SPR:** DEMOLISH MERVYN'S AND MONTGOMERY WARDS STORE AND AUTO REPAIR TO DEVELOP A 154,113 SQ FT COSTCO WITH TIRE SALES/INSTALLATION CENTER, OUTSIDE FOOD SERVICE, AND GAS STATION, ALONG WITH CONCEPTUAL PLANS FOR UP TO 468 MULTI-FAMILY RESIDENTIAL UNITS AND AN ADDITIONAL 30,000 SQ FT OF RETAIL; **EA:** TO REVIEW THE PROPOSED AMENDMENTS AND PROJECT PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TO DETERMINE THE NECESSARY ENVIRONMENTAL DOCUMENTATION.

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1. The site plan, floor plans and elevations received and dated August 9, 2010 (Costco) and June 17, 2010 (Mixed-use), shall be the conceptually approved layout with the following modifications:
 - a. Additional exhibits shall be provided to depict all utility apparatus, such as but not limited to back flow devices and Edison transformers on the site plan. In accordance with Section 3.4.3.5 of Specific Plan No. 13, utility meters shall be screened from view from public rights-of-way. Electric transformers in a required front or street side yard

ATTACHMENT NO. 3.15

shall be enclosed in subsurface vaults. Backflow prevention devices shall be prohibited in the front yard setback and shall be screened from view. (Code Requirement)

- b. Additional exhibits shall be provided to depict the location of all gas meters, water meters, electrical panels, air conditioning units, mailboxes (as approved by the United States Postal Service), and similar items on the site plan and elevations. If located on a building, they shall be architecturally designed into the building to appear as part of the building. They shall be architecturally compatible with the building and non-obtrusive, not interfere with sidewalk areas and comply with required setbacks.
- c. Enhanced paving within the public right-of-ways on Edinger Avenue and Center Avenue shall not be allowed. (Code Requirement).
- d. In accordance with Section 3.4.2.1 of Specific Plan No. 13, a drive aisle with a minimum width necessary for two-way traffic without adjacent parking from the driveway entry on Edinger Avenue shall provide an accessible travel way to the parking lots adjacent to Center Street. Landscaping along Edinger Avenue shall be provided in conformance with the increased width shown in the Edinger Avenue Precise Plan of Street Alignment to the maximum extent possible.
- e. Building pad transitions shall be designed to match up with the existing improvements on the adjacent parcels, and all modifications needed to allow for the match up shall be indicated on the site plan. Any required reconstruction, including asphalt areas, curb and gutter, landscaping and median islands, drainage infrastructure, drive aisle improvements and related work on adjacent parcels and outside the limits of the site plan parcel shall be shown on the improvement plans for the site.
- f. Project data information shall include the flood zone and the base flood, and lowest building floor elevations per NGVD29 datum or an equation schedule to show equivalence to that datum for coordination with available FEMA mapping.
- g. ADA path of travel running between or through parking areas or rows shall be a minimum of 10 feet in width or 6 feet in width for a raised sidewalk path. All driveway crossings shall conform to Title 24 and ADA requirements.

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLETED PRIOR TO ISSUANCE OF A DEMOLITION PERMIT:

2. The applicant shall follow all procedural requirements and regulations of the South Coast Air Quality Management District (SCAQMD) and any other local, state, or federal law regarding the removal and disposal of any hazardous material including asbestos, lead, and PCB's. These requirements include but are not limited to: survey, identification of removal methods, containment measures, use and treatment of water, proper truck hauling, disposal procedures, and proper notification to any and all involved agencies (Mitigation Measure).
3. Pursuant to the requirements of the South Coast Air Quality Management District, an asbestos survey shall be completed (Mitigation Measure).
4. The applicant shall complete all Notification requirements of the South Coast Air Quality Management District (Mitigation Measure).
5. A truck hauling and routing plan for all trucks involved in asbestos removal and demolition of the existing structures shall be submitted to the Department of Public Works and approved by the Director of Public Works (Mitigation Measure).

6. The applicant shall disclose the method of demolition on the demolition permit application for review and approval by the Building and Safety Director (Mitigation Measure).
7. The project Storm Water Pollution Prevention Plan (SWPPP) shall include interim provisions for the demolition operations.

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLETED PRIOR TO ISSUANCE OF A GRADING PERMIT:

8. All vehicular access rights to Edinger Avenue and Center Avenue shall be released and relinquished to the City of Huntington Beach, except at locations approved by the Director of Planning, or as restricted by existing restricted access requirements as shown on previously recorded maps, easements or dedications.
9. The subdivider shall provide evidence and recorded documentation to the satisfaction of the City of the vehicular and pedestrian access rights, the right to construct off-site improvements, the right to operate, and maintain the private storm drain and sewer systems, and the right for the City and the Property Owner's Association to access and perform maintenance on the improvements located within the Southern California Edison right-of-way between Center Drive and the northerly map boundary. Approval from Southern California Edison must also be obtained for any changes, quitclaims or realignments of existing easements.
10. The sewer and portions of the storm drain system located onsite shall be private and maintained by the Property Owners Association.
11. The Public Works Department shall review and approve the final geometrics and design of onsite circulation and truck delivery drive aisles for reciprocal access and consistency with any new parcels created or reconfigured.
12. If phasing of construction or improvements is proposed, a detailed phasing plan shall be submitted. The phasing plan shall address all on and off-site infrastructure improvements, timing of building construction, and methods of providing emergency as well as customer access to existing tenants on adjacent parcels. Any future phasing plan shall be subject to review and approval by the Directors of Public Works, Fire, Building and Safety, and Planning.
13. The applicant shall 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. Based on the Groundwater Hydrology Study, the Geotechnical Hydrogeologic, or other qualified Engineer shall determine whether permanent groundwater dewatering is feasible within the constraints of a safe pumping level. The project Applicant shall incorporate the qualified Engineer's designs and recommendations in project plans. If safe groundwater dewatering is determined to not be feasible, permanent groundwater dewatering shall not be implemented. The City's Director of Public Works shall approve or disapprove of any permanent groundwater dewatering based on the Groundwater Hydrology Study and qualified Engineer recommendations.
14. The applicant shall provide proof that driven friction piles extending into the stiff and/or dense natural soils encountered below depths of about 45 to 50 feet below the existing grade are to be utilized. Mitigation may be required for friction piles for the proposed buildings at their current locations or at other locations within the project site, for minor structures such as low retaining walls and freestanding walls, as well as for building floor slabs and other concrete

walks and slabs adjacent to the buildings, subject to the approval of the Public Works Director (Mitigation Measure).

15. The applicant shall ensure that any required import material consists of relatively non-expansive soils with an Expansion Index of less than 35. The imported materials should contain sufficient fines (binder material) so as to be relatively impermeable and result in a stable subgrade when compacted. All import materials shall be approved, subject to the approval of the Public Works Director (Mitigation Measure).
16. The applicant shall provide and execute a Landscape License Agreement for maintenance of landscaping within the public right-of-way.
17. A Precise Grading Plan, prepared by a Licensed Civil Engineer, shall be submitted to the Public Works Department for review and approval. The following shall be shown on the grading plans (PW):
 - a. Hardscape improvements, including, but not limited to, paving, sidewalk, curb and gutters, decorative paving, signing and striping, and other features to be constructed by the plan shall be shown with horizontal and vertical dimensions and elevations.
 - b. Private sewer improvements, including laterals up to each commercial unit, shall be designed per the final approved sewer study and City Standards.
 - c. A composite utility plan showing the relationship of all utilities proposed onsite shall be shown for reference.
 - d. Private water service improvements beyond the public water system appurtenances shall be shown for reference only.
 - e. Entry/exit throats of appropriate length and width shall be provided at each project access point to facilitate safe, convenient, and unobstructed vehicle access. Areas adjacent to these entry/exit points shall be designed to provide appropriate stopping sight distance for vehicles, trucks, pedestrians and bicyclists.
 - f. A new 12 inch public waterline on the north side of the development, approximately 600 feet in length tying into the existing 10 inch public waterline on the north side, that serves the property from Center Avenue, and the existing public 12 inch public waterline on the east side of the development, located at the northwest corner of the Mervyn's site, shall be required per Water Division Standards.
 - g. A new 12 inch public waterline on the west side of the development, approximately 1100 feet in length tying into the new 12 inch public waterline on the north side of the development and extended southerly, shall be required per Water Division Standards.
 - h. A new 12 inch public waterline on the south of the development approximately 300 feet in length tying into the new 12 inch waterline on the west side of the development and the existing 12 inch waterline on the south side of the development, that serves the property from Edinger Avenue, shall be required per Water Division Standards.
18. Full frontage infrastructure improvements shall be designed, including, but not limited to, curb and gutter, sidewalk, street lighting, raised medians, new traffic signals, traffic signal interconnect systems, signing and striping, drainage improvements and handicapped access ramps. All work shall be in full conformance with the approved traffic impact analysis, the Edinger Corridor Specific Plan and Precise Plan of Street Alignment, current City Standards,

Caltrans standards where applicable, and the approved Specific Plan No. 13 for the Bella Terra Mall and associated technical studies.

19. Street Lighting, traffic signals, signing, striping, street improvements, traffic control, landscaping and other infrastructure improvements shall be shown on separate sheets, 24" by 36", and shall conform to City of Huntington Beach standards. Plans shall be submitted for review and final approval by Public Works.
20. Drive aisle spacing and proposed drive through aisles dimensions shall be supported by an approved traffic queuing study to insure that waiting vehicles do not block adjacent aisles.
21. Traffic Control Plans, prepared by a Licensed Civil or Traffic Engineer, prepared per the City's guidelines (signed and stamped), shall be submitted to Public Works and Caltrans for review and approval, for work within City's right-of-way.
22. Final Design hydrology and hydraulic studies for both on-site and off-site facilities shall be prepared and submitted for Public Works review and approval. The hydrologic and hydraulic analysis shall include, but not be limited to facilities sizing, limits of attenuation, downstream impacts and other related design features. Runoff shall be limited to pre-1986 Q's, which must be established in the hydrology study. If the analyses shows that the City's current drainage system cannot meet the volume needs of the project runoff, the developer shall be required to attenuate site runoff to an amount not to exceed the 25-year storm as determined using pre-1986 design criteria. As an option, the developer may choose to explore low-flow design alternatives, downstream attenuation or detention, or upgrade the City's storm water system to accommodate the impacts of the new development, at no cost to the City (Mitigation Measure).
23. The Hydrology and Hydraulics Study for the City approved Site Development and Drainage Plan shall reduce peak runoff rates to the existing conditions 25-year storm event peak runoff rate; the design capacity of the City storm drainage channels (Mitigation Measure).
 - a. Prior to receiving a precise grading permit, the project Applicant shall:
 - i) Prepare a Site Development and Drainage Plan
 - ii) Prepare an existing and proposed project Hydrology and Hydraulics Study based on the Site Development and Drainage Plan. The existing hydrology shall include an evaluation of run-on to the project site because of spillage from the Bella Terra Mall drainage system.
 - iii) Implement stormwater detention BMPs, based on the Hydrology and Hydraulics Study, for all storm events up to the 100-year storm event, to ensure that peak flow rates from the project site to the off-site storm drain system do not exceed the existing 25-year storm event peak flow rate.
 - iv) Analyze existing street flow capacity to determine exceedance of any design criteria and guidelines from the City's MPD.
 - v) Additionally, stormwater detention BMPs shall be implemented such that areas draining to the existing piped storm drain systems do not exceed existing peak flow rates for the 10 and 25-year storm events and that peak flows to local streets do not exceed MPD and City design guidelines.
 - vi) In accordance with the MPD, streets must be designed to leave at least one-lane free of ponded water in each direction for conveyance of the 10-year storm event, must be contained within the curbs for the 25-year storm event, cannot

- exceed 0.2 foot above the street curbs for the 50-year storm event, and cannot exceed 0.5 foot above the street curbs for the 100-year storm event.
- vii) The internal storm drain system must be adequate to detain sufficient stormwater runoff such that the street flow requirements of Center Street or Edinger Avenue are not exceeded.
 - viii) Surface ponding or sump areas on the site will be limited to a maximum depth of 8-inches, and shall be distributed to areas away from building pads, and remote areas of parking lots.
 - ix) Surface ponding or sump areas shall not exceed 1/3 of the proposed parking area in surface area. If there are proposed underground parking structures, they shall not be used for retention or storage, unless approved by the Director of Public Works.
 - x) Stormwater retention areas shall be analyzed for back to back 24-hour, 100-year storm events per the requirements of the Orange County Flood Control Manual.
 - xi) The final Hydrology and Hydraulics Study shall identify and evaluate the routing through the project site in relation to the new buildings, landscaping, utilities, and others. Sufficient detention, provided to mitigate constrained capacities in the Bella Terra Mall drainage system, shall be implemented for run-on from north of the Montgomery Ward site onto the project site.
 - xii) The final Hydrology and Hydraulics Study shall incorporate all NPDES requirements in effect at the time that the precise grading permit is anticipated to be issued or when the study is accepted as complete.
 - xiii) Precise final grading and street improvement plans and studies shall be submitted to the Public Works Department for review and approval. The project developer shall incorporate into a final Drainage Plan all recommendations and requirements identified the review of the final Hydrology and Hydraulics Study and identified stormwater detention requirements/features. Following grading, excavation, and installation of utilities, the Public Works Department shall inspect the project site and verify that project site drainage is in accordance with the Final Drainage Plan and that required detention/storm drain system improvements have been implemented.
24. Plans and studies shall be submitted to the City Engineer for approval and the project developer shall incorporate into a Final Drainage Plan, all recommendations and requirements identified by the City Engineer, based on their review of the final Hydrology and Hydraulics Study and identified stormwater detention requirements/features (Mitigation Measure).
25. Non-residential structures, including utilities and sanitary facilities must be elevated or floodproofed to below the flood depth and capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy as required by Chapter 222 of the City of Huntington Beach Zoning and Subdivision Ordinance (Mitigation Measure).
26. A portion of the project is designated on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map as a Special Flood Hazard Area (SFHA) "A" zone, and is therefore subject to flooding during a 100 year storm event. The design elevations for this project will be 2-feet or higher above the Base Flood Elevation derived from the project drainage study, or the best available design studies accepted by the City of Huntington Beach. Should additional flood proofing be required, the developer shall conform to all

Federal, State and City requirements for flood-proofing the buildings against the 100-year storm event.

27. City of Huntington Beach-approved Water Quality Management Plan shall be prepared by a Licensed Civil Engineer in accordance with the California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, NPDES No. CAS618030 Waste Discharge Requirements, including any recent updates, and Orange County DAMP requirements for a Project WQMP and measures as described below. A preliminary WQMP shall be prepared to accompany the submittal of the approved Site Plan. A final WQMP shall be prepared to satisfy the requirements of the DAMP and City LIP, and shall conform to the Permit Requirements Section XII, "New Development," and associated subsections of Order No. R8-2009-0030. The final WQMP shall incorporate water quality BMPs and LID's for all improved phases of the proposed project. Prior to receiving a precise grading permit, three signed copies and an electronic copy on CD (.pdf or .doc format) shall be submitted to the Public Works Department. The final WQMP shall include the following additional requirements:
- a. Infiltration-type BMPs shall not be used.
 - b. Wet swales and grassed channels shall not be used because of the slow infiltration rates of project site soils and potentially shallow depth to groundwater.
 - c. Dry and wet detention basins and constructed wetlands are not recommended for the project site.
 - d. If proprietary Structural Treatment Control devices are used, they shall be sited and designed also in compliance with the manufacturers design criteria.
 - e. Treatment BMPs shall be selected such that standing water drains within 24 hours or as required by the City's vector control.
 - f. Excess stormwater runoff shall bypass the treatment BMPs unless they are designed to handle the flow rate or volume from a 100-year storm event without reducing effectiveness.
 - g. Effectiveness of any treatment BMP for removing the pollutants of concern shall be documented.
 - h. The WQMP shall incorporate water efficient landscaping using drought tolerant, native plants in accordance with Landscape and Irrigation Plans as set forth by the Association (see below).
 - i. Building materials shall minimize exposure of bare metals to stormwater. Copper or Zinc roofing materials, including downspouts, shall not be used. Bare metal surfaces shall be painted with non-lead containing paint.
 - j. Proprietary stormwater treatment systems maintenance shall be in accordance with the manufacturer's recommendations. If a non-proprietary treatment system is used, maintenance shall be in accordance with standard practices as identified in the CASQA (2009) handbook, City BMP guidelines or The Village at Bella Terra Mitigation Monitoring and Reporting or other City-accepted guidance.
 - k. Reporting requirements: the Association 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.

- I. Where applicable and subject to the review and approval of the City Engineer, use of porous concrete or asphalt (if acceptable to the Geotechnical Engineer) or other pervious pavement for driveways, paths, sidewalks, and courtyards/open space areas to the maximum extent is encouraged.

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLIED TO DURING DEMOLITION, GRADING AND SITE DEVELOPMENT:

28. The applicant shall ensure that disturbed material and unsuitable natural soils such as peat deposits encountered immediately below the fill should be excavated and replaced as properly compacted fill. All required additional fill should be properly compacted, subject to the approval of the Public Works Director (Mitigation Measure).
29. The applicant shall ensure that the excavated soils be allowed to dry prior to placement as compacted fill, and that the soils at the bottom of the excavations also be allowed to dry as necessary prior to placement of compacted fill. As an alternative to drying the exposed natural soils at the bottoms of the required excavations, the exposed soils shall be over-excavated and replaced with 1 to 1 ½ feet of 1 ½ inch crushed rock to provide a base for the compaction of the required backfill. Compliance with this mitigation shall be subject to the approval of the Public Works Director (Mitigation Measure).
30. If during demolition, grading and/or construction any soil and/or groundwater contamination are found or suspected on-site, construction in the area shall cease, appropriate Health and Safety procedures shall be implemented, and appropriate agencies shall be notified. Any hazardous substances contained on the site shall be identified and removed in compliance with City, State, and Federal standards (Mitigation Measure).

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLETED PRIOR TO ISSUANCE OF A BUILDING PERMIT:

31. The developer shall submit a completed FEMA Elevation Certificate signed by a registered Civil Engineering certifying compliance with all Federal, State and City flood protection requirements.
32. Final design elevations of grading shall not vary from elevations shown on the approved Site Plans (preliminary grading plans) by more than one (1) foot.

THE FOLLOWING CONDITIONS ARE REQUIRED TO BE COMPLETED PRIOR TO FINAL OCCUPANCY OF THE FIRST RESIDENTIAL UNIT OR RETAIL BUILDING:

33. The medians in Edinger shall be inspected, approved and deemed complete by the City of Huntington Beach which includes; replaced soil, irrigation systems, perimeter root/moisture barriers, colored and stamped concrete, plant material and all required utilities. The medians shall be maintained for a period of 15 months total after installation is deemed complete.
34. The park, fountains, pools, enriched paving and all auxiliary decorative structures, artwork, landscape plantings and irrigation systems indicated as a part of the residential and retail project shall be completed.

Appendix A Revised Mitigation Monitoring and Reporting Program

A. INTRODUCTION

As part of the previous project and EIR, mitigation measures were required to reduce potential impacts to the greatest extent feasible. These mitigation measures were set forth in the approved Mitigation Monitoring and Reporting Program (MMRP) for the previous project. Similarly, mitigation measures were identified to reduce potential impact of the revised project to the greatest extent feasible. Applicable mitigation measures are discussed in each chapter of this Addendum, with the impact for which the measures are necessary. As part of the preparation of the Addendum, primarily due to the format of the document, the numbering of mitigation measures has changed from the previous EIR, as shown in this Addendum. A comprehensive comparison of mitigation measures required for both the previous and revised projects, including changes to numbering, is provided below.

As with the previous MMRP, the following table identifies required mitigation measures by resource area. Similar to what was prepared for the previous project, this table 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 MMRP shall be used by the City of Huntington Beach staff responsible for ensuring compliance with mitigation measures associated with revised 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 revised project Applicant and the Applicant's Contractor shall be responsible for implementation of all mitigation measures, unless otherwise noted in the table.

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Aesthetics								
MM4.1-1	MM4.1-1	To the extent feasible, the Applicant shall use 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.	Project building plans	Review and approve building plans for inclusion of features	Plan check prior to issuance of building permit	Planning		
Air Quality								
MM4.2-1	MM4.2-1	During construction, operators of any gas or diesel fueled equipment, including vehicles, shall be encouraged to turn off equipment if not in use or left idle for more than five minutes.	Contract language and notes on grading and building plans	Review and approve contract specifications, grading and building plans for inclusion	Plan check prior to issuance of a grading permit Perform periodic field check during construction to ensure compliance	Planning		
MM4.2-2	MM4.2-2	The Applicant shall require by contract specifications that the architectural coating (paint and primer) products used would have a low VOC rating. Contract specifications shall be included in the proposed project construction documents, which shall be reviewed by the City prior to issuance of a building permit.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-3	MM4.2-3	The Applicant shall require by contract specifications that electrical outlets are included in the building design of the loading docks to allow use by refrigerated delivery trucks. The proposed project Applicant shall require that all delivery trucks do not idle for more than five 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.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		refrigeration units when the delivery truck engine is turned off.						
MM4.2-4	MM4.2-4	The proposed project would provide plentiful short- and long-term bicycle parking facilities to meet peak demand (generally one bike rack space per 20 vehicle/employee space).	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-5	MM4.2-5	All retail and residential facilities shall ensure that current transit schedules are available in common areas for the use of employees and residents.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-6	MM4.2-6	All retail facilities in excess of 150 employees shall provide preferential vanpool/carpool employee parking.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-7	MM4.2-7	All retail facilities in excess of 150 employees shall be required to provide free parking passes to eligible employees.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-8	MM4.2-8	All residential and nonresidential coatings applied during subsequent maintenance activities shall be required to be low VOC paints with a reduction of at least 20 percent.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-9	MM4.2-9	Residential and Retail development shall implement waste reduction and recycling measures such that waste diversion from landfills equals 65 percent, the current City Standard for waste diversion.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM4.2-10	MM4.2-10	Residential and Retail development shall use drought tolerant plants for landscaping. The following are suggestions to enhance the benefits of this measure. Evergreen trees on the north and west sides afford the best protection from the setting summer sun and cold winter winds. Additional considerations include the use of deciduous trees on the south side of the house that will admit summer sun; evergreen plantings on the north side will slow cold winter winds; constructing a natural planted channel to funnel summer cooling breezes into the house. Neighborhood CCR's not requiring that front and side yards of single-family homes be planted with turf grass. Vegetable gardens, bunch grass, and low -water landscaping shall also be permitted, or even encouraged.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-11	MM4.2-11	Residential and Retail development shall implement water reduction features such that water usage is reduced by 20 percent from the unmitigated estimate emissions of 234 MTCO _{2e} . Water reduction features may include, but are not limited to: <ul style="list-style-type: none"> ■ Installation of water conserving irrigation systems such that watering times can be varied and that the system will shut off during rain events ■ Installation of water saving appliances ■ Installation of low-flow showers and toilets 	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-12	MM4.2-12	Residential and Retail developments shall implement energy saving measures such that natural gas usage is reduced to at least 15 percent below 2008 Title 24 standards. This could include, but is not limited to, the following: <ul style="list-style-type: none"> ■ Use of light colored roofing material ■ Planting trees appropriately to provide shading 	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		during the heat of the day <ul style="list-style-type: none"> Increase energy efficiency of insulation, doors, and windows 						
MM4.2-13	MM4.2-13	Electrical outlets shall be located outside in the front and rear of both residential and retail development such that 20 percent of landscaping equipment can be electrically powered.	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
MM4.2-14	MM4.2-14	Residential and Retail developments shall implement energy saving or incorporate renewable resources such that a minimum of 30 percent of the project's total estimated unmitigated electrical consumption of 1,777 MTCO _{2e} is offset. Energy saving features may include, but are not limited to the following: <ul style="list-style-type: none"> Use of Energy Star appliances Use of energy saving lighting and light fixtures including dimmer switches, motion sensors, and timers Addition of photovoltaic cells to offset onsite electrical usage Installation of energy efficient HVAC units 	Contract language and notes on building plans	Review and approve contract specifications and building plans for inclusion	Plan check prior to issuance of a building permit	Planning		
Biological Resources								
MM3.1-1	MM4.3-1	Nesting habitat for protected or sensitive avian species: <ol style="list-style-type: none"> Vegetation removal and construction shall occur between September 1 and January 31 whenever feasible. Prior to any construction or vegetation removal between February 15 and August 31, a nesting survey shall be conducted by a qualified biologist of all habitats within 500 feet of the construction area. Surveys shall be conducted no less than 	Developer shall submit construction schedule (including grading activities) as evidence of construction overlap with breeding season.	Review schedule and field survey report, and as necessary, review and approve plans indicating construction limits	Plan check prior to issuance of a grading permit	Planning		

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		14 days and no more than 30 days prior to commencement of construction activities and surveys will be conducted in accordance with CDFG protocol as applicable. If no active nests are identified on or within 500 feet of the construction site, no further mitigation is necessary. A copy of the pre-construction survey shall be submitted to the City of Huntington Beach. If an active nest of a MBTA protected species is identified onsite (per established thresholds) a 250-foot no-work buffer shall be maintained between the nest and construction activity. This buffer can be reduced in consultation with CDFG and/or USFWS.	If construction occurs during relevant breeding, developer shall present a survey report (prepared by a consultant approved by the City) to the City prior to issuance of a grading permit. If nests are found, developer shall submit plans identifying nest locations and limits of construction activities.	Perform periodic field check to ensure compliance	During construction	Planning		
		3. Completion of the nesting cycle shall be determined by qualified ornithologist or biologist.						

Cultural Resources								
MM3.1-2	MM4.4-1	The Applicant shall arrange for a qualified professional archaeological and paleontological monitor to be present during all project-related ground-disturbing activities. In addition, all construction personnel shall be informed of the need to stop work on the project site in the event of a potential find, until a qualified archaeologist or paleontologist has been provided the opportunity to assess the significance of the find and implement appropriate measures to protect or scientifically remove the find. Construction personnel will also be informed that unauthorized collection of cultural resources is prohibited.	Proof of retention of archaeological and paleontological monitor	Verify retention of qualified monitors	Plan check prior to issuance of grading permit	Planning		
				Periodic field check to ensure monitors are present	Throughout ground-disturbing activities	Planning		
MM3.1-3	MM4.4-2	If archaeological or paleontological resources are discovered during ground-disturbing activities, all construction activities within 50 feet of the find shall	Notes on grading plans	Review and approve grading plans for inclusion	Plan check prior to issuance of grading permit	Planning		

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM3.1-4		cease until the archaeologist/paleontologist evaluates the significance of the resource. In the absence of a determination, all archaeological and paleontological resources shall be considered significant. If the resource is determined to be significant, the archaeologist or paleontologist, as appropriate, shall prepare a research design for recovery of the resources in consultation with the State Office of Historic Preservation that satisfies the requirements of Section 21083.2 of CEQA. The archaeologist or paleontologist shall complete a report of the excavations and findings, and shall submit the report for peer review by three County-certified archaeologists or paleontologists, as appropriate. Upon approval of the report, the City shall submit the report to the South Central Coastal Information Center at California State University, Fullerton, and keep the report on file at the City of Huntington Beach.	Research design and recovery plan, if required	Review and approve research design and recovery plan	Throughout ground-disturbing activities	Peer review by three County-certified professionals		
MM4.4-3		In the event of the discovery of a burial, human bone, or suspected human bone, all excavation or grading in the vicinity of the find shall halt immediately, the area of the find shall be protected, and the Developer shall immediately notify the City and the Orange County Coroner of the find and comply with the provisions of P.R.C. Section 5097. If the human remains are determined to be prehistoric, the Coroner will notify the NAHC, which will determine and notify a Most Likely Descendent (MLD). The MLD shall complete the inspection of the site within 24 hours of notification, and may recommend scientific removal and non-destructive analysis of human remains and items associated with Native American burials.	Notes on grading plans	Review and approve grading plans for inclusion	Plan check prior to issuance of grading permit Throughout ground-disturbing activities	Orange County Coroner Planning		

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Geology and Soils								
MM3.1-5	MM4.5-1	The grading plan prepared for the proposed project shall 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.	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		
Hazardous Materials								
MM4.3-1	MM4.6-1	In the event that soil and/or groundwater contamination that could present a threat to human health or the environment is encountered during construction in the project area, construction activities in the immediate vicinity of the contamination shall cease immediately. For soil and/or groundwater impacts, Risk Management Plan(s) shall be submitted to the appropriate agencies (e.g., Huntington Beach Fire Department HBFD, Orange County Health Care Agency OCHCA, Air Quality Management District AQMD, Regional Water Quality Control Board RWQCB) for review and approval. The Plan(s) shall (1) identify the contaminants of concern and the potential risk each contaminant would pose to human health and/or the environment during construction and post-development and (2) describe measures to be taken to protect workers, and the public, and/or the environment from exposure to potential site hazards. Such measures could include a range of options.	Risk Management Plan & Site Health and Safety Plan	Review and approve any grading plans for inclusion	Plan check prior to issuance of any grading permit	Fire		

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		Including, but not limited to, physical site controls during construction, remediation, long-term monitoring, post-development maintenance or access limitations, or some combination thereof. A Site Health and Safety Plan that meets California Occupational Safety and Health Administration requirements shall be prepared and in place prior to commencement of work in any contaminated area.						
MM4.3-2	MM4.6-2	Prior to the issuance of grading permits, the project 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 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.	Methane Testing Plan Notes on building and methane plans	Review and approval of testing plan Review and approve building and methane gas plans for appropriate documentation	Prior to commencement of sampling Prior to issuance of any grading permit and during construction	Fire Fire		
MM4.3-3	MM4.6-3	Prior to project implementation, the Applicant shall submit for approval a soil testing and management work plan to the appropriate agencies (including the HBFD, OCHCA, AQMD, RWQCB) for review and approval. All native and imported soils associated with the proposed project site shall meet the standards outlined under the City's Specification No. 431-92 prior to the approval of grading plans and building plans by the HBFD, and any other appropriate federal, state, local requirements. Additionally, all work at the project site shall conform to the City's Public Works Department requirements	Soil Testing Work Plan Contract language	Review and approve soil testing work plan Review and approve haul route plans	Prior to issuance of any grading permit Prior to issuance of haul permits	Fire Public Works		

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure (i.e., haul route permits).	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
Hydrology and Water Quality								
MM3.1-6	MM4.7-1	<p>The Applicant shall prepare a City of Huntington Beach-approved Water Quality Management Plan in accordance with the DAMP requirements for a Project WQMP and measures described below.</p> <p>A final WQMP shall be prepared to satisfy the requirements of the DAMP and City LIP. The final WQMP shall incorporate water quality BMPs for all improved phases of the proposed project. Prior to receiving a precise grading permit, three signed copies and an electronic copy on CD (.pdf or .doc format) shall be submitted to the Public Works Department. The final WQMP shall include the following additional requirements:</p> <p>Project and Site Characterization Requirements</p> <ul style="list-style-type: none"> ■ Entitlement Application numbers and site address shall be included on the title sheet of the WQMP ■ In project description section, explain whether proposed use includes onsite food preparation, eating areas (if not please state), outdoor activities to be expected, vehicle maintenance, service, washing cleaning (if prohibited onsite, 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 	Water Quality Management Plan	Review and approve WQMP	Prior to receiving a precise grading permit	Public Works		

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>Incorporated into the project design shall be included.</p> <ul style="list-style-type: none"> ■ 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 figure showing the selected treatment BMPs and drainage areas shall be included in the WQMP. <p>Structural Treatment BMPs</p> <ul style="list-style-type: none"> ■ Infiltration-type BMPs shall not be used. These would not be suitable or feasible for the project site because, as mentioned above, the project site soils have a shallow depth to seasonal high groundwater. ■ Wet swales and grassed channels shall not be used because of the slow infiltration rates of project site soils and potentially shallow depth to groundwater ■ Dry and wet detention basins and constructed wetlands are not recommended for the project site because of the amount of area required for treatment and potential impacts to shallow groundwater. Additionally, wet detention basins would require approval by the vector control agency. ■ If proprietary Structural Treatment Control devices are used, they shall be sited and designed also in compliance with the manufacturers design criteria. ■ Treatment BMPs shall be selected such that 						

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>standing water drains within 24 hours or as required by the City's vector control.</p> <ul style="list-style-type: none"> ■ Excess stormwater runoff shall bypass the treatment 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 BMP for removing the pollutants of concern shall be documented. ■ The WQMP shall incorporate water efficient landscaping using drought tolerant, native plants in accordance with Landscape and Irrigation Plans as set forth by the Association (see below). ■ Pet waste stations shall be provided and maintained. ■ Building materials shall minimize exposure of bare metals to stormwater. Copper or Zinc roofing materials, including downspouts, shall not be used. Bare metal surfaces shall be painted with non-lead containing paint. <p>For all structural treatment and source control BMPs, the WQMP shall identify the responsible party, such as a Master Residential Association and Master Commercial Association or property owner, for maintenance of the treatment system, and a funding source or sources for its operation and maintenance. The term Association refers to the responsible party. Operations and maintenance BMPs shall include, but not be limited to:</p> <ul style="list-style-type: none"> ■ The Association shall dictate minimum landscape maintenance standards and tree trimming requirements for the total project site. Landscape maintenance must be performed by 						

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>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.</p> <p>Application rates shall not exceed labeled rates for pesticides, and shall not exceed soil test rates for nutrients. Slow release fertilizers shall be used to prevent excessive nutrients in runoff or irrigation waters.</p> <ul style="list-style-type: none"> ■ The Association 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 Association shall require that all trees be trimmed by or under the direct observation/direction of a licensed/certified Arborist, for the entire The Village at Bella Terra improvement area. The Association shall establish minimum standards for maintenance for the total community, and establish enforcement thereof for the total community. The Association 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. If automated sprinklers are used, they shall be inspected at least quarterly and adjusted yearly to minimize 						

Appendix A Revised Mitigation, Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program								
Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>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.</p> <ul style="list-style-type: none"> ■ Proprietary stormwater treatment systems maintenance shall be in accordance with the manufacturer's recommendations. If a non-proprietary treatment system is used, maintenance shall be in accordance with standard practices as identified in the CASQA (2003) handbooks, City BMP guidelines, or other City-accepted guidance. ■ Education programs. Signage, enforcement of pet waste controls, and public education would improve use and compliance, and therefore, effectiveness of this BMP and reduce potential for hazardous materials and other waste in stormwater runoff. The Association shall prepare and install appropriate signage, disseminate information to residents and retail businesses, and include pet waste controls in the Association agreement/Conditions, Covenants, and Restrictions. ■ Street sweeping shall be performed at an adequate frequency to prevent build up of pollutants (see http://www.fhwa.dot.gov/environment/ultraurb/for_street_sweeping_effectiveness). ■ Maintenance Plan. The Association 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 						

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>drain systems during maintenance operations. No discharge of building or courtyard/open space wash water shall enter the storm drain system unless treated and approved by the City of Huntington Beach.</p> <ul style="list-style-type: none"> Reporting requirements: the Association 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>The Applicant is encouraged to consider the following BMPs:</p> <ul style="list-style-type: none"> Use of porous concrete or asphalt (if acceptable to the Geotechnical Engineer) or other pervious pavement for driveways, paths, sidewalks, and courtyards/open space areas to the maximum extent practicable will reduce pollutants in stormwater runoff as well as provide some detention within the material void space. If porous paver blocks are used, they must be adequately maintained to provide continued porosity (effectiveness). Incorporation of rain gardens or cisterns to reuse runoff for landscape irrigation Site design and landscape planning to group water use requirements for efficient irrigation 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 						

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
CofA3.1-1	CofA4.7-1	<p>project design (PBS&J 2008). Dry swales could remove substantial amounts of nutrients, suspended solids, metals, and petroleum hydrocarbons (PBS&J 2008).</p> <ul style="list-style-type: none"> Other proprietary treatment devices (if supporting documentation is provided) <p>These 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 	Grading and Drainage Plan	Review and approval of Grading and Drainage Plan	Prior to issuance of a precise grading or building permit	Public Works		
MM3.1-7	MM4.7-2	<p>The Applicant shall 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. Based on the Groundwater Hydrology Study, the Geotechnical, Hydrogeologic, or other qualified Engineer shall determine whether permanent groundwater dewatering is feasible within the constraints of a safe pumping level. The project Applicant shall incorporate the qualified Engineers designs and recommendations into project plans. If safe groundwater dewatering is determined to not be</p>	Groundwater Hydrology Study	Review and approve Groundwater Hydrology Study	Prior to issuance of a precise grading permit	Public Works		

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM3.1-8		feasible, permanent groundwater dewatering shall not be implemented. The City's Director of Public Works shall approve or disapprove of any permanent groundwater dewatering based on the Groundwater Hydrology Study and qualified Engineer recommendations.						
MM4.7-3		<p>Prepare a Hydrology and Hydraulics Study and City-approved Site Development and Drainage Plan and reduce peak runoff rates to the existing conditions 25-year storm event peak runoff rate; the design capacity of the City storm drainage channels.</p> <p>Prior to receiving a precise grading permit, the project Applicant shall:</p> <ul style="list-style-type: none"> ■ Prepare a Site Development and Drainage Plan ■ Prepare an existing and proposed project Hydrology and Hydraulics Study based on the Site Development and Drainage Plan. The existing hydrology shall include an evaluation of run-on to the project site because of spillage from the Bella Terra Mall drainage system, north of the Montgomery Ward Site. ■ Implement stormwater detention BMPs, based on the Hydrology and Hydraulics Study, for all storm events up to the 100-year storm event, to ensure that peak flow rates from the project site to the off-site storm drain system do not exceed the existing 25-year storm event peak flow rate. ■ Analyze existing street flow capacity to determine exceedance of any design criteria and guidelines from the City's MPD. ■ Additionally, stormwater detention BMPs shall be implemented such that areas draining to the existing piped storm drain systems do not exceed existing peak flow rates for the 10- and 	<p>Site Development and Drainage Plan</p> <p>Hydrology and Hydraulics Study</p> <p>Precise final grading and street improvement plans and studies</p>	<p>Review and approve plan</p> <p>Review and approve study</p> <p>Inspect project site; verify that drainage is in accordance with the Final Drainage Plan and that required detention/storm drain system improvements have been implemented.</p>	<p>Prior to issuance of a precise grading permit</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>Public Works</p>		

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>25-year storm events and that peak flows to local streets do not exceed MPD and City design guidelines:</p> <ul style="list-style-type: none"> > In accordance with the MPD, streets must be designed to leave at least one-lane free of ponded water in each direction for conveyance of the 10-year storm event, must be contained within the curbs for the 25-year storm event, cannot exceed 0.2 foot above the street curbs for the 50-year storm event, and cannot exceed 0.5 foot above the street curbs for the 100-year storm event. > The internal storm drain system must be adequate to detain sufficient stormwater runoff such that the street flow requirements are not exceeded. > Surface ponding or sump areas on the site will be limited to a maximum depth of 8-inches, and shall be distributed to areas away from building pads, and remote areas of parking lots. > Surface ponding or sump areas shall not exceed 1/3 of the proposed parking area in surface area. If there are proposed underground parking structures, they shall not be used for retention or storage, unless approved by the Director of Public Works. ■ Stormwater retention areas shall be analyzed for back-to-back 24-hour 100-year storm events per the requirements of the Orange County Flood Control Manual. ■ The final Hydrology and Hydraulics Study shall identify and evaluate the routing through the project site in relation to the new buildings, 						

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>landscaping, utilities, and others. Sufficient detention, provided to mitigate constrained capacities in the Bella Terra Mall drainage system, shall be implemented for run-on from north of the Montgomery Ward site onto the project site.</p> <ul style="list-style-type: none"> ■ The final Hydrology and Hydraulics Study shall incorporate all NPDES requirements in effect at the time that the precise grading permit is anticipated to be issued or when the study is accepted as complete. ■ Precise final grading and street improvement plans and studies shall be submitted to the Public Works Department for review and approval. The project developer shall incorporate into a final Drainage Plan all recommendations and requirements identified the review of the final Hydrology and Hydraulics Study and identified stormwater detention requirements/features. <p>Following grading, excavation, and installation of utilities, the Public Works Department shall inspect the project site and verify that project site drainage is in accordance with the Final Drainage Plan and that required detention/storm drain system improvements have been implemented.</p>						
MM3.1-9	MM4.7-4		Precise Grading and Site Development and Drainage Plan	Review and approval of Grading and Site Development and Drainage Plan	Prior to issuance of a precise grading or building permit	Public Works		

Appendix A Revised Mitigation Monitoring and Reporting Program

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>and Site Development and Drainage Plan identifying BMPs to minimize underground structure flooding. The Precise Grading and Site Development and Drainage Plan shall implement design features to minimize flooding of underground structures such as, but not limited to:</p> <ul style="list-style-type: none"> ■ Grade areas to drain away from the structure entryways ■ Implement runoff prevention (e.g., berms or dikes) to direct project site runoff and flood flows away from underground structure entryways ■ Elevate underground structure entryways to two-feet above the existing grade (approximate depth of potential flooding from the East Garden Grove-Wintersburg Channel) ■ Implement sumps and pumps within the underground structures to remove any runoff entering the underground structures (this measure shall also be subject to the WQMP and DAMP BMP requirements for discharge treatment and disposal) <p>Additionally, the Applicant shall incorporate flood-proofing measures to prevent seepage flooding. Underground structures materials and design shall be in accordance with FEMA floodplain development requirements and the 2007 California Building Code for structures subject to flooding and hydrostatic pressures.</p> <ul style="list-style-type: none"> ■ The geotechnical engineer and/or waterproofing specialist shall prepare design requirements for flood-proofing the underground structures and ensuring that structures are built to withstand hydrostatic pressures. ■ Any utilities located in below grade structures 						

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>shall be protected from ponding water and seepage in accordance with the geotechnical engineer recommendations and 2007 California Building Code.</p> <p>The Applicant shall also design on-site runoff to drain away from building foundations and shall not allow for more than 8 inches of ponding at any location on-site.</p>						
Noise								
MM4.5-1	MM4.9-1	<p>The Applicant shall require by contract specifications that the following construction best management practices (BMPs) be implemented by contractors to reduce construction noise levels:</p> <ul style="list-style-type: none"> ■ Notification shall be mailed to owners and occupants of all developed land uses immediately bordering or directly across the street from the project site area 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 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, and the police department. ■ Ensure that construction equipment is properly muffled according to industry standards ■ Utilize the best available technology to reduce 	<p>Contract language and notes on grading and building plans</p>	<p>Review and approve contract specifications, grading and building plans for inclusion</p>	<p>Plan check prior to issuance of a grading permit</p>	<p>Planning</p>		

Appendix A Revised Mitigation Monitoring and Reporting Program

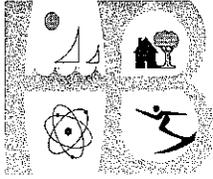
Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
		<p>noise levels from pile driving activities, including but not limited to the use of noise blankets or temporary sound barriers</p> <ul style="list-style-type: none"> ■ Place noise-generating construction equipment and locate construction staging areas away from sensitive uses, where feasible ■ Schedule pile-driving activities between the hours of 8:00 A.M. and 4:00 P.M. on Mondays through Fridays only. 						
MM4.5-2	MM4.9-2	The Applicant shall require by contract specifications that construction staging areas, along with the operation of earthmoving equipment within the project site, are 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 and approved by the City.	Contract language and notes on grading plans	Review and approve grading plans for inclusion	Prior to issuance of a grading permit	Planning		
MM4.5-3	MM4.9-3	Prior to issuance of building permits, the Applicant shall submit an acoustical study, prepared by a certified acoustical engineer, to ensure that exterior (e.g., patios and balconies) and interior noise levels would not exceed the standards set forth in the City of Huntington Beach Municipal Code Sections 8.40.050 through 8.40.070. 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		
Public Services								
MM3.1-10	MM4.11-1	Radio antenna receivers (BDA's) shall be installed in all underground parking structures in order to allow emergency responders to use their radio systems.	Final building plans	Review and approval of building plans for inclusion	Prior to issuance of a building permit	Planning		

Revised Project Mitigation Monitoring and Reporting Program

Revised Project Mitigation Measure No.	Previous Project Mitigation Measure No.	Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM4.6-1	MM4.13-1	The Applicant shall provide funds on a fair share basis to the City of Huntington Beach to construct either an additional northbound through lane or an additional westbound through lane at the intersection of Beach Boulevard and Edinger Avenue.	Proof of fair share payment	Confirm payment	Prior to issuance of certificate of occupancy	Public Works		
Utilities and Service Systems								
MM3.1-11	MM4.14-1	Prior to issuance of a building permit for the proposed project, the existing 10-inch stubout connection shall be replaced with a stubout, whose size will be determined with a sewer study, to the 69-inch OCSD trunk sewer line so that a replacement sewer lateral can be installed to service the development. The sewer study shall also evaluate the condition of the existing OCSD manhole in Edinger Avenue to determine if the manhole requires rehabilitation. In addition, a second 12-inch point of connection shall be constructed for additional capacity, if necessary.	Sewer Study Infrastructure Improvement Plans	Review and approval of study Review and approval of infrastructure plans	Prior to issuance of a grading permit Prior to issuance of a building permit	Public Works Public Works		

ATTACHMENT NO. 3.45



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING AND BUILDING

www.huntingtonbeachca.gov

Planning Division
714.536.5271

Building Division
714.536.5241

NOTICE OF ACTION

April 8, 2011

SUBJECT: ENTITLEMENT PLAN AMENDMENT NO. 2011-002 (THE VILLAGE AT BELLA TERRA)

APPLICANT: Ed Cadavona, Architects Orange, 144 N. Orange Street, Orange, CA 92866

PROPERTY OWNER: Becky Sullivan, BTDJM Phase II Associates, LLC, 922 Laguna Street, Santa Barbara, CA 93101

REQUEST: To amend the site plan layout of the previously approved Site Plan Review No. 2010-001 for The Village at Bella Terra mixed use project. The amendments include changing the size and shape of the residential parking structure to reduce the walking distance to each unit, amend the interior courtyard spaces and recreational amenities, reorient the westerly units to face north and south, and add one additional level of residential above the retail. The project details remain the same at 467 residential units and 29,500 square feet of retail/restaurant uses.

LOCATION: 7601 Edinger Avenue (north of Edinger Avenue, west of the existing Bella Terra development, and east of the Union Pacific Rail Road)

DATE OF ACTION: April 8, 2011

On April 8, 2011, the Planning and Building Department of the City of Huntington Beach took action on your application, and your application was **conditionally approved**. Attached to this letter are the conditions of approval for your application.

Please be advised that the Department of Planning and Building reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to issuance of building permits. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your

ATTACHMENT NO. 4.1

project. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

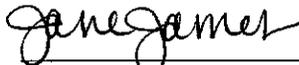
Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance and Specific Plan No. 13, the action taken by the Department of Planning and Building is final unless an appeal is filed to the City Council by you or by a City Council member. The appellant shall file a written notice of appeal to the City Clerk within ten (10) calendar days of the date of the Planning and Building Department'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. A filing fee of \$494 shall also accompany the notice of appeal. Said appeal must be in writing and must set forth in detail the action and grounds by which the applicant or interested party deems himself aggrieved. The last day for filing an appeal and paying the filing fee for the above noted application is **Wednesday, April 20, 2011 at 5:00 p.m.**

If you have any questions, please contact Jane James, Senior Planner at (714) 536-5596 (jjames@surfcity-hb.org) or the Planning Division Planning and Zoning Information Counter at (714) 536-5271.

Sincerely,

Scott Hess, AICP
Director of Planning and Building

by:



Jane James
Senior Planner

Attachments: Findings and Conditions of Approval – Entitlement Plan Amendment No. 11-002

Cc: Honorable Mayor and City Council
Chair and Planning Commission
Fred A. Wilson, City Administrator
Scott Hess, AICP, Director of Planning and Building
Herb Fauland, Planning Manager
Kellee Fritzel, Economic Development Deputy Director
Bill Reardon, Division Chief/Fire Marshal
Debbie DeBow, Senior Civil Engineer
Mark Carnahan, Inspection Manager
Becky Sullivan, BTDJM Phase II Associates, LLC, Property Owner
Project File

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

ENTITLEMENT PLAN AMENDMENT NO. 2011-002

FINDINGS OF APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 11-002:

1. Entitlement Plan Amendment No. 11-002 to amend the site plan layout of the previously approved Site Plan Review No. 2010-001 for The Village at Bella Terra mixed use project, including changing the size and shape of the residential parking structure to reduce the walking distance to each unit, amending the interior courtyard spaces and recreational amenities, reorienting the westerly units to face north and south, and adding one additional level of residential above the retail 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 project details remain the same at 467 residential units and 29,500 square feet of retail/restaurant uses and the mixed-use residential and retail development, with the recommended conditions of approval, incorporates architectural and design principles to help ensure maximum compatibility of design with the existing Bella Terra, promote pedestrian-friendly entries and uses, and promote the use of high quality exterior materials. Structures on the project site would vary in heights in order to provide variety to the roofline and to reduce overall building massing. Development standards and design guidelines in Specific Plan No. 13 ensure that form, height, and development convey an overall high level of quality. Landscaping and paving patterns will be compatible with the adjacent Bella Terra development and the project will contain gathering places for public activity.
2. The revised plans under Entitlement Plan Amendment No. 11-002 to amend the site plan layout of the previously approved Site Plan Review No. 2010-001 for The Village at Bella Terra mixed use project, including changing the size and shape of the residential parking structure to reduce the walking distance to each unit, amending the interior courtyard spaces and recreational amenities, reorienting the westerly units to face north and south, and adding one additional level of residential above the retail will be compatible with surrounding uses because circulation patterns effectively move passenger vehicles and delivery trucks around the site; adequate parking for the proposed development will be provided; a high level of quality architecture is proposed with the mixed use portion of the building; and the overall project will incorporate sustainable building practices to maximize energy efficiency.
3. The revised plans under Entitlement Plan Amendment No. 11-002 to amend the site plan layout of the previously approved Site Plan Review No. 2010-001 for The Village at Bella Terra mixed use project, including changing the size and shape of the residential parking structure to reduce the walking distance to each unit, amending the interior courtyard spaces and recreational amenities, reorienting the westerly units to face north and south, and adding one additional level of residential above the retail will comply with the provisions of Specific Plan No. 13 and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance. The proposed project meets code requirements in terms of building height, setbacks, landscaping, common and private open space, and

with conditions imposed will depict reciprocal access for pedestrian and bicycle connections from the westerly adjacent property to the Bella Terra development.

4. The granting of Entitlement Plan Amendment No. 11-002 to amend the site plan layout of the previously approved Site Plan Review No. 2010-001 for The Village at Bella Terra mixed use project will not adversely affect the General Plan. It is consistent with the Land Use Element designation of CR-F2-sp-mu (F14) (Regional Commercial) for Area B on the subject property.

CONDITIONS OF APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 11-002:

1. The site plan, floor plan, and elevations received and dated January 31, 2011 shall be the conceptually approved layout with the following modifications:
 - a. The site plan shall depict the pedestrian connection to the west at the northwest corner of the residential layout.
 - b. The residential parking structure shall yield the minimum number of parking stalls identified in the approved Shared Parking Analysis under Site Plan Review No. 10-001.
2. All other conditions of approval required under Site Plan Review No. 10-001 shall remain in effect.

INFORMATION ON SPECIFIC CODE REQUIREMENTS:

1. The applicant and/or applicant's representative shall be responsible for ensuring the accuracy of all plans and information submitted to the City for review and approval.
2. Entitlement Plan Amendment No. 11-002 shall not become effective until the ten-calendar day appeal period has elapsed.
3. Entitlement Plan Amendment No. 11-002 shall become null and void unless exercised within one year of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning and Building Department a minimum 30 days prior to the expiration date.
4. The Planning and Building Department reserves the right to revoke Entitlement Plan Amendment No. 11-002, pursuant to a public hearing for revocation, if any violation of these conditions or the Huntington Beach Zoning and Subdivision Ordinance or Municipal Code occurs.
5. The development shall comply with all applicable provisions of the Municipal Code, Building Department, and Fire Department as well as applicable local, State and Federal Fire Codes, Ordinances, and standards, except as noted herein.

OCT 03 2011

Jeffrey M. Oderman
Direct Dial: (714) 641-3441
E-mail: joderman@rutan.com

October 3, 2011

Members of the Planning Commission
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Re: October 11, 2011, Planning Commission Meeting Agenda Item #2;
Development Agreement No. 2008-001 (The Village at Bella Terra)

Dear Members of the Planning Commission:

On behalf of BTDJM Phase II Associates, LLC ("DJM"), I am writing to request that you take action at your October 11 meeting to recommend to the City Council that the Council approve the Development Agreement ("DA") for the Village at Bella Terra ("VABT") project *with one modification*: deletion of the provisions in the draft of the DA presented to the Commission at your September 27, 2011, study session that would obligate DJM to repair/repave approximately 2,300 linear feet of Center Street (DA Section 1 [definition of "Off-Site Public Improvements"], Section 4.1.1, and Exhibit "C").

The City staff and DJM have fully negotiated and are in full agreement with respect to all of the other terms of the DA. DJM thanks the City staff for its diligence and support in helping to put this document together. DJM *does* have a disagreement with City staff concerning the Center Street repair/repaving issue, however, and since we were unable to resolve that issue between ourselves we agreed that we would each take our respective positions to the Planning Commission and City Council for resolution.

DJM objects to including the Center Street repair/repaving obligation in the DA for the following reasons:

1. The City previously certified a full Environmental Impact Report (No. 07-03) for the VABT project and an Addendum to that EIR. *The repair/repaving of Center Street was not identified in either document as an impact of the VABT project or a required mitigation measure.*

2. The Planning Commission and City Council have previously issued the development entitlements for the VABT project (including General Plan Amendment No. 10-001, Zoning Text Amendment No. 10-001, Specific Plan No. 13, Site Plan Review No. 10-001, and Tentative Tract Map No. 17261) and the City's Redevelopment Agency has approved (on October 4, 2010) a comprehensive Affordable Housing Agreement ("AHA") for the 71 affordable housing units to be included in the VABT project. *The repair/repaving of Center Street is not a condition of approval for any of the VABT project entitlements or the AHA.*

ATTACHMENT NO. 5.1

Members of the Planning Commission
October 3, 2011
Page 2

3. There is no “nexus” between the impacts of the VABT project on the environment and the City’s desire or need to repair/repave Center Street. Center Street is an existing City street and the City’s maintenance responsibility. Even if there are existing deficiencies in the roadway, these are the *City’s* obligation to fix, not DJM’s obligation. If the City were to unilaterally try to impose the Center Street repair/repaving obligation on DJM instead of sticking the obligation into the DA, this imposition would constitute an unconstitutional “taking” of DJM’s property rights. (See, e.g., *Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463 [held: city guilty of inverse condemnation for attempting to condition development project on obligation to dedicate right-of-way for realignment of an intersection when the deficiency was an existing deficiency and not reasonably related to any impacts caused by the project].) DJM submits the City should not be trying to accomplish through the DA what it could not lawfully accomplish through the entitlements process.

4. The City staff has taken the position with DJM that City policy requires the City to obtain some “extraordinary benefit” as a condition to approval of a development agreement and the Center Street repair/repaving obligation is needed to serve that policy. *In fact, there is no such City policy.* The Land Use Element of the City’s General Plan (Policy I-LU 7) says only that the City “*may use*” development agreements “where appropriate” and that development agreements can address “additional benefits that *may* be contributed” by the developer (emphasis added), which falls far short of a command that the City extract such benefits. Likewise, there is nothing in the State law authorizing development agreements (Cal. Government Code Section 65864 *et seq.*) or the City’s implementing development agreement ordinance (Chapter 246 of the Municipal Code) that even suggests the City’s approval of a development agreement must or should be conditioned upon the developer’s agreement to provide some “added benefit.”

5. Even though no law or City policy requires the City to extract an “added benefit” as a condition to approval of a development agreement, DJM *has* offered to provide such added benefits. When this issue was first raised by City staff during the negotiation of the VABT DA, City staff and DJM agreed upon the language now incorporated into Section 4.1.2 of the DA (to which DJM does *not* object) that obligates DJM to contribute \$250,000 toward the cost of providing a pedestrian linkage with the former Levitz property to the west. It was only *after* DJM made this concession to fund the pedestrian connection to the former Levitz property (which improvement is not related to any impacts of the VABT project either) that City staff came back and asked for the *additional* requirement relating to repair and repaving of Center Street. While this happened several months ago (it has taken years to finalize the language in the DA), DJM feels the City staff’s demand to add the Center Street repair/repaving requirement after negotiating for the pedestrian connection was a “late hit” in terms of how the DA was negotiated.

6. Beyond that, DJM submits the VABT project, viewed in its totality, provides *tremendous* public benefits to the City and its citizens, including without limitation: a new Costco store, which will provide excellent shopping opportunities for City residents and will

Members of the Planning Commission
October 3, 2011
Page 3

generate very substantial local sales tax revenues; 71 affordable housing units that will be rent-restricted for 55 years (including 28 units affordable to the most needy "very low" income household category); a 1-acre park that will be open to the public but maintained at no cost to the City (over and above the VABT project's park dedication/fee requirement and for which DJM will receive *no* credit against its park obligations); demolition of the old run-down Montgomery Ward building; revitalization of the Bella Terra shopping center in the wake of Mervyn's departure; creation of a very high quality mixed-use project (well above minimum City design and building standards) in the key Edinger-Beach corridor; and a considerable number of construction and long-term employment opportunities for area residents during these very difficult economic times. The notion that DJM needs to provide an "additional benefit" above and beyond all of these other substantial benefits (and its \$250K contribution to the pedestrian connection referred to above) is, DJM submits, simply "piling on."

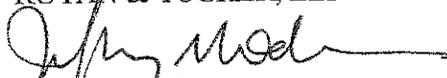
7. DJM estimates it would have to pay approximately \$500,000 to repair/repave the 2,300 linear foot portion of Center Street as recommended by City staff. In these difficult economic times the VABT project is financially "thin" already and simply cannot afford to carry this additional burden.

DJM needs the DA in order to clarify the rules that will apply relative to payment of park fees for the project and which condominium conversion regulations will apply if the residential units (which are approved and are being built as condos but which will be rented out for the indefinite future) are later sold. (DA, Sections 5.1-5.1.4.) While the staff report presented to the Commission at your September 27th meeting indicates (at page 2) that only "current development/exaction fees [apply] during the term of the agreement," in fact the DA (in Section 3.2.1(ii)) allows the City to increase fees as long as those increases are "applicable to similarly situated properties or projects on a citywide or areawide basis." DJM is abiding by all of the City's requirements and believes the DA is more than fair to protect the City's interests. Accordingly, DJM respectfully requests that the Planning Commission recommend approval of the DA subject to deletion of the provisions relating to the repair/repaving of Center Street.

Thank you for your consideration of this request.

Sincerely,

RUTAN & TUCKER, LLP


Jeffrey M. Oderman

cc: Scott Hess
Jane James
Lindsay Parton
Becky Sullivan
Dick Harlow