

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF ORANGE,

a California Municipal Corporation,

and

MILAN REI X, LLC,

a California Limited Liability Company

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into as of the ____ day of _____, 2019 (“Agreement Date”), by and between MILAN REI X, LLC (hereinafter “OWNER”), and the CITY OF ORANGE, a municipal corporation, organized and existing under the laws of the State of California (hereinafter “CITY”), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code (the “Development Agreement Legislation”) and Article XI, Section 2 of the California Constitution.

RECITALS

This Agreement is predicated upon the following facts:

A. These Recitals refer to and utilize certain capitalized terms which are defined in this Agreement. The parties intend to refer to those definitions in conjunction with the use thereof in these Recitals.

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

C. OWNER is the owner of certain real property within the County of Orange, State of California, as more particularly described in Exhibit “A” attached hereto and made a part hereof (hereafter, the “Property”). OWNER desires to develop the Property in accordance with the provisions of this Agreement, and as more particularly set forth in the Trails at Santiago Creek Specific Plan (the “Development Plan”). The Development of the Property as contemplated by the Development Plan and this Agreement is referred to herein as the “Project”.

D. OWNER has applied for, and CITY has granted, the Existing Project Approvals and this Agreement in order to create a Project and a physical environment that will conform to and complement the goals of CITY, create a community sensitive to human needs and values, facilitate efficient traffic circulation, provide needed housing, and provide for public open space and trail improvements consistent with the elements and policies of CITY’s General Plan. As part of the process of granting the Existing Project Approvals, the City Council of CITY (hereinafter the “City Council”) has required the preparation of an Environmental Impact Report (hereinafter the “EIR”), which report has been certified as adequate and complete by the City Council and has otherwise carried out all requirements of the California Environmental Quality Act (“CEQA”).

E. On November 2, 2016, CITY entered into a Pre-Development Agreement with OWNER regarding the Project (“Pre-Development Agreement”). Pursuant to the terms of the Pre-

Development Agreement, CITY has agreed to process for action the EIR, Development Plan, this Agreement and any other entitlements necessary to carry out and implement the Project consistent with the land use plan, public benefits and exactions set forth in the Pre-Development Agreement and the land use regulations in effect as of November 2, 2016. CITY and OWNER acknowledge and agree that the Existing Project Approvals are consistent with the Pre-Development Agreement and intend this Agreement to serve as the Development Agreement for the Project as defined and set forth in Section 2.03(h) of the Pre-Development Agreement.

F. Since the approval of the Pre-Development Agreement, CITY and OWNER have worked cooperatively with community representatives to address concerns raised during the CEQA process as well as other matters related to OWNER. As a result, and as additional material consideration for the vested rights conferred to OWNER by this Agreement, OWNER has agreed to provide the public benefits set forth in this Agreement which include: (i) up to a maximum of Four Million, One Hundred Thousand Dollars (\$4,100,000.00) to construct greenway improvements for Santiago Creek, (ii) an additional One Million Dollars (\$1,000,000.00) for local trail improvements, (iii) funding the community's acquisition of the Ridgeline property which will provide to the community an additional approximately fifty (50) acres of public open space, (iv) up to One Million Dollars (\$1,000,000.00) for traffic improvements to widen Santiago Canyon Road and re-stripe Cannon Ave, and (v) Two Million Dollars (\$2,000,000.00) to relocate the horse riding arena currently located on Santiago Canyon Road to the Ridgeline property and other related Ridgeline property improvements. The Project will be limited to a maximum of one hundred and twenty-eight (128) single family detached homes consistent with the development standards and guidelines set forth in the Development Plan.

G. The following actions were taken with respect to this Agreement and the Project:

1. On _____, 2019, following a duly noticed public hearing, the City Planning Commission recommended that the City Council approve this Agreement;

2. On _____, 2019, after a duly noticed public hearing and pursuant to CEQA, the City Council adopted the environmental impact report for this Agreement and the Project;

3. On _____, 2019, the City Council of the CITY approved the following:

- Zone Change (Specific Plan) _____
- General Plan Amendment _____
- Environmental Impact Report No. _____
- Orange Park Acres Specific Plan Amendment ____
- East Orange Plan Amendment ____
- Tentative Tract Map No. ____

4. On _____, 2019, after a duly noticed public hearing, the City Council determined that the provisions of this Agreement are consistent with the General Plan of the CITY;

5. On _____, 2019, after a duly noticed public hearing, the City Council adopted Ordinance No. _____ approving and authorizing the execution of this Agreement, a copy

of which is on file in the City Clerk's Office at the CITY, and adopted the findings and conditions pertaining thereto, including those relating to the environmental documentation for the Project.

H. The CITY has engaged in extensive studies and review of the potential impacts of the Project as well as the various potential benefits to the CITY by the provision, among other things, for open space, recreation, community facilities, and roadway improvements.

I. In consideration of the substantial public improvements and benefits to be provided by OWNER and the Project, and in order to strengthen the public financing and planning process and reduce the economic costs of development, by this Agreement, CITY intends to give OWNER assurance that OWNER can proceed with the development of the Project for the Term of this Agreement pursuant to the terms and conditions of this Agreement and in accordance with CITY's General Plan, ordinances, policies, rules and regulations existing as of the Effective Date. In reliance on CITY's covenants in this Agreement concerning the Development of the Property, OWNER has and will in the future incur substantial costs in site preparation and the construction and installation of major infrastructure and facilities in order to make the Project feasible.

J. Pursuant to Section 65867.5 of the Development Agreement Legislation, the City Council has found and determined that: (i) this Agreement and the Existing Project Approvals implement the goals and policies of CITY's General Plan, provide balanced and diversified land uses and impose appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within CITY, (ii) this Agreement is in the best interests of and not detrimental to the public health, safety and general welfare of CITY and its residents; (iii) adopting this Agreement is consistent with CITY's General Plan and constitutes a present exercise of the CITY's police power; and (iv) this Agreement is being entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Legislation, and Chapter 17.44 of the Orange Municipal Code.

K. CITY and OWNER agree that it may be beneficial to enter into additional agreements or to modify this Agreement with respect to the implementation of the separate components of the Project when more information concerning the details of each component is available, and that this Agreement should expressly allow for such contemplated additional agreements or modifications to this Agreement.

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

1. **Definitions.**

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

1.1 **Authorizing Ordinance.** The "Authorizing Ordinance" means Ordinance No. _____ approving this Agreement.

1.2 **CITY**. The “CITY” means the City of Orange, California, a municipal corporation, duly organized and existing under the Constitution and laws of the State of California, and all of its officials, employees, agencies and departments.

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

1.4 **Development**. “Development” means the improvement of the Property for purposes of completing the Project, including, without limitation: grading, the construction of infrastructure and public facilities related to the Project (whether located within or outside the Property), the construction of structures and buildings and the installation of landscaping.

1.5 **Development Agreement Legislation**. The “Development Agreement Legislation” means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date, and implemented through Chapter 17.44 of the Orange Municipal Code.

1.6 **Development Fees**. “Development Fees” means development impact and processing fees imposed on the Project as conditions of the Existing Project Approvals and limited as more particularly set forth in Section 4.3.

1.7 **Development Plan**. The “Development Plan” consists of the Existing Project Approvals, the Existing Regulations, and those Future Project Approvals (such as subdivision maps and precise development plans) contemplated, necessary, and requested by OWNER to implement the Existing Project Approvals. Any reference in the Project Approvals to a Development Plan includes any Specific Plan approved by the CITY as defined the Existing Regulations.

1.8 **Development Transferee**. “Development Transferee” means a transferee from OWNER of all or a portion of OWNER’s interest in the Property pursuant to Section 2.5.1 and the successors and assigns of any such transferee.

1.9 **Effective Date**. “Effective Date” means the date that the Authorizing Ordinance becomes effective.

1.10 **Existing Project Approvals**. The “Existing Project Approvals” are those Project Approvals, including Certification of Environmental Impact Report No. _____, General Plan Amendment No. GPA _____, Zone Change (Specific Plan) No. _____, Orange Park Acres Specific Plan Amendment _____, East Orange Plan Amendment _____ and Tentative Tract Map No. _____, which have been approved and adopted by the CITY on _____, 2019, consistent with the Existing Regulations.

1.11 **Existing Regulations**. “Existing Regulations” means those ordinances, rules, regulations, policies, requirements, guidelines, constraints or other actions of the CITY, other than site-specific Project Approvals, which purport to affect, govern or apply to the Property or the implementation of the Development Plans in effect on November 2, 2016.

1.12 **Financing District.** “Financing District” for purposes of this Agreement means a community facilities district formed pursuant to the Mello-Roos Community Facilities District Act of 1982 (California Government Code Sections 53311 et seq., as amended), an assessment district formed pursuant to the Improvement Act of 1911 (California Streets & Highways Code Sections 5000 et seq., as amended), an assessment district formed pursuant to the Municipal Improvement Act of 1913 (California Streets & Highways Code Sections 10000 et seq., as amended), an assessment district formed pursuant to the Landscaping and Lighting Act of 1972 (California Streets and Highways Code Sections 22500 et seq., as amended), or any other similar special district or assessment district authorized pursuant to State law for purposes of financing the cost of public improvements, Facilities, services and/or public facilities fees within a distinct geographic area of the CITY.

1.13 **Future Project Approvals.** “Future Project Approvals” means those Project Approvals contemplated, necessary, and requested by CITY or OWNER to implement the Existing Project Approvals and approved by the CITY after the approval of the Existing Project Approvals.

1.14 **Off-Site Improvements.** “Off-Site Improvements” means physical infrastructure improvements or Facilities which are not and will not be located on the Property.

1.15 **On-Site Improvements.** “On-Site Improvements” means physical infrastructure improvements or facilities that are or will be located on the Property.

1.16 **OWNER.** “OWNER” is initially Milan REI X, LLC, a California limited liability company and shall include any Development Transferee but only to the extent of and in proportion to the share of the Project acquired by such Development Transferee.

1.17 **Planning Commission.** “Planning Commission” means the duly appointed and constituted Planning Commission of CITY.

1.18 **Pre-Development Agreement.** “Pre-Development Agreement” means that certain agreement titled “Pre-Development Agreement by and between the City of Orange and Milan REI X, LLC Relating to 109 Acres Known as the Trails at Santiago Creek,” executed by CITY and OWNER on or about November 2, 2016.

1.19 **Project Approvals.** “Project Approvals” means Certification of Environmental Impact Report No. EIR _____, General Plan Amendment No. GPA _____, Zone Change (Specific Plan) No. _____, and the Development Plan and all Future Project Approvals such as site-specific plans, subdivision maps, permits and other entitlements of every kind and nature, including, but not limited to: specific plans, site plans, precise development plans, tentative and final subdivision maps, parcel maps, variances, zoning designations, conditional use permits, grading, building and other similar plans and permits, the site-specific provisions of the General Plan, and environmental approvals consistent with this Agreement. To the extent any such site-specific plans, maps, permits and other entitlements are adopted from time to time, “Project Approvals” shall include such matters.

2. **General Provisions.**

2.1 **Binding Covenants.** The provisions of this Agreement to the extent permitted by law shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits and burdens of this Agreement shall bind and inure to the benefit of the parties and all successors in interest to the parties hereto. The City Clerk of CITY shall cause this Agreement to be recorded with the County Recorder, County of Orange, within ten (10) days after the Effective Date.

2.2 **Interest of OWNER.** OWNER represents that OWNER has a legal interest in the Property.

2.3 **Term.** The term (hereinafter called "Term") of this Agreement shall commence on the Effective Date and shall extend for a period of ten (10) years thereafter, terminating at the end of the day preceding the tenth (10th) anniversary of the Effective Date, subject to specific extensions, revisions and termination provisions of this Agreement. Prior to the expiration of the Term, as may be extended by the terms of this Agreement, OWNER may further extend the term of this Agreement for an additional five (5) year period if OWNER or any Development Transferee has completed the public improvements set forth in Sections 4.1.3 and 4.1.5. Notwithstanding the foregoing, the Term of this Agreement shall not extend beyond a period of fifteen (15) years after the Effective Date.

2.4 **Termination.** This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

2.4.1 If termination occurs pursuant to any specific provision of this Agreement;
or

2.4.2 Completion of the total build-out of the Project pursuant to the terms of this Agreement and the CITY's issuance of all required occupancy permits and acceptance of all dedications and improvements required to complete Development of the Project;

2.4.3 The termination of this Agreement shall not affect any right or duty arising independently from entitlements issued by CITY or other land use approvals approved concurrently or subsequent to the approval of this Agreement.

2.5 **Transfers and Assignments.**

2.5.1 **Right to Assign.** OWNER shall have the right from time to time and on such number of occasions as it chooses to sell, assign or otherwise transfer all or any portion of its interests in the Property together with all its right, title and interest in this Agreement, or the portion thereof which is subject to transfer (the "Transferred Property") to any person or entity at any time during the Term of this Agreement; provided, however, that any such transfer or assignment must be pursuant to a sale, assignment or other transfer of the interest of OWNER in the Property, or a portion thereof. In the event of any such sale, assignment, or other transfer, (i) OWNER shall notify CITY thirty (30) days prior to such event of the name of the Development Transferee, together with the corresponding entitlements being transferred to such Development Transferee and (ii) the agreement between OWNER and such Development Transferee pertaining to such transfer shall provide that either OWNER or the Development Transferee shall be liable for the performance of those obligations of OWNER under this Agreement which relate to the Transferred

Property, if any. Each Development Transferee and OWNER shall notify CITY in writing which entity shall be liable for the performance of each respective obligation 30 days prior to the date of any sale, assignment or transfer pursuant to this subsection.

2.5.2 **Release Upon Transfer.** It is understood and agreed by the parties that the Property may be subdivided after the Effective Date. One or more of such subdivided parcels may be sold, mortgaged, hypothecated, assigned or transferred to persons for development by them in accordance with the provisions of this Agreement.

2.5.2.1 **Release of OWNER.** Effective upon such sale, mortgage, hypothecation, assignment or transfer, the obligations of OWNER shall become several and not joint and OWNER and the balance of the Property other than the Transferred Property, shall be released from its obligations under this Agreement assumed by the Development Transferee with respect to Transferred Property, provided that (i) OWNER is not then in default under this Agreement, (ii) OWNER has provided to CITY the notice of such transfer specified in Section 2.5.1, (iii) the Development Transferee executes and delivers to CITY a written agreement in which (A) the name and address of the Development Transferee is set forth and (B) the Development Transferee expressly and unconditionally assumes all the obligations of OWNER under this Agreement with respect to the obligations of OWNER under this Agreement for the performance required of OWNER and regarding the Transferred Property. All executory exactions or conditions which are not assumed by a Development Transferee shall remain with the balance of the Property not transferred.

2.5.2.2 **Effect of Noncompliance.** From and after the assumption of obligations under this Agreement by a Development Transferee pursuant to Section 2.5.2.1, noncompliance by any such Development Transferee with the terms and conditions of this Agreement assumed by such Development Transferee shall entitle CITY to pursue any and all of its rights under this Agreement so assumed against such Development Transferee, but such noncompliance shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for CITY to initiate enforcement action against, other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder. Similarly, noncompliance by OWNER with respect to any terms and conditions of this Agreement not assumed by such Development Transferee shall entitle CITY to pursue any and all of its rights under this Agreement retained by OWNER against OWNER, but such noncompliance by OWNER shall not be deemed a default or grounds for termination hereof with respect to, or constitute cause for CITY to initiate enforcement action against, such Development Transferee or other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder.

2.5.2.3 **Release by Phase.** Upon completion of any phase or tract of development of the Project as determined by CITY and fulfillment of any obligations under this Agreement related to such phase or tract, CITY shall release that completed phase or tract from any further obligations under this Agreement. The provisions of this Section 2.5.2.3 shall be self-executing and shall not require the execution or recordation of any further document or instrument; provided, however, if requested by OWNER, CITY agrees to execute, in recordable form a document confirming the release contemplated by this Section

2.5.2.3 provided OWNER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto.

2.5.2.4 **Rights of Successors and Assigns**. Except as otherwise set forth in this Agreement, any and all successors and assigns of OWNER shall have all of the same rights, benefits and obligations of OWNER under this Agreement.

2.5.3 **Termination of Agreement With Respect to Individual Dwelling Units Upon Sale to Public**. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall terminate as to any dwelling unit which has been finally subdivided, sold and issued a certificate of occupancy. Upon such sale, the dwelling unit shall be released from and shall no longer be subject to or burdened by the provisions of this Agreement. The provisions of this Section 2.5.3 shall be self-executing and shall not require the execution or recordation of any further document or instrument provided, however, if requested by OWNER, CITY agrees to execute, in recordable form, a document confirming the release contemplated by this Section 2.5.3, provided OWNER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto.

2.6 **Amendment of Development Agreement**.

2.6.1 **Initiation of Amendment**. Either party may propose an amendment to this Agreement and both parties agree that it may be beneficial to enter into additional agreements or modification of this Agreement in connection with the implementation of the separate components of the Project.

2.6.2 **Procedure**. Except as set forth in Section 2.6.5 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

2.6.3 **Consent**. Except as expressly provided in this Agreement, any amendment to this Agreement shall require the written consent of both parties. No amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each party.

2.6.4 **Consent of OWNER**. Where an assignee of OWNER applies for an amendment to this Agreement, the written consent of OWNER shall always be required before CITY approval of the amendment. Further, an assignee shall not be required or entitled to approve an amendment to this Agreement. The recordation of this Agreement shall serve as notice to all assignees of the provisions of this Section.

2.6.5 **Operating Memoranda**. The parties acknowledge that refinements and further development of the Project may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Project Development and with respect to those items covered in general terms under this Agreement. If and when the parties mutually find that changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, they may, unless otherwise required by law, effectuate such changes, adjustments, or clarifications without amendment to this Agreement as specified in the Project Approvals or

through operating memoranda mutually approved by the parties, which, after execution, shall be attached hereto as addenda and become a part hereof and may be further changed and amended from time to time as necessary, with further approval by City Manager, on behalf of the CITY and by any corporate officer or other person designated for such purpose in a writing signed by a corporate officer on behalf of OWNER. Unless otherwise required by law or by the Project Approvals, no such changes, adjustments, or clarifications shall require prior notice or hearing. The Parties agree that the maximum number of 128 single family detached units may not be increased through an Operating Memoranda.

3. **Description of Development.**

3.1 **Development and Control of Development.**

3.1.1 **Project.** During the Term of this Agreement, OWNER shall have the vested right to implement the Development pursuant to this Agreement and the Project Approvals and CITY shall have the right to control the Development of the Project in accordance with the terms and conditions of this Agreement. Except as otherwise specified in this Agreement, the Project Approvals and the Existing Regulations shall control the design and Development of the Project and all On-Site Improvements and Off-Site Improvements and appurtenances in connection therewith. The permitted uses of the property, the density and intensity of use, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes shall be as set forth in the Existing Regulations and Project Approvals, including without limitation the Development Plan document. So long as OWNER is not in default under this Agreement and provided the Project is being developed in accordance with the Project Approvals, OWNER has a vested right to construct, at OWNER's discretion, a maximum of 128 residential units.

3.1.2 **Timing of Development.** To the extent OWNER develops the Project, OWNER shall proceed in accordance with the phasing schedule set forth in the Existing Project Approvals. OWNER's adherence with the phasing schedule set forth in the Development Plan shall be considered by CITY in determining OWNER'S good faith compliance with the terms of this Agreement as required by Section 9 of this Agreement. Notwithstanding the preceding sentences, the parties acknowledge that the primary purpose of any phasing contained in the Development Plan is to tie the construction of certain public infrastructure improvements to particular development milestones and that OWNER cannot at this time predict when or in what order the Project phases will be developed. Such decisions depend upon numerous factors some of which are not within the control of OWNER, such as market orientation and demand, interest rates, competition and other similar factors. Subject to the phasing schedule set forth in the Existing Project Approvals, Section 2.3 of this Agreement concerning the Term of this Agreement, and the Project Approvals, and to the extent permitted by the Project Approvals and this Agreement, OWNER shall have the discretion to develop the Project in phases at such times as OWNER deems appropriate within the exercise of its subjective business judgment. Specifically, CITY agrees that OWNER shall be entitled to apply for and receive permits, maps, certificates of occupancy and other entitlements to develop and use the Property at any time, provided that such application is made in accordance with this Agreement, the Project Approvals and the Existing Regulations.

3.1.3 **Permits and Approvals - Cooperation.** CITY shall accept and timely process, in the normal and legal manner for processing such matters, all applications for Future Project Approvals called for or required under this Agreement.

3.1.4 **Further Mitigation.** In connection with the issuance of any Future Project Approvals that are subject to review under CEQA, unless required under CEQA, this Agreement or the Existing Regulations, the CITY shall not impose any environmental alternatives or mitigation measures in addition to those referenced in the Existing Project Approvals.

3.2 **Rules, Regulations and Official Policies.** Except as otherwise specified in this Agreement and the Project Approvals, the rules, regulations and official policies governing the permitted uses of the Property, the density and intensity of use of the Property, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to Development of the Property shall be the Existing Regulations. In connection with any subsequent approval or action which CITY is permitted or has the right to make under this Agreement relating to the Project, CITY shall exercise its discretion or take action in a manner which complies and is consistent with the Project Approvals, the Existing Regulations and such other standards, terms and conditions contained in this Agreement. The Existing Project Approvals, as well as an overview and non-exhaustive list of Existing Regulations are listed in Exhibit “_”. CITY has certified two copies of each of the documents listed on Exhibit “_”. CITY has retained one set of the certified documents and has provided OWNER with the second set.

3.3 **Reserved Authority.**

3.3.1 **Uniform Codes.** This Agreement shall not prevent CITY from applying new rules, regulations and policies relating to uniform codes (such as the Uniform Building Code, National Electrical Code, Uniform Mechanical Code or Uniform Fire Code, as amended) adopted by the State of California, which new rules and regulations are necessary to preserve the health and safety of the residents of CITY or which the CITY is required by state law to apply.

3.3.2 **State and Federal Laws and Regulations.** In the event that State or Federal laws or regulations prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.3.3 **Regulation for Health and Safety.** Notwithstanding anything to the contrary in this Agreement, CITY shall have the right to apply regulations (including amendments to the Existing Regulations) adopted by the CITY after the Effective Date, in connection with any Project Approvals, or deny, or impose conditions of approval on, any Project Approvals provided that such application to the Development is required to protect the physical health and safety of existing or future residents or occupants of the Property, or any portion thereof or any lands adjacent thereto. OWNER may protest the imposition of any such emergency regulations or

conditions to the City Council or as otherwise provided by CITY rules or regulations while continuing to construct the Development.

3.3.4 **Procedure For Application of New Regulations.** The CITY shall not apply to the Project any regulation, law, program, ordinance or action under Section 3.3.1, 3.3.2, or 3.3.3 (except for emergency ordinances adopted to protect health and welfare as set forth therein) which is not an Existing Regulation (“New Regulation”) without providing at least thirty (30) days prior written notice to OWNER of the CITY’s intent to apply such New Regulation to the Project. OWNER shall have thirty (30) days from the date of such notice to review and evaluate the New Regulation and to serve CITY with a written protest (Protest) against the application of the New Regulation to the Project. If the OWNER timely provides the Protest to CITY, then CITY will not apply the New Regulation to the Project until the City Council of CITY makes a finding, after a duly noticed public hearing, that such New Regulation does not conflict with the Existing Regulations as applied to the Project and is required (as opposed to permitted) to comply with State or Federal laws or regulations after taking into consideration all reasonable alternatives. Should OWNER elect to continue to construct the Development after receipt of notice of the applicability of any New Regulation described in Section 3.3.3 to such construction, OWNER does so at its own risk.

3.4 **Vested Right.** By entering into this Agreement and relying thereupon, OWNER is obtaining vested rights to proceed with the Project in accordance with the terms and conditions of this Agreement, and in accordance with, and to the extent of, the Project Approvals. By entering into this Agreement and relying thereupon, CITY is securing significant public benefits and facilities which enhance the public health, safety and welfare, a partial listing of which benefits is set forth in Section 4.1.

3.4.1 **No Conflicting Enactments.** Except as provided in Section 3.3 of this Agreement, neither the City Council nor any other agency of CITY shall impose a rule, regulation, ordinance or other measure which governs the rate, timing or sequencing of the Development of all or any part of the Project that is inconsistent or in conflict with this Agreement or the Project Approvals. Any such rule, regulation, ordinance or other measure shall be considered to conflict if it has any of the following effects, which includes, but is not limited to:

(i) Limits or reduces the density or intensity of the Project or otherwise requires any reduction or increase in the number, size or square footage of lots, homes, structures, buildings or other improvements; or

(ii) Applies to the Project, but is not uniformly applied by the CITY to all substantially similar development within the CITY; or

(iii) Controls, limits or otherwise negatively affects the rate, timing or phasing of the Development of the-Property.

The above list is not intended to be comprehensive or to limit the types of action that would conflict with Existing Regulations, this Agreement and the Project Approvals.

3.4.2 **Consistent Enactments.** By way of enumeration and not limitation, the following types of enactments shall be considered consistent with Existing Regulations and the Project Approvals and not in conflict:

(i) Relocation of unit types within the Property pursuant to an application from OWNER; and

(ii) Changes in the phasing of the Development pursuant to an application from OWNER, provided any changes in phasing do not alter the phasing or timing of any public improvements to be provided by OWNER under this Agreement unless such change in the phasing or timing of the public improvements is approved by CITY.

3.4.3 **Initiative Measures.** In addition to and not in limitation of the foregoing, it is the intent of OWNER and CITY that no moratorium or other limitation (whether relating to the rate, timing or sequencing 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), site development permits, precise plans, site development plans, building permits, occupancy certificates or other entitlements approved, issued or granted within CITY, or portions of CITY, shall apply to the Project to the extent such moratorium or other limitation would restrict OWNER's right to develop the Project in such order and at such rate as permitted under this Agreement. In accordance with Section 6 of this Agreement, CITY agrees to cooperate with OWNER in all reasonable manners in order to keep this Agreement in full force and effect. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action. In the event of any litigation challenging the effectiveness of this Agreement, or any portion hereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, absent a court order to the contrary.

3.4.4 **Consistency Between This Agreement and Current Laws.** CITY represents that there are no rules, regulations, ordinances, policies or other measures of the CITY in force as of the Agreement Date that would interfere with Development and use of all or any part of the Project according to the Project Approvals and this Agreement. The parties understand and acknowledge that the Agreement is consistent with CITY's General Plan and zoning for the Property because General Plan Amendment No. GPA _____ and Zone Change No. _____, which are part of the Existing Project Approvals, will become effective concurrent with the Effective Date of this Agreement.

3.5 **Future Amendments to Development Plan.** The following rules apply to future amendments to the Development Plan:

3.5.1 **OWNER'S Written Consent.** Any Development Plan amendment which is not in compliance with Section 2.6.3 and 2.6.4 of this Agreement shall not apply to the Property or the Project while this Agreement is in effect.

3.5.2 **Concurrent Development Agreement Amendment.** Any Development Plan amendment requiring amendment of this Agreement shall be processed concurrently with an amendment to this Agreement

3.5.3 **Effect of Amendment.** Except as expressly set forth within this Agreement or in any amendment to this Agreement, a Development Plan amendment will not alter, affect, impair or otherwise impact the rights, duties and obligations of the parties under this Agreement.

4. **Obligations of the Parties**

4.1 **Benefits to CITY.** The direct and indirect benefits CITY (including, without limitation the existing and future residents of CITY) will receive pursuant to the implementation of the Agreement include, but are not limited to, the following:

4.1.1 **Acquisition of Ridgeline Golf Course.** Owner will convey to the City the property within the City of Orange known as the Ridgeline Golf Course, as more particularly described in Exhibit “_” attached hereto and made a part hereof (hereafter, the “Ridgeline Property”). Milan REI IV, LLC, the owner of the Ridgeline Property, has agreed to sell the Ridgeline Property to the City for fair market value. Owner shall negotiate with Milan REI IV, LLC, to determine a process for establishing the fair market value of the Ridgeline Property and shall provide the City with funds equal to said fair market value in order to fund the City’s acquisition of the Ridgeline Property prior to the issuance of the 1st certificate of occupancy for the Project.

4.1.2 **Funding for Capital Improvements to Ridgeline Golf Course.** In addition to funding the acquisition of the Ridgeline Property, as set forth above, Owner will provide an additional Two Million Dollars (\$2,000,000.00) to be used to relocate the existing horse arena on Santiago Canyon Road, and for capital improvements, to the Ridgeline Golf Course, prior to the issuance of the 1st certificate of occupancy for the Project.

4.1.3 **Greenway.** The Development will provide Four Million One Hundred Thousand Dollars (\$4,100,000.00) in greenway improvements (“Greenway Improvements”), as described and further set forth in the cost estimate by Summers Murphy & Partners dated July 18, 2017, attached hereto as Exhibit “_”. The Greenway Improvements shall be constructed or funded prior the issuance of the 60th certificate of occupancy for the Project. The parties shall cooperate in good faith to reach an agreement concerning the ownership and maintenance obligations for the Greenway Improvements prior to the approval of the first Tentative Map for the Property. The parties shall consider such entities or mechanisms including, but not limited to, a conservancy, landscape maintenance district, Home Owner’s Association, local public agencies (including CITY or County of Orange), non-profit organization or similar entities or mechanisms upon which the Parties can agree.

4.1.4 **Funding for Trail Improvements.** Owner will provide to the City an additional One Million Dollars (\$1,000,000.00) in funding to be used for local trail improvements prior to the issuance of the first certificate of occupancy for the Project.

4.1.5 **Circulation Improvements.** The Development will provide approximately One Million Dollars (\$1,000,000.00) in traffic and circulation improvements, as described and further set forth in the cost estimate prepared by Fuscoe Engineering and LL&G set forth in Exhibit “_” attached hereto, prior to the 1st certificate of occupancy for the Project.

4.1.6 **Rehabilitation of Property.** The Development will result in the rehabilitation of a blighted, highly industrialized property that has been utilized for sand and gravel mining operations for several decades. OWNER will be permitted to continue the sand and gravel operations provided however, OWNER will cease all sand and gravel operations upon the earlier to occur of either 1) the issuance of the first certificate of occupancy for the Project, or 2) a date which is three (3) years after the approval of the first tentative map for the Project.

4.1.7 **School Impact Fees.** The OWNER or its Development Transferees will pay to the Orange Unified School District (“OUSD”), school impact fees in accordance with the current policies and fee schedule of the OUSD for the Project as full and complete mitigation for school impacts from the Project.

4.1.8 **Comprehensive Planning.** The Development will provide a comprehensive planning effort which incorporates adjacent land ownership and reflects the CITY’s General Plan and Master Plan of Parks and Master Plan of Recreational Trails.

4.1.9 **Short Term Employment.** The Development will create substantial employment opportunities through the Project construction and development phase.

4.2 **Public Improvements and Financing District.** At OWNER’s request, CITY shall cause a Financing District to be formed in a timely manner. Such Financing District shall include the Property or a portion thereof within its boundaries for the purpose (in addition to other possible purposes) of funding the planning, design and construction of the public improvements required to be constructed for Development of the Project to proceed. Such improvements, include, but are not limited to, traffic signal and street improvements, park land acquisition, library facilities fees, grading and improvements, drainage, sewer and water improvements, school mitigation fees and other development fees and other facilities. Such Financing District shall be in conformance with applicable CITY rules, regulations and policies as amended from time to time.

4.3 **Limitation on Development Fees.** Certain development impact and processing fees have been imposed on the Project as conditions of the Existing Project Approvals which impact and processing fees are in existence on the Effective Date and set forth more fully in Exhibit “_” (“Project Development Fees”). In providing the benefits specified above, including funds to acquire and improve the Ridgeline Property and the Greenway, the Development will provide recreational facilities far in excess of what state law or CITY ordinances might otherwise require. Accordingly, the Project Development Fees applicable to the Development shall not include any park fees or development fees for park purposes which might otherwise be collected by the City. Notwithstanding any fee increases adopted by the CITY, Project Development Fees applicable to the Development shall be adjusted annually, commencing on the first anniversary of the effective date of the Pre-Development Agreement (November 2, 2016), to reflect any increase or decrease in the construction cost index as established and published in the Engineering News Record. The foregoing shall not apply to processing fees charged by the CITY for the CITY’s administrative time and related costs incurred in preparing and considering any application for the Project Approvals which fees shall be assessed in the amount they exist at the time OWNER becomes liable to pay such fees. Project Development Fees and any increases therein shall be assessed in accordance with Exhibit “_”. During the term of the Agreement CITY shall be precluded from applying any development impact fee that does not exist as of the Effective Date.

This provision does not authorize CITY to impose fees on the Project that could not be imposed in the absence of this Agreement.

4.4 **Dedications and Exactions.** At the appropriate points in the Development of the Project, OWNER shall irrevocably offer for dedication or reserve for acquisition by CITY or its designee the streets, any public right-of-way, parkland and other areas within the Property as more fully set forth in the Existing Project Approvals, including, but not limited to, those set forth in Exhibit “_”, for the uses set forth in the Existing Project Approvals. In addition to and not in limitation of the foregoing, CITY shall not levy or require any further dedications and exactions in connection with Project Approvals. Notwithstanding the foregoing, Future Project Approvals will be reviewed in a manner consistent with the general review procedures of the CITY according to the particular type of Future Project Approval being sought to the extent such procedures are consistent with this Agreement.

4.5 **Project Mitigation.** OWNER shall undertake and complete the mitigation requirements of the Existing Project Approvals. These requirements shall be satisfied within the time established therefore in the Existing Project Approvals.

4.6 **Construction of Public Facilities.** OWNER shall, at OWNERS sole option and discretion, either fund or undertake the construction and timing of public facilities set forth in paragraph 4.1 and any other public facilities as set forth in the Development Plan in a manner consistent with Section 3.1.2. The public facilities to be constructed pursuant to this Agreement and the Project Approvals will benefit the community and may, therefore, at OWNER’s sole option and discretion, be financed through a Financing District established pursuant to Section 4.2 of this Agreement. Owner shall be entitled to credits for traffic impact fees to the extent a developer would be entitled to such credit in the absence of this Agreement. Within six months of the Effective Date, the parties shall meet to discuss the potential for entering into a reimbursement agreement whereby the CITY would collect fees from future development for their fair share of the improvements constructed by Owner.

5. **Further Assurances to OWNER Regarding Exercise of Reserved Authority.**

5.1 **Adoption of General Plan and Granting of Other Project Approvals.** In preparing and adopting General Plan Amendment No. GPA-____ and in granting the other Project Approvals, CITY considered, and will consider in granting Future Project Approvals, the health, safety and welfare of the residents of CITY and prepared in this regard extensive environmental analysis contained in the EIR and other studies. Without limiting the generality of the foregoing, in reviewing and adopting General Plan Amendment No. GPA-____ and the other Existing Project Approvals, the City Council carefully considered and determined the projected needs (taking into consideration the planned development of the Project and all other areas within CITY) for police, fire, library, traffic, paramedics and similar facilities and services within the Project and surrounding areas, flood control measures, the needs of the residents for open space and parks and the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project and the needs of the residents of the Project and surrounding areas for other infrastructure as well as the various benefits to the CITY, some of which are described in Section 4.1.

5.2 **Assurances to OWNER.** The parties further acknowledge that the public benefits to be provided by OWNER to CITY pursuant to this Agreement are in consideration for and reliance upon assurances that the Property will be developed in accordance with the Project Approvals and this Agreement. Accordingly, while recognizing that the Development of the Property may be affected by exercise of the authority and rights reserved and excepted as provided in Sections 3.3.1, 3.3.2 and 3.3.3 (“Reserved Authority”) or this Agreement, OWNER is concerned that CITY may adopt land use regulations in violation of the Reserved Authority and to attempt to apply regulations which are inconsistent with the Project Approvals pursuant to the exercise of the Reserved Authority. Accordingly, OWNER desires assurances that CITY will not and CITY agrees that it will not further restrict or limit the development of the Property in violation of this Agreement except in strict accordance with the Reserved Authority.

6. **Indemnification.** Except to the extent of the gross negligence or willful misconduct of the Indemnified Parties (as defined below), OWNER, and with respect to the portion of the Property transferred to them, the Development Transferees, agree during the term of this Agreement, to, at CITY’s request, defend CITY and its agents, officers, and employees (the “Indemnified Parties”) from and against any claims, including claims for attorneys fees, or proceeding against the Indemnified Parties to set aside, void or annul the approval of this Development Agreement or the Project Approvals. CITY agrees to timely take all actions necessary or required to uphold the validity and enforceability of this Agreement and the Existing Regulations and shall promptly notify OWNER of any claim, action or proceeding brought challenging any provision of this Agreement or the Project Approvals. OWNER and the CITY shall select joint legal counsel to conduct such defense which legal counsel shall represent both OWNER and the CITY in defense of such action. OWNER and CITY shall meet and confer to determine the reasonable estimate of the costs of defense of any such claim or action and OWNER shall deposit a sufficient portion of said amount with the CITY to ensure CITY that it will have sufficient funds to pay the costs of defense until a further deposit is required, if any. The CITY will draw down on such funds to pay for costs of defense and may require additional deposits if it appears that the costs of defense will exceed the amount on deposit. The CITY shall refund, without interest, any unused portions of the deposit once the claim or action is finally concluded. Should the CITY fail to promptly and timely notify OWNER or cooperate fully or decide to terminate this Agreement, OWNER shall be relieved of its defense and indemnity obligations hereunder. OWNER shall have the right to direct the prosecution, strategy and settlement of any defense hereunder in consultation with the CITY, provided however, that CITY and OWNER agree not to unreasonably withhold or delay approval of the settlement of any claim or action which does not significantly impair the rights and obligations of either party under this Agreement or the Project Approvals. The indemnitees set forth in this section shall survive any closing, rescission, or termination of this Agreement, and shall continue to be binding and in full force and effect in perpetuity with respect to the Indemnified Parties and their successors.

7. **Relationship of Parties.** The contractual relationship between CITY and OWNER is such that OWNER is an independent contractor and not the agent or employee of CITY. CITY and OWNER hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained in this Agreement or in any document executed in connection with the Project shall be construed as making CITY and OWNER joint venturers or partners.

8. **Amendment or Cancellation of Agreement.** This Agreement may be amended or canceled in whole or in part only by mutual consent of the parties in the manner provided for in Government Code Section 65868. No amendment or modification of this Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each party hereto. This provision shall not limit CITY's or OWNER's remedies as provided by Section 10.

9. **Periodic Review of Compliance with Agreement.**

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

9.2 **Good-Faith Compliance.** During each periodic review, OWNER shall be required to demonstrate good faith compliance with the terms of this Agreement. OWNER agrees to furnish such reasonable evidence of good faith compliance as CITY, in the exercise of its reasonable discretion, may require. If requested by CITY, CITY agrees to provide to OWNER, a Development Transferee or any party designated by OWNER or a Development Transferee, an estoppel certificate that OWNER or a Development Transferee is in compliance with the terms of this Agreement, provided OWNER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto.

9.3 **Failure to Conduct Annual Review.** The failure of the CITY to conduct the annual review shall not be an OWNER default. Further, OWNER shall not be entitled to any remedy for CITY failure to conduct this annual review.

9.4 **Initiation of Review by City Council.** In addition to the annual review, the City Council may at any time (but not more than once in any twelve (12) month period) initiate a review of this Agreement by giving written notice to OWNER. Within thirty (30) days following receipt of such notice, OWNER shall submit evidence to the City Council of OWNER's good faith compliance with this Agreement and such review and determination shall proceed in the same manner as provided for the annual review.

9.5 **Availability of Documents.** If requested by OWNER, CITY agrees to provide to OWNER copies of any documents, reports or other items reviewed, accumulated or prepared by or for CITY in connection with any periodic compliance review by CITY, provided OWNER reimburses CITY for all reasonable and direct costs and fees incurred by CITY with respect thereto.

10. **Events of Default Remedies and Termination.** Unless amended or canceled as provided in Section 8, or modified or suspended pursuant to Government Code Section 65869.5 or terminated pursuant to this Section 10, this Agreement is enforceable by either party hereto.

10.1 **Defaults by OWNER.** If CITY determines on the basis of substantial evidence that OWNER has not complied in good faith with the terms and conditions of this Agreement, CITY shall, by written notice to OWNER, specify the manner in which OWNER has failed to so comply and state the steps OWNER must take to bring itself into compliance ("First Default

Notice”). CITY and OWNER shall meet in good faith for the purpose of resolving any disputes within fifteen (15) days of OWNER’s receipt of written notice of default from CITY. If the CITY determines that following these meetings, OWNER is not taking necessary steps to cure such default, it shall provide notice of same to OWNER (“Second Default Notice”) and if, within thirty (30) days after the effective date of such notice OWNER has failed to so comply or OWNER does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then OWNER may be deemed to be in default under the terms of this Agreement and CITY may initiate the process to terminate this Agreement pursuant to Government Code Section 65868. In event of default by OWNER, except as provided in Section 10.3, CITY’s sole remedy for any breach of this Agreement by OWNER shall be CITY’s right to terminate this Agreement.

10.2 **Defaults by CITY.** If OWNER determines on the basis of substantial evidence that CITY has not complied in good faith with the terms and conditions of this Agreement, OWNER shall, by written notice to CITY, specify the manner in which CITY has failed to so comply and state the steps CITY must take to bring itself into compliance. CITY and OWNER shall meet in good faith for the purpose of resolving any disputes within fifteen (15) days of CITY’s receipt of written notice of default from OWNER. If the OWNER determines that following these meetings, CITY is not taking necessary steps to cure such default, it shall provide notice of same to CITY and if, within thirty (30) days after the effective date of such notice, CITY has failed to so comply or CITY does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then CITY shall be deemed to be in default under the terms of this Agreement and OWNER may initiate the process to terminate this Agreement and, in addition, may pursue any other remedy available at law or equity, including specific performance as long as such remedy is consistent with Section 10.3.

10.3 **Specific Performance Remedy.** Due to the size, nature and scope of the Project, it will not be practical or possible to restore the Property to its natural condition once implementation of this Agreement and the Project Approvals has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts. For the above reasons, CITY and OWNER agree that damages alone would not be an adequate remedy if CITY fails to carry out its obligations under this Agreement and that, in addition to any all other remedies OWNER may have at law or in equity, including, without limitation, claims for general, special or compensatory damages for any default under this Agreement, OWNER shall have the right to seek and obtain specific performance or injunctive relief as a remedy for any breach of this Agreement. OWNER may seek to enjoin any threatened or attempted violation of this Agreement, seek to enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of OWNER. CITY’s remedy of terminating this Agreement shall be sufficient if OWNER fails to carry out its obligations hereunder. Notwithstanding the above, and as further set forth in Section 3.1.2 of this Agreement, CITY may not seek specific performance to require OWNER to construct the Development except to the extent that OWNER becomes

otherwise obligated under this Agreement to construct any or all of the public facilities identified in the Development Plan. Nothing contained in this Agreement shall prevent OWNER from enforcing the right to seek a refund or return of a deposit made, or a fee paid, to the CITY in accordance with the provisions of the Existing Rules.

10.4 **Institution of Legal Action.** OWNER may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement. Such legal action shall be heard by a referee from the Orange County Superior Court pursuant to the reference procedures of the California Code of Civil Procedure Sections 638, et seq. OWNER and CITY shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him. If OWNER and CITY are unable to agree on a referee within ten (10) days of a written request to do so by either party hereto, either party may seek to have one appointed pursuant to the California Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Section 10.4 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

10.5 **Estoppel Certificates.** Either party may at any time deliver written notice to the other party requesting an estoppel certificate (the “Estoppel Certificate”) stating:

10.5.1 The Agreement is in full force and effect and is a binding obligation of the parties.

10.5.2 The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

10.5.3 No default in the performance of the requesting party’s obligations under the Agreement exists or, if a default does exist, the nature and amount of any default. A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The City Manager or any person designated by the City Manager may sign Estoppel Certificates on behalf of the CITY. Any officer of OWNER may sign on behalf of OWNER. An Estoppel Certificate may be relied on by assignees and mortgagees.

10.5.4 In the event that one party requests an Estoppel Certificate from the other, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto.

11. **Waivers and Delays.**

11.1 **No Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, and failure by a party to exercise its rights upon a default by the other party hereto, shall not constitute a waiver of such party’s right to demand strict compliance by such other party in the future.

11.2 **Third Parties.** Non-performance shall not be excused because of a failure of a third person, except as provided in Section 11.3.

11.3 **Force Majeure.** OWNER and CITY shall not be deemed to be in default where failure or delay in performance of any of their obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots, or similar hostilities, strikes and other labor difficulties beyond OWNER or CITY control, including government regulations (including, without limitation, local, state and federal environmental and natural resource regulations), voter initiative or referenda, moratoria (including, without limitation, any “development moratorium” as that term is applied in Government Code Section 66452.6) or judicial decisions.

11.4 **Extensions.** The Term of this Agreement and the time for performance by OWNER or CITY of any of its obligations hereunder or pursuant to the Project Approvals shall be extended by the period of time that any of the events described in Section 11.3 or this Section 11.4 exist and/or prevent performance of such obligations; provided that, except for the extension set forth in Section 2.3 of this Agreement allowing OWNER to extend the Term hereof for an additional five (5) year period, in no event shall any such extension exceed a total of 24 months without the prior approval, in their sole and complete discretion, of both OWNER and CITY. Subject to this limit the Term shall be extended for delays arising from the following events for a time equal to the duration of each delay which occurs during the Term:

11.4.1 **Litigation.** The period of time after the Effective Date during which litigation related to the Project Approvals, which has the actual effect of delaying implementation of the Project, is pending, including any litigation pending on the Agreement Date. This period shall include any time during which appeals may be filed or are pending.

11.4.2 **Referenda.** Any referenda or petition initiative which would invalidate or delay the implementation of the Project Approvals.

11.4.3 **Government Agencies.** Any delay resulting from the acts or omissions of the CITY or any other governmental agency or public utility and beyond the reasonable control of OWNER.

11.5 **Notice of Delay.** Each party shall give notice to the other of any delay that either party believes to have occurred as a result of the occurrence of any of the events described in Section 11.3 or 11.4. Such notice shall be provided as soon as either party becomes aware of any such delay, and in no event shall notice of a delay of any length be given later than sixty (60) days after the end of the delay or it shall be deemed waived.

12. **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail; postage prepaid, return receipt requested. Notices required to be given to CITY shall be addressed as follows:

City of Orange, City Manager
300 E. Chapman Avenue
Orange, CA 92866

With a copy to:
City of Orange, City Attorney
300 E. Chapman Avenue
Orange, CA 92866

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

Milan REI X
c/o Tivoli Capital Inc.
888 S. Disneyland Drive, Suite 103
Anaheim, CA 92802

With a copy to:
Carmen A. Morinello, Esq.
200 Spectrum Center Dr. Suite 1250
Irvine, CA 92612

Any notice given as required herein shall be deemed given only if in writing and upon delivery personally or by independent courier service. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

13. **Attorneys' Fees.** If legal action is brought by either party against the other for breach of this Agreement or to compel performance under this Agreement, the prevailing party shall be entitled to an award of its costs, including reasonable attorneys' fees, and shall also be entitled to recover its contribution for the costs of the referee referred to in Section 10.4 above as an item of damage and/or recoverable costs. If the City is the prevailing party and uses in-house counsel in the litigation, it shall be entitled to recover attorneys' fees at the hourly rate that OWNER is being charged by its attorney or at the in-house counsel's fully burdened rate, whichever is higher.

14. **Recording.** This Agreement and any amendment or cancellation hereto shall be recorded, at no cost to CITY, in the Official Records of Orange County by the City Clerk within the period required by Section 65868.5 of the Government Code.

15. **Effect of Agreement on Title.**

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

15.2 **Encumbrances and Lenders' Rights.** OWNER and CITY hereby agree that this Agreement shall not prevent or limit any owner of any interest in the Property, or any portion thereof, at any time or from time to time in any manner, at its or their sole discretion, from encumbering the Property, the improvements thereon, or any portion thereof with any mortgage, deed of trust sale and leaseback arrangement or other security device. CITY acknowledges that any Lender (as hereinafter defined) may require certain interpretations of or modifications to the Agreement or the Project and CITY agrees, upon request, from time to time, to meet with the property owner(s) and/or representatives of such Lenders to negotiate in good faith any such request for interpretation or modification. CITY further agrees that it will not unreasonably withhold its consent to any such requested interpretation or modification to the extent such interpretation or modification is consistent with the intent and purpose of this Agreement. A default under this Agreement shall not defeat, render invalid, diminish or impair the lien of any Lender.

The mortgagee or a mortgage or beneficiary of a deed of trust or holder of any other security interest in the Property or any portion thereof and their successors and assigns, including without limitation the purchase at a judicial or non-judicial foreclosure sale or a person or entity which obtains title by deed-in-lieu of foreclosures ("Lender") shall be entitled to receive a copy of

any First Default Notice, as defined in Section 10.1, at the name and address Lender has provided to the City Clerk of the CITY. As a pre-condition to the institution of any legal proceedings or termination proceedings, the CITY shall deliver to all such Lenders written notification of any situation in which OWNER has failed to cure and is deemed to be in default under Section 10.1 (hereafter, the “Second Default Notice”). The Second Default Notice shall specify in detail the alleged default and the suggested means to cure it. Each such Lender shall have the right, at its sole option, to cure such default within seventy-five (75) days of receipt of the Second Default Notice or, if such default cannot be reasonably cured within seventy-five (75) days, to commence and diligently pursue a cure of such default, in which case CITY shall not terminate this Agreement or otherwise institute legal proceedings. Within 20 days of receipt of the Second Default Notice, such Lenders shall provide written notice to the CITY as to whether such Lender intends to cure the default. If the CITY does not receive such notice within 20 days the Lender shall be deemed to have elected not to cure and the CITY may pursue all available remedies provided to it under this Agreement.

16. **Severability of Terms.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to enforce.

17. **Subsequent Amendment to Authorizing Statute.** This Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation in effect as of the Effective Date. Accordingly, subject to Section 3.3.2 above, to the extent that subsequent amendments to the Government Code would affect the provisions of this Agreement, such amendments shall not be applicable to this Agreement unless necessary for this Agreement to be enforceable or required by law or unless this Agreement is modified pursuant to the provisions set forth in this Agreement and Government Code Section 65868 as in effect on the Agreement Date.

18. **Rules of Construction and Miscellaneous Terms.**

18.1 **Interpretation and Governing Law.** The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. The parties understand and agree that this Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of the CITY, and in particular, the CITY’s police powers. In this regard, the parties understand and agree that this Agreement shall not be deemed to constitute the surrender or abnegation of the CITY’s governmental powers over the Property.

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

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

18.4 **Joint and Several Liability.** If there is more than one signer of this Agreement, their obligations are joint and several.

18.5 **Time of Essence.** Time is of the essence regarding each provision of this Agreement of which time is an element.

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

18.7 **Entire Agreement.** This Agreement together with the Development Plan constitutes the entire agreement between the parties with respect to the subject matter hereof, and the Agreement supersedes all previous negotiations, discussion and agreements between the parties, and no parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof. To the extent there are any inconsistencies between the attached exhibits and this Agreement, the terms and conditions of this Agreement shall control unless the parties otherwise mutually agree in writing.

19. **Extension and Preparation of Maps.** In accordance with Government Code Section 66452.6(a), any tentative map approved which relates to all or a portion of the Property shall be extended for the greater of (i) the Term of the Agreement or (ii) expiration of the tentative map pursuant to Section 66452.6. Any tentative map prepared for the Project which includes a subdivision shall comply with the provisions of Government Code Section 66473.7 unless exempt as provided therein.

20. **Not for Benefit of Third Parties.** This Agreement and all provisions hereof are for the exclusive benefit of CITY and OWNER and its Development Transferees and shall not be construed to benefit or be enforceable by any third party.

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

Dated: _____, 2019

“CITY”

THE CITY OF ORANGE,
a municipal corporation,

By: _____
Mark A. Murphy, Mayor

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Gary A. Sheatz, City Attorney

Dated: _____, 2019

“OWNER”

MILAN REI X, LLC,
a California limited liability company,

By: _____

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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