

**PLANNING COMMISSION
RESOLUTION NO. 2026-_____**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MURRIETA, RECOMMENDING THAT THE CITY COUNCIL ADOPT ORDINANCE NO. _____ APPROVING A DEVELOPMENT AGREEMENT WITH MURRIETA MARKETPLACE HOLDINGS LP, A CALIFORNIA LIMITED PARTNERSHIP, BONSCALL SERVICE STATION, LP A CALIFORNIA LIMITED PARTNERSHIP AND SCOTT-MURRIETA SERVICE STATION, LP A CALIFORNIA LIMITED PARTNERSHIP TO EXTEND THE ENTITLEMENTS FOR THE DEVELOPMENT OF A COMMERCIAL SHOPPING CENTER AT THE NORTHWEST CORNER OF WINCHESTER ROAD (HIGHWAY 79) AND CLINTON KEITH ROAD

WHEREAS, Murrieta Marketplace Holdings LP, a California Limited Partnership, Bonsall Service Station, LP a California Limited Partnership and Scott-Murrieta Service Station, LP a California Limited Partnership, as tenants-in-common (collectively, “Developers”) own an undeveloped lot containing approximately 49.7 acres of land at the northwest corner of Winchester Road Hwy 79 and Clinton Keith Road (APNs 963-060-065, 963-060-066, 963-450-001 through 963-450-019, 480-100-073 and 480-100-074) in Murrieta, California (“Site”); and

WHEREAS, June 27, 2018, the City Planning Commission adopted Resolution No. PC-2018010 approving a Development Plan (DP-2017-1370), and Conditional Use Permit (“CUP”) CUP-2018-1568 for the operation of a car wash and CUP 2017-1442 for outdoor display and equipment rental, each as conditioned thereby pursuant to the Conditions of Approval (collectively, “Entitlements”) authorizing the development of a commercial center containing up to 518,817 square feet of building area and 2,155 parking stalls including 20 buildings on 10 building pads, including two gas stations and private and public infrastructure on and adjacent to the Site (collectively, “Project”). The City Planning Commission approvals included consideration of previously adopted Environmental Impact Report State Clearinghouse No. 2005031028 (“EIR”) and the various addendums thereto and adopted an Addendum to the EIR (collectively with previously approved EIR and addenda, “CEQA Approvals”); and

WHEREAS, consistent with Murrieta Municipal Code Section 16.54.040(A)(3), Developers propose to enter into a Development Agreement with the City of Murrieta (“City”) to extend the entitlements for the Project through June 27, 2036 as the Entitlements will otherwise expire on June 27, 2026; and

WHEREAS, California Government Code Sections 65864 *et seq.* (“Development Agreement Law”) and Murrieta Municipal Code Chapter 16.54 (“City Development Agreement Ordinance”) authorize the City to enter into binding development agreements to provide an enhanced degree of certainty in the development process for both the property owner/developer and the affected public agency; and

WHEREAS, the Project will benefit the City by providing new restaurants, retail uses, and a gas station for residents and City visitors to patronize which will generate sales tax payable to the City; and

WHEREAS, pursuant to state law and Murrieta Development Code Chapter 16.54, a Development Agreement must be approved by ordinance following public hearings by the Planning Commission and City Council; and

WHEREAS, the City proposes an Ordinance approving a Development Agreement with Developers to extend the Entitlements pursuant to the terms contained in the Development Agreement; and

WHEREAS, Staff have reviewed the extension request and have determined that the extended term will not be detrimental to the surrounding areas; and

WHEREAS, on March 25, 2026, the City of Murrieta Planning Commission held a duly noticed public hearing on the proposed Ordinance approving the Development Agreement, at which a staff report was presented and evidence was provided in the record to support the findings required by Murrieta Development Code Section 16.54.070; and

WHEREAS, the Planning Commission considered and discussed the public comments and written information provided at the public hearing and has determined that the proposed Ordinance approving the Development Agreement is appropriate; and

WHEREAS, the Planning Commission has considered the potential for environmental effects as a result of the proposed Development Agreement pursuant to the California Environmental Quality Act (CEQA) and concurs with staff's recommendation.

NOW, THEREFORE, the Planning Commission of the City of Murrieta does resolve as follows:

Section 1. The foregoing recitals are true and correct and are incorporated by this reference as if set forth in full.

Section 2. The Planning Commission makes the following findings based on the following facts:

A. In accordance with Section 16.54.070 of the Murrieta Development Code, the proposed Development Agreement will be consistent with the objectives, policies, general land uses, and programs of the general plan, any applicable specific plan, and the Development Code.

FACTS: The proposed Development Agreement is consistent with the objectives, policies, general land uses, and programs of the Murrieta General Plan and the

provisions of the Murrieta Development Code because the Agreement does not modify the Project, land use designation, zoning classification, or development standards applicable to the Site. The Development Agreement only extends the duration of previously approved entitlements from 2018 for the Murrieta Marketplace commercial center, which were approved by the Planning Commission after a comprehensive review for consistency with the General Plan and Development Code. The 2018 approvals include Development Plan (DP-2017-1370), and CUP-2018-1568 for operation of a car wash and CUP 2017-1442 for outdoor display and equipment which were granted by Planning Commission Resolution No. PC-2018010.

The Site is designated Commercial in the Murrieta General Plan and zoned Regional Commercial (RC) under the Development Code. The Project, consisting of a commercial retail center including fueling, retail, and service uses, was previously determined to be consistent with these designations and applicable development standards. The Development Agreement does not alter those approvals and therefore maintains consistency with the City's adopted land use framework and regulatory requirements.

Because the Development Agreement only provides additional time for the implementation of an already approved project and does not authorize any changes to the approved land uses, density, intensity, or development standards, the Agreement remains fully consistent with the objectives, policies, and implementation programs of the General Plan and with the provisions of the Development Code.

B. In accordance with Section 16.54.070 of the Murrieta Development Code, the proposed Development Agreement will be in the best interest of the City.

FACTS: The proposed Development Agreement is in the best interests of the City because it provides certainty regarding the continued implementation of a previously approved commercial development that will provide retail services, employment opportunities, and tax-generating uses for the community. The Agreement facilitates the orderly development of the Site by allowing the approved project additional time to proceed while maintaining all previously adopted conditions of approval and development standards.

The Development Agreement also benefits the City by encouraging investment in commercial development at a prominent intersection along Winchester Road (State Route 79) and Clinton Keith Road, a key commercial corridor within the community. Implementation of the approved commercial center will contribute to the City's economic base through the provision of retail services and the generation of sales tax and other local revenues that support municipal services.

By providing development certainty while preserving the City's regulatory authority through the existing conditions of approval and applicable municipal regulations,

the Development Agreement promotes economic development, supports the City's long-term planning objectives, and therefore serves the best interests of the City.

C. The proposed Development Agreement is internally consistent with other applicable provisions of the Development Code.

FACTS: The proposed Development Agreement is internally consistent with the provisions of the Murrieta Development Code because it implements the procedures and authority established in Murrieta Municipal Code Chapter 16.54, which allows the City to enter into development agreements consistent with State law. The Agreement extends the duration of the previously approved entitlements while maintaining all applicable Development Code standards and regulations governing the project.

The Site's Regional Commercial (RC) zoning designation allows for the type of commercial development previously approved for the Site. The Development Agreement does not modify or waive the underlying zoning regulations, development standards, or conditions of approval applicable to the project. Instead, it preserves the regulatory framework established by the Development Code while providing additional time for the approved project to be constructed.

Because the Development Agreement operates within the authority provided by the Development Code and does not conflict with any of its provisions, the Agreement is internally consistent with the City's adopted land use regulations.

Section 3. The Planning Commission recommends that that the City Council find that the proposed Development Agreement is in compliance with the provisions of the CEQA Guideline Section 15162 and that no further analysis is required under CEQA in connection with the approval of the Development Agreement.

FACTS:

- (a) The Development Agreement does not alter the approved Project; the Development Agreement only extends time for the entitlements.
- (b) No new environmental impacts will be created as a result of the approval of the Development Agreement.
- (c) The prior CEQA Approvals remain adequate.

Section 4. Based on the written and oral information received at the public hearing and the findings stated above, the Planning Commission recommends that the City Council adopt the environmental determination and adopt an Ordinance approving the Development Agreement in substantially the same form as set forth in **Exhibit "A."**

PASSED, APPROVED AND ADOPTED at a regular meeting of the Planning Commission of the City of Murrieta, California, held on the ____ day of _____, 2026.

APPROVED:

Planning Commission Chairperson

ATTEST:

Carl Stiehl, City Planner

I, Carl Stiehl, City Planner, City of Murrieta, California do hereby certify under penalty of perjury that the foregoing Resolution was duly adopted at a regular meeting of the Planning Commission on the ___ day of _____, 2026 by the following roll call vote:

MOTION MADE BY COMMISSIONER _____

SECONDED BY COMMISSIONER _____

AYES: _____

NOES: _____

ABSENT: _____

ABSTAINED: _____

Carl Stiehl, City Planner

ATTACHMENTS:

Proposed ordinance

EXHIBT A
PROPOSED ORDINANCE

ORDINANCE NO. 26-__

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MURRIETA, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT WITH MURRIETA MARKETPLACE HOLDINGS LP, A CALIFORNIA LIMITED PARTNERSHIP, BONSAI SERVICE STATION, LP A CALIFORNIA LIMITED PARTNERSHIP AND SCOTT-MURRIETA SERVICE STATION, LP A CALIFORNIA LIMITED PARTNERSHIP TO EXTEND THE ENTITLEMENTS FOR THE DEVELOPMENT OF A COMMERCIAL SHOPPING CENTER AT THE NORTHWEST CORNER OF WINCHESTER ROAD (HIGHWAY 79) AND CLINTON KEITH ROAD

Summary: This ordinance adopts a Development Agreement for the construction of a shopping center at the northwest corner of Winchester Road (Highway 79) and Clinton Keith Road to extend the project's entitlements.

WHEREAS, consistent with Murrieta Municipal Code Section 16.54.040(A)(3) Murrieta Marketplace Holdings LP, a California Limited Partnership, Bonsai Service Station, LP a California Limited Partnership and Scott-Murrieta Service Station, LP a California Limited Partnership as tenants-in-common (collectively, "Developers") proposed to enter into a Development Agreement with the City of Murrieta ("City") to extend the entitlements for a commercial center containing up to 518,817 square feet of building area and 2,155 parking stalls including 20 buildings on 10 building pads, including fueling stations and private and public infrastructure on and adjacent to the site (collectively, "Project") owned by Developers. The Project will be located on an undeveloped lot located on approximately 49.7 acres of land at the northwest corner of Winchester Road Hwy 79 and Clinton Keith Road (APNs 963-060-065, 963-060-066, 963-450-001 through 963-450-019, 480-100-073 and 480-100-074) in Murrieta, California ("Site"); and

WHEREAS, California Government Code Sections 65864 *et seq.* ("Development Agreement Law") and Murrieta Municipal Code Chapter 16.54 ("City Development Agreement Ordinance") authorize the City to enter into binding development agreements for the purpose of providing an enhanced degree of certainty in the development process for both the property owner/developer and the affected public agency; and

WHEREAS, June 27, 2018, the City Planning Commission adopted Resolution No PC-2018010 approving development plan (DP-2017-1370), and conditional use permit ("CUP") CUP 2018-1568) for the operation of a car wash and CUP 2017-1442 for outdoor display and equipment rental each as conditioned thereby pursuant to the Conditions of Approval (collectively, "Entitlements") to approve the development of the Project on the Site. The City Planning Commission approvals included consideration of previously adopted Environmental Impact Report State Clearinghouse No. 2005031028 ("EIR") and the various addendums thereto and adopted an Addendum to the EIR (collectively with previously approved EIR and addenda, "CEQA Approvals"); and

WHEREAS, without the approval of the Development Agreement (“DA”), the Project will expire June 27, 2026. Pursuant to the Developers’ request, the City and Developers have negotiated and agreed to the DA, attached hereto as Exhibit A, which will extend the term of the Entitlements through June 27, 2036; and

WHEREAS, the Project will benefit the City by providing new restaurants, retail uses, and a gas station for residents and City visitors to patronize which will generate sales tax payable to the City; and

WHEREAS, at a duly-noticed public hearing on March 25, 2026, the City Planning Commission considered the approval of the DA and made a recommendation to the City Council that the proposed Development Agreement is in compliance with the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15162 determining that no further analysis is required under CEQA in connection with the approval of the Development Agreement; and

WHEREAS, the City Council held a duly noticed public hearing regarding the DA on _____, 2026, and considered the recommendation of the City Planning Commission and the evidence, testimony, and arguments submitted by City staff, the Developers, and all interested parties; and

WHEREAS, the City Council finds and determines that all actions required of City prior to approval of the DA by the City Council have been duly and regularly taken and all legal prerequisites of the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MURRIETA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are hereby incorporated into this Ordinance as set forth herein.

SECTION 2. That, as conditioned, the Project conforms to the regulations contained within Title 16, the Murrieta Development Code, and with the adopted elements of the Murrieta General Plan.

SECTION 3. Based upon the evidence presented, the City Council makes the following findings of fact for the adoption of the DA attached as Exhibit A pursuant to Murrieta Municipal Code Section 16.54.070:

- a. *The Development Agreement is in the best interests of the city.*
The proposed Development Agreement is in the best interests of the City because it provides certainty regarding the continued implementation of a previously approved commercial development that will provide retail services, employment opportunities, and

tax-generating uses for the community. The Agreement facilitates the orderly development of the Site by allowing the approved project additional time to proceed while maintaining all previously adopted conditions of approval and development standards. The Development Agreement also benefits the City by encouraging investment in commercial development at a prominent intersection along Winchester Road (State Route 79) and Clinton Keith Road, a key commercial corridor within the community. Implementation of the approved commercial center will contribute to the City's economic base through the provision of retail services and the generation of sales tax and other local revenues that support municipal services. By providing development certainty while preserving the City's regulatory authority through the existing conditions of approval and applicable municipal regulations, the Development Agreement promotes economic development, supports the City's long-term planning objectives, and therefore serves the best interests of the City.

b. *The Development Agreement is consistent with the objectives, policies, general land uses, and programs of the general plan, any applicable specific plan, and this development code.*

The proposed Development Agreement is consistent with the objectives, policies, general land uses, and programs of the Murrieta General Plan and the provisions of the Murrieta Development Code because the Agreement does not modify the Project, land use designation, zoning classification, or development standards applicable to the Site. The Development Agreement only extends the duration of previously approved entitlements from 2018 for the Murrieta Marketplace commercial center, which were approved by the Planning Commission after a comprehensive review for consistency with the General Plan and Development Code.

c. *The Development Agreement is compatible with the surrounding development.*

The Site is designated Commercial in the Murrieta General Plan and zoned Regional Commercial (RC) under the Development Code. The Project, consisting of a commercial retail center including fueling, retail, and service uses, was previously determined to be consistent with these designations and applicable development standards. The Development Agreement does not alter those approvals and therefore maintains consistency with the City's adopted land use framework and regulatory requirements. The Agreement facilitates the development of the Project which is located at a significant regional travel intersection in southwest Riverside County - Clinton Keith Road and Winchester Road. The east side of Winchester Road at Clinton Keith Road was the developed under the jurisdiction of Riverside County and includes similar commercial development such as fast food restaurants, a neighborhood commercial center consisting of a Stater Brothers grocery store, CVS Drugstore, Starbucks, and other ancillary retail uses like banks, gas stations, and smaller industrial and office buildings. The Development Agreement facilitates similar retail and commercially oriented uses and is therefore compatible with surrounding development.

d. *The Development Agreement will not adversely affect public health, safety, or welfare.*

The proposed Development Agreement is internally consistent with the provisions of the Murrieta Development Code because it implements the procedures and authority established in Murrieta Municipal Code Chapter 16.54, which allows the City to enter into development agreements consistent with State law. The Agreement extends the duration of the previously approved entitlements while maintaining all applicable Development Code standards and regulations governing the project. Further, the Agreement facilitates the orderly development of the Site by allowing the approved project additional time to proceed while maintaining all previously adopted conditions of approval and development standards. The Project also does not increase the severity of any environmental impacts not previously known.

The proposed Development Agreement will not adversely affect the public health, safety, or general welfare because it does not modify the approved project, increase development intensity, or introduce new land uses beyond those previously evaluated and approved by the City. The Development Agreement solely extends the duration of previously approved entitlements for the Murrieta Marketplace project.

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15162, the City has determined that none of the conditions requiring preparation of a subsequent or supplemental environmental document have occurred. There are no substantial changes to the project, no substantial changes in the circumstances under which the project is undertaken, and no new information of substantial importance that would result in new significant environmental impacts or a substantial increase in the severity of previously identified impacts.

The previously certified 2005 Environmental Impact Report for the Marquis/Westmar Commercial Project (SCH No. 2005031028), together with subsequent addenda prepared for the Murrieta Marketplace project, adequately evaluated the environmental effects of the approved development, including those related to public health, safety, and welfare. The Development Agreement does not alter those conclusions, and all previously adopted mitigation measures and conditions of approval remain applicable.

Accordingly, the approval of the Development Agreement resulting in an extension of the entitlement period for 10 additional years will not affect public health, safety, or welfare.

SECTION 4. Based upon all oral and written reports and presentations made by City staff and members of the public, including any attachments and exhibits, the City Council hereby finds that the proposed approval of the DA and the construction of the Project does not require further analysis under the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) ("CEQA"), pursuant to CEQA Guidelines 15162, because the DA does not alter the approved Project and is only extending the term of the Entitlements which were previously analyzed under CEQA and said CEQA analysis remains adequate because no new environmental impacts will be created as a result of the approval of the DA.

SECTION 5. The City Manager and City Clerk, and their designees, are authorized and directed to take such actions and execute such documents and certifications as may be necessary to implement and affect execution, recordation and enforcement of this Ordinance and the DA.

SECTION 6. Pursuant to Government Code Section 65868.5, the City Clerk of the City shall record a copy of said DA with the County Recorder within 10 days after the City signing of the DA.

SECTION 7. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. This Ordinance shall become effective on the thirty-first (31st) day after its passage and adoption, and within fifteen (15) days after its final passage and the City Clerk shall cause it to be posted and published in a newspaper of general circulation, printed, published and circulated in the City in the manner required by law and shall cause a copy of this Ordinance and its certification, to be entered in the Book of Ordinances of the City.

PASSED AND ADOPTED this ___ day of _____, 2026.

Jon Levell, Mayor

ATTEST:

Cristal McDonald, City Clerk

APPROVED AS TO FORM:

Tiffany J. Israel, City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)§
CITY OF MURRIETA)

I, Cristal McDonald, City Clerk of the City of Murrieta, California, do hereby certify that the foregoing Ordinance No. 2_ - _____ was duly passed and adopted by the City Council of the City of Murrieta at the regular meeting thereof, held on the ___th day of _____, 2026, and was signed by the Mayor of the said City, and that the same was passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Cristal McDonald, City Clerk

EXHIBIT A
DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Murrieta
One Town Square
Murrieta, CA 92562

Attention: City Clerk

APNs: 963-060-065, 963-060-066, 963-450-001
through 963-450-019, 480-100-073 and 480-100-074

(Space Above For Recorder's Use)
Exempt from Recording Fees pursuant
to Government Code Section 27383

DEVELOPMENT AGREEMENT

between

**CITY OF MURRIETA,
a California general law city and municipal corporation**

and

**MURRIETA MARKETPLACE HOLDINGS, LP, a California limited partnership,
SCOTT-MURRIETA SERVICE STATION, LP, a California limited partnership,
BONSALL SERVICE STATION, LP, a California limited partnership, AS TENANTS IN
COMMON**

Reference dated as of _____, 2026

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DEVELOPMENT AGREEMENT
(MURRIETA MARKETPLACE)

This Development Agreement (as further defined in Section 1.1, "Agreement") is entered into between the CITY OF MURRIETA, a California general law city and municipal corporation (as further defined in Section 1.1, "City") and MURRIETA MARKETPLACE HOLDINGS LP, a California limited partnership, BONSALL SERVICE STATION, LP a California limited partnership and SCOTT-MURRIETA SERVICE STATION, LP a California limited partnership, as tenants-in-common (collectively, and as further defined in Section 1.1, "Developer"). This Agreement is dated as of _____, 2026 for reference only. This Agreement will not become effective until the "Effective Date" (defined in Section 1.1). City and Developer are entering into this Agreement in reliance on the facts set forth in the Recitals, below.

RECITALS

A. Developer owns approximately 49.73 acres of land located west of Winchester Road (Highway 79 North) and bounded by Clinton Keith Road to the south and Max Gillis Boulevard to the north and Warm Springs Creek to the west in the City of Murrieta, California (APN: 963-060-065, 963-060-066, 963-450-001 through 963-450-019, 480-100-073 and 480-100-074) ("Property") legally described on the attached Exhibit A and depicted on the attached Exhibit B ("Site Plan"). Developer intends to develop the Project (defined below) on the Property.

B. On June 27, 2018, the City Planning Commission adopted Resolution No PC-2018010 with respect to the Property, approving development plan (DP-2017-1370), and conditional use permits (CUP-2018-1568) for operation of a car wash and CUP 2017-1442 for outdoor display and equipment rental pursuant to conditions of approval. The foregoing development approvals authorized development of a commercial center containing up to 518,817 square feet of building area and 2,155 parking stalls including 20 buildings on 10 building pads, including two gas stations and private and public infrastructure on and adjacent to the Property. Developer intends to construct a variety of retail and restaurant uses on the Property including without limitation a gas station, retail buildings, fast food restaurants, fast casual restaurants and restaurants with drive-thrus, in up to five phases (as further defined in Section 1.1, the "Project"). The Planning Commission approval included consideration of previously adopted Environmental Impact Report State Clearinghouse No. 2005031028 ("EIR") and a prior addendum thereto and adopted a further addendum to the EIR (collectively with previously approved EIR and addenda, "CEQA Approvals").

C. The City of Murrieta Planning Division acted administratively to approve a substantial conformance determination (SC-2022-2701) on March 24, 2025 with respect to the Property, making minor changes to the previous approval and adopting revised conditions of approval and the modification of the site plan approved by the Planning Commission on June 27, 2018. The revised conditions of approval are attached to this Agreement as Exhibit C and incorporated herein by this reference and are referred to herein as the "Conditions of Approval".

D. City is authorized under Section 7 of the California Constitution and Government Code Section 65864, *et seq.* ("Development Agreement Law") to enter into binding development

agreements with persons having legal or equitable interests in real property for the development of that property.

E. Developer has applied to City for approval and enactment of this Agreement in order to preserve the Development Approvals for the Property while additional development approvals are under consideration and to permit adequate time for phasing and construction following such approvals. The City Planning Commission ("Planning Commission") and the City Council ("City Council") have conducted public hearings and have found that this Agreement is consistent with City's General Plan ("General Plan"), including the General Plan Land Use Element.

F. On _____, 2026, the Planning Commission made CEQA findings and adopted Resolution No. ____ - __ recommending that the City Council approve an ordinance approving this Agreement.

G. On _____, 2026, the City Council made CEQA findings and adopted Ordinance No. ____ - __ ("Enacting Ordinance"), which approved this Agreement.

H. By adopting the Enacting Ordinance, the City Council elected to exercise its governmental powers with regard to the Development of the Property to assure that previously approved and recorded maps, permits and entitlements for the Project remain in effect to permit development of the Project as approved by the City. This Agreement binds City and future City Councils and limits the City Council's future exercise of its police powers in exchange for the public benefits conveyed by Developer to the City. This Agreement has been found by the City Council to be fair, just and reasonable and in the best interests of City's citizens and the health, safety and welfare of the public.

I. All of City's prior actions and approvals with regard to this Agreement complied with all applicable legal requirements related to notice, public hearings, findings, votes, and other procedural matters.

J. The Development of the Property in accordance with this Agreement will provide substantial benefits to City. This Agreement eliminates uncertainty in planning and provides for the orderly development of the Property, ensures the progressive installation of necessary public improvements to serve the Project, and serves the purposes of the Development Agreement Law.

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following initially capitalized terms used in this Agreement have the following meanings:

"Agreement" means this Development Agreement and all attachments and exhibits thereto.

"Annual Monitoring Report" has the meaning ascribed to the term in Section 6.1.

"Applications" has the meaning ascribed to the term in Section 3.7.b.

“CEQA” means the California Environmental Quality Act, codified at Public Resources Code Section 21000 *et seq.* and the CEQA Guidelines, 14. C.C.R. Section 15000 *et seq.*

“CEQA Approvals” has the meaning ascribed to the term in Recital B.

“Certificate of Agreement Compliance” or “Certificate” has the meaning ascribed to the term in Section 6.6.

“Certificate of Occupancy” means a document issued by City’s Building Department, certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

“City” means the City of Murrieta, a California general law city and municipal corporation, its successors and assigns, and its related or subordinate boards, commissions, and entities.

“City Council” means the City Council of the City of Murrieta.

“Claims or liabilities” has the meaning ascribed to the term in Section 11.2.a.

“Conditions of Approval” means the Conditions of Approval attached as Exhibit C to this Agreement and incorporated herein by this reference.

“Developer” means Developer as defined in the preamble to this Agreement and the respective successors and assigns of each of Murrieta Marketplace Holdings LP, Bonsall Service Station, LP and Scott-Murrieta Service Station, LP, provided that the term Developer shall not include any End User.

“Developer Transferee” shall mean a Person to which Transferor has conveyed fee title to a portion of the Property and has assigned the obligations under this Agreement as further described in Section 2.3.

“Development” means the subdivision and improvement of the Property for the purposes of constructing or reconstructing the public and private structures, improvements and facilities comprising the Project, including: grading; the construction or reconstruction of infrastructure and public and private facilities related to the Project, whether located within or outside the Property; the construction or reconstruction of buildings and structures; and, the installation of landscaping. “Development” does not include the maintenance of any building, structure, improvement or facility after its construction and completion.

“Development Agreement Law” has the meaning ascribed to the term in Recital D.

“Development Approvals” mean all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, maps, approvals, permits and other entitlements applicable to the Development of the Property, including: specific plans and specific plan amendments; tentative and final subdivision and parcel maps; conditional use permits, public use permits and site plans; zoning; variances; and, grading and building permits. The term Development Approvals does not include (i) rules, regulations, policies, and other enactments of general application within the City authorized to be applicable

to the Property pursuant to this Agreement, or (ii) any matter where City has reserved authority under this Agreement.

“Development Exactions” mean any monetary or non-monetary exaction or mitigation measure, including a Development Impact Fee, imposed by City in connection with a Development Approval or in connection with the granting of any other right, privilege or approval pertaining to the Project, including requirements for land dedication or for public construction either within or outside the Property.

“Development Impact Fee” means a monetary payment authorized by Government Code Section 66001, *et seq.*, imposed legislatively on a broad class of development projects. The City may apply subsequently adopted development impact fee increases to development of the Property provided the same are lawfully imposed, are applied uniformly to development either throughout the City or within a defined area of benefit that includes the Property, are not applied on an ad hoc basis solely to the Project, and do not physically prevent development of the Property for the uses and to the density and intensity of development set forth in this Agreement.

“Development Plan” means the proposed plan for Development of all or a portion of the Property pursuant to the Existing Development Approvals and Subsequent Development Approvals, in accordance with the Existing Land Use Regulations and applicable Subsequent Land Use Regulations, subject to the Reservations of Authority.

“Director” means the Director of Development Services.

“Effective Date” means the date which is thirty (30) days following the second reading and adoption of the Enacting Ordinance.

“EIR” has the meaning ascribed to the term in Recital B.

“Enacting Ordinance” has the meaning ascribed to the term in Recital G.

“End User” means any Person that acquires or leases a parcel within the Property with the intent to operate a retail or wholesale business thereon, provided that, unless otherwise determined by Developer, an “End User” shall not be a Developer Transferee.

“Existing Development Approvals” mean all Development Approvals approved or issued by City prior to adoption of the Enacting Ordinance, including the Development Approvals described in Recitals B, C, F and G.

“Existing Land Use Regulations” mean all Land Use Regulations in effect as of the second reading and adoption of the Enacting Ordinance as the same may have been modified or superseded pursuant to the Existing Development Approvals or this Agreement.

“General Plan” has the meaning ascribed to the term in Recital E.

“Including” or “including” has the meaning ascribed to the term in Section 12.8.

“Land Use Regulations” mean all ordinances, resolutions, codes, rules, regulations and official written policies of the City and/or any subsidiary district of the City and/or any joint powers authority or council of governments of which the City is a member which affect, govern, or apply to land development and use of the Property, including those governing: the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; Development Exactions; design, improvement and construction standards and specifications applicable to the Development of the Property; and the reservation or dedication of land for public purposes, all as may be modified or supplemented pursuant to this Agreement. “Land Use Regulations” do not include any ordinance, resolution, code, rule, regulation or official policy governing: the conduct of businesses, professions, and occupations; taxes and assessments; the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property; or the exercise of the power of eminent domain.

“MMRP” means the mitigation monitoring and reporting program for assessing and ensuring compliance with required mitigation measures, which was approved by the City in conjunction with the Planning Commission’s approval of the Existing Development Approvals.

“Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust, or any other security-device lender, and their successors and assigns.

“Notice” has the meaning ascribed to the term in Section 2.7.a.

“Offsite Property” has the meaning ascribed to the term in Section 3.9.

“Operating Memorandum” has the meaning ascribed to the term in Section 5.

“Parties” mean City and Developer, collectively.

“Party” means either City or Developer, individually.

“Permitted Delay” means delays in a Party’s performance due to: changes in local, state or federal laws or regulations; strikes; delays caused by governmental agencies in processing and issuing permits and approvals; third party litigation, a development moratorium (including a water or sewer moratorium) or the actions of other public agencies to prohibit Development of the Property; civil commotion, fire, acts of God, war, lockouts, riots, floods, earthquakes, epidemic, quarantine, freight embargoes, and/or failure of contractors to perform; any third-party court action to set aside or modify the Development Approvals; or, other circumstances beyond a Party’s reasonable control and which substantially interfere with either Party’s ability to perform its obligations under this Agreement. “Permitted Delays” do not include delays attributable to Developer’s inability to obtain funds or financing or due to changes in market conditions or demands, whether or not foreseeable as of the Effective Date.

“Person” means and refers to any association, corporation, governmental entity or agency, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind, including City and Developer.

“Planning Commission” means the Planning Commission of the City of Murrieta.

“Project” means the Development of the Property in accordance with the Development Plan as further described in Recital B and as modified as described in Recital C, as the Development Plan may be further defined, enhanced or modified in accordance with this Agreement.

“Property” has the meaning ascribed to the term in Recital A.

“Reservations of Authority” mean the rights reserved to City under Section 3.6.

“Site Plan” has the meaning ascribed to the term in Recital A.

“Subsequent Development Approvals” mean all Development Approvals approved by City subsequent to the Effective Date in connection with development of the Property that are adopted in accordance with the Development Plan or in accordance with Subsequent Land Use Regulations adopted consistent with the requirements of this Agreement, including the Reservations of Authority.

“Subsequent Land Use Regulations” mean all Land Use Regulations adopted and effective after the Effective Date that are adopted in accordance with the Development Plan and the requirements of this Agreement, including the Reservations of Authority.

“Term” has the meaning ascribed to the term in Section 2.2.

“Transfer” has the meaning ascribed to the term in Section 2.3.

“Transfer Property” has the meaning ascribed to the term in Section 2.3.

“Transferor” has the meaning ascribed to the term in Section 2.3.

Other initially capitalized terms used in this Agreement but not otherwise set forth in Section 1.1, above, will have the meaning given to those terms where they first appear in this Agreement.

1.2 Exhibits. The following documents are attached to a part of this Agreement:

Exhibit A Legal Description of Property

Exhibit B Site Plan

Exhibit C Conditions of Approval

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is made subject to this Agreement and the Development of the Property may be carried out in accordance with this Agreement. The benefits and burdens of this Agreement touch and concern the Property and bind Developer and all future owners of all or any portion of the Property.

2.2 Term. The term (“Term”) of this Agreement will commence on the Effective Date and will expire on June 30, 2029 unless terminated sooner by operation of some other provision of this Agreement or extended in accordance with Section 9.2.

2.3 Assignment and Transfer. Developer may sell, lease, license, hypothecate, transfer, or assign (any or all of the foregoing, individually and collectively, “Transfer”) the Property and in connection therewith assign this Agreement in whole or in part to any Person at any time provided that no partial Transfer may violate the Subdivision Map Act, Government Code Section 66410, *et seq.*); provided that any Transfer shall be subject to City’s reasonable review and approval, including a review of any unmet conditions of development, which approval shall not be unreasonably withheld and provided further that no assignment of its rights and interests under this Agreement to a Person may be made by Developer unless made together with the Transfer of all or a part of the Property (“Transfer Property”). City’s City Manager’s approval or disapproval must be by Notice and must be given within thirty (30) days after the Transferor submits Notice to City’s City Manager describing the proposed Transfer and the proposed Developer Transferee. If City fails to provide Notice within the thirty (30) day period, then City’s approval will be deemed to be irrevocably given and the Transferor and Developer Transferee may rely on City’s deemed approval.

Following any Transfer to a Developer Transferee, the Developer Transferee shall assume in writing all obligations of the transferor Developer (“Transferor”) pertaining to the Transfer Property and shall be the “Developer” with respect to the Transfer Property and the portion of the Project developed or to be developed thereon (including satisfaction of conditions of approval and other entitlement requirements with respect thereto) and once said writing has been recorded against the Transfer Property, Transferor thereupon automatically shall be released from any and all obligations under this Agreement with respect to the Transfer Property arising from and after the date of the Transfer. If requested by Transferor, the City shall promptly memorialize such release in writing in recordable form. Notwithstanding the foregoing, no End User shall have any rights under this Agreement and Transferor shall, notwithstanding the sale or lease of any parcel comprising a portion of the Property to an End User continue to be responsible to perform all obligations under this Agreement with respect to each parcel owned or leased by an End User following such Transfer.

2.4 Voluntary Amendment or Cancellation of Agreement. This Agreement may be voluntarily amended or cancelled in whole or in part only with the written consent of City and all Persons holding fee title to that portion of the Property to which the amendment or cancellation will apply. The amendment or cancellation process must comply with Government Code Section 65868. This Section 2.4 does not limit the operation of Government Code Section 65869.5.

2.5 Termination. This Agreement will automatically terminate upon the occurrence of any of the following events:

- a. The expiration of the Term.
- b. The entry of a final judgment setting aside, voiding or annulling the City Council’s adoption of the Enacting Ordinance.

c. The adoption of a referendum measure overriding or repealing the Enacting Ordinance.

d. The completion of the Project, as evidenced by the issuance of all required Certificates of Occupancy for the Property and the acceptance of all required public dedications.

e. Upon a Party's election to terminate this Agreement in accordance with Section 8.4 or Section 8.5. If the terminating Party under Section 8.5 does not own the entirety of the Property, then the termination will apply only to that portion of the Property owned by the terminating Party.

2.6 Representations and Warranties.

a. City represents and warrants to Developer, as follows:

i. City is a public body, corporate and politic. City is authorized to enter into this Agreement pursuant to Government Code Section 65864, *et seq.*, and the execution and delivery of this Agreement by City has been fully authorized by all requisite actions on the part of City.

ii. City's execution and delivery of this Agreement and City's performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

iii. City has not received any notice of, or knows of any basis for, any actual or pending litigation or proceeding by any Person against City with respect to the Property or this Agreement.

b. Developer represents and warrants to City, as follows:

i. Developer is either the owner of fee simple title to the Property or has an equitable interest in the Property, including an option to purchase the Property.

ii. Developer's execution and delivery of this Agreement and Developer's performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

iii. Developer is not the subject of bankruptcy or receivership proceedings and is not insolvent.

iv. Developer has not received any notice of, or knows of any basis for, any actual or pending litigation or proceeding by any Person against Developer with respect to the Property or this Agreement.

v. Each entity that constitutes the Developer is a duly organized limited partnership established within and in good standing under the laws of the State of California, as applicable, and is authorized to do business in the State of California. The execution and delivery

of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer.

2.7 Notices.

a. As used in this Agreement, the term “Notice” means any request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other required or permitted communication.

b. All Notices must be in writing and will be considered given:

i. When delivered in person to the recipient named below.

ii. On the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope, postage prepaid, as either registered or certified mail, return receipt requested.

iii. On the date of delivery shown in the records of a reputable delivery service (e.g. UPS or Federal Express).

c. All Notices must be addressed as follows:

City: City of Murrieta
One Town Square
Murrieta, CA 92562
Attn: Justin Clifton, City Manager
Email: JClifton@MurrietaCA.gov

With a copy to: City of Murrieta
One Town Square
Murrieta, CA 92562
Attn: Scott Agajanian
Email: SAgajanian@MurrietaCA.gov

With a copy to: Aleshire & Wynder, LLP
1 Park Plaza, Suite 1000
Irvine, CA 92614
Attn: Tiffany J. Israel, City Attorney
Email: tisrael@awattorneys.com

If to Developer: Scott-Murrieta Service Station, LP
Bonsall Service Station, LP
Murrieta Marketplace Holdings LP
c/o J & T Management
P.O. Box 1958 or (for overnight deliveries) 139 Radio Road
Corona, CA 92879
Attn: Jack Kofdarali
Email: jack@jntmgmt.com

With a copy to:

Hepner & Myers LLP
1241 Johnson Avenue, Suite 360 San
Luis Obispo, CA 93401
Attn: Amanda Myers
Email: amyers@HepnerMyers.com

d. Either Party may, by Notice given at any time, require subsequent Notices to be given to another Person or to a different address, or both. Notices given before receipt of Notice of change of address will not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Vested Right to Develop. Subject to the terms of this Agreement, Developer has the legally vested right to develop the Property in accordance with, and to extent of, the Development Plan, the Development Approvals, the Existing Land Use Regulations, applicable Subsequent Development Approvals, applicable Subsequent Land Use Regulations, and this Agreement. Except as otherwise provided in this Agreement, the permitted uses of the Property shall include, without limitation, construction of the Project as described in Recital B and Recital C, including as set forth in Section 3.5, and the density or intensity of use of the Property and the maximum height and size of proposed buildings shall be as set forth in the Development Plan. Provisions for reservation or dedication of land for public purposes applicable to the Property shall be those set forth in the Existing Development Approvals and in any Subsequent Development Approvals approved by Developer and the City.

3.2 Effect of Agreement on Land Use Regulations; Development Exactions; Development Plan; Submittal of Subsequent Development Approvals.

a. Except as otherwise provided under the terms of this Agreement, including the Reservations of Authority, (i) the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to the Development of the Property shall be the Existing Land Use Regulations and (ii) no amendment, revision of, or addition to the Development Plan that would affect the Project or increase the obligations or decrease the rights of Owner hereunder or under the Development Plan shall be made without Owner's consent, whether adopted or approved by the City Council or any office, board, commission or other agency of City.

b. In connection with any Subsequent Development Approval, City will exercise its discretion in accordance with the Development Plan and this Agreement, including the Reservations of Authority in Section 3.6.

c. The Development Plan for the Project may require the processing of Subsequent Development Approvals. The City will accept for processing, review and action all applications for Subsequent Development Approvals, and such applications will be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The Parties acknowledge that City is not obligated in any manner to approve any

Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition, except that City's actions concerning Subsequent Development Approvals must be consistent with the Development Plan and Existing Land Use Regulations, subject to the Reservations of Authority. Notwithstanding the foregoing, City agrees that, if an application for any Subsequent Development Approval is in substantial conformance with the Existing Development Approvals and this Agreement, the approval of such application shall not be unreasonably withheld. Processing of Subsequent Development Approvals or changes in the Development Approvals or Development Plan made pursuant to Developer's application will not require an amendment to this Agreement; however, upon their approval by the City, all Subsequent Development Approvals or changes in the Development Approvals or Development Plan will be subject to and covered by this Agreement.

3.3 Intentionally Omitted.

3.4 Timing of Development; Public Improvements Phasing.

a. Nothing in this Agreement is a covenant to develop or construct the Project. The Parties acknowledge that Developer cannot predict if, when, or the rate at which phases of the Project will be developed. The California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the litigants in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over the litigants' agreement. The Parties intend to cure that deficiency by providing that Developer has the right to develop the Project, or not develop the Project, in the order, at the rate, and at the times that Developer, in its sole and absolute discretion, determines to be appropriate, subject only to any Development Plan timing or phasing requirements.

b. Required public improvements may be tied to certain phases of the Project. The schedule for provision of these improvements, as they relate to a particular phase, will be governed by the Existing Development Approvals, Subsequent Development Approvals, the CEQA Approvals, the MMRP and this Agreement.

3.5 Changes and Amendments to Existing or Subsequent Development Approvals. The Parties acknowledge that the passage of time may demonstrate that changes to the Existing Development Approvals or Subsequent Development Approvals may be necessary or appropriate. If the Parties determine that changes are necessary or appropriate, such changes may be made by mutual consent of the Parties in accordance with Government Code Section 65868, and may be approved on behalf of City as follows: (a) by the Director in the case of minor changes or findings of substantial conformance, as authorized in Murrieta Municipal Code Section 16.56.025 and the Director may impose conditions consistent with Murrieta Municipal Code Section 16.56.050 and (b) by the Planning Commission in the case of any other changes not subject to clause (a), above.

3.6 Reservations of Authority. Any contrary provision in this Agreement notwithstanding, the following Subsequent Land Use Regulations will apply to the Project:

a. Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development

Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued.

b. Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other procedural matter.

c. Regulations which do not conflict with the Development Plan or this Agreement. To the greatest extent possible, these regulations must be applied and construed to provide Developer with all of the rights and assurances provided under this Agreement. For all purposes pursuant to this Agreement generally, and this paragraph (c) specifically, an ordinance, resolution, initiative, referendum, moratorium or other regulation will be deemed to conflict with the Development Plan and this Agreement if the ordinance, resolution, initiative, referendum, or regulation seeks to, whether as part of a specific or general enactment that applies to the Property or Project: (i) limit or reduce the density, intensity, square footage, height or size of structures or type of development on the Property; (ii) regulate the rate, timing or sequencing of the development of the Property in any manner; (iii) require any additional on-site or off-site improvements not required by the applicable Land Use Regulations or Development Approvals to be constructed or paid for by Developer or a subsequent owner of the Property; or (iv) restricting the use of the Property in any manner or degree other than as set forth in the applicable Land Use Regulations and Development Approvals.

i. Regulations that conflict with the Development Plan if Developer has given its written consent to those regulations.

ii. Federal, state, County, and multi-jurisdictional laws and regulations which City is required to enforce against the Property or the Development of the Property, provided that if there is any preemption of this Agreement or City's authority to perform hereunder or any frustration of the ability of any Party to comply with the terms of this Agreement as a result of such law or regulation, the Parties shall make a reasonable attempt to modify or amend this Agreement to comply with such applicable state or federal law or regulation in a manner that is least disruptive to the purpose and intent of this Agreement.

The Parties acknowledge that City is restricted in its authority to limit its police powers by contract. This Agreement will be construed, contrary to its stated terms if necessary, to reserve to City all those police powers that cannot be restricted by contract.

3.7 Subsequent Development Approvals.

a. When acting on Subsequent Development Approvals, City may apply only the Existing Land Use Regulations and those Subsequent Land Use Regulations that are permitted under the Reservations of Authority. Any Subsequent Development Approval will be automatically vested under this Agreement.

b. Upon Developer's request, City will accept and diligently process applications for Subsequent Development Approvals. City will exercise reasonable good faith efforts to expedite the processing of the Subsequent Development Approvals applications to ensure that those applications are promptly considered by the approving authority. Upon satisfactory completion by Developer of all required preliminary actions and payment of appropriate

processing fees, if any, City shall proceed to process and check all applications for Project development and building approvals within the times set forth in the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the California Government Code), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the California Government Code), and other applicable provisions of law, as the same may be amended from time to time. City shall employ all lawful actions capable of being undertaken by City to promptly (i) accept all complete applications for Subsequent Development Approvals (collectively, "Applications") and (ii) process and take action upon the Applications in accordance with applicable law with a goal of completing the first review or plan check within four weeks and the second and third review or plan check within two weeks; provided however, that City shall not be deemed in default under this Agreement should such time frame(s) not be met. Furthermore, the City and Developer teams shall convene, as necessary, a telephonic or in-person meeting with the relevant City departments and personnel to resolve open items, subject to City's availability, subject to the Developer's payment of applicable City fees for project expediting services.

3.8 Modification or Suspension by State or Federal Law. If a state or federal law or regulation which is enacted after the Effective Date prevents the Parties' compliance with any of this Agreement's provisions, then that provision will be modified or suspended to the extent and for the time necessary to achieve compliance with the conflicting state or federal law. This Agreement's remaining provisions will continue unaffected. The Parties will amend this Agreement to preserve, to the greatest extent possible, the benefits that would arise to the Parties under this Agreement but for the conflicting state or federal law. Upon the repeal of the conflicting state or federal law or upon the occurrence of any circumstance that removes their effect upon this Agreement, this Agreement's provisions will be automatically restored to their full original form and any amendment that the Parties may have entered into under this Section 3.8 will terminate.

3.9 City Acquisition of Offsite Real Property Interests for Public Right of Way Purposes. In any instance where Developer is required by any Development Approval or Land Use Regulation or this Agreement to construct any public improvement on land not owned by Developer, City and Developer shall cooperate in acquiring the necessary legal interest ("Offsite Property"). All costs of acquisition shall be the responsibility of Developer.

3.10 Legally Binding Contract; Enforceability. It is the intent of the City and Developer that this Agreement is a legally binding contract which, unless stated otherwise herein, shall prevail over the provisions of any subsequently enacted moratorium, statute, ordinance, limitation or other measure, enacted by City, and whether or not such initiative, moratorium, referendum, statute, ordinance, limitation or other measure relates, in whole or in part to the Project.

3.11 Future Use of CEQA Approvals. The Parties understand that the CEQA Approvals are intended to be used in connection with each of the Existing Development Approvals and Subsequent Development Approvals needed for the Project. City agrees to use the CEQA Approvals in connection with the processing of any Subsequent Development Approval, except as may be otherwise required by the Reservations of Authority or state or federal law, including CEQA.

3.12 Extension of Development Approvals. Pursuant to Govt. Code Section 65863.9 and as an exercise of its police power, the City further declares that each of the Existing Development Permits are and remain in effect for the term of this Agreement and are deemed as of the Effective Date to be “used” as such term is defined in the Conditions of Approval (General Item 3) and accordingly automatically remain in effect for the Term. City hereby covenants that except as is authorized by Section 3.5 or Section 3.6 this Agreement, City shall not impose conditions on the extension of any Development Approvals affecting the Property during the Term.

4. PUBLIC BENEFITS.

4.1 Project Objectives. The Project accomplishes the City’s goals and policies set forth in the General Plan by achieving the following objectives:

a. Ensure the development of the Property consistent with applicable goals and policies of the City set forth in the General Plan.

b. Expand economic development and facilitate job creation in the City by establishing new retail uses on vacant land in a developing area.

c. Assist the region in achieving jobs/housing balance region-wide by attracting new businesses to the City, providing additional job opportunities in a housing rich area, and thereby providing a more equal jobs-housing balance in the Riverside County/Inland Empire area, which will reduce the need for members of the local workforce to commute outside the area for employment.

d. Construction of an attractive mixed-use retail development, which meets the local demand for neighborhood serving retail and entertainment uses in the City and throughout the region.

e. Implement the type and amount of retail uses at the Property that are viable based on market demand.

f. Accommodate new development in a phased, orderly manner that is coordinated with the provision of necessary infrastructure and public improvements.

g. Provide for uses that will generate tax revenue for the City including increased property and sales tax, in order to support the City’s ongoing municipal operations.

4.2 Credit/Reimbursement for Offsite Improvements. The Parties acknowledge and agree that Developer is making Project improvements that are covered in whole or in part by the Development Impact Fee program. The Parties further acknowledge and agree that in accordance with policies adopted from time to time by City, Developer may be entitled to a credit and/or reimbursement to offset Developer’s Development Impact Fee obligation, as determined by City. City and Developer shall enter into a Development Impact Fee credit/reimbursement agreement for any Project improvements that exceed Developer’s Development Impact Fee obligation before commencement of construction of any improvements for which Developer desires a development impact fee credit or reimbursement.

4.3 Offsite Improvements. Developer shall construct all offsite public improvements required by the Project Planning, Public Works, and Engineering Conditions of Approval attached hereto as Exhibit C, as may be modified by a Subsequent Development Approval, prior to receiving a final certificate of occupancy.

5. OPERATING MEMORANDUM.

The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Agreement. If and when the Parties find that minor changes or minor adjustments are necessary or appropriate and do not modify (a) the Term; (b) the uses allowed on the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for Subsequent Discretionary Approvals; (e) the density or intensity of use of the Property or the maximum height or square footage of proposed buildings or other structures or improvements; or (f) any Development Exactions, they shall effectuate such minor changes or minor adjustments through a written operating memorandum ("Operating Memorandum") approved in writing by Developer and the Director, which upon request from Developer shall be in a recordable form. The authority to enter into an Operating Memorandum is hereby delegated to the Director who is hereby authorized to execute the same without further Planning Commission or City Council action. No such Operating Memoranda shall constitute an amendment to this Agreement requiring public notice or hearing and are considered ministerial clarifications.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic Review. The Director will review this Agreement annually, on or before each anniversary of the Effective Date, as required by California Government Code Section 65865.1 and Murrieta Municipal Code Section 16.54.100 to ascertain Developer's good faith compliance with the terms of this Agreement as set forth in an annual monitoring report ("Annual Monitoring Report"). Appropriate fees to fund the Annual Monitoring Report, which may not exceed the City's actual costs of reviewing Developer's compliance with the terms of this Agreement, shall be paid by Developer.

6.2 Procedure.

a. During a periodic review, Developer will be required to demonstrate good faith compliance with this Agreement.

b. Upon completion of a periodic review, (i) if the Director finds that Developer has complied in good faith with this Agreement, then the review will be concluded or (ii) the Director shall notify the Planning Commission if the Director concludes based upon substantial evidence that the Developer has not complied in good faith compliance with the terms of this Agreement.

c. Upon receipt of notice from the Director pursuant to Section 6.4.a.i, the Planning Commission shall determine whether to recommend that the matter be referred to City Council. If the Planning Commission does not so recommend, then the review will be concluded.

d. If the matter is referred to City Council by Planning Commission, the City Council may make a preliminary finding that Developer has not complied in good faith with this Agreement. Thereafter, following Notice and opportunity to cure as provided under Section 8.4, the City Council may modify or terminate this Agreement in accordance with Section 6.4 and Section 6.5.

6.3 No Waiver. Failure of City to conduct an annual review will not constitute a waiver by City of its rights to otherwise enforce the provisions of this Agreement nor will Developer have or assert any defense to such enforcement by reason of any such failure to conduct any annual review(s).

6.4 Proceedings for Modification or Termination.

a. If Developer fails to cure, or to commence to cure, as applicable, the matters constituting the basis for the City Council's preliminary finding under Section 6.2.d as required by Section 8.4, then City may proceed to modify or terminate this Agreement following the procedures set forth in this Section 6.4 and in Section 6.5. City must hold a noticed public hearing concerning the modification or termination and provide Developer with Notice of the hearing. The Notice must include the following:

i. The time and the place of hearing, which must be no less than thirty (30) days following the date of the Notice;

ii. The specific action, whether amendment or termination, which City proposes to take; and

iii. Such other information as is reasonably necessary to inform Developer of the nature of the proceeding and the facts supporting City's preliminary finding under Section 6.2.d.

6.5 Hearing on Modification or Termination. At the time and place set for the public hearing described in Section 6.4, Developer must be given an opportunity to be heard and present witnesses and evidence on its behalf. If, following the conclusion of the public hearing, the City Council finds, based upon substantial evidence in the record of the public hearing, that Developer has not complied in good faith with this Agreement, then the City Council may terminate or modify this Agreement and impose any conditions it determines as are reasonably necessary to protect City's interests, provided that any termination shall only be carried out in accordance with the requirements of Section 8.4. The City Council's decision will be administratively final and subject to judicial review under Code of Civil Procedure Section 1094.5.

6.6 Certificate of Agreement Compliance. If, at the conclusion of a special or periodic review, Developer is found to be in compliance with this Agreement, then, upon Developer's written request, City will issue a "Certificate of Agreement Compliance" ("Certificate") to Developer stating that, after the most recent periodic or special review, this Agreement remains in effect and Developer is not in default of this Agreement. The Certificate must be in recordable form, contain information necessary to communicate constructive record notice of the finding of compliance, state whether the Certificate is issued after a periodic or special review, and state the

anticipated date of the next periodic review. Developer may record the Certificate with the Riverside County Recorder.

7. NO CROSS-DEFAULTS.

City acknowledges that Developer may Transfer all or portions of the Property to other Persons in accordance with Section 2.3. City further acknowledges that title to all or portions of the Property may become vested in Mortgagees or a Mortgagee's successor as a result of foreclosure, or the acceptance of a deed in lieu of foreclosure, by a Mortgagee. City agrees that defaults under this Agreement by an owner of a portion of the Property will not be a default as to any other portion of the Property. In other words, a default under this Agreement by a Transferor with respect to its obligations pertaining to that portion of the Property retained by it following a Transfer or with respect to obligations arising prior to the date of Transfer will not constitute a default as to any Person other than Transferor, will not permit City to exercise any remedy under this Agreement or otherwise with respect to any other portion of the Property other than that portion owned by Transferor and shall not affect any successor Developer's rights or obligations under this Agreement. Similarly, a default by any successor Developer with respect to its obligations pertaining to the portion of the Property owned by that successor Developer will not constitute any Transferor's default or permit City to exercise any remedy under this Agreement or otherwise as to any portion of the Property other than the portion owned by the defaulting successor Developer and shall not affect any Transferor's rights or obligations under this Agreement. The Parties agree that, if more than one Person holds title to the Property, then the rights and obligations of the Persons holding title to the Property are the distinct and several obligations of each Person.

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. The Parties acknowledge that neither Party would have entered into this Agreement if it were to be liable for monetary damages under this Agreement. In general, and subject to those procedural prerequisites required under the Development Agreement Law or this Agreement, each of the Parties may pursue any remedy at law or equity available for the breach of this Agreement, except that neither Party will be liable in monetary damages (other than attorneys' fees under Section 12.20) to the other Party, or to any successor in interest of that Party, or to any other Person. Each Party covenants not to sue for monetary damages or claim any monetary damages related to any of the following:

- a. Any breach of this Agreement or for any cause of action that arises out of this Agreement; or
- b. Any taking, impairment or restriction of any right or interest arising under this Agreement; or
- c. Any dispute regarding the application or interpretation of this Agreement.

Nothing in this Agreement shall preclude either Party from seeking payment of sums due to it pursuant to this Agreement (including the right of Developer to obtain credit or repayment for improvements pursuant to Section 4.2, repayment of sums paid by Developer to City if it is determined that such sums were paid in excess or in error).

8.2 Specific Performance. The Parties acknowledge that specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement for the following reasons:

a. Money damages are unavailable against the Parties.

b. Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once Developer has begun to implement this Agreement. After such time, Developer may be precluded from other options it may have had with regard to the Property. Moreover, Developer has invested significant time and resources in the planning and processing of the Project. Developer will be investing even more time and resources in implementing the Project in reliance upon this Agreement and it is not possible to determine the sum of money that would adequately compensate Developer if City were to breach its obligations.

8.3 Release. Except for the right to seek repayment of sums paid by Developer to City described in Section 8.1 and the right to recover attorneys' fees under Section 12.20, Developer, for itself, its successors and assignees, releases City, its officials, officers, agents and employees from any and all monetary claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including any claim or liability based upon Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance that seeks to impose any monetary liability whatsoever upon City because it entered into this Agreement or because of the terms of this Agreement.

8.4 City's Termination of Agreement or Exercise of Other Remedies Upon Developer's Default. Subject to compliance with Sections 6.4 and 6.5, City may terminate or modify this Agreement upon Developer's failure to perform any material duty or obligation under this Agreement. City may terminate or modify this Agreement or exercise its other remedies only after providing Notice of default to Developer setting forth the nature of the default and the actions, if any, required to cure the default and only if (a) Developer has failed to take the actions and materially cure the default within sixty (60) days after its receipt of the Notice, or (b) Developer has failed within sixty (60) days to commence the actions necessary to cure the default and thereafter diligently proceed to cure the default if the default is of a type that cannot be cured within sixty (60) days but can be cured within a longer time.

8.5 Developer's Termination of Agreement or Exercise of Other Remedies Upon City's Default. Developer may terminate this Agreement or exercise its other remedies upon City's failure to perform any material duty or obligation under this Agreement. Developer may terminate this Agreement or exercise its other remedies only after providing Notice of default to City setting forth the nature of the default and the actions, if any, required by City to cure the default and only if (a) City has failed to take such actions and materially cure the default within sixty (60) days after its receipt of the Notice or (b) City has failed within sixty (60) days to commence the actions necessary to cure the default and thereafter diligently proceed to cure the default if the default is of a type that cannot be cured within sixty (60) days but can be cured within a longer time.

8.6 Informal Resolution. During the administration and implementation of this Agreement, the Parties recognize that good faith disagreements may arise between City staff and

Developer. In the event that a dispute arises, the Parties will meet and confer in a good-faith attempt to resolve the dispute.

9. THIRD PARTY LITIGATION.

9.1 Defense of Third Party Litigation. City shall promptly notify Developer in writing of any claim, action or proceeding filed and served against City to challenge, set aside, void, annul, limit or restrict the approval and continued implementation and enforcement of this Agreement, including challenges of the environmental review of the Project, any Development Approval and/or this Agreement conducted pursuant to the California Environmental Quality Act. Developer and City agree to use good faith, commercially reasonable efforts to confer and cooperate with one another with respect to such third party litigation. Developer shall defend (with legal counsel of City's selection, reasonably acceptable to Developer), indemnify and hold harmless City, its agents, officers and employees from any such claim, action or proceeding, and shall indemnify City for all costs of defense and/or judgment obtained in any such action or proceeding; provided, however, if Developer elects, in its sole discretion, not to defend the action (preferring to either allow judgment to be entered or to enter into a settlement with plaintiff(s) which declares this Agreement to be void, annulled, or which limits or restricts this Agreement), Developer shall so notify City in writing and City shall then have the option, in its sole discretion, of defending the action at its cost. In the event this Agreement, as a result of a third party challenge, (a) is voided or annulled, this Agreement shall terminate and be of no further force or effect as of the date such judgment or settlement and (b) is limited or restricted in such a manner that the intent and purposes of this Agreement cannot be implemented as mutually desired by the Parties, then unless otherwise agreed by the Parties in writing, this Agreement shall be of no further force or effect as of the date such judgment or settlement.

9.2 Extension of Term. Anything in this Agreement to the contrary notwithstanding, the Term (and any extension thereof under Section 2.3) will automatically be extended by the number of days in the period commencing on the date of filing of any claim, action, or proceeding of the type described in Section 9.1 and ending on the date that the claim, action, or proceeding is either settled or fully and finally resolved in City's and Developer's favor, as evidenced by the expiration of all appeal periods with no further appeal being filed or the issuance of a full, final, and non-appealable judgment or decision. City will execute, in recordable form, any instrument which Developer may reasonably require to evidence the extension.

10. MORTGAGEES.

10.1 Mortgagee Protection.

a. This Agreement does not prevent or limit Developer, in its sole discretion, from encumbering the Property or any portion or any improvement thereon with any mortgage, deed of trust or other security device. City acknowledges that a Mortgagee may require Agreement interpretations and modifications. City will meet with Developer and the Mortgagee's representatives to negotiate in good faith with regard to any requested interpretation or modification. City may not unreasonably withhold its consent to any requested interpretation or modification. All Mortgagees will be entitled to the following rights and privileges:

i. Developer's breach of this Agreement will not defeat, render invalid, diminish or impair the lien of any mortgage made in good faith and for value.

ii. Upon a Mortgagee's written request, City will provide a copy of any Notice of default given to Developer concurrently with the Notice to Developer. The Mortgagee will have the right, but not the obligation, to cure the default within any remaining cure period allowed Developer under this Agreement.

iii. Any Mortgagee who comes into possession of the Property or any portion of it pursuant to foreclosure of the Mortgagee's security instrument or its acceptance of a deed in lieu of foreclosure will take the Property or portion thereof subject to this Agreement. Any other provision of this Agreement to the contrary notwithstanding, no Mortgagee will have any obligation to perform any of Developer's obligations or to guarantee their performance. However, if any of Developer's obligations are conditions precedent to City's obligations, then Developer's obligations will continue to be conditions precedent to City's performance of its obligations.

11. INSURANCE; INDEMNIFICATION.

11.1 Insurance.

a. Types of Insurance.

i. Public Liability Insurance – Prior to Construction. Prior to commencement of construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of City and Developer broad form commercial general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage, providing protection of a least **One Million Dollars (\$1,000,000)** per occurrence and **Two Million Dollars (\$2,000,000)** aggregate coverage plus an Umbrella Liability Policy for **One Millions Dollars (\$1,000,000)** for bodily injury, death or property damage combined for any one accident or occurrence, which limits shall be subject to reasonable increases in amount as City may reasonably require from time to time.

ii. Public Liability Insurance – During Construction. During construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of City and Developer broad form commercial general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage, providing protection of a least **Five Million Dollars (\$5,000,000)** per occurrence for bodily injury, death or property damage combined for any one accident or occurrence, which limits shall be subject to reasonable increases in amount as City may reasonably require from time to time.

iii. Worker's Compensation – Prior to Construction. Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.

iv. During Construction - Commercial Auto. Insurance Services Office Form Number CA 0001 coverage Code 1 (any auto), with limits no less than \$2,000,000 per accident for bodily injury and property damage.

v. During Construction - Insurance Contractor's Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions (if the Project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

vi. Other Insurance. Developer may procure and maintain any insurance not required by this Agreement, but all such insurance shall be subject to all of the provisions hereof pertaining to insurance and shall be for the benefit of City (to the extent applicable) and Developer.

vii. Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed and admitted to do business by California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act of negligence (excepting willful and intentional violations of law) of City or Developer that might otherwise result in the forfeiture of the insurance, (2) the insurer waives the right of subrogation against City and against City's agents and representatives; (3) the policies are primary and noncontributing with any insurance that may be carried by City; and (4) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance (other than Workers' Compensation) required to be procured by the terms of this Agreement. The City's Risk Manager, or its designee, acknowledges and agrees that the insurance requirements above have been established based on anticipated use, activities, and conditions of the Property. In the event the City's Risk Manager reasonably determines that a new or unreasonable use, activity, or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates an increased or decreased risk of loss to the City than what the Parties hereby acknowledge to be duly satisfied by the insurance requirements above, Developer agrees that the minimum limits of the insurance policies required by this Section 11.1 may be changed accordingly upon receipt of written notice from the City's Administrative Services Director or designee; provided that Developer shall have the right to appeal a determination of increased coverage to the City Manager of City within twenty (20) days of receipt of notice from the City's Risk Manager.

viii. Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(A) For insurance required above, within thirty (30) days after the Effective Date.

(B) For any renewal or replacement of a policy already in existence, at least ten (10) days before the expiration or replacement of the existing policy.

(C) If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder.

11.2 Indemnification.

a. General. The Developer shall indemnify the City and its officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, expenses, penalties, obligations, errors, omissions, or liabilities, including attorneys' fees and costs (herein "claims or liabilities") that may be asserted or claimed by any Person arising out of or in connection with the work, operations, or activities by Developer or its officers, agents, employees, or contractors (including subcontractors), upon the Property or related to or arising out of the approval of this Agreement, the Existing Development Approval or Subsequent Development Approvals;

i. The indemnifying Party will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including reasonable legal costs and attorneys' fees incurred in connection therewith.

ii. The indemnifying Party will promptly pay any judgment rendered against the indemnified Party or its officers, agents, or employees for any such claims or liabilities arising out of or in connection with its foregoing indemnity and will save and hold the indemnified Party, its officers, agents, and employees harmless from any failure to so pay any such judgment. If the indemnified Party recovers any attorneys' fees, expert witness fees, costs, interest, or other amounts from the third party or third parties asserting claims or liabilities, the indemnifying Party shall be entitled to retain the same in an amount not to exceed payments made pursuant to its indemnification obligation (provided such Party has fully performed its indemnity obligations hereunder).

iii. In the event the indemnified Party, its officers, agents, or employees is made a party to the action or proceeding filed or prosecuted against for such damages or other claims arising out of or in connection with the work, operations, or activities of the indemnifying Party under this Agreement, the indemnifying Party agrees to pay the indemnified Party, its officers, agents, or employees any and all reasonable out-of-pocket costs and expenses actually incurred by the indemnified Party, its officers, agents, or employees in such action or proceeding, including by not limited to reasonable legal costs and attorneys' fees.

b. Exceptions. The indemnities and releases of this Section 11.2 shall not include claims or liabilities to the extent and degree arising from the negligence or willful misconduct of any or all of the indemnified Party and its officers, agents and employees.

c. Loss and Damage. Except as otherwise set forth in this Agreement, City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. Except as otherwise set forth in this Agreement, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature.

d. Period of Indemnification. The obligations for indemnity under this Section 11.2 shall begin upon the Effective Date and shall survive termination of this Agreement.

e. Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from the City or its officers, agents, servants, or employees, for any loss or damage to the Developer or to any person or property, except as specifically provided hereunder and the Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against the City, its officers, agents and employees.

f. Survival of Provisions. The indemnity provisions set forth in this Section shall survive termination or cancellation of this Agreement as to matters arising prior to the termination or cancellation of this Agreement.

12. MISCELLANEOUS PROVISIONS.

12.1 Recordation of Agreement. This Agreement and any amendment, termination or cancellation of it will be recorded with the Riverside County Recorder by the City Clerk in accordance with Government Code Section 65868.5.

12.2 Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to in this Agreement. Parole evidence will not be admissible to interpret this Agreement.

12.3 Estoppel Certificates. Within thirty (30) days following a Party's written request, and at no cost to the requesting Party, the other Party will certify in writing that, to its knowledge:

a. This Agreement is in full force and effect and is binding upon the certifying Party.

b. This Agreement has not been amended or modified, except as expressly described in the estoppel certificate.

c. The requesting Party is not in default of its obligations under this Agreement, and that there have been no events that with the passage of time, the giving of notice, or both, would constitute the requesting Party's default under this Agreement, except as expressly described in the estoppel certificate.

12.4 Severability. Every provision of this Agreement is a separate and independent covenant. If any provision is, or the application of the provision in certain circumstances is, to any extent, found to be invalid or unenforceable for any reason whatsoever, then the remainder of this Agreement, or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected. The Parties will negotiate in good faith any amendments or operating memoranda necessary to cure any invalidity or unenforceability.

12.5 Interpretation and Governing Law. This Agreement and any dispute concerning it will be governed and interpreted in accordance with California's procedural and substantive laws, without regard to its conflicts of laws principles. This Agreement will be construed as a whole according to its fair language and common meaning. The rule of construction that ambiguities in a document are to be resolved against the drafting party may not be employed in interpreting this Agreement. Each Party acknowledges that it was represented by counsel in this Agreement's negotiation and preparation.

12.6 Section Headings. All section headings and subheadings are inserted for convenience only and do not affect this Agreement's construction or interpretation.

12.7 Singular and Plural. The singular of any word includes the plural.

12.8 Including. Unless the context requires otherwise, the term "including" means "including, but not limited to."

12.9 Time of Essence. Time is of the essence as to the performance of any obligation as to which time is an element.

12.10 Calendar Periods. All references to "years", "quarters", "months" and "days" are references to calendar years, quarters, months and days.

12.11 Waiver. A Party's failure on any one or more occasions to insist upon strict compliance by the other Party, or a Party's failure on any one or more occasions to exercise its rights upon the other Party's default, is not a waiver of that Party's right to demand strict compliance by the other Party on any future occasion.

12.12 No Third Party Beneficiaries. This Agreement is entered into for the sole protection and benefit of the Parties and their successors and assigns. Except as provided in Section 10 or with respect to a Developer Transferee, no other person or entity has any right of action based upon this Agreement.

12.13 Permitted Delays. The period of a Permitted Delay will commence to run on the date the Permitted Delay begins. The period of the Permitted Delay will end when the circumstances giving rise to the Permitted Delay are eliminated or mitigated, provided that with respect to third party litigation, Permitted Delay shall be deemed to have occurred during the entire pendency of the litigation. The Term of this Agreement and each obligation of the Developer shall be extended on a day for day basis for each day of Permitted Delay. The Party alleging the Permitted Delay will exercise commercially reasonable efforts to eliminate or mitigate the circumstances giving rise to the Permitted Delay or the extension terminates provided that neither Party shall have an obligation to settle litigation pursuant to this sentence on terms unacceptable

to such Party. Neither Party will be in default of an obligation if that Party's inability to perform or delay in performing that obligation is caused by a Permitted Delay. Except with respect to Permitted Delay resulting from action or inaction by a governmental agency, no Permitted Delay shall result in an extension of more than six months. Any further extension will require an amendment of this Agreement.

12.14 Successors in Interest. The burdens of this Agreement are binding upon, and the benefits of this Agreement inure to, the Parties' successors in interest. All provisions are enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act with regard to the Development of the Property:

- a. Is for the benefit of and is a burden upon all portions of the Property.
- b. Runs with the Property and all portions.
- c. Subject to Section 7 of this Agreement, is binding upon each Party and its successors in interest during the term of that Party's or its successors' ownership of the Property or any portion.

12.15 Counterparts. This Agreement may be executed in counterparts, which will be construed together and have the same effect as if the Parties had executed the same instrument.

12.16 Jurisdiction and Venue. All legal actions and proceedings to enforce or interpret this Agreement must be filed and tried in Riverside County Superior Court or other legally appropriate court and venue.

12.17 Project as a Private Undertaking. The Project is a private development and neither Party is acting as the agent of the other in any respect. Each Party is an independent contracting entity with respect to this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of private property by a private party.

12.18 Further Actions and Instruments. Each Party must cooperate with the other and provide reasonable assistance to the other in the performance of the other Party's obligations. Upon a Party's request, the other Party must promptly execute (with notary acknowledgment if required) those instruments, and take any reasonable actions, necessary to evidence or consummate the transactions expressly described, or which are a logical extension of the transactions described, in this Agreement.

12.19 Eminent Domain. No provision of this Agreement expands, limits, or restricts City's exercise of its eminent domain powers.

12.20 Attorneys' Fees. If either Party files any action or brings any action or proceeding against the other pertaining to the interpretation or enforcement of this Agreement, then the prevailing Party will recover as an element of its costs of suit and not as damages its costs of suit, expert fees, consultant costs, and reasonable attorneys' fees as fixed by the Court.

12.21 Authority to Execute. Each natural person executing this Agreement on behalf of a Party represents that he or she has the authority to execute this Agreement on behalf of that Party and that he or she has the authority to bind that Party to this Agreement.

[Signature pages follow]

SIGNATURE PAGE

TO

MURRIETA MARKETPLACE DEVELOPMENT AGREEMENT

“DEVELOPER”

SCOTT-MURRIETA SERVICE STATION,
LP, a California limited partnership

By: 
Hagop Kofdarali,
Authorized Signatory

BONSALL SERVICE STATION, LP,
a California limited partnership

By: 
Hagop Kofdarali,
Authorized Signatory

MURRIETA MARKETPLACE
HOLDINGS, LP, a California limited
partnership

By: 
Hagop Kofdarali,
Authorized Signatory

EXHIBIT A
TO
MURRIETA MARKETPLACE CROSSINGS DEVELOPMENT AGREEMENT

Legal Description of Property

The land referred to herein is situated in the State of California, County of Riverside, City of Murrieta and described as follows:

Being a portion of the South half of the Northwest one-quarter of Section 6, Township 7 South, Range 2 West, San Bernardino Meridian, described as follows:

Commencing at the Southeast corner of Government Lot 2 of said Section 6; Thence N 89°57'08"W along the South line of said Government Lot 2, a distance of 149.92 feet;

Thence S 00°02'52"W, a distance of 30.00 feet to a point of intersection with the Southerly right-of-way line of Porth Road as dedicated by Declaration of Dedications recorded April 28, 1977 as Instrument Numbers 74084, 74085, and 74086, and Declaration of Dedication recorded May 13, 1977 as Instrument Number 85048, all being Records of the Recorder of Riverside County, California, said point being the true point of beginning;

Thence S 46°57'30"W, a distance of 29.70 feet;

Thence S 00°02'52"W, a distance of 49.71 feet to the beginning of a tangent curve, concave Easterly and having a radius of 106.00 feet;

Thence Southerly along the arc of said tangent curve, through a central angle of 30°27'53", an arc distance of 56.36 feet;

Thence S 30°25'01 "E, a distance of 263.04 feet to a point of intersection with the Westerly right-of-way line of Briggs Road as adopted by resolution on file in Supervisor Minute Book 40, Page 239, dated May 3, 1948, Records of the Clerk of the Board of Supervisors, Riverside, California;

Thence Southerly along said Westerly right-of-way line of Briggs Road, s 00°26'29"W, a distance of 80.32 feet to the beginning of a non-tangent curve, concave Southwesterly, having a radius of 106.00 feet and an initial radial bearing of N 73°41'11"E;

Thence Northwesterly along the arc of said non-tangent curve, through a central angle of 14°06'12", an arc distance of 26.09 feet;

Thence N 30°25'01"W, a distance of 306.16 feet to the beginning of a tangent curve, concave Easterly and having a radius of 144.00 feet;

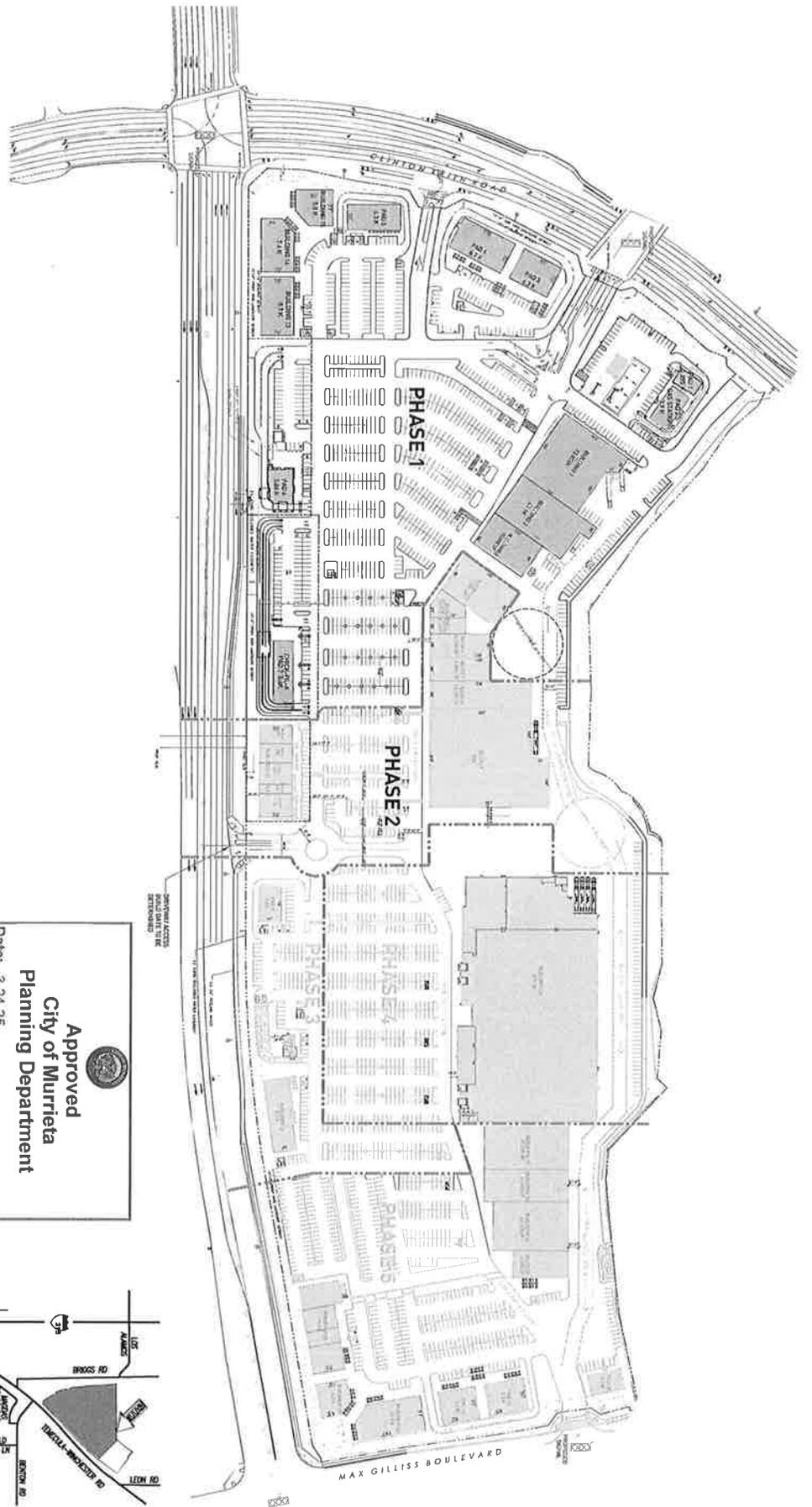
Thence Northerly along the arc of said tangent curve, through a central Angle of 30°27'53", an arc distance of 76.57 feet;

Thence N 00°02'52"E, a distance of 52.78 feet;

Thence N 45°06'50"W, a distance of 24.42 feet to a point of intersection with said Southerly right-of-way line of Porth Road;

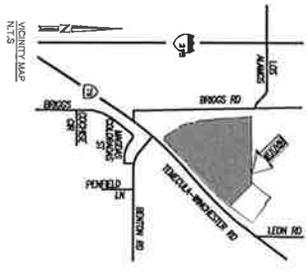
Thence S 89°57'08"E along said Southerly right-of-way line, a distance of 77.01 feet to the true point of beginning.

EXHIBIT B
TO
MURRIETA MARKETPLACE DEVELOPMENT AGREEMENT
Site Plan
(see attached)




Approved
City of Murrieta
Planning Department

Date: 3-24-25
 By: D. Chantarasulu
 Description: Murrieta Marketplace -
 SC-2022-2701



rdc.
 Long Beach, CA | 562.428.8000 | rdc@collaborative.com

CLIENT
Murrieta Marketplace Holdings, LP
 139 Radio Rd, Corona, California

PROJECT
Murrieta Marketplace
 Winchester Road & Clinton Keith Road, Murrieta, California

1:12,500
SITE PLAN
1
 15.177

EXHIBIT B - SITE PLAN



Approved
 City of Murrieta
 Planning Department

Date: 3-24-25
 By: D. Charlarangsu
 Description: Murrieta Marketplace +
 SC-2022-2701

BUILDING	RETAIL SF	RESTAURANT SF	CINEMA SF	TOTAL SF	% RESTAURANT	REQUIRED SHOPPING CENTER WITH MAX. 10% RESTAURANT SF	RESTAURANT GREATER THAN 10% SF	REQUIRED PARKING STALLS FOR SHOPPING CENTER WITH MAX. 10% RESTAURANT	REQUIRED PARKING STALLS FOR RESTAURANT GREATER THAN 10%	TOTAL REQUIRED PARKING STALLS	TOTAL PROVIDED PARKING STALLS
PHASE 1											
BUILDING 1	23,872			23,872	0%						
BUILDING 2	23,100			23,100	0%						
BUILDING 3	10,000			10,000	0%						
BUILDING 13	3,000	5,700		8,700	65%						
BUILDING 14	3,000	4,600		7,600	61%						
BUILDING 15	5,800	5,800		11,600	100%						
PAD 1	1,895	1,895		3,790	100%						
PAD 2	3,900	3,900		7,800	100%						
PAD 3	3,000	3,000		6,000	100%						
PAD 4	3,000	5,700		8,700	65%						
PAD 5	2,300	4,000		6,300	63%						
PAD 6	3,860	3,860		7,720	100%						
PAD 7	5,600	5,600		11,200	100%						
PHASE 1 SUBTOTAL	75,172	40,455	0	115,627	35%	85,735	28,892	347	289	636	973
PHASE 2											
BUILDING 4	12,500			12,500	0%						
BUILDING 5	2,880			2,880	1910%						
Suite 501	2,550			2,550	0%						
BUILDING 6	6,500			6,500	0%						
BUILDING 7	8,500			8,500	0%						
BUILDING 8	10,200			10,200	0%						
BUILDING 9	50,000			50,000	0%						
BUILDING 12	5,000	8,800		13,800	64%						
PHASE 2 SUBTOTAL	97,930	8,800	0	106,730	8%	195,338	27,019	781	270	1,052	119
PHASE 3											
BUILDING 26	8,200			8,200	0%						
PAD 8	3,580			3,580	100%						
PAD 10	1,200			1,200	100%						
PHASE 3 SUBTOTAL	8,200	4,780	0	12,980	36%	206,828	30,429	819	304	1,126	65
PHASE 4											
BUILDING 16	171,500			171,500	0%						
PHASE 4 SUBTOTAL	171,500	0	0	171,500	0%	393,478	13,279	1574	135	1,707	420
PHASE 5											
BUILDING 19	21,030			21,030	0%						
BUILDING 20	12,400			12,400	0%						
BUILDING 22	21,730			21,730	0%						
BUILDING 24	3,000	3,200		6,200	52%						
BUILDING 28	14,000	6,400		20,400	31%						
BUILDING 29	1,700	3,000		4,700	64%						
BUILDING 30	5,800	5,000		10,800	46%						
PAD 11	5,700	5,700		11,400	100%						
PAD 12	5,900	5,900		11,800	100%						
PAD 13	3,200	3,200		6,400	100%						
PHASE 5 SUBTOTAL	79,660	32,400	0	112,060	28%	484,344	34,473	1937	345	2,282	530
PHASE 1-5 SUBTOTAL	432,462	86,955	0	518,917	17%						2,159

Note 1: For planning purposes, restaurant uses greater than 10% are assume to be fast food
 Note 2: Floor are is defined as — Per City of Murrieta zoning code

rdc.
 Long Beach, CA | 562.628.8000 | rdc@laborative.com

CLIENT
Murrieta Marketplace Holdings, LP
 139 Radio Rd, Corona, California

PROJECT
Murrieta Marketplace
 Winchester Road & Clinton Keith Road, Murrieta, California

PROJECT SUMMARY
 11-21-2024

EXHIBIT C
TO
MURRIETA MARKETPLACE DEVELOPMENT AGREEMENT

Planning, Public Works, and Engineering Conditions of Approval

(see attached)



CITY OF MURRIETA

March 24, 2025

**Ms. Karine Kofdarali
J&T Management
P.O. Box 1958
Corona, CA 92878**

Delivered Electronically

Re: Substantial Conformance (SC) 2022-2701 Murrieta Marketplace

Dear Karine:

On March 24, 2025 the Development Services Director of the City of Murrieta acted to administratively approve the above referenced project. The City's approval is effective immediately.

If you have any questions, please feel free to contact me at (951) 461-6002.

Sincerely,

A handwritten signature in blue ink, appearing to read "David", followed by a long horizontal line.

**David Chantarangsu, AICP
Development Services Director**

cc: file

**CONDITIONS OF APPROVAL
FOR
SUBSTANTIAL CONFORMANCE 2022-2701
March 24, 2025**

The project approval is issued to Murrieta Marketplace Holdings, L.P. for a Substantial Conformance to make minor changes to the previously approval (518,817 square feet of building area, 2,155 parking stalls to be constructed in five phases and adding additional access where none previously existed (pending separate approval from Caltrans) ("Project"). The Project is located at Winchester Road and Clinton Keith Road on a 49.73-acre parcel (APN: 963-060-065, 066, 963-450-001 through 963-450-019, 480-100-073 and -074). This permit runs with the land and shall be binding upon, Murrieta Marketplace Holdings, L.P., or the owner of the subject property ("Permittee/Owner") and all subsequent successors in interest to the Permittee/Owner as to such land.

PLANNING DIVISION

GENERAL

1. The Permittee/Owner shall defend (with attorneys approved by the City), indemnify, and hold harmless the City of Murrieta, its agents, officers, and employees from any claims, damages, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void, or annul an approval of the City, its advisory agencies, appeal boards, or legislative body concerning this approval for Substantial Conformance 2022-2701. The City will promptly notify the Permittee/Owner of any such claim, action, or proceeding against the City and will cooperate fully in the defense.
2. Any outstanding zoning application fees due the City of Murrieta for processing this project shall be paid to the City within thirty (30) calendar days of this approval ("Effective Date Failure to pay such outstanding fees within the time specified shall invalidate any approval or conditional approval granted. No permits, site work, or other actions authorized by this action shall be processed by the City, nor permitted, authorized or commenced until all outstanding fees are paid to the City pursuant to the City's adopted Fee Schedule.
3. Elective for Applicant (Not required for this particular SC): Pursuant to Section 711.4 of the State of California Fish and Game Code, the applicant is required to pay a \$50.00 handling fee. Said fees shall be paid to the Clerk/Recorder of the County of Riverside at the time the Notice of Exemption is filed pursuant to Section 21152 of the Public Resources Code. In order to comply with State mandated time lines for filing of a Notice of Exemption the above fee must be delivered to the Planning Division within two (2) working days after the effective date.
4. This approval shall be used within three (3) years of the approval date of this Substantial Conformance Permit or the expiration of the original Development Plan (DP-2017-1370) whichever comes first; otherwise, it shall become null and void and of no effect whatsoever in accordance with Murrieta Municipal Code Section 16.56.060 B. Use means the beginning of substantial construction under this approval within the three (3) year period, which is thereafter diligently pursued to completion, and in the event the use hereby permitted ceases operation for a period of 180 days or more, this approval shall become null and void.
5. The project shall be developed in conformance with all conceptual exhibits for this Substantial Conformance (Site Plan dated November 22, 2024), approved elevations per DP-2017-1370

dated 6-27-18 and these conditions of approval to bring the Substantial Conformance site plan into compliance with the Development Code. Subsequent modifications of this approval, which do not intensify the use, including but not limited to reorientation of structures, alteration of parking and circulation design, minor changes to the Conditions of Approval, interpretations of the Conditions of Approval relative to intent, necessity of, and timing, may be approved by the Director, unless the Director requires a Substantial Conformance or Revised Permit application in accordance with the Development Code. Materials and colors used in the construction of the building(s) shall be in compliance with those approved with this application. The area shown as Phase 1 is approved for development subject to any modifications required by these conditions of approval.

6. Prior to the expiration of this approval, the Permittee/Owner may request an extension of time in accordance with Development Code Section 16.80.060.
7. The applicant will need to secure all necessary building permits to the satisfaction of the Building & Safety Division (Building Code) and the Murrieta Fire & Rescue Department (Fire Code).
8. The project shall comply with all applicable standards of the City's Development Code and all other applicable County, State and Federal code and ordinances and permit requirements.
9. The use of these premises shall comply with the standards of the Murrieta Development Code ("MDC") and all other applicable State and Federal codes.
10. The Substantial Conformance Permit shall be subject to all applicable requirements, post approval procedures and provisions of the MDC (Section 16.80.070).
11. In the event the use hereby permitted under this permit, (a) is found to be in violation of the terms and conditions of this permit, (b) is found to have been obtained by fraud or perjured testimony, or (c) is found to be detrimental to the public health, safety or general welfare, or is a public nuisance, this permit shall be subject to the revocation procedures in Section 16.82 of the Development Code.
12. The Permittee/Owner shall obtain approval of all necessary plans for the construction of structures on the subject property in accordance with the Murrieta Development Code. Such plans include but are not limited to grading plans, landscaping plans, and sign plans.
13. All conditions of approval for the previously approved Development Plan (DP-2017-1370), Conditional Use Permit (CUP-2018-1568), and Substantial Conformance (SC-2022-2701) shall be fully satisfied unless modified by these conditions of approval. The project no longer proposes outdoor display, equipment rental, or seasonal display associated with the construction of a Home Depot.
14. No signs are approved pursuant to this project approval. Prior to the installation of any on-site advertising or directional signs, a sign permit application shall be submitted to and approved by the Planning Division pursuant to the approved sign program and all requirements of Chapter 16.38 of the City's Development Code.

15. Any lighting shall be designed to avoid any light spillage onto adjacent properties, and comply with MDC Sections 16.18.100 – Lighting and 16.18.110 – Mount Palomar Lighting Standards.
16. All parking requirements shall be provided on-site. The site plan is conceptual only and requires design changes required by these conditions of approval and compliance with all parking development code standards in Title 16 of the Murrieta Municipal Code unless otherwise approved by the Development Services Department. Any amended/relocated parking spaces shall be designed and improved pursuant to Section 16.34 of the Murrieta Development Code.
17. The Project shall comply with MDC Section 16.34.090 – Bicycle Parking Standards. The bicycle racks/spaces shall be shown on project landscaping and improvement plans submitted for Planning Division approval and shall be installed in accordance with those plans.
18. Trash enclosures shall be provided for the project meeting the minimum size requirements for refuse/recycle as per MMC Section 16.18.150 – Solid Waste/Recyclable Materials Storage and AB 1826 Mandatory Commercial Organics Recycling Standards.
 - a. All trash bins shall be stored in approved enclosures and screened in compliance with Sections 16.18.120 and 16.18.150 of the Murrieta Development Code.
 - b. The location of the enclosures must be shown on the precise grade plan and the surface, including the access apron shall be constructed with concrete.
 - c. A solid cover with decorative trellis or other architecturally compatible cover shall be incorporated into the trash enclosure design.
19. Parking lot light standards, refuse enclosures, and other common site elements shall match in both design and materials and be consistent with those within the rest of the commercial shopping center.
20. The permittee shall comply with all the mitigation measures identified in the Mitigation Measures & Reporting Program (MMRP) adopted with the Certified Environmental Impact Report.

Project Specific:

21. The site plan dated 11-22-2024 is conceptual only. The site plan may require design changes subject to these conditions of approval and to comply with all development code standards in Title 16 of the Murrieta Municipal Code.
22. The architectural elevations are subject to the original Development Plan 2017-1370 approval with an approved date stamp by the City of Murrieta Planning Commission of 6-27-18, and as modified by the conceptual elevations for Phase 1 dated February 2025. Changes to the site plan approved by this Substantial Conformance in Phase 1 or subsequent phases that result in modifications to building elevations, including but not limited to changes in building area, location, orientation, height, or footprint, may be subject to further review and approval as determined by the Development Services Director pursuant to Murrieta Municipal Code Section 16.80.070 prior to the issuance of a building permit for the modified area.
23. Prior to issuance of a Grading Permit, a separate site plan shall be submitted for review to determine compliance with setbacks (Buildings, landscaping, outdoor dining), drive aisle widths, drive-through standards (16.44.080), outdoor dining standards, landscape planters, internal

vehicle circulation, trash enclosures, loading facility screening, internal pedestrian connections, parking requirements (including loading spaces), electric vehicle charging, Commercial District Design Standards 16.10.030 and mechanical/utility/equipment screening. This site plan shall be consistent with the grading plan.

24. Prior to issuance of a Grading Permit, the project will be reviewed for compliance with all development code standards in Title 16 of the Murrieta Municipal Code. Changes to the site plan may be required.
25. Prior to issuance of a Building Permit, a separate site plan shall be submitted for review to determine compliance with setbacks (Buildings, landscaping, outdoor dining), drive aisle widths, drive-through standards (16.44.080), outdoor dining standards, landscape planters, internal vehicle circulation, trash enclosures, loading facility screening, internal pedestrian connections, parking requirements (including loading spaces), electric vehicle charging, Commercial District Design Standards 16.10.030 and mechanical/utility/equipment screening. This site plan shall be consistent with the grading plan
26. Prior to issuance of Building Permit, the project will be reviewed for compliance with all development code standards in Title 16 of the Murrieta Municipal Code. Changes to the site plan may be required.
27. The project floor area total is 518,817 square feet of building area. The project is subject to parking requirements based on the gross building area and may require a reduction in building square footage.
28. The parking ratios shown on the revised site plan are reference only. The project is required to comply with 16.34 Off-Street Parking and Loading Standards.
29. The project no longer proposes outdoor display, equipment rental, or seasonal display. The existing Conditional Use Permit is now void.
30. The prior approval proposed 3 phases. This proposal identifies 5 phases. A separate phasing plan application shall be submitted for review for any subsequent phases beyond the first phase.
31. Prior to issuance of a grading permit, the site plan shall show compliance with internal pedestrian connections. The construction plans shall provide the required pedestrian connections consistent or substantially like what is shown on the conceptual landscape plan dated September 9, 2022, sheet L-1.
32. All buildings are subject to the approved elevations Development Plan DP-2017-1370. The pad configuration and building changes proposed with this approval will require the architecture to substantially conform with these elevations, including four-sided architecture.

Final Inspection

33. The improvements shall be fully constructed prior to final inspection of the project.

34. The permittee shall contact the Development Services Department a minimum of 72-hours to allow for scheduling of any inspection required for this project.

LANDSCAPING

Prior to the issuance of grading permits:

35. Three printed copies and one digital copy of landscape construction plans shall be submitted to the Planning Division. A licensed Landscape Architect shall prepare the plans.
36. All previous conditions under original development plan DP-2017-1370 and CUP-2018-1568 shall apply, as amended per these conditions of approval.
37. The landscape construction plans shall be in substantial conformance with the preliminary landscape plans as approved by the City's Landscape Architect, City Administrative Staff, Planning Commission and/or City Council. Notes, details, and specifications shall be included.
38. It is the responsibility of the landscape architect to be aware of and comply with the requirements and standards of Title 16.28 of the Murrieta Municipal Code, the City's current policies, and current State of California water efficient landscape requirements.
39. It is the responsibility of the applicant and owner's design team to be aware of and comply with the layout and landscape requirements and standards for Off-Street parking according to Title 16.34 of the Murrieta Municipal Code.
40. Landscape design, including but not limited to tree groupings and required setbacks, shall be in accordance with Murrieta Fire & Rescue guidelines, standards, and policies.
41. Natural wood bark mulch or other approved mulch material shall be applied to all planting areas 3 inches deep, except where restricted by Murrieta Fire & Rescue requirements. An alternate non-combustible mulch shall be used wherever wood mulch is restricted and in locations shown on the approved conceptual landscape plan.
42. Step-out strips are required when adjacent to parking spaces and shall be 12" wide by 4" deep doveled into the adjacent 6" curb, or 12" wide by 12" deep integrally poured curb. Show step-out strips on plans and coordinate with the project engineer.
43. Fire apparatus access roads shall be illustrated and noted on planting plan. Trees are to be located so that the mature canopies do not encroach into the access road clear zone of 28 feet wide and 13.5 feet high.
44. Avoid plants that require cutting back to keep them within a specific area or at a trimmed height. Carefully select and locate plants where they will be allowed to grow to maturity and keep their natural shape.
45. Plant materials within vehicular line of sight impact areas are to be limited to a maximum of 30" natural height. Impact areas include but are not limited to project entries, drive aisles, and parking

lot island planters.

46. Linear root barriers shall be installed for all trees located within 5 feet of paving and within 10 feet of city sidewalks.
47. Prior to finalizing the landscape construction document set for submittal, inspect existing site landscaping directly adjacent to the project and identify areas that have missing or unhealthy plant material. On the landscape plan, specify areas and replacement plant material that will restore the existing landscape to a healthy filled-in appearance in compliance with Murrieta Municipal Code section 16.28.090. The perimeter landscape design shall coordinate with surrounding properties - select shrubs and ground cover to match or coordinate with surrounding planting.
48. Above ground utilities shall be located in shrub areas and screened as required from public view. Fire equipment shall have a setback of 10 feet from face of curb or as otherwise permitted, where only low growing ground covers shall be planted.
49. Utilities and light standard locations shall be coordinated with Owner's engineering team to avoid conflicts with required tree locations and utility screening.
50. All bumper overhang areas shall be planted with a drought-tolerant groundcover growing no greater than 6" high at maturity.
51. Street trees shall be provided at 30'-0" on center.
52. An opaque screen shall be installed along all drive aisles and parking areas abutting public streets and rights-of-way. The screening shall have a height of not less than thirty (30) inches and not more than forty-two (42) inches at maturity. Spacing should be as close as feasible while still allowing for healthy long-term growth and condition at maturity.
53. It is the responsibility of the applicant and owner's design team to be aware of and comply with the layout and landscape requirements and standards for Off-Street parking according to Title 16.34 of the Murrieta Municipal Code.
54. It is the responsibility of the applicant and owner's design team to be aware of and comply with the requirements of Title 16.42 Tree Preservation. This chapter provides regulations for the protection, preservation, and maintenance of significant tree resources and establishes minimum mitigation measures for trees removed as a result of new development.
55. Diamond tree planters are to be configured at sidewalks when directly adjacent to parking spaces. Provide one planter for every three parking spaces to contribute to the required shading percentage. The diamond in profile shape will achieve a sufficient plantable area while avoiding conflicts with pedestrian path of travel. Interior plantable area is to be a minimum of 20 square feet, however, 25 square feet is preferred.

Prior to issuance of a Building Permit:

56. The landscape plans shall be approved by the City's Landscape Architect and Assigned Planner for each phase.

Prior to the initiation of landscape construction:

57. Contact City's Assigned Planner or Landscape Architect to determine if a pre-job meeting with the job site superintendent and the landscape contractor will be required. No landscaping shall occur prior to the meeting or the City's determination that it will not be required.

Prior to the issuance of occupancy permits:

58. All required landscaping and irrigation systems shall be installed in a condition acceptable to the City. The owner's Landscape Architect shall provide inspections throughout the landscape installation process. The owner shall provide the City's Assigned Planner with a Landscape Certificate of Completion documentation package at the time of final inspection request. The City will review the Certificate of Completion and conduct a final inspection to ensure that the landscape installation is in compliance with all City policies, practices and the approved landscape plans. The Certificate of Completion shall be complete with irrigation water audit, irrigation schedules, landscape maintenance schedules, and soil management report.
59. Performance securities, in the amount determined by the City to guarantee the adequate maintenance of the landscaping materials and irrigation system in accordance with the approved plans for a period of one (1) year from the date of final clearance of the installed landscaping by the City, shall be posted with the Planning Division. Acceptable forms of security shall be limited to cash deposit, cash bonds, or irrevocable letters of credit. The performance securities may be released one (1) year after final clearance of the installed landscaping by the City, upon written request by the owner, if the landscaping has been adequately maintained. A deposit to cover re-inspection of the landscape, at the current City rate shall be posted with the Planning Division prior to re-inspection for maintenance bond release.

BUILDING AND SAFETY DIVISION

General:

60. All construction shall comply with the current California Building Codes (CBC), and related Codes and Ordinances of the City of Murrieta. Digital sets of plans shall be submitted for building/s and exterior site improvements; and shall include building data, building use/occupancy, construction type, actual building square foot area and related building means of egress and ensuing egress discharge to the public right-of-way.
61. Architectural site and on-site civil design shall correlate and details shall comply with accessibility standards of the State of California.
62. Construction plan submittals shall be subject to the current California Green Building Standards Code, wherein provisions for means of achieving material conservation and resource efficiency through construction waste reduction of at least 65% recycling and/or salvage for reuse, diversion, and employment of techniques to reduce pollution through recycling of materials.
63. Any proposed exterior lighting shall be shown on building permit plans and shall comply with the City of Murrieta's MMC Sec.16.18.110, Mt. Palomar Lighting Pollution Control Standards and/or equal. LED limits are 4050 lumens maximum per fixture and 3000K kelvin color rendition.

64. Separate permits shall be obtained from the City of Murrieta Building & Safety Division, for individual structures and appurtenances e.g., construction trailer(s), parking lot lighting, play structures, masonry walls, retaining walls, monument signs, building and monument wall signs, automated gates & pedestrian access gates, temporary power etc. Temporary power and temporary wiring shall comply with the current California Electrical Code.
65. Plans submitted during the permitting process, including but not limited to, site plan, precise grade plans and building architectural features, shall not vary substantially from plans previously reviewed and approved by the Planning, Engineering or other City Departments, without prior authorization from the City Planner, City Engineer and/or Director of Building and Safety.
66. Detectable warnings shall be cast in place and comply with the following:
 - a. Detectable warning surfaces shall be yellow and approximate FS 33538 of SAE AMS-STD-595A. (CBC 11B-705.1.1.3.1)
67. Required van accessible parking spaces shall be configured to be a minimum of 12' ft. wide by 18' ft long with a 5' wide access aisle way on the passenger side of the vehicle. Standard accessible spaces shall be configured to be a minimum of 9' ft. wide by 18' ft long, adjacent to a minimum 5' wide access aisle.
68. Required EV van accessible parking spaces shall be configured to be a minimum of 12' ft. wide by 18' ft long with a 5' wide access aisle way on the passenger side of the vehicle. Standard EV accessible spaces shall be configured to be a minimum of 9' ft. wide by 18' ft long, adjacent to a minimum 5' wide access aisle. Ambulatory EV spaces shall be a minimum of 10' ft. wide and do not require an access aisle.

Building Permit Application:

69. Digital sets of building construction plans shall be submitted, including two sets of supplemental current soil report, structural calculations, energy calculations, etc. Submittals shall conform to the Electronic Plan Check Submittal Guide (Building Form IB-110). Plans must conform to Digital Submittal Requirements (Building Form DS-162).
70. Plans submitted for building construction shall contain a full-size copy of the Final Approved set of city departments Conditions of Approval.
71. Submit a construction waste management plan (Building Form DS-153) for diversion of materials.

Prior to Permit Issuance:

72. A Waste Management Plan (Building Form DS-153), which may include a Construction and Demolition letter (C & D letter) from the Waste Management Company for the recycling reuse and diversion of construction waste materials from landfills is required prior to the permit issuance.
73. All applicable fees and forms shall be paid. This may include TUMF School, DIF, etc.

74. Will serve or first release forms from the governing water and sewer districts will be required.
75. Verification of an approved, stamped, signed by the City of Murrieta Engineer, and issued grading plan.

Prior to Building Final:

76. Final permit approvals shall be obtained, and any outstanding fees shall be paid to all City Departments, which may include Fire, Planning, Engineering, Building & Safety, and the City Landscape Architect prior to the issuance of a Certificate of Occupancy from the City of Murrieta Building and Safety Division.

ENGINEERING

General Requirements:

77. Provide documentation from Caltrans confirming that they will allow right-in/right-out only access along State Route 79 (Winchester Road) as shown on the Overall Site Plan and Emergency Path of Travel Sheet A0.30, dated October 2022.
78. These conditions of approval shall apply to Substantial Conformance 2022-2701 (SB 2022-2701). The original Conditions of Approval Development Plan 2017-1370 shall remain in effect and serve as the basis for Conditions for this project's Substantial Conformance Review. Project documents (e.g., Conditions of Approval, Tentative Map/Site Plan, Preliminary Grading Plan, Preliminary Improvement Plan, Preliminary Water Quality Management Plan, Preliminary Geotechnical Report, etc.) may be subject to revisions as part of this substantial conformance review, to ensure compliance with local, state, and federal ordinances, policies, and regulations. Moreover, additional document(s) may be required to ensure complete compliance as noted.
79. Revisions to the originally approved conceptual grading plan, hydrology, and stormwater reports may not be required at this time. Applicant, however, shall agree to provide all applicable revisions to all conceptual plans/reports for review and approval by the Engineering Department so that said approved conceptual plans/reports can then be submitted with construction documents with the intent to obtain a grading permit, or, when subdivider applies for a time extension, or additional substantial conformance, whichever occurs first.
80. The governing document describing the water quality guidelines whereby the City of Murrieta's Water Quality Management Plan (WQMP) abides by is the California Regional Water Quality Control Board, San Diego Region, Order No. R9-2013-0001, as amended by Order nos. R9-2015-001 and R9-2015-0100, National Pollution Discharge Elimination System No. CAS0109266 Permit (NPDES MS4 Permit). All projects are subject to said permit and any permit revisions thereof.
81. For Phase 1, revise the project driveway approach geometry at the new traffic signal at the intersection of Clinton Keith Road/Porth Road/Project Driveway to include the following prior to the issuance of any grading permit:
 - a. 2 left-turn lanes, 1 through lane, 1 right-turn lane

82. Prior to the issuance of a building permit, the Applicant shall pay a fair share fee for the design and installation of an eastbound right-turn overlap phase at the Winchester Road (SR-79) and Clinton Keith Road intersection for the construction of Phase 1. The fair share amount shall be determined by the City Engineer or his designee utilizing the Phase 1 Focused Traffic Study dated March 18, 2025.
83. Design, furnish, and install a westbound (Clinton Keith Road) right-turn lane into the easternmost project driveway located between Pads 4 and 5 prior to the first occupancy of Phase 1. The design of the improvements shall be prepared by a licensed engineer and be subject to the review and approval of the City Engineer prior to the construction of the improvements.
84. Prior to first occupancy, design, furnish, and install the project driveway at Max Gillis Boulevard as right-turn in/right-turn out access only. The design, improvements, and installation shall include a raised median on Max Gillis Boulevard to control the turning movements subject to the preparation of a sight distance exhibit referred to in Condition No. 85. The median shall extend a minimum of 25 feet past the project driveway in both the east and west directions.
85. Prior to the design and construction of the improvements referenced in Condition No. 84 provide a sight distance exhibit for the Max Gillis Boulevard and project driveway intersection, following the requirements shown in City Standard Drawing No. 214. Should the sight distance requirements not be met, the Applicant shall determine and provide necessary improvements to meet the minimum required sight distance subject to the approval of the City Engineer. The exhibit shall be prepared by a licensed engineer and be subject to the review and approval of the City Engineer prior to the construction of the improvements.
86. Prior to first occupancy, provide signing and striping plans, prepared by a licensed civil engineer, for the project access points along both Clinton Keith Road and along Max Gillis Boulevard. The plans shall be subject to the review and approval of the City Engineer. Required improvements shall be installed prior to first occupancy.
87. For any future phase of development exceeding the authorized building square footage of this approved Phase 1, the Applicant shall submit a traffic signal warrant analysis to the City engineer for review and approval to determine if the project signal located at the project driveway and Max Gillis Boulevard is required to be installed. Subsequent analyses shall be approved prior to the issuance of a building permit for any requested phase of development. When future development beyond the approved Phase 1 building square footage meets the warrant analysis for the signal, the applicant shall design, furnish, and install the traffic signal. The design of the traffic signal improvements shall be prepared by a licensed engineer and be subject to the review and approval of the City Engineer prior to the construction of the improvements. The signal shall be operational prior to the issuance of a certificate of occupancy or building final for development beyond the approved Phase 1 building square footage which results in the need for the signal based on a warrant analysis.

FIRE DEPARTMENT

Prior to Issuance of a Grading Permit:

88. All construction shall comply with the adopted codes and fire regulations at the time of construction related to fire safe materials, setbacks and distances from property lines.
89. A Fire Access and Water plan shall be submitted and approved by Murrieta Fire & Rescue (MFR) prior to the issuance of a grading permit. The plan shall indicate the location of all fire lanes and the approved signage and curb marking. It shall include the location of all fire appurtenances and shall demonstrate compliance with California Fire Code (CFC) Section 503.1.1. The plan shall indicate the turning radius on the fire apparatus access roadways. The required turning radius is 28 feet inside and 56 feet outside. Current guidelines are available on the MFR web page.
90. The California Fire Code Section 503.1.1 requires "Approved fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet of all portions of the exterior walls of the first story of the buildings as measured by an approved route around the exterior of the building or facility.
91. All portions of on-site fire apparatus access roads shall be a minimum of 26' in width.
92. Provide a fire flow analysis from the local water purveyor indicating the closest fire hydrant to serve the proposed project and fire flow available at 20 PSI. The required minimum fire flow for a commercial structure is 3,000 Gallons Per Minute (GPM) @ 20PSI for three hours. The fire flow is the highest volume listed of 3,000 GPM or as delineated in Table B105.2 in Appendix B of the California State Fire Code. The fire suppression water shall be in accordance with Section 3313.1 of the amended California State Fire Code.
93. Plans and specifications for construction of underground Private Fire Service Mains and appurtenances shall be submitted to the City of Murrieta for review and approval prior to installation.
94. Commercial fire access roads shall provide access roadway with minimum unobstructed width of 26 feet and minimum 13'6" vertical clearance.
95. All fire apparatus roadways shall be installed in accordance with the locally amended Section 503.2.3 of the California Fire Code. Fire apparatus access roads shall be approved by the fire code official prior to the commencement of combustible construction. Access roadways shall be capable of holding an imposed load of 75,000 pounds including in adverse weather conditions.
96. Prior to the issuance of a building permit for Phase 1, the Applicant shall submit a construction access plan to the Fire Marshal for review and approval, including access road specifications for construction, in each phase. Fire apparatus access roads required by the Fire Marshal in each phase shall be usable (paved), accessible and fire hydrant(s) shall be capable of flowing the minimal required GPM and shall be tested/accepted by Fire Department prior to dropping any lumber for construction.
97. Address numbering shall comply with the locally amended code specific to Section 505.1 in Ordinance 584-22. Address numbers shall be illuminated to be visible from the street at all hours. Buildings up to 25' in height are required to have a minimum of 12" address number with a minimum 2" stroke. Buildings exceeding 25' in height are required to install address numbers at

a minimum of 24" in height with a minimum 4" stroke. Address numbering shall be placed on all sides of a structure. Additional addressing numbers shall be required when deemed necessary by the fire code official.

Community Services Department

98. The applicant shall have in place an Association and/or Property Management to maintain all common areas, irrigation and landscape along the roadways. No areas will be maintained by the City of Murrieta, Community Services District.

Miscellaneous

99. The following Conditions of Approval of Development Plan 2017-1370 (dated June 27, 2018) are hereby revised by the conditions of SC-022-2701 above resulting from approved plans, changes in federal, state or City regulations, applicable General Plan Mitigation Measures, or the construction of City, state, or county street improvements, are replaced in their entirety, or deemed to be no longer applicable to the project:

Conditions 4, 5, 13-17, 20-22, 26, 31, 36, 46, 74, 101, 102, 132, 145, 173, and 179.

100. The Project Mitigation Monitoring and Reporting Program shall be updated to reflect modified conditions of approval, approved plans, and as-built field conditions upon the completion of improvements identified by the approved Project phasing plan.

