



City of Huntington Beach Planning and Building Department

**STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Scott Hess, AICP, Director of Planning and Building  
**BY:** Tess Nguyen, Associate Planner *TN*  
**DATE:** September 25, 2012

**SUBJECT: DEVELOPMENT AGREEMENT NO. 12-003 (ARCHSTONE HB LOFTS DEVELOPMENT AGREEMENT)**

**APPLICANT:** Archstone Apartments, 3 MacArthur Place, Suite 600, Santa Ana, CA 92707 and Red Oak Investments, 2101 Business Center Drive, Suite 230, Irvine, CA 92612

**PROPERTY**

**OWNER:** Archstone Huntington Beach College Park LLC, 3 MacArthur Place, Suite 600, Santa Ana, CA 92707

**LOCATION:** 7400 Center Avenue, Huntington Beach, CA 92647 (southeast corner of Center Avenue and Gothard Street)

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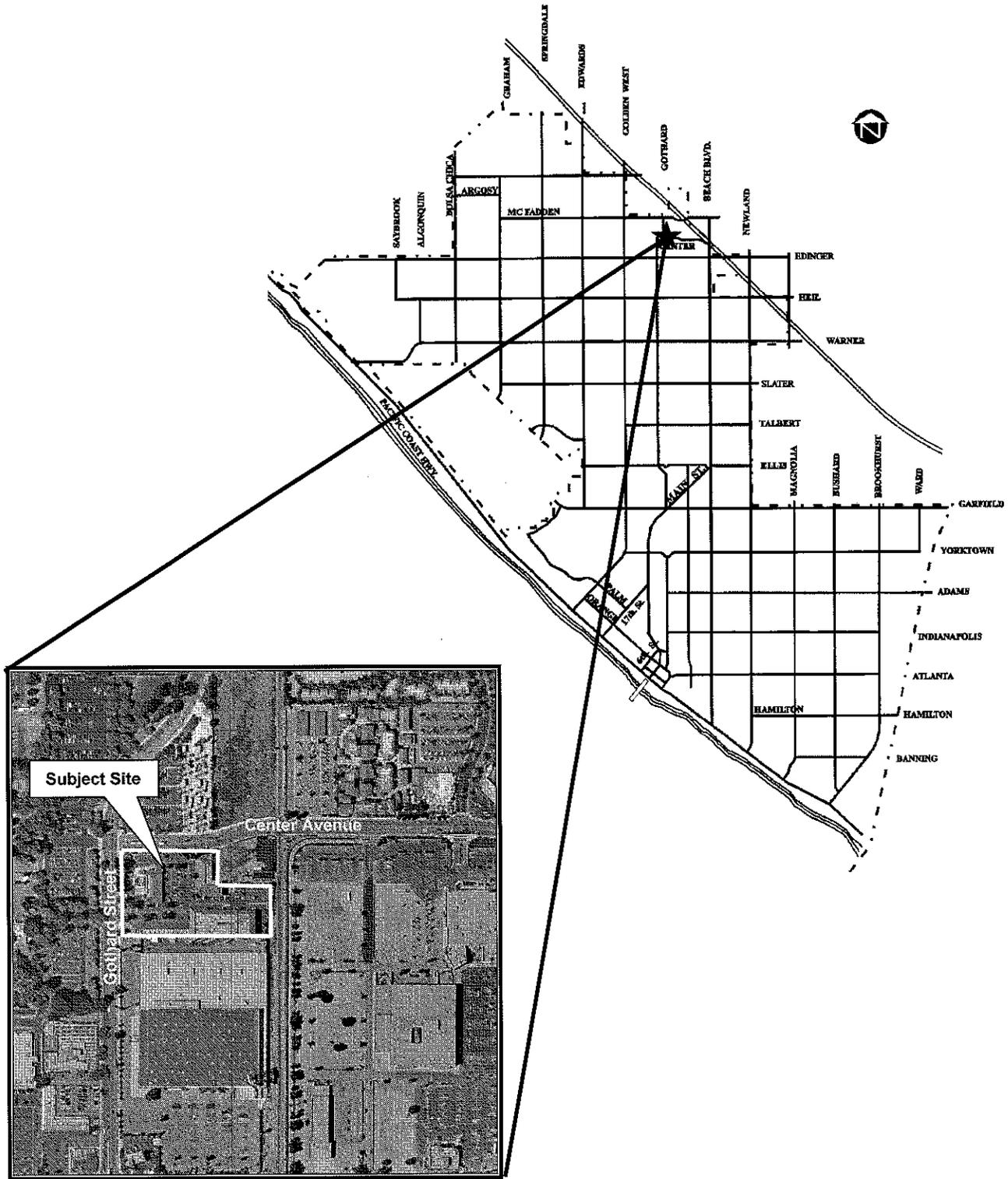
**STATEMENT OF ISSUE:**

- ◆ Development Agreement No. 12-003 represents a request for the following:
  - To enter into a Development Agreement between the City of Huntington Beach and Archstone Huntington Beach College Park LLC (developer) pursuant to approvals for the Archstone HB Lofts Project, a 385 multi-family residential mixed use development including live/work units, 10,000 sq. ft. of retail, leasing office, resident fitness and recreation areas and public open space (formerly known as The Ripcurl).
- ◆ Staff recommends approval of Development Agreement No. 12-003 based upon the following:
  - Consistency with the General Plan;
  - Conforms to the provisions of Chapter 246 – *Development Agreements* of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO);
  - Consistency with the approved Project and the Conditions of Approval and Mitigation Measures adopted pursuant to Conditional Use Permit (CUP) No. 07-043 and Environmental Impact Report (EIR) No. 07-004; and
  - Ensures the mutually beneficial development of the approved project and serves the affordable housing needs of the community by providing 39 on-site affordable housing units.

**RECOMMENDATION:**

Motion to:

“Approve Development Agreement No. 12-003 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) to the City Council for adoption.”



**VICINITY MAP  
 DEVELOPMENT AGREEMENT NO. 12-003  
 (ARCHSTONE HB LOFTS- 7400 CENTER AVENUE)**

**ALTERNATIVE ACTION(S):**

The Planning Commission may take alternative actions such as:

- A. “Deny Development Agreement No. 12-003 with findings for denial.”
- B. “Continue Development Agreement No. 12-003 and direct staff accordingly.”

**PROJECT PROPOSAL:**

Development Agreement No. 12-003 represents a request to enter into a Development Agreement between the City of Huntington Beach and Archstone Huntington Beach College Park LLC (developer) pursuant to approvals for the Archstone HB Lofts Project. The Project is approved for 385 multi-family apartment units, including live work units, 10,000 sq. ft. of retail space, a leasing office, resident fitness and recreation areas and public open space.

The project, formerly known as The Ripcurl, was approved by the Planning Commission and the City Council in 2008 under the Mixed Use-Transit Center District of the HBZSO. Therefore, the project is subject to the affordable housing provisions of the HBZSO. The project has been delayed in pursuing construction due to the downturn in the economy; however, the project applicant and developer are now moving forward. Condition No. 4.a. requires an affordable housing agreement to be approved by the City Council and recorded to provide for affordable dwelling units in accordance with the Huntington Beach Zoning and Subdivision Ordinance (HBZSO).

**ISSUES:**

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

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property	M-sp-d (Mixed Use – Specific Plan Overlay – Design Overlay)	SP-14 (Beach and Edinger Corridors Specific Plan)	Vacant Commercial Center; Approved for 385 unit mixed use project
North of Subject Property (across Center Avenue)	M-sp-d	SP-14	Golden West Transportation Center
South of the Subject Property	M-sp-d	SP-14	Vacant; Approved for 487 unit multi-family project
East of Subject Property	M-sp-d; CR-F2-sp-mu (F9) (Commercial Regional—0.50 Floor Area Ratio— Specific Plan Overlay— Mixed Use Overlay—(1.5 Max. Floor Area Ratio (Mixed Use)/0.5 Max. Floor Area Ratio (Commercial)/25 du/ac))	SP-14; SP 13 (Bella Terra Specific Plan)	Southern California Edison transmission towers; Costco (across the Union Pacific Railroad right-of-way)
West of Subject Property (across Gothard Street)	P (RL) (Public—Low Density Residential)	PS (Public—Semipublic)	Golden West College

**General Plan Conformance:**

The General Plan land use designation is Mixed Use - Specific Plan Overlay - Design Overlay (M-sp-d). The development agreement is consistent with the following General Plan goals and policies:

A. Housing Element

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

Goal H 3: Assist in development of affordable housing.

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

B. Land Use Element

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

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

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

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

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

The development agreement would ensure that the project is developed in accordance with the approved project development plan, which provides a housing choice adjacent to an existing public transit center and provides an alternative for residents seeking to be within walking distance of work, services or commercial uses and reduce dependency on their automobile. The development agreement would guarantee that the project provides 39 on-site affordable housing units. These units would help the City to satisfy its affordable housing obligations while providing housing for moderate income households.

**Zoning Compliance:**

The Archstone HB Lofts Project, as approved pursuant to Conditional Use Permit No. 07-043, is consistent with the development standards and regulations of the Mixed Use–Transit Center District standards that the project was approved pursuant to in 2008. Development Agreement No. 12-003 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 affordable housing requirement/agreement, which is executed via the proposed development agreement, was included in the scope of the proposed project’s Environmental Impact Report (EIR No. 07-004) certified by the City Council on November 10, 2008.

**Environmental Board:** Not Applicable.

**Coastal Status:** Not applicable.

**Redevelopment Status:** Not Applicable.

**Design Review Board:** Not applicable.

**Subdivision Committee:** Not applicable.

**Other Departments Concerns and Requirements:**

Development Agreement No. 12-003 was drafted by the City Attorney’s office in coordination with the Planning Division and Economic Development Department. In addition, Development Agreement No. 12-003 is consistent with conditions approved for the project and applicable mitigation measures adopted for EIR No. 07-004, 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 13, 2012, and notices were sent to property owners of record and occupants within a 500 ft. radius of the project site, interested parties, and individuals/organizations that commented on the environmental document. As of September 18, 2012, no communications on Development Agreement No. 12-003 have been received.

**Application Processing Dates:**

**DATE OF COMPLETE APPLICATION:**      **MANDATORY PROCESSING DATE(S):**

Not Applicable

Not Applicable

Development Agreement No. 12-003 is required pursuant to approvals for Conditional Use Permit No. 07-043, which was approved by the City Council on November 10, 2008.

## **ANALYSIS:**

When the Archstone HB Lofts Project was approved, Condition No. 4.a. required an affordable housing agreement to be approved by the City Council and recorded to provide for affordable dwelling units in accordance with the HBZSO. The proposed development agreement, which includes the affordable housing agreement, complies with these conditions.

### **Consistency with the HBZSO and General Plan**

The City is authorized pursuant to California Government Code Section 65864 et.seq. and Chapter 246 of the HBZSO to enter into binding development agreements with persons or entities owning legal interests in real property located within the City. The objective of a development agreement is to provide assurances that an applicant may proceed with a project in accordance with existing policies and standards in place at the time of project approval. The City and developer desire to enter into a development agreement for the subject site in order to achieve the mutually beneficial development of the property and ensure that the project is developed in accordance with the approved project pursuant to Conditional Use Permit No. 07-043.

The development agreement would be effective for five years and vests the developer's right to construct the project pursuant to the terms of the agreement. Development Agreement No. 12-003 references the project pursuant to Conditional Use Permit No. 07-043. In addition, the development agreement is consistent with the General Plan land use designation for the site insofar as the approved project is consistent with the General Plan land use designation. As discussed in the General Plan Conformance Section of this report, the development agreement would conform to applicable goals and policies of the General Plan.

### **Affordable Housing**

The project is required to provide affordable housing in accordance with the HBZSO and conditions of approval for the project. Of the 385 total units, the project will provide 39 affordable units on-site. The 39 affordable units would be made available to moderate income households for which the City has a remaining need of 392 units for the 2008-2014 planning period. The development agreement stipulates these requirements in addition to a 55-year affordability period and the timing for which the affordable units shall be constructed. The development agreement also includes a separate affordable housing agreement exhibit to be recorded, which further specifies details of the affordable units including income requirements, household size and the timing for the affordability period to take effect.

## **SUMMARY:**

Staff recommends approval of Development Agreement No. 12-003 because it would:

- Conform to applicable goals and policies of the General Plan;
- Conform to the provisions of Chapter 246 – *Development Agreements* of the Huntington Beach Zoning and Subdivision Ordinance;
- Ensure development of the Archstone HB Lofts Project consistent with the conditions approved for Conditional Use Permit (CUP) No. 07-043 and applicable mitigation measures adopted for EIR No. 07-004; and
- Provide for the construction of needed affordable housing in the City of Huntington Beach.

**ATTACHMENTS:**

1. Suggested Findings for Development Agreement No. 12-003
2. Draft Ordinance – Archstone HB Lofts Development Agreement
3. Conditional Use Permit No. 07-043 – Notice of Action with Findings, Conditions of Approval and Mitigation Measures

SH:HF:MBB:tn

## ATTACHMENT NO. 1

### SUGGESTED FINDINGS FOR APPROVAL

#### DEVELOPMENT AGREEMENT NO. 12-003

#### SUGGESTED FINDINGS FOR CEQA:

The Planning Commission finds that the proposed development agreement, which executes the required affordable housing agreement, is included in the scope of the proposed project's Environmental Impact Report (EIR No. 07-004) certified by the City Council on November 10, 2008.

#### SUGGESTED FINDING FOR APPROVAL – DEVELOPMENT AGREEMENT NO. 12-003:

The development agreement is consistent with the General Plan and Huntington Beach Zoning and Subdivision Ordinance. Development Agreement No. 12-003 provides for the construction of the Archstone HB Lofts Project, which complies with approved Conditional Use Permit No. 07-043 and was found to conform to the goals and policies of the General Plan as approved by the City Council on November 10, 2008. The development agreement ensures the construction of 39 affordable housing units within the project in accordance with the provisions of the HBZSO for a 55-year period. The development agreement is consistent with the following General Plan goals and policies:

#### A. Housing Element

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

Goal H 3: Assist in development of affordable housing.

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

#### B. Land Use Element

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

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

- a. Not applicable
- b. Vary uses and densities along the City's extended commercial corridors, such as Beach Boulevard.
- c. Increase diversification of community and local commercial nodes to serve adjacent residential neighborhoods.
- e. Intermix uses and densities in large-scale development projects.
- f. Site development to capitalize upon potential long-term transit improvements.

- g. Establish linkages among community areas, which may include pedestrian and vehicular paths, landscape, signage, other streetscape elements, open space, transitions, in form, scale, and density of development, and other elements.

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

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

The development agreement would ensure that the project is developed in accordance with the approved project development plan, which provides a housing choice adjacent to an existing public transit center and provides an alternative for residents seeking to be within walking distance of work, services or commercial uses and reduce dependency on their automobile. The development agreement would guarantee that the project provides 39 on-site affordable housing units. These units would help the City to satisfy its affordable housing obligations while providing housing for moderate income households.

#### **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.

**DRAFT**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH ADOPTING A  
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF HUNTINGTON  
BEACH AND ARCHSTONE HUNTINGTON BEACH COLLEGE PARK LLC  
(DEVELOPER)  
(DEVELOPMENT AGREEMENT NO. 12-003)**

WHEREAS, the City Council approved Conditional Use Permit No. 07-043 to develop an approximately 3.8-acre property located at 7400 Center Avenue (Property) with 385 apartment units, including live work units, with a leasing office, and private and public recreation and open space areas (Project) pursuant to the City of Huntington Beach Zoning and Subdivision Ordinance; and

The City and Developer each mutually desire to enter into a Development Agreement with one another to permit and ensure that the Property is developed in accordance with the approved Conditional Use Permit No. 07-043 and the City's zoning regulations 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. 12-003 conforms to Government Code Section 65864 et. seq. and that:

- a. Development Agreement No. 12-003 is consistent with the Huntington Beach General Plan; and
- b. Development Agreement No. 12-003 is consistent with Chapter 246 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) and the Huntington Beach Municipal Code; and
- c. Development Agreement No. 12-003 will not be detrimental to the health, safety and general welfare, and will not adversely affect the orderly development of the property because it is consistent with applicable land use regulations of the zoning regulations in effect at the time of project approval, mitigation measures adopted for the Project in accordance with EIR No. 07-004, and conditions approved for Conditiona Use Permit No. 07-043; and
- d. The City Council has considered the fiscal effect of Development Agreement No. 12-003 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. 12-003 and adopts it by this ordinance pursuant to Government Code Section 65867.5. This action is subject to a referendum.

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

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Planning and Building

Exhibit A: Development Agreement No. 12-003

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF HUNTINGTON BEACH  
2000 Main Street  
Huntington Beach, CA 92648

Attention: Director of Planning and Building

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(Space Above For Recorder's Use)

### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made in Orange County, California, as of \_\_\_\_\_, 2012, by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (the "City") and ARCHSTONE HUNTINGTON BEACH COLLEGE PARK LLC, a Colorado limited liability company (the "Property Owner").

#### RECITALS:

- A. The City is authorized pursuant to Government Code sections 65864 through 65869.5 and Huntington Beach Zoning and Subdivision Ordinance (HBZSO) Chapter 246 to enter into binding development agreements with persons or entities owning legal interests in real property located within the City.
- B. Property Owner is the owner of that certain real property more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
- C. The City and the Property Owner each desire to enter into this Agreement affecting the Property in conformance with Government Code section 65864 et seq. and HBZSO 246 in order to achieve the mutually beneficial development of the Property in accordance with this Agreement.
- D. The Property Owner seeks to develop a project on the Property consisting of up to 385 dwelling units and live work units, 10,000 square feet of square feet of commercial uses, as more particularly set forth in the Development Plan (collectively, the "Project"), attached as Exhibit B and incorporated herein, all in accordance with City regulations, as may be amended from time to time.
- E. The City Council of the City (the "City Council") certified an environmental impact report (the "EIR") for the Project on November 10, 2008 and approved General Plan Amendment 07-0003, Zoning Text Amendment 07-0004, Zoning Map Amendment 07-001 and Conditional Use Permit No. 07-043 on November 10, 2008.

- F. The City and the Property Owner each mutually desire to obtain the binding agreement of one another to permit and ensure that the Property is developed strictly in accordance with the provisions of this Agreement.
- G. This Agreement will benefit the Property Owner and the City by eliminating uncertainty in planning and providing for the orderly development of the Project. Specifically, this Agreement (1) eliminates uncertainty about the validity of exactions to be imposed by the City, (2) provides for the construction of needed affordable housing, (3) ensures that development of the Property occurs within a reasonable timeframe, and (4) generally serves the public interest within the city and the surrounding region.
- H. The Planning Commission and City Council have each given notice of their intention to consider this Agreement, and have each conducted public hearings thereon pursuant to the relevant provisions of the Government Code. The City Council has found that the provisions of this Agreement are consistent with the City's 1996 General Plan for development within the City, as amended (the "General Plan") and City zoning ordinances, as amended. The Planning Commission and City Council have also specifically considered the impacts and benefits of the Project upon the welfare of the residents of the City and the surrounding region. The City Council has determined that this Agreement is beneficial to the residents of the City and is consistent with the present public health, safety and welfare needs of the residents of the City and the surrounding region.
- I. On \_\_\_\_\_, 2012, the Planning Commission held a duly noticed public hearing on this Agreement.
- J. On \_\_\_\_\_, 2012, the City Council held a duly noticed public hearing on this Agreement.

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

1. **Definitions.**

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

1.2. "Affordable Housing Agreement" shall collectively mean that certain Affordable Housing Agreement Restrictions—Rental (Declaration of Covenants, Conditions and Restrictions for Property) (AHARR) by and between the HBHA, the City and the Property Owner together with all attachments thereto, which was approved as to form as part of this Development Agreement. AHARR shall also include any and all amendments or modifications thereto.

1.3. "Affordable Rent" shall have the same meaning set forth in California Health and Safety Code section 50053, as more specifically set forth in the Agreement

Containing Covenants Affecting Real Property to be attached to the Affordable Housing Agreement.

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

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

1.6. "City Council" shall mean the City Council of the City.

1.7. "City Manager" shall mean the City Manager of the City.

1.8. "County" shall mean Orange County.

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

1.10. "Development Plan" shall mean the site plan that was approved by the City as part of CUP 07-043.

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

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

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

1.14. "Huntington Beach Housing Authority" shall mean the Housing Authority of the City of Huntington Beach.

1.15. "Moderate Income Household" shall mean persons and families whose income conforms to the qualifying limits defined by California Health and Safety Code Section 50093(b) and set forth in Title 25, California Code of Regulations, Section 6932, as that section may be amended, modified or recodified from time to time. Generally, Moderate Income Household means income that exceeds eighty percent (80%) of the Area Median Income but does not exceed one hundred twenty percent (120%) of the Area Median Income, adjusted for family size by the California Department of Housing and Community Development ("HCD") in accordance with adjustment factors and adopted and amended from time to time by the United States Department of Housing ("HUD") pursuant to Section 8 of the United States Housing Act of 1937..

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

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

1.18. "Planning Commission" shall mean the Planning Commission of the City.

1.19. "Project" shall mean that development contemplated pursuant to the Development Plan, attached as Exhibit B, approved by Conditional Use Permit No. 07-043.

1.20. "Recession" shall mean an economic recession as determined by the National Bureau of Economic Research, or any successor organization charged with the duty of determining the state of the United States economy.

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

2. **Term of Agreement.** This Agreement shall become operative and commence upon the Effective Date and remain in effect for a term of five (5) years. Except for continuing obligations regarding affordable housing covenants and requirements, upon the expiration or termination of the term, this Agreement shall be deemed terminated and have no further force and effect.

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

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

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

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

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

3.5. **Project Completion.** This Agreement and the EIR and associated findings, are based on the expectation that the Project will be constructed as follows: up to 346 Market Rate Rental Dwelling Units including seven (7) live/work units, 39 Affordable Dwelling Units and up to 10,000 square feet of commercial space will be completed for occupancy during the term of the Agreement.

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

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

3.8. Cooperation and Indemnification. The City agrees to cooperate with the Property Owner in all reasonable manners in order to keep this Agreement in full force and effect. Notwithstanding the preceding sentence, in the event any legal action instituted by a third party or other government entity or official challenging the validity of this Agreement, the City and the Property Owner agree to cooperate in defending such action, with the Property Owner to indemnify the City pursuant to Paragraph 15 of this Agreement. In the event of any litigation challenging the effectiveness of this Agreement or any portion thereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless a court of competent jurisdiction orders otherwise.

#### 4. Development of the Property.

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

(b) Development Standards. All development and design requirements and standards applicable to the Project shall conform to the Development Plan and any conditions and mitigation measures imposed on the Project, the Huntington Beach Municipal Code, and any Applicable Rules.

(c) Development Impact Fees. In addition to the obligations set forth elsewhere in this Agreement, the Property Owner shall be responsible for paying when due all Development Impact Fees in connection with development of the Project at the rates in effect on the Effective Date. Subject to all applicable laws then in effect, the City shall have the right to charge and apply to the Property all Development Impact Fees as may be in effect on the Effective Date.

5. Affordable Housing. It is the intent of the parties that the Affordable Dwelling Units shall be constructed concurrently with the Market Rate Rental Dwelling Units. The Project is subject to the requirement of providing a total of 39 Affordable Dwelling Units, all of which shall be rental units and must remain Affordable Dwelling Units for at least fifty-five (55) years. The City and the Property Owner agree as a condition precedent to Development that an Affordable Housing Agreement be executed to memorialize the terms and conditions of the affordable housing components (Attached Hereto as Exhibit C). The Property Owner will provide affordable units for rent, which shall be made available to and occupied by Moderate Income Households. The Property Owner agrees to record said affordability covenant and Deed of Trust in favor of the City to assure that affordability covenant runs with the land and remains in effect for the affordability period. The Property Owner agrees to comply with all terms and provisions of the Affordable Housing Agreement and its attachments and acknowledges that any default thereunder shall also constitute a default under this Agreement.

It is contemplated that multiple temporary final inspections (to allow for occupancy) will be sought during the construction of the Project. When each temporary final inspection (to allow for occupancy) is sought, approximately ten percent (10%) of the units for which it is sought will be Affordable Dwelling Units.

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

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

8. Compliance Review.

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

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

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

9. Modification, Amendment, Cancellation or Termination.

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

9.2. Modification. The City Planning Director, with the consent of the Property Owner, may make minor modifications to the Agreement without the need for formal action by the City's Planning Commission or City Council as long as such modifications do not alter the Term of this Development Agreement, the permitted uses, density or intensity of uses, the maximum height or size of buildings, provisions for reservations or Dedication of land, conditions, terms, restrictions and requirements relating to Subsequent Discretionary Actions and Approvals, and monetary contributions by the Property Owner.

10. **Defaults, Notice and Cure Periods, Events of Default and Remedies.**

10.1. **Default By the Property Owner.**

10.1.1. **Default.** If the Property Owner does not perform its obligations under this Agreement in a timely manner, the City may exercise all rights and remedies provided in this Agreement, provided the City shall have first given written notice to the Property Owner as provided in Paragraph 15(a) hereof.

10.1.2. **Notice of Default.** If the Property Owner does not perform its obligations under this Agreement in a timely manner, the City through the City Manager may submit to the Property Owner a written notice of default in the manner prescribed in Paragraph 15(a) identifying with specificity those obligations of the Property Owner under this Agreement which have not been timely performed. Upon receipt of any such written notice of default, the Property Owner shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of any such written notice of default and shall complete the cure of any such default(s) no later than sixty (60) days after receipt of any such written notice of default, or if such default(s) is not capable of being cured within sixty (60) days, no later than one hundred twenty (120) days after receipt of any such written notice of default, provided the Property Owner commences the cure of any such default(s) within such sixty (60) day period and thereafter diligently pursues such cure at all times until any such default(s) is cured.

10.1.3. **Failure to Cure Default Procedure.** If after the cure period provided in Paragraph 10.1.2 has elapsed, the City Manager finds and determines the Property Owner, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the City's Planning and Building Director shall make a report to the Planning Commission and then set a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that the Property Owner, or its successors, transferees and/or assigns, as the case may be, has not cured a default under this Agreement pursuant to this Paragraph 10, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Property Owner, and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council. Such right of appeal shall include, but not be limited to, an objection to the manner in which the City intends to modify this Agreement if the City intends as a result of a default of the Property Owner, or one of its successors or assigns, to modify this Agreement. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Subject to Paragraph 4(a) above, nothing in this Paragraph 10 or this Agreement shall be construed as modifying or abrogating the City Council's review of Planning Commission actions or limiting the City's rights and remedies available at law or in equity, which shall include (without limitation) compelling the specific performance of the Property Owner's obligations under this Agreement.

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

10.1.5. **Lender Protection Provisions.**

10.1.5.1. **Notice of Default.** In addition to the notice provisions set forth in Paragraph 15(a)(2), the City shall send a copy of any notice of default sent to the Property Owner or any of its successors or assigns to any lender that has made a loan then secured by a deed of trust against the Property, or a portion thereof, provided such lender shall have (a) delivered to the City written notice in the manner provided in Paragraph 15(a) of such lender's election to receive a copy of any such written notice of default and (b) provided to the City a recorded copy of any such deed of trust. Any such lender that makes a loan secured by a deed of trust against the Property, or a portion thereof, and delivers a written notice to the City and provides the City with a recorded copy of any such deed of trust in accordance with the provisions of this Paragraph 10.1.5.1 is herein referred to as a "Qualified Lender."

10.1.5.2. **Right of a Qualified Lender to Cure a Default.** The City shall send a written notice of any Property Owner default to each Qualified Lender. From and after receipt of any such written notice of default, each Qualified Lender shall have the right to cure any such default within the same cure periods as provided to the Property Owner hereunder. If the nature of any such default is such that a Qualified Lender cannot reasonably cure any such default without being the owner of the Property, or the applicable portion thereof, (as reasonably determined by the City), then so long as the Qualified Lender(s) is (are) diligently proceeding (as reasonably determined by the City) to foreclose the lien of its deed of trust against the owner of the Property, or the applicable portion thereof, and after completing any such foreclosure promptly commences the cure of any such default and thereafter diligently pursues the cure of such default to completion, then such Qualified Lender shall have an additional one hundred twenty (120) days following such foreclosure to cure any such default.

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

10.2. **Default by the City.**

10.2.1. **Default.** In the event the City does not accept, process or render a decision in a timely manner on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements therefore, or as otherwise agreed to by the City and the Property Owner, or the City otherwise defaults under the provisions of this Agreement, subject to Paragraph 10.3, the Property Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided the Property Owner has first complied with the procedures in Paragraph 10.2.2.

10.2.2. **Notice of Default**. Prior to the exercise of any other right or remedy arising out of a default by the City under this Agreement, the Property Owner shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed under this Agreement. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) no later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided the City shall continuously and diligently pursue each remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City is in default under this Agreement or whether the City has cured the default, or to seek the enforcement of this Agreement, the City and the Property Owner may submit the matter to negotiation/mediation pursuant to Paragraph 15(o) of this Agreement.

10.3. **Monetary Damages**. The Property Owner and the City acknowledge that neither the City nor the Property Owner would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application thereof. Both the City and the Property Owner agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the Property Owner for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the City and the Property Owner agree that neither shall be liable for monetary damages under or with respect to this Agreement or the application thereof and the City and the Property Owner covenant not to sue for or claim any monetary damages for the breach of any provision of this agreement. This foregoing waiver shall not be deemed to apply to any fees or other monetary amounts specifically required to be paid by the Property Owner to the City pursuant to this Agreement, including, but not limited to, any amounts due pursuant to Paragraph 15(g) and 15(m). The foregoing waiver shall also not be deemed to apply to any fees or other monetary amounts specifically required to be paid or credited by the City to the Property Owner pursuant to this Agreement, including, but not limited to any fee credits specifically required to be credited by the City to the Property Owner or its assignee(s).

11. **Administration of Agreement and Resolution of Disputes**. The Property Owner shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project or the interpretation and administration of this Agreement. All City Council decisions or determinations regarding the Project or the administration of this Agreement shall also be subject to judicial review pursuant to Code of Civil Procedure section 1094.5, provided that, pursuant to Code of Civil Procedure section 1094.6, any such action must be filed in a court of competent jurisdiction not later than ninety (90) days after the date on which the City Council's decision becomes final. In addition, in the event the Property Owner and the City cannot agree whether a default on the part of the Property Owner, or any of its successors or assigns, under this Agreement exists or whether or not any such default has been cured, then the City or the Property Owner may submit the matter to negotiation/mediation pursuant to Paragraph 15(o).

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

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

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

15. **Miscellaneous.**

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

If to the City:

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

If to the Property Owner:

Red Oak Investments  
2101 Business Center Drive, Suite 230  
Irvine, CA 92612  
Attn: Alex Wong  
Tel. No.: (714) 342-2502  
Fax No.: (949) 733-2005

Archstone Huntington Beach College Park LLC  
3 MacArthur Place, 6th Floor  
Santa Ana, CA 92707-5902  
Attn: Ken Keefe  
Tel. No.: (714) 689-7014  
Fax No.: (714) 460-8571

Archstone Huntington Beach College Park LLC  
c/o Archstone  
9200 East Panorama Circle, Suite 400  
Englewood, CO 80112  
Attn: Michael Shomo  
Tel. No.: (303) 708-6954  
Fax No.: (720) 873-6358

Allen Matkins  
Three Embarcadero Center, 12th Floor  
San Francisco, California 94111-4074  
Attn: Sonia J. Ransom  
Tel. No.: (415) 837-1515  
Fax No.: (415) 837-1516

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

(c) **Entire Agreement; Conflicts.** This Agreement represents the entire agreement between the City and the Property Owner with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the City and the Property Owner with respect to the matters contained in this Agreement. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in the Applicable Rules or the Subsequent Applicable Rules, then the provisions of this Agreement shall govern and prevail.

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

(e) **Inurement and Assignment.** This Agreement shall inure to the benefit of and bind the successors and assigns of the City and the Property Owner, may be assigned by either the City or the Property Owner to any party or parties purchasing all or any part of the Property, or any interest therein pursuant to the provisions of this Paragraph 15(e). The specific rights and obligations of this Agreement shall be deemed covenants running with the land that concern and affect the Property Owner's interest in the Property. Prior to the Property Owner's assignment of any rights, duties or obligations under this Agreement, the Property Owner shall present such information required by the City in its commercially reasonable discretion to demonstrate to the City's satisfaction that the proposed successor and/or assignee has the financial ability and experience to fulfill those specific rights, duties and obligations under the Agreement that the successor and/or assignee would assume. The City shall have the right to approve the proposed successor and/or assignee, provided that the City's approval may not be

unreasonably withheld, conditioned or delayed. The provisions of this Paragraph 15(e) shall be self-executing and shall not require the execution or recordation of any further document or instrument. The City's approval rights over a successor or assignee of the Property Owner shall terminate upon issuance of the final inspection for the project.

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

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

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

(i) **Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that any one or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the reasonable control of the party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor, subcontractor, or consultant to timely perform (so long as the Property Owner is not otherwise in default of any obligation under this Agreement and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform), riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, a Recession or unusually severe weather. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

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

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

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

(m) **Indemnification.** The Property Owner agrees, as a condition of approval of this Agreement, to indemnify, defend and hold harmless at the Property Owner's expense, the City, the City Council, and the City's agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of this Agreement to determine the reasonableness, legality or validity of any provision hereof or obligation contained herein. The Property Owner also agrees to indemnify the City, the City Council, and the City's officials, agents and employees for any claims, acts or proceedings relating to the Property Owner's failure to comply with the Project's affordable housing requirements.

The indemnity described in this section is not subject to the provisions of paragraph 4.a. providing that obligations cease if the Project does not go forward; provided, however, that the indemnity described in the first sentence of this section shall terminate when the applicable statute of limitations for the legal challenges described therein terminates.

The City shall promptly notify the Property Owner of any such claim, action or proceeding of which the City receives notice, and the City will cooperate fully with the Property Owner in the defense thereof. The Property Owner shall provide a defense to the City with counsel reasonably selected by the Property Owner and the City to defend both the City and the Property Owner, and shall reimburse the City for any court costs which the City may be required to pay as a result of any such claim, action or proceeding. The City may, in its sole discretion, participate in the defense of any such claim, action or proceeding at its own expense, but such participation shall not relieve the Property Owner of the obligations of this Paragraph 15(m).

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

(o) **Alternative Dispute Resolution Procedure.**

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

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

(3) **Mediation.**

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

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

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

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

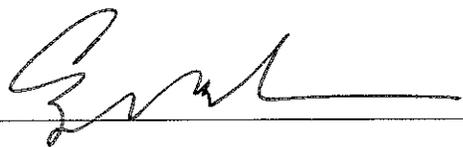
(4) **Preservation of Rights.** Nothing in this Paragraph shall limit a party's right to seek an injunction or restraining order from a court in circumstances where such equitable relief is deemed necessary by a party to preserve such party's rights.

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

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

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

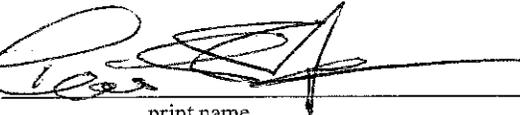
ARCHSTONE HUNTINGTON BEACH  
COLLEGE PARK LLC, a Colorado  
limited liability company

By: 

CYNTHIA H. EPELDAUER  
print name

ITS: (circle one) Chairman/President Vice President

**AND**

By: 

ITS: (circle one) Secretary/Chief Financial Officer/  
Asst. Secretary ~~Treasurer~~

Thomas S. Reif  
Assistant Secretary

CITY OF HUNTINGTON BEACH,  
a California municipal corporation

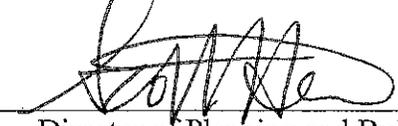
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
City Attorney mv-9-4-12

INITIATED AND APPROVED:

  
\_\_\_\_\_  
Director of Planning and Building

REVIEWED AND APPROVED

\_\_\_\_\_  
City Manager

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Orange }

On September 10, 2012 before me, Kali Goglanian  
Date Here Insert Name and Title of the Officer

personally appeared Cynthia H. Eppeldauer  
Name(s) of Signer(s)

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 Kali Goglanian  
Signature of Notary Public

Place Notary Seal Above



**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Development Agreement

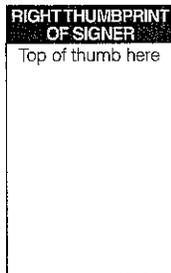
Document Date: not dated Number of Pages: 20

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Cynthia H. Eppeldauer

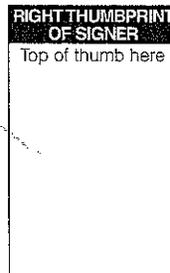
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**ACKNOWLEDGEMENT**

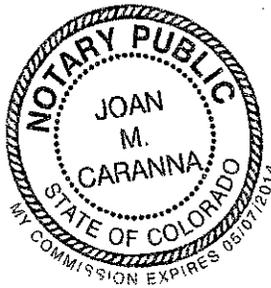
STATE OF COLORADO

COUNTY OF ARAPAHOE

On this 12 day of September in the year 2012, before me,  
Joan M. Caranna, personally  
appeared Thomas S. Reif,  
personally known to me to be the person whose name is subscribed to the within  
instrument and acknowledged to me that he executed the same in his authorized capacity,  
and that his signature on the instrument the person, or the entity upon behalf of which the  
person acted, executed the instrument.

Joan M. Caranna  
Notary Public

My commission expires 05/07/2014



Seal

## EXHIBIT A

### LEGAL DESCRIPTION

PARCEL 1, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 211, PAGES 25 AND 26 OF PARCEL MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM A PORTION THEREOF 50% OF A 100% OF ALL MINERALS, GAS, OIL, PETROLEUM, NAPHTHA AND OTHER HYDROCARBON SUBSTANCES IN, UNDER, OR THAT MAY BE PRODUCED OR RECOVERED FROM THAT PORTION OF SAID LAND BELOW A DEPTH OF 500 FEET FROM ITS SURFACE, WITH AND INCLUDING IN SUCH EXCEPTION AND RESERVATION, FOR THE BENEFIT OF THOSE ENTITLED THERETO, THE RIGHT AT ANY AND ALL TIMES TO ENTER UPON AND INTO ANY AND ALL PARTS OF THE PORTION OF SAID LAND BELOW SUCH DEPTH OF 500 FEET FROM ITS SURFACE FOR THE PURPOSE OF EXPLORING AND DRILLING FOR, MINING, DEVELOPING, REMOVING AND EXTRACTING ANY AND ALL SUCH SUBSTANCES BY SLANT OR DIRECTIONAL DRILLING OR OTHER OPERATIONS FROM OTHER LAND, ENTERING INTO AND PENETRATING THE LAND THE SUBJECT HEREOF, ONLY BELOW SUCH DEPTH OF 500 FEET FROM ITS SURFACE BUT WITH (AND THERE SHALL BE) NO RIGHT UNDER SUCH EXCEPTION AND RESERVATION OF ENTRY UPON OR USE OF THE SURFACE OR SUBSURFACE TO A DEPTH OF 500 FEET BELOW THE SURFACE, AS RESERVED BY DOROTHY THAYER PECK, IN DEED RECORDED OCTOBER 1, 1959, IN BOOK 4907, PAGE 389 OF OFFICIAL RECORDS, CHARLES H. THATCHER AND TITLE INSURANCE AND TRUST COMPANY, A CALIFORNIA CORPORATION, ALL AS TRUSTEES OF THE TRUST UNDER WRITTEN DECLARATION THEREOF BY CARRIE A. PECK, DATED DECEMBER 18, 1936, AS TO AN UNDIVIDED 25% OF SAID 100% INTEREST, AND BY DOROTHY T. PECK, A WIDOW, IN HER INDIVIDUAL CAPACITY, AS TO AN UNDIVIDED 25% OF SAID 100% INTEREST.

ALSO EXCEPTING FROM THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET MEASURED VERTICALLY FROM THE CONTOUR OF THE SURFACE WITHOUT, HOWEVER, THE RIGHT OF ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY OR ANY PART THEREOF LYING BETWEEN SAID SURFACE OF 500 FEET BELOW SAID SURFACE, AS EXCEPTED IN THE GRANT DEED FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY RECORDED JUNE 30, 1986 AS INSTRUMENT NO. 86-277355 OF OFFICIAL RECORDS.

# EXHIBIT B

ATTACHMENT NO. 2.23

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Huntington Beach  
2000 Main Street  
Huntington Beach, California 92648

Attention: City Clerk

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(Space Above For Recorder's Use)

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

This Affordable Housing Agreement and Declaration of Conditions, Covenants and Restrictions for Property (the "Declaration") is made as of \_\_\_\_\_, 2012, by and between ARCHSTONE HUNTINGTON BEACH COLLEGE PARK LLC, a Colorado limited liability company (the "Property Owner" or "Covenantor") and THE HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH, a California municipal corporation (the "Housing Authority" or "Covenantee").

R E C I T A L S :

A. Property Owner is the owner of record of that certain real property located at 7302-7400 Center Avenue (the "Subject Property"), in the City of Huntington Beach, County of Orange, State of California legally described in the attached "Exhibit A."

B. The Property Owner seeks to develop a project on the Property consisting of 384 dwelling units, and approximately 7,000 square feet of resident recreation area, lobby and leasing office area. The project also includes approximately 10,000 square feet of commercial/retail uses, as more particularly set forth in the Development Plan (collectively, the "Project") approved by Conditional Use Permit ("CUP") 07-043, attached as Exhibit B and incorporated herein, all in accordance with the General Plan, as it may be amended from time to time (the "General Plan") adopted by the City Council of the City (the "City Council"), the Zoning Code and CUP 07-043.

C. The City imposed conditions of approval on the Project, in part that the Property Owner provide affordable housing. As part of the plan to provide affordable housing, the City and the Property Owner entered into a Development Agreement which requires as a condition that an Affordable Housing Agreement be executed requiring the Property Owner to provide affordable rental units for a certain period of time. Specifically, the Property Owner is required to/has agreed to provide 39 units within the Project available for rent to households earning Moderate-Income (as that term is defined in the Development Agreement) for a period of 55

years as further defined herein. The execution and recordation of this Declaration is intended to fully satisfy that condition.

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

1. **Affordability Covenants.** Covenantor agrees for itself and its successors and assigns, and every successor to Covenantor's interest in the affordable unit, or any part thereof that the Project approved by CUP 07-043 located at 7302-7400 Center Avenue, which consists of 384 units, 39 of which shall be designated as affordable and shall be held subject to this Declaration for fifty-five years from the date final inspection has been approved by the City as follows:

(a) **Qualified Households.** Covenantor agrees to make available, restrict occupancy to, and to lease 39 units for the duration of the Affordability Period as defined herein. These 39 units may sometimes be referred to as an "Affordable Unit" or, collectively, the "Affordable Units." Each Affordable Unit shall be occupied by Moderate-Income Households as that term is defined in the Development Agreement adjusted for the actual number of persons in the Household that will reside in the Affordable Unit.

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

As used in this Declaration, the term "Covenantor" shall mean the Property Owner, its successors and assigns, and every successor to the Property Owner's interest in the Project, or any part thereof.

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

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

occupied by such Household. Covenantor shall verify the income certification of the Household in one or more of the following methods:

- (1) Obtain two (2) paycheck stubs from two (2) most recent pay periods for each adult member of the Household.
- (2) Obtain a copy of an income tax return certified to be true and complete for the most recent tax year in which a return was filed, for each adult member of the Household.
- (3) Obtain an income verification certification from the employer of each adult member of the Household.
- (4) Obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the Household receives assistance from such agencies.
- (5) Obtain an alternate form of income verification reasonably requested by Covenantee, if none of the above forms of verification is available to Covenantor.

If, at the time of the annual lease renewal of an Affordable Unit to an eligible Household, the Covenantor learns that Household's income increases above the income level permitted for that unit, the Household shall continue to be permitted to reside in such Affordable Unit, for no more than one year. Notwithstanding the foregoing, Covenantor, at the City's discretion, shall have the option, in its commercially reasonable discretion, to designate another dwelling unit as an Affordable Unit during that one year period so that the Household may continue to occupy a unit in the Project, if the Household and the Covenantor so agree.

(d) **Determination of Affordable Rent for the Affordable Units.** The rent for each Affordable Unit (the "Affordable Rent") shall be adjusted annually by the following formula established by California Health and Safety Code Section 50053 upon the publication of the revised Area Median Income. This methodology sets the moderate income rent at 1/12 of thirty percent (30%) of one-hundred ten percent (110%) of the Area Median Income adjusted for family size appropriate to the unit. As used herein, for the purpose of calculating the Affordable rent, "adjusted for family size appropriate to the unit" shall mean a household of one person in the case of a studio Affordable Dwelling Unit, two persons in the case of a one-bedroom Affordable Dwelling Unit, and a household of three persons in the case of a two-bedroom Affordable Dwelling Unit. The income limits and Affordable Rents in effect as of the date of this Agreement are attached hereto as Exhibit "C" and incorporated herein by this reference.

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

COVENANTOR HEREBY AGREES TO RESTRICT THE AFFORDABLE UNITS ACCORDINGLY.

COVENANTOR'S INITIALS

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

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

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

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

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

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

or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

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

(a) The Affordable Unit shall be used only for private dwelling purposes, with appurtenant facilities, and for no other purposes; provided, however, that home occupation businesses conducted in compliance with the City’s Municipal Code and other City regulations shall be considered an appropriate use for private dwelling purposes;

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

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

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

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

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

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

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

4. **Covenants for Benefit of Housing Authority.** All covenants without regard to technical classification or designation shall be binding for the benefit of the Covenantee and such covenants shall run in favor of Covenantee for the entire period during which time such covenants shall be in force and effect. The Covenantee, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any such action at law or suits in equity or other proper legal proceedings to enforce and to cure such breach to which it or any other beneficiaries of these covenants may be entitled during the term specified for such covenants, except the covenants against discrimination which may be enforced at law or in equity at any time in perpetuity.

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

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

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

If to the Housing Authority:

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

If to the Property Owner:

Red Oak Investments  
2101 Business Center Drive, Suite 230  
Irvine, CA 92612  
Attn: Alex Wong  
Tel. No.: (714) 342-2502  
Fax No.: (949) 733-2005

Archstone Huntington Beach College Park LLC  
3 MacArthur Place, 6th Floor  
Santa Ana, CA 92707-5902  
Attn: Ken Keefe  
Tel. No.: (714) 689-7014  
Fax No.: (714) 460-8571

Archstone Huntington Beach College Park LLC  
c/o Archstone  
9200 East Panorama Circle, Suite 400  
Englewood, CO 80112  
Attn: Michael Shomo  
Tel. No.: (303) 708-6954  
Fax No.: (720) 873-6358

Allen Matkins  
Three Embarcadero Center, 12th Floor  
San Francisco, California 94111-4074  
Attn: Sonia J. Ransom  
Tel. No.: (415) 837-1515  
Fax No.: (415) 837-1516

8. **Applicable Law.**

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

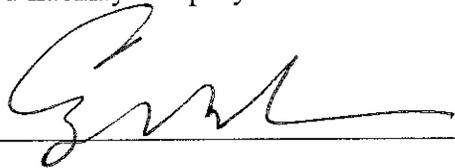
(b) This Agreement shall be construed in accordance with the laws of the State of California and all applicable HUD Housing Quality Standards and City Codes.

**[Signatures and Jurats to Follow]**

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

PROPERTY OWNER:

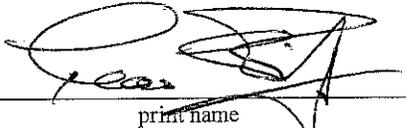
ARCHSTONE HUNTINGTON BEACH COLLEGE PARK LLC, a Colorado limited liability company

By: 

CYNTHIA H. EPPELDAUER  
print name

ITS: (circle one) Chairman/President Vice President

AND

By: 

ITS: (circle one) Secretary/Chief Financial Officer/  
Asst. Secretary ~~Treasurer~~

**Thomas S. Reif**  
Assistant Secretary

COVENANTEE:

THE HOUSING AUTHORITY OF THE CITY OF HUNTINGTON BEACH, a California municipal corporation

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney / Housing Authority Counsel *MW 9-4-02*

INITIATED AND APPROVED:

\_\_\_\_\_  
Director of Planning and Building

REVIEWED AND APPROVED

\_\_\_\_\_  
City Manager

ACKNOWLEDGMENT

State of California )  
County of Orange )

On September 10, 2012, before me, Kali Goglanian, Notary Public  
(insert name of notary)

Notary Public, personally appeared Cynthia H. Eppeldauer,  
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 Kali Goglanian



ACKNOWLEDGMENT

Colorado  
State of ~~California~~ )  
County of Arapahoe )

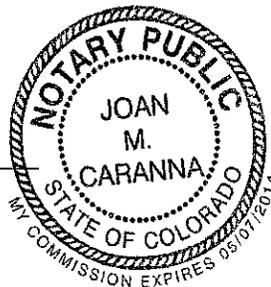
On September 12, 2012, before me, Joan M. Caranna,  
(insert name of notary)

Notary Public, personally appeared Thomas S. Reif,  
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 Joan M. Caranna



(Seal)

## EXHIBIT A

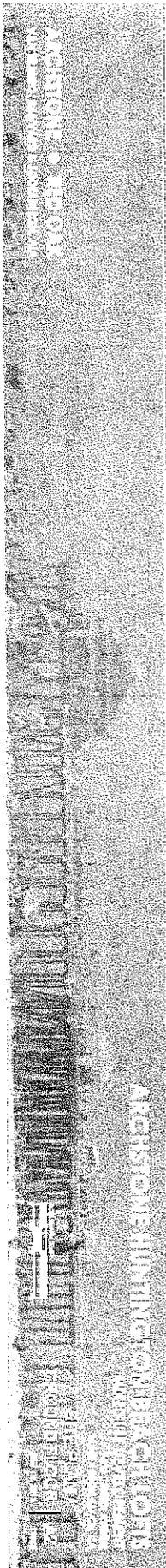
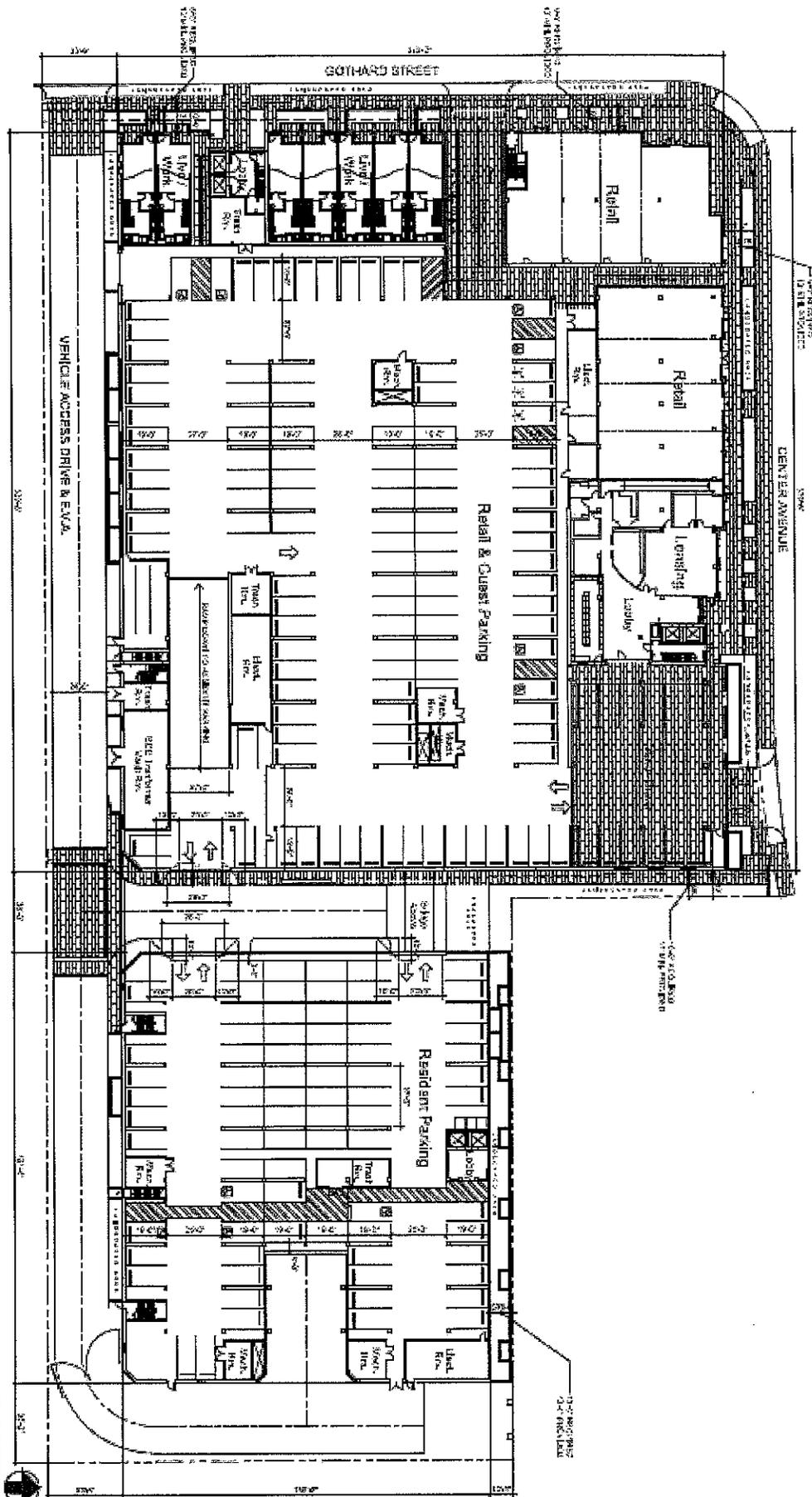
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ALSO EXCEPTING FROM THAT PORTION THEREOF LYING BELOW A DEPTH OF 500 FEET MEASURED VERTICALLY FROM THE CONTOUR OF THE SURFACE WITHOUT, HOWEVER, THE RIGHT OF ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY OR ANY PART THEREOF LYING BETWEEN SAID SURFACE OF 500 FEET BELOW SAID SURFACE, AS EXCEPTED IN THE GRANT DEED FROM SOUTHERN PACIFIC TRANSPORTATION COMPANY RECORDED JUNE 30, 1986 AS INSTRUMENT NO. 86-277355 OF OFFICIAL RECORDS.

EXHIBIT B  
SITE PLAN



# EXHIBIT C

ATTACHMENT NO. 2.35

EXHIBIT C

2012 QUALIFYING INCOME AND RENT SCHEDULE  
 THE LOFTS APARTMENT PROJECT  
 HUNTINGTON BEACH, CALIFORNIA

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I. 2012 Orange County Income Information

<u>Household Size</u>	<u>HCD Median</u>	<u>HUD Median</u>
1 Person	\$59,700	
2 Persons	68,250	
3 Persons	76,750	
4 Persons	85,300	85,300
5 Persons	92,100	

II. Household Income Limits as Defined by the California Health & Safety Code

	<u>Moderate Income (Section 50093)</u>	
1 Person	\$53,950 -	\$71,650
2 Persons	61,650 -	81,900
3 Persons	69,350 -	92,100
4 Persons	77,050 -	102,350
5 Persons	83,250 -	110,550

III. California Health & Safety Code Section 50053 Affordable Housing Cost Calculations

	<u>Moderate Income</u>		
	<u>Studio</u>	<u>1-Bdrm</u>	<u>2-Bdrm</u>
Benchmark Household Size	1	2	3
% of HCD Median Income	110%	110%	110%
Household Income for Rent Calculation	\$65,670	\$75,075	\$84,425
% of Income Allotted to Gross Rent	30%	30%	30%
Allowable Gross Rent	\$1,642	\$1,877	\$2,111
(Less) Utilities Allowance	28	39	47
Allowable Net Rent	\$1,614	\$1,838	\$2,064

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<sup>1</sup> Based on utilities published by OCHA 10/1/2011. Includes Gas: Cooking, Heating, Water Heater. Electric: Basic.



# City of Huntington Beach

2000 Main Street • Huntington Beach, CA 92648

OFFICE OF THE CITY CLERK  
JOAN L. FLYNN  
CITY CLERK

## NOTICE OF ACTION

ENVIRONMENTAL IMPACT REPORT NO. 07-004  
ZONING TEXT AMENDMENT NO. 07-004  
GENERAL PLAN AMENDMENT NO. 07-003  
ZONING MAP AMENDMENT NO. 07-001  
CONDITIONAL USE PERMIT NO. 07-043

### (THE RIP CURL PROJECT)

November 18, 2008

Red Oak Huntington Beach, LLC  
Attn: Andrew Nelson and Alex Wong  
2101 Business Center Drive #230  
Irvine, CA 92612

**APPLICANT:** Andrew Nelson/Alex Wong, Amstar/Red Oak Huntington Beach, LLC

**REQUEST:** APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF:

- 1) ENVIRONMENTAL IMPACT REPORT NO. 07-004: To analyze the potential environmental impacts associated with the implementation of the proposed project
- 2) ZONING TEXT AMENDMENT NO. 07-004: To amend the HBZSO by adding Chapter 218 that establishes the Mixed Use-Transit Center District zoning and development standards
- 3) GENERAL PLAN AMENDMENT NO. 07-003: To amend the General Plan Land Use Designation from the current CG-F1-d (Commercial General—0.35 Max Floor Area Ratio—Design Overlay) to the proposed M-F7-d (Mixed Use—3.0 Max Floor Area Ratio—Design Overlay) designation
- 4) ZONING MAP AMENDMENT NO. 07-001: To amend the Zoning designation from the current CG (Commercial General) to the proposed MU-TCD (Mixed Use-Transit Center District) designation

ATTACHMENT NO. 3.1

- 5) **CONDITIONAL USE PERMIT NO. 07-043 (THE RIPCURL)**: To develop and construct a mixed use residential and commercial development (approximately 382,700 sq. ft.) consisting of 440 residential units (including 11 live/work units), 10,000 sq. ft. of commercial uses, 705 parking spaces, outdoor amenities (pool and spa, fire pit and movie projection area), and indoor amenities (fitness center, business center, conference room, and clubhouse). The project would be six stories in height and consists of four levels of housing over three levels of parking.

**LOCATION:** 7302-7400 Center Avenue, Huntington Beach, CA 92647 (southeast corner of Gothard Street and Center Avenue)

**PROJECT  
PLANNER:** Tess Nguyen

On Monday, November 10, 2008 a Public Hearing was held to consider an appeal filed by Councilmember Jill Hardy and Andrew Nelson, Red Oak Huntington Beach, LLC of the Huntington Beach Planning Commission's approval of Environmental Impact Report (EIR) No. 07-004, Zoning Text Amendment (ZTA) No. 07-004, General Plan Amendment (GPA) No. 07-003, Zoning Map Amendment (ZMA) No. 07-001, Conditional Use Permit (CUP) No. 07-043, and CEQA Statement of Findings of Fact with a Statement of Overriding Considerations for the proposed Ripcurl Project located on a 3.8 acre site at the southeast corner of Gothard Street and Center Avenue.

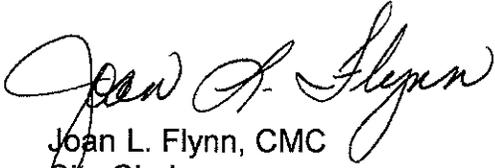
The following action was taken by the Huntington Beach City Council:

Approved the Staff Recommended Action to: **1) Certify Environmental Impact Report No. 07-004 as adequate and complete in accordance with CEQA requirements by adopting Resolution No. 2008-66; and 2) Approved Zoning Text Amendment No. 07-004 with findings for approval, and approved for introduction Ordinance No. 3819 with the following revisions: Visitor parking 1/5 units; minimum 75% of units with 60 sq. ft. balconies; up to 20% tandem parking for residential at half credit; Approved General Plan Amendment No. 07-003 by adopting Resolution No. 2008-67; Approved Zoning Map Amendment No. 07-001 with findings for approval and approved for introduction Ordinance No. 3820; Approved Conditional Use Permit No. 07-043 with findings and conditions for approval to allow 385 residential units and 10,000 square feet of commercial uses; require a minimum of 50% of affordable units on-site; on-site affordable units may be moderate income and off-site affordable units shall be low income; a north/south public pedestrian/bicycle access on the site between Center Avenue and the southerly property line, with restricted access hours and, Approved CEQA Statement of Findings of Fact with a Statement of Overriding Considerations.**

Enclosed are the Findings for Approval for ZTA 07-004 and ZMA 07-001; Findings and Conditions of Approval for CUP 07-043; copies of Resolution Nos. 2008-66 and

ATTACHMENT NO. 3.2

2008-67; copies of Ordinance Nos. 3819 and 3820 approved for introduction; and, the Action Agenda from the November 10, 2008 meeting. If you have any questions, please contact Tess Nguyen, Associate Planner at (714) 374-1744.



Joan L. Flynn, CMC  
City Clerk

JF:pe

c: Scott Hess, Director of Planning  
Mary Beth Broeren, Planning Manager  
Tess Nguyen, Associate Planner  
Jill Hardy, Councilmember

Attachments:

Findings for Approval – ZTA 07-004 and ZMA 07-001  
Findings and Conditions for Approval - CUP 07-043  
City Council Action Agenda for 11-10-08  
Resolution Nos. 2008-66 and 2008-67  
Ordinance Nos. 3819 and 3820

(STAFF RECOMMENDATION)

FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 07-043

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 07-043:

1. Conditional Use Permit No. 07-043 for the construction of 385 residential units and 10,000 sq. ft. of commercial/retail space 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 proposed transit-oriented development would produce an environment which is both attractive and sustainable by increasing housing options, promoting alternative modes of transportation, and creating a local sense of place. The adjacency to a variety of commercial, entertainment, educational, and transportation uses allows the project to have a more compact and higher density development while minimizing adverse environmental effects. The mix of land uses contemplated by the proposed project as well as those already existing in the vicinity would create a dynamic environment where people can live, work, and play within a walking distance. The population increase would enhance the economic viability of the area by supplying a customer base for the area businesses. In addition, the architectural treatment of the buildings includes numerous features that contribute to an attractive design and convey a high quality visual image and character of the development. The provision of centrally located courtyards and open space amenities add to the appeal of the development. Given these project features, the project would fit within the surrounding neighborhood.
2. The conditional use permit will be compatible with surrounding uses and anticipated land uses because the proposed mixed-use project is complementary to existing uses in the vicinity. The area in proximity to the project site is targeted for revitalization efforts, incorporating more intense mixed use development. Because of its unique location, the project will accommodate the proposed growth that is compatible with surrounding uses. The project is designed to convey a high quality visual image and attractive pedestrian atmosphere to harmonize with developments in the vicinity. Furthermore, compliance with the mitigation measures of Environmental Impact Report No. 05-01 and code provisions will ensure that the project will be compatible with other area developments.
3. The proposed mixed use project will comply with the provisions of the base district and other applicable provisions in the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it would be located. The proposed development will comply with all code provisions, including setbacks, building height, open space, parking, and building design standards. Compliance with the development standards will ensure a high quality development that would be compatible with the surrounding land uses.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the proposed Land Use Element designation of Mixed Use 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 2.1: Comply with City's performance standards for acceptable levels of service.

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:

- 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.
- f. Site development to capitalize upon potential long-term transit improvements.

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

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

Goal LU 10: Achieve the development of a range of commercial uses.

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 and Zoning land use designations are a mechanism to achieve the goals of smart growth and sustainable development. The amendments would allow for a mixed use, transit-oriented, 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 commercial and entertainment uses, employment centers, a transit hub, and a school. Because of its location and unique features, the site would be appropriate in accommodating an infill development that is more compact in design and 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. Mixed use development is about widening the choices on where to live and how to travel, rejuvenating urban neighborhoods, bringing more people into everyday social interactions, and ensuring that communities continue to thrive.

The proposed project would be a mixed-use, transit-oriented, and high-density development that offers a wide range of housing opportunities and options, accommodating different age groups, income levels, and household types. The project is required to meet the City's affordable housing ordinance obligations providing the equivalent of 10 percent of the units (on-site and/or off-site) as affordable. In addition, the project provides a concentration of living, shopping, entertainment, educational, and employment opportunities within walking distance of the Golden West Transportation Center. This development promotes the use of transit services as an alternative to reliance on the automobile as the primary mode of transportation. Because the project is located in close proximity to different activities and uses, it provides opportunities and convenience for many households to use alternate travel modes such as walking and biking to complete their daily routines and run errands.

The structures of the proposed project are designed to convey a high quality visual image and character and ensure compatibility of residential and commercial uses. The project is designed with retail storefronts on the ground level and residential units above, incorporating design elements, building materials, and colors to differentiate and complement the residential and commercial components of the project. The proposed mix of retail and residential uses at the project site, along with high quality design and attractive pedestrian atmosphere, would activate the urban environment and revitalize community life.

**CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 07-043:**

1. The site plan, floor plans, elevations, and other site plan exhibits received and dated August 6, 2008 shall be the conceptually approved design with the following modifications.
  - a. The project shall be revised to reduce the number of residential units from 440 units to 385 units and retain the 10,000 sq. ft. of commercial/retail space.
  - b. The number of onsite parking spaces shall be increased to comply with the minimum parking requirements of the MU-TCD development standards.
  - c. The minimum open space areas shall be provided to comply with the open space requirements of the MU-TCD development standards.
  - d. The minimum private storage space shall be provided to comply with the private storage space requirements of the MU-TCD development standards.
  - e. Architectural projections and recesses shall be provided on all building elevations except for the building elevations that face each other (i.e. the east elevation of the west building and west elevation of the east building).
  - f. The height of parapet walls shall be reduced to two feet and maintain the score-line design.
  - g. A walkability/pedestrian access plan within the project site and to adjacent sites and landscape plans shall be submitted for Design Review Board approval. The plan shall include a north/south pedestrian/bicycle access path extending from Center Avenue to the southerly property line between the two buildings. The access path shall be open to the public but may have restricted hours such as being closed in the evening/early morning hours subject to review and approval by the Planning Department.
  - h. The recreation room shall be designed to have windows looking out onto the courtyard and the elevator waiting area to provide more visibility. **(PD)**
2. Prior to receiving a precise grading and building permit, the following shall be submitted and approved:
  - a. The applicant shall prepare a site Grading and Drainage Plan containing the recommendations of the final Soils and Geotechnical Reports analysis for temporary and permanent groundwater dewatering as well as for surface drainage. **(PW)**
  - b. A Shoring Plan prepared by a Civil or Structural Engineer shall be submitted to the Public Works Department (for reference only) with first submittal of the Precise Grading Plan. **(PW)**
3. During grading and construction, the following shall be completed:

- a. Raker braces per the preliminary Geotechnical Report (dated December 12, 2006) shall be used for lateral support of the temporary shoring during the construction phase of the project as deemed necessary by the Public Works Director. **(PW)**
  - b. Tie-back anchors will not be allowed in the public right-of-way (under Gothard Street or Center Avenue) or under any adjacent private property (Levitz and Southern California Edison) as deemed necessary by the Public Works Director. **(PW)**
4. Prior to issuance of building permits, the following shall be approved:
- a. The Affordable Housing Agreement shall be approved and recorded by the City prior to issuance of building permits. The Agreement shall provide for a minimum of 50 percent of the affordable housing requirement on-site. On-site affordable units may be rented at moderate income levels; any off-site affordable units shall be at low income levels, pursuant to the HBZSO, and the method and location of off-site compliance shall be set forth in the Agreement.
  - b. The subject property shall provide an irrevocable offer to dedicate a reciprocal accessway between the subject site and adjacent southerly property. The design, location and width of the accessway shall be reviewed and approved by the Planning Department and Public Works Department. The accessway design shall consist of vehicular access, pedestrian access, bicycle access, and landscaping. The pedestrian and bicycle access shall be separated from the vehicular access and shall be attractively landscaped. The subject property owner shall be responsible for making necessary improvements to implement the reciprocal accessway. The legal instrument shall be submitted to the Planning Department a minimum of 30 days prior to building permit issuance. The document shall be approved by the Planning Department and the City Attorney as to form and content and, when approved, shall be recorded in the Office of the County Recorder prior to final building permit approval. A copy of the recorded document shall be filed with the Planning Department for inclusion in the entitlement file prior to final building permit approval. The recorded agreement shall remain in effect in perpetuity, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
  - c. A public art element, approved by the Design Review Board, Director of Planning, and Director of Huntington Beach Art Center, shall be designated on the plans. Public Art shall be innovative, original, and of artistic excellence; appropriate to the design of the project; and reflective of the community's cultural identity (ecology, history, or society).
5. Prior to final inspection, the following shall be completed:
- a. The project developer shall construct an underground storm drain pipe along the east side of Gothard Street from Center Avenue to Edinger Avenue to connect to the existing, underground Edinger Avenue storm drain pipe as deemed necessary based on a Final Hydrology and Hydraulics Report. As deemed necessary, the new Gothard Street, underground storm drain facility sizing and design shall be targeted to convey the highest storm event exceedance flow rates along Gothard Street at full build-out of the General Plan, including contributions from any permanent groundwater dewatering system. The proposed

project onsite storm drainage system shall be designed to convey all water quality treated flow directly into the new underground storm drain pipe along Gothard Street, as deemed necessary. **(PW)**

- b. An antenna shall be installed within the underground parking structure to relay Police and Fire Department radio transmissions. **(PD)**
  - c. Lighting in the parking structure shall be placed over and between parking stalls. **(PD)**
  - d. Surveillance cameras shall be installed at the elevator areas, stairwells, and main residential lobby and recorded 24 hours a day, every day. **(PD)**
  - e. Elevators and stairwells shall be adequately lighted. **(PD)**
  - f. Products shall be attached to areas vulnerable to skateboarding opportunities near the northwest side of the building in order to prevent noise and damage to property. **(PD)**
6. The City reserves the right to require the property owner to dedicate a portion of the private onsite fire water system to become a future public water system that will be owned and maintained by the City; and shall require the property owner to dedicate a minimum ten (10) feet water utility easement (five feet on either side of the water pipeline and appurtenances) for any portion of the private onsite fire water system that will become public and any new water pipelines/facilities constructed within the subject property that will be part of the public water system. **(PW)**
  7. The City reserves the right to require the property owner to enter into a Special Utility Easement Agreement (SUEA) with the City for any portion of the private on-site fire water system that will be converted to a public water system and any new water pipelines/facilities constructed within the subject property that will be part of the public water system. **(PW)**
  8. To be consistent with the City's condition to convert a portion of the private onsite fire water system to a future public water system, backflow protection devices are required on all individual water service connections (domestic, irrigation and fire) served from the private on-site domestic and fire water pipelines. **(PW)**
  9. The project shall comply with all mitigation measures adopted in conjunction with Environmental Impact Report No. 07-004.
  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 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 City Council's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the City Council may be required pursuant to the provisions of HBZSO Section 241.18.

**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.

City of Huntington Beach

# The Ripcurl Project

*Final Environmental Impact Report:*  
SCH No. 2008011069

*Mitigation Monitoring and Reporting Program*

*Prepared for*  
**City of Huntington Beach**  
Planning Department  
2000 Main Street, Third Floor  
Huntington Beach, California 92648

*Prepared by*  
**PBS&J**  
12301 Wilshire Boulevard, Suite 430  
Los Angeles, California 90025

September 2008

ATTACHMENT NO. 3.12

# Mitigation Monitoring Program

## A. INTRODUCTION

The Final Environmental Impact Report for The Ripcurl Project (State Clearinghouse #2008011069) identified mitigation measures to reduce the adverse effects of the project in the areas of: aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, public services, and transportation/traffic.

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

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

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

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

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<b>Aesthetics</b>						
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		
<b>Air Quality</b>						
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 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		
<b>Biological Resources</b>						
MM4.3-1 Nesting habitat for protected or sensitive avian species: 1. Vegetation removal and construction shall occur between September 1 and January 31 whenever feasible. 2. 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 14 days and no more than 30 days prior to commencement of construction activities and surveys	Developer shall submit construction schedule (including grading activities) as evidence of construction overlap with breeding season. If construction occurs during relevant breeding, developer shall present a survey	Review schedule and field survey report, and as necessary, review and approve plans indicating construction limits Perform periodic field check to	Plan check prior to issuance of a grading permit During construction	Planning Planning		

**Mitigation Monitoring and Reporting Program**

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>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.</p> <p>3. Completion of the nesting cycle shall be determined by qualified ornithologist or biologist.</p>	<p>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.</p>	<p>ensure compliance</p>				
<b>Cultural Resources</b>						
<p><b>MM4.4-1</b> 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.</p>	<p>Proof of retention of archaeological and paleontological monitor</p>	<p>Verify retention of qualified monitors</p> <p>Periodic field check to ensure monitors are present</p>	<p>Plan check prior to issuance of grading permit</p> <p>Throughout ground-disturbing activities</p>	<p>Planning</p> <p>Planning</p>		

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p><b>MM4.4-2</b> If archaeological or paleontological resources are discovered during ground-disturbing activities, all construction activities within 50 feet of the find shall 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.</p>	<p>Notes on grading plans</p> <p>Research design and recovery plan, if required</p>	<p>Review and approve grading plans for inclusion</p> <p>Review and approve research design and recovery plan</p>	<p>Plan check prior to issuance of grading permit</p> <p>Throughout ground-disturbing activities</p>	<p>Planning</p> <p>Peer review by three County-certified professionals</p>		
<p><b>MM4.4-3</b> 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 Applicant 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.</p>	<p>Notes on grading plans</p>	<p>Review and approve grading plans for inclusion</p>	<p>Plan check prior to issuance of grading permit</p> <p>Throughout ground-disturbing activities</p>	<p>Orange County Coroner &amp; Planning</p>		

**Geology and Soils**

<p><b>MM4.5-1</b> 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</p>	<p>Notes on grading plan and building plans</p>	<p>Review and approve grading and building plans for inclusion of</p>	<p>Plan check prior to issuance of a grading permit</p>	<p>Public Works</p>		
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Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
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.		final soils and geotechnical recommendations		Building and Safety		
<b>Hazardous Materials</b>						
MM4.6-1 In the event that previously unknown or unidentified soil and/or groundwater contamination that could present a threat to human health or the environment is encountered during construction in the project area, construction activities in the immediate vicinity of the contamination shall cease immediately, if contamination is encountered, a Risk Management Plan shall be prepared and implemented that (1) identifies the contaminants of concern and the potential risk each contaminant would pose to human health and the environment during construction and post-development and (2) describes measures to be taken to protect workers, and the public from exposure to potential site hazards. Such measures could include a range of options, including but not limited to, physical site controls during construction, remediation, long-term monitoring, post-development maintenance or access limitations, or some combination thereof. Depending on the nature of contamination, if any, appropriate agencies shall be notified (e.g., Huntington Beach Fire Department). If needed, a Site Health and Safety Plan that meets Occupational Safety and Health Administration requirements shall be prepared and in place prior to commencement of work in any contaminated area.	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		

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
MM4.6.2 Prior to the issuance of grading permits the project shall comply with HBFD City Specification #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 #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	  	  

Hydrology and Water Quality

CoA4.7-1 The project developer shall construct an underground storm drain pipe along the east side of Gothard Street from Center Avenue to Edinger Avenue to connect to the existing, underground Edinger Avenue storm drain pipe. Based on a Final Hydrology and Hydraulics Report, the new Gothard Street underground storm drain facility sizing and design shall be targeted to convey the highest storm event exceedance flow rates along Gothard Street at full build-out of the General Plan, including contributions from any permanent groundwater dewatering system. The proposed project onsite storm drainage system shall be designed to convey all water quality treated flow directly into the new underground storm drain pipe along Gothard Street.	Improvement Plans	Review and approval of improvement plans	Plan check prior to issuance of grading permit	Public Works	  	  
MM4.7-1 The Applicant shall prepare a Hydrology and Hydraulics Report and Drainage Plan that incorporates stormwater attenuation to reduce project site runoff to meet City design standards for stormflow in Gothard Street.  Prior to receiving a precise grading permit, the Applicant shall prepare an Hydrology and Hydraulics Report detailing proposed project peak runoff rates for the 10-, 25-, 50-, and 100 year design storm events to Gothard Street, including contributions	Hydrology and Hydraulic Report and Drainage Plan  Groundwater	Review and approve plan and documentation  Review and	Prior to issuance of a precise grading permit  Prior to issuance of a grading permit and	Public Works  Building & Safety	  	  

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>from any permanent groundwater dewatering that may be implemented by the proposed project. This Hydrology and Hydraulics Report shall also identify the existing available capacity for flow in Gothard Street for the design storms and evaluate the existing capacity in and potential impacts to the Edinger Avenue system, Murdy Channel, and East Garden Grove-Wintersburg Channel.</p> <p>Based on the Hydrology and Hydraulics Report, the Applicant shall prepare a Drainage Plan that shall incorporate sufficient stormwater attenuation such that the City design standards for flow in Gothard Street are not exceeded. It is expected that this may require underground detention facilities. However, detention in underground parking structures shall not be allowed and surface ponding shall be limited to a maximum depth of 8 inches. Attenuation shall be designed for back to back 24-hour storm design storm events that development of the proposed project would increase peak runoff rates for</p> <p>If either above-ground or below-ground detention facilities are proposed, the Applicant shall consult with the Department of Public Works and vector control agency to develop a design that will be sufficient for stormwater detention but will not present a human health or environmental hazard.</p> <p>A qualified engineer of the Public Works Department shall approve this Hydrology and Hydraulics Report and Drainage Plan prior to issuance of a precise grading permit. The site Drainage Plan shall be coordinated with the WQMP to maximize efficiency of stormwater runoff detention/retention and water quality treatment.</p> <p>The Building and Safety Department shall evaluate any proposed permanent groundwater dewatering system to ensure that it would function as required. Following construction, the Building and Safety Department shall verify that any groundwater dewatering system has been implemented as required.</p>	<p>Dewatering System Plan</p>	<p>approve dewatering system</p>	<p>following completion of construction activities</p>			
<p>MM4.7.2 The Applicant shall design and implement project site drainage features to minimize stormwater runoff and flood waters</p>	<p>Grading and Drainage Plan</p>	<p>Review and approval of</p>	<p>Prior to issuance of a precise</p>	<p>Public Works</p>		

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<p>from entering into underground parking structures or otherwise contribute to flood hazards and shall incorporate flood-proofing and hydrostatic pressure measures for all below-ground structures.</p> <p>Prior to receiving a precise grading permit, the Applicant shall prepare a site Grading and Drainage Plan identifying design elements to minimize underground structure flooding. The Grading 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"> <li>■ Grade areas to drain away from the structure entryways.</li> <li>■ Implement overflow prevention (e.g., berms or dikes, grated inlets, or a combination, thereof) to direct project site runoff and flood flows away from underground structure entryways.</li> <li>■ Elevate underground structure entryways to two-feet above the existing grade (approximate depth of potential flooding from the East Garden Grove-Wintersburg Channel)</li> <li>■ Implement sumps and pumps within the underground structures to remove any runoff entering the underground structures (this measure shall also be subject to WQMP and DAMP BMP requirements for discharge treatment and disposal).</li> <li>■ 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.</li> <li>■ 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.</li> <li>■ Any utilities located in below grade structures shall be protected from ponding water and seepage in accordance with the geotechnical engineer recommendations and 2007</li> </ul>		Grading and Drainage Plan	grading permit			

**Mitigation Monitoring and Reporting Program**

Mitigation Measure	Implementation Documentation	Monitoring Activity	Timing	Responsible Monitor	Compliance Verification Signature	Date
<p>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> <p>CoA4.7-2 Prior to receiving a precise grading or building permit, the Applicant shall prepare a site Grading and Drainage Plan containing the recommendations of the final Soils and Geotechnical Reports analysis for temporary and permanent groundwater de-watering as well as for surface drainage</p>	Grading and Drainage Plan	Review and approval of Grading and Drainage Plan	Prior to issuance of a precise grading plan	Public Works		
<p><b>Noise</b></p> <p>MM4.9-1 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"> <li>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</li> <li>Ensure that construction equipment is properly muffled according to industry standards</li> <li>Place noise-generating construction equipment and locate construction staging areas away from sensitive uses, where feasible</li> </ul> <p>Implement noise attenuation measures to the extent feasible.</p>	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	Planning		

ATTACHMENT NO. 3.21