

RESOLUTION NO. PC 12-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BREA RECOMMENDING TO THE CITY COUNCIL THE CENTRAL PARK VILLAGE BREA DEVELOPMENT PROPOSAL WHICH INCLUDES A FINAL EIR, A STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION AND MONITORING PROGRAM, DEVELOPMENT AGREEMENT NO. DA 12-01, GENERAL PLAN AMENDMENT NO. GPA 12-01, AND ZONE CHANGE NO. ZC 12-01.

A. RECITALS.

(i) The project proponent, Brea Central Village, LLC (JH Real Estate Partners), Brea Central, LLC., 500 Newport Center Drive Suite 900, Newport Beach, California 92660 (the "Applicant") has submitted an application for Central Park Village Brea (the Project), which proposes the development of one site for up to 452 residential units and 66,000 square feet of commercial space.

(ii) The property on which the Project is proposed is located at the southeast and west corners of Site Drive and Central Avenue legally described as Assessor Parcel Nos. 296-241-03, 296-241-04, and 296-241-05 as shown in the latest records of the County of Orange Tax Assessor (the "Project Site").

(iii) The Planning Commission of the City of Brea held a duly noticed public hearing, as required by law, regarding the Project on April 24, 2012. The Planning Commission took public testimony regarding the Project on April 24, 2012, and then closed the public comment portion of the hearing. The Planning Commission deliberated the merits of the Project at meeting held on April 24, 2012.

(iv) The applicable General Plan land use designation and zone classification for the Site is Light Industrial and is recommended to the City Council to be designated Mixed Use II as depicted in Exhibit "A" subject to General Plan Amendment No. GPA 12-

01, further, the Site would be zoned Mixed Use II as depicted in Exhibit "A" subject to Zone Change No. ZC 12-01.

(v) The Project, has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, et seq.), and the City's Local CEQA Guidelines. A Final Environmental Impact Report (the "Final EIR") was prepared for the Project and is incorporated herein by reference as if set forth in full. The Planning Commission recommends to the City Council the certification of the Final EIR No. 11-01 and made environmental findings concerning the Project by separate Resolution No. PC 12-XX. That Resolution is incorporated herein by reference as if set forth in full. The Planning Commission fully considered the Final EIR during its deliberations of the merits of the Project.

(vi) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION.

NOW, THEREFORE, BE IT FOUND, DETERMINED, AND RESOLVED, by the Planning Commission of the City of Brea, as follows:

1. In all respects as set forth in Recitals, Part A, of this Resolution.
2. The Planning Commission further finds, and recommends the City Council so find as follows:
 - a. Finding: The Project is in conformity with the General Plan of the City of Brea, and that the proposed subject property is suitable for the uses

permitted in the proposed Development Agreement, including but not limited to, its access, physical arrangement, level of density and intensity, and relationship to similar or related uses.

Facts: The project brings proposed housing and commercial uses that are appropriate for this site and fulfills the community-wide goal of providing a mix of housing types that would serve a variety of households as well as new local shops and services to the development.

The project fulfills the General Plan goals of creating a “Sense of Place” and “Creating Connections” for Northwest Brea.

b. Finding: The Project will result in a new land use designation and zoning that are compatible and in harmony with the goals, objectives, policies, and programs set forth in the General Plan of the City of Brea

Facts: The Central Park Village Brea Proposal incorporates the principals and goals of the General Plan such as Goal CD-2, enhance the character of neighborhoods in northwest Brea and CD-9, create a dynamic, mixed use urban village that integrates a range of housing types (including Lofts and Townhomes), new commercial uses, and a Park.

c. Finding: The subject site is physically suitable for the type and proposed density of development.

Fact: Site 1 contains 15.40 acres with an overall proposed density of 29 units to the acre below the maximum density allowed by the General Plan.

d. Finding: The design of the project or its related improvements is not likely to cause serious public health problems.

Fact: All project related improvements are designed in compliance with City standard and by licensed experts for a given trade area.

3. The Planning Commission hereby recommends to the City Council the adoption of a Statement of Overriding Considerations, as set forth within the Final EIR 11-01, and incorporated herein as if set forth in full, for the Project. For the reasons set forth in the Statement of Overriding Considerations, the Planning Commission finds that each overriding benefit of the Project, individually, justifies proceeding with the Project despite the significant and unavoidable impact identified in the Final EIR or alleged to be significant in the records of proceedings. Each benefit of the Project outweighs the Project's significant and unmitigable environmental impact: a contribution to a significant cumulative effect to traffic at the SR-57/Lambert Road interchange.

4. The Planning Commission recommends to the City Council the adoption of a Mitigation and Monitoring Program as set forth within the Final EIR 11-01, which is incorporated herein as if set forth in full, and imposes each mitigation measure as a condition of Project approval.

5. The Planning Commission recommends to the City Council the approval of General Plan Amendment No. GPA 12-01 and Zone Change No. ZC 12-01, as depicted within Exhibit "A" attached hereto, and incorporated herein as if set forth in full.

6. The Planning Commission recommends to the City Council the approval of Development Agreement No. DA 12-01, subject to conditions as set forth in Exhibit "B" attached hereto, and incorporated herein as if set forth in full.

7. The Secretary of this Commission shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED this 24th day of April, 2012.

Chairman, Planning Commission

I, David Crabtree, Secretary to the Planning Commission of the City of Brea, do hereby certify that the foregoing Resolution was introduced at a regular meeting of the Planning Commission of the City of Brea held on the 24th day of April, 2012, and was finally passed at a regular meeting of the Planning Commission of the City of Brea, held on the 24th day of April, 2012, by the following votes:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:

ATTEST: _____
Secretary, Planning Commission

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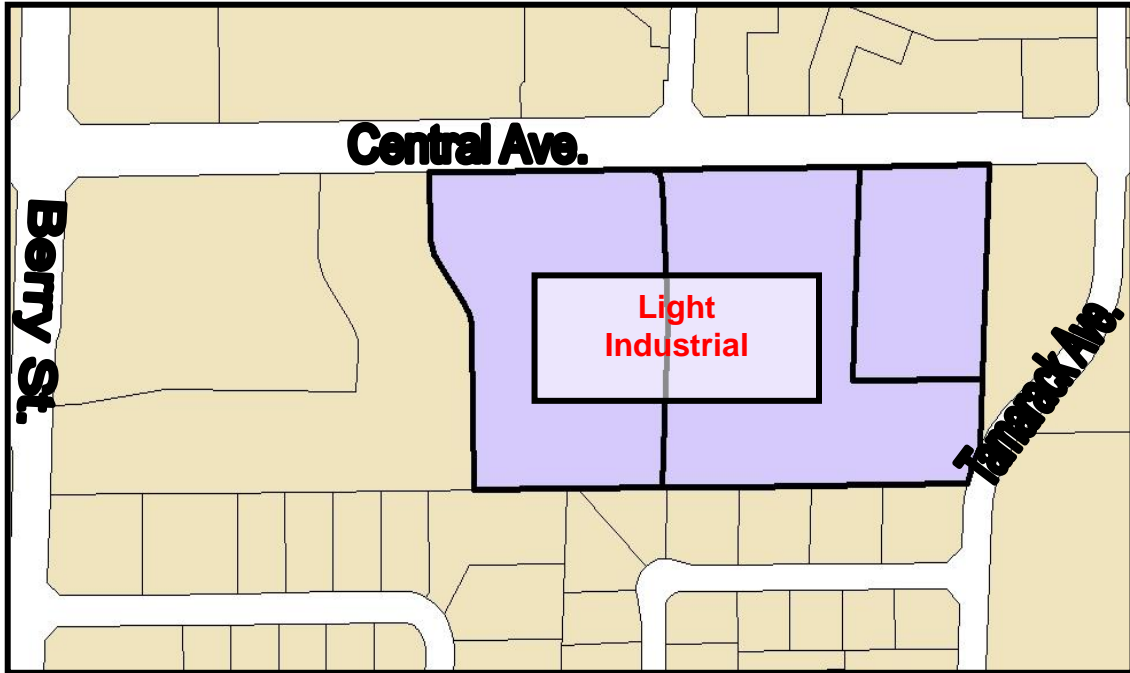
Applicant: Central Park Village Brea

DA 12-01, FEIR 11-01, GPA 12-01, and ZC 12-01

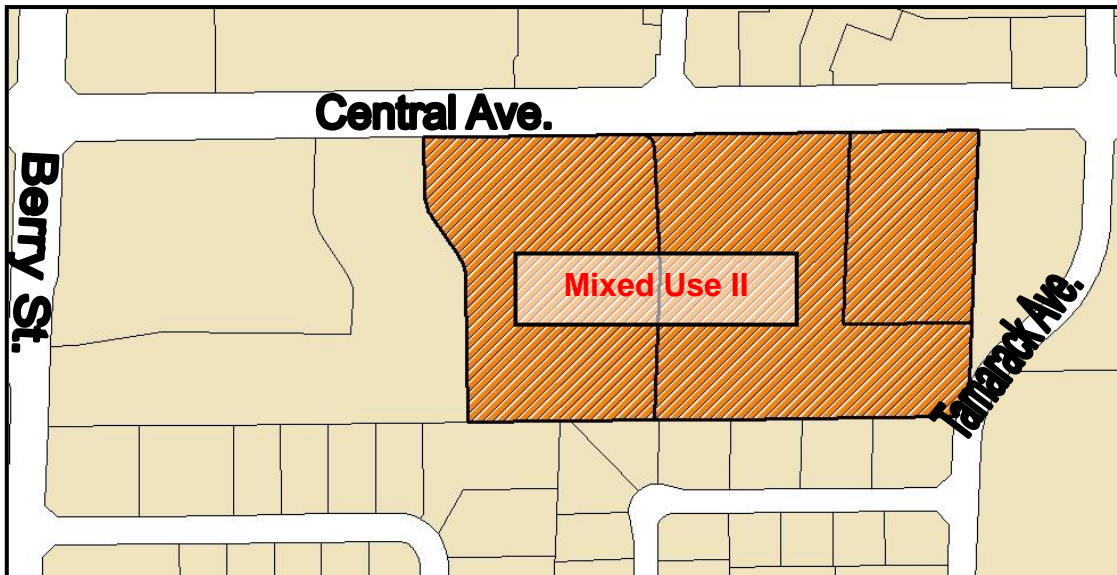
Exhibits:

- A. Maps related to General Plan Amendment No. GPA 12-01 and Zone Change No. ZC 12-01
- B. Draft Development Agreement No. DA 12-01

Exhibit "A"



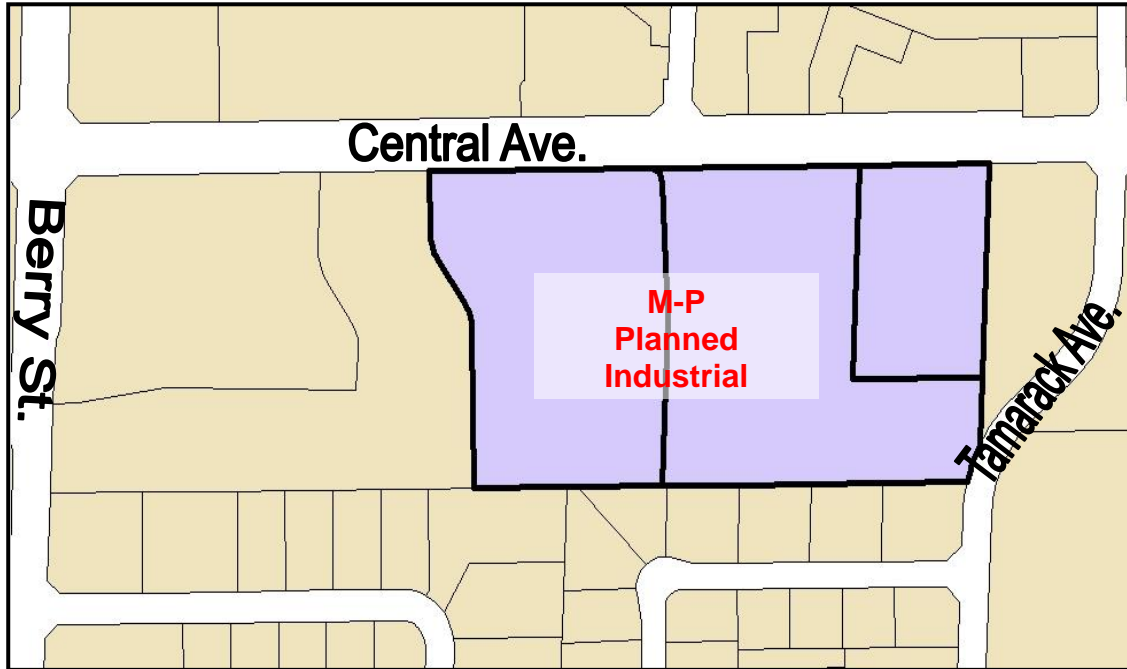
Existing General Plan Land Use Designation



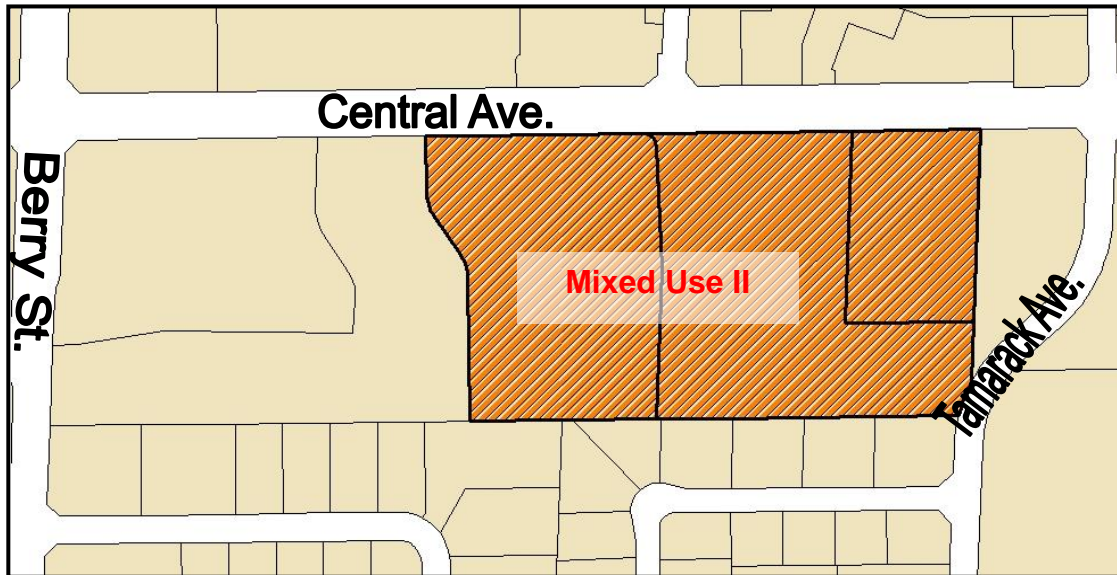
Proposed General Plan Land Use Designation
General Plan Amendment No. GPA 12-01

Exhibit "A"
General Plan Amendment

Exhibit "A"



Existing Zoning Designation



Proposed Zoning Designation
Zone Change No. ZC 12-01

Exhibit "A"
Zone Change

Exhibit B to PC Resolution 12-XX

Recorded at the Request of
And When Recorded Mail To:

Cheryl Balz
City Clerk, City of Brea
Number One Civic Center Circle
Brea, California 92821

**DEVELOPMENT AGREEMENT NO. DA 12-01
CONCERNING PROPERTY KNOWN AS
"Central Park Village Brea" LOCATED IN
BREA, CALIFORNIA**

THIS AGREEMENT is made and entered into as of the "Effective Date" set forth herein by and between Brea Central, LLC, a California limited liability company ("Developer"), and the CITY OF BREA, a municipal corporation organized and existing under the laws of the State of California ("City").

W I T N E S S E T H:

A. Recitals.

(i) California Government Code Sections 65864 et seq. authorize cities to enter into binding development agreements with persons having legal or equitable interest in real property for the development of such property.

(ii) Developer owns that real property located entirely within City, the common and legal description of which is set forth in Exhibit "1" attached hereto and incorporated herein by this reference and hereinafter is referred to as the "Site." Developer intends to construct a mixed-use residential and commercial development (the "Project") on the "Site" as more fully described herein. The Project includes 369 multi-family rental units ("Rental Units"), 83 single-family attached townhomes ("For Sale Units"), 31,000 square feet of commercial use, and 35,000 square feet of medical office use, and a one-acre park privately-owned, but open to the general public, which is to be maintained in perpetuity by Developer (the "Park").

(iii) Developer and City desire to provide through this Development Agreement more specific development controls on the Site which will provide for maximum efficient utilization of the Site in accordance with sound planning principles and in a manner consistent with the General Plan and Zoning Ordinance.

(iv) By electing to enter into this Agreement, City shall bind future members of the City Council of City to the obligations specified herein and further limit the future exercise of certain governmental and proprietary powers of City and members of the City Council.

(v) On _____, City adopted its Ordinance No. _____ (the "Ordinance") thereby approving this Development Agreement with Developer and said Ordinance was effective on _____.

B. AGREEMENT:

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. In this Agreement, unless the context otherwise requires, the following terms shall have the following meaning:

- (a) "**City**" is the City of Brea.
- (b) Community Facilities District ("**CFD**")
- (c) "**Common and Private Outdoor Living Areas**" shall mean the land and the two swimming pools, clubhouse, and related amenities available for use by residents of the Project.
- (d) "**Developer**" means Brea Central, LLC, a California limited liability company.
- (e) "**Effective Date**" shall mean the 31st calendar day following adoption of the Ordinance approving this Agreement by City's City Council and this Development Agreement shall not become effective until General Plan Amendment _____, Zone Change _____ and _____ have all taken effect.
- (f) "**For Sale Units**" shall mean the Project's 83 single-family attached townhomes.
- (g) "**Lambert Ramps**" shall mean the contemplated improvements to the State Route 57 – Lambert Road on- and off-ramps.
- (h) "**Lambert Ramps Fee**" means Developer's fair share, not to exceed 1%, of the cost to improve the Lambert Ramps.
- (i) "**Moderate Units**" shall mean the Units affordable to persons and families of moderate income, as defined in California Health and Safety Code section 50093. With sale prices based on California H & S Code Section 50052.5.
- (j) "**Park**" shall mean the one-acre Park privately-owned but open to the general public, which is to be maintained in perpetuity by Developer.
- (k) "**Park Amenities**" shall mean the following improvements to be included in the Park: as described further in Section 9.(f) of this Development Agreement.

- (l) **"Parks and Recreational Fees"** shall mean the amount of parks and recreational impact fees that Developer is obligated to pay, based upon the Project Composition of 452 multiple-family dwelling units, pursuant to Brea Municipal Code section 18.64.080, as of the Effective Date less any credit received for development of the Park amenities open to the public.
- (m) **"Project"** is that development approved for the Site as provided in this Development Agreement. Specifically, the development shall consist of the improvements generally described on Exhibit "D", attached hereto (the "Project Booklet") and in the Specifications.
- (n) **"Site"** means the property described on Exhibit "1" attached hereto.
- (o) **"Specifications."** The Project Booklet, vesting tentative map, site plan, architectural elevations, floor plans, colors and materials boards/sheets and notebook, Park plan with amenities, project construction phasing, and preliminary grading information, as contained in Exhibit D. The project also includes the records of applications by Developers and the proceedings before the Parks, Recreation and Human Services Commission, Planning Commission and City Council, and all such records and files in these matters are incorporated herein reference as though set forth in full.

2. Recitals. The recitals are part of the agreement between the parties and shall be enforced and enforceable as any other provisions of this Agreement.

3. Interest of Property Owner. Developer warrants and represents that it has full legal right to enter into this Agreement and that the person executing this Agreement on behalf of Developer has been duly authorized to do so.

4. Binding Effect of Agreement. Developer hereby subjects the land described in Exhibit "1" hereto, to the covenants, reservations and restrictions set forth in this Agreement. The City and Developer hereby declare their specific intent that the covenants, reservations and restrictions as set forth hereby shall be deemed covenants running with the land and shall pass to and be binding upon Developer's successors and assigns in title or interest to the Project. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. Without limiting the generality of the foregoing, the development rights and standards set forth in this Agreement shall remain vested and applicable with respect to a given parcel on which improvements are constructed pursuant to this Agreement until the date that is 25 years after the initial final certificate of occupancy is issued for such improvements.

5. Relationship of Parties. It is understood that the contractual relationship between City and Developer is such that Developer is an independent party and is not the agent of City for any

purpose whatsoever and shall not be considered to be the agent of City for any purpose whatsoever.

6. Term and Termination of Agreement.

(a) The term of the Agreement shall commence on the Effective Date and shall expire on a date which is 10 years from the Effective Date.

(b) Upon the sale of a legal parcel upon which the improvements permitted under the Conditions (as hereafter defined) have been completed and a certificate of occupancy allowing lawful occupancy issued (a "C of O"), the owner of such transferred parcel (the "New Owner") shall not be required to comply with any obligations set forth in this Agreement, and upon request of such New Owner or Developer, City shall execute, acknowledge and deliver a recordable instrument releasing such parcel from this Agreement, provided no such release shall affect any rights theretofore vested, including without limitation those described in the last sentence of Section 4.

(c) Upon the completion of all improvements permitted under the Conditions on the portion of the Property owned by a Developer and the issuance of a C of O for all such improvements, this Agreement shall no longer impose further obligations on the owner of such portion of the Property with respect to such portion, and upon request of Developer, City shall execute, acknowledge and deliver a recordable instrument releasing such portion of the Property from this Agreement, provided no such release shall affect any rights theretofore vested, including without limitation those described in the last sentence of Section 4.

7. Assignment. Developer shall have the right to sell, mortgage, hypothecate, assign or transfer its Site to any person or entity at any time during the term of this Development Agreement. Any such transfer shall be deemed to include an assignment of all rights, duties and obligations created by this Development Agreement with respect to the portion of the Site transferred. The assumption of any or all of the obligations of Developer under this Agreement pursuant to any such transfer shall relieve Developer, without any act or concurrence by the City, of its legal duty to perform those obligations except to the extent that such Developer is in default with respect to any and all obligations at the time of the proposed transfer. Developer shall notify City in writing 30 days prior to any transfer of ownership other than individual sales of units, including the name, address, and contact information of assignee.

8. Vested Rights, General Standards and Restrictions Pertaining to Development of the Site. The following specific restrictions shall apply to the use of the Site pursuant to this Development Agreement.

(a) During the term hereof, Developer shall have the vested right to develop the Site in accordance with the terms and conditions attached as Exhibit "2" or incorporated by reference to this Agreement and the Specifications, and City shall have the right to control development of the Site in accordance with the provisions of Exhibit "2" of this Agreement.

9. Effect of City Regulations on Development of Project. Except as expressly provided in this Development Agreement, the Conditions and all substantive and procedural requirements and provisions contained in City's ordinances, rules and regulations, including, but not limited to,

Zoning Ordinance, in effect as of the Effective Date of this Development Agreement, shall apply to the construction and development of the Site.

(a) The provisions of this paragraph shall not preclude the application to the development of the Site those changes in City Ordinances, regulations, plans or specifications which are specifically mandated and required by changes in state or federal laws or regulations provided in California Government Code Section 65869.5 or any successor provision or provisions. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations.

(b) The cost of fees associated with the construction of the Project, including land use approvals, development fees, building permits, etc., shall be no higher than those fees in effect at the Effective Date, and no additional fees or exactions shall be permitted for a period of 5 years from the Effective Date, except for Parks and Recreational Fees, which shall be fixed for the Term of the Development Agreement, as specified in Section 9.(f) of this Agreement. All fees and other requirements associated with Affordable Housing are being met through the provision of the Moderate Income Units as required in California Health and Safety Code Section 50053(b)(4), which consist of 45 multi-family affordable rental units restricted to moderate income for 55 years. If converted to for-sale condos, then 45 units shall be sold to moderate income buyers (with first option to the existing tenants) with a new 45-year "ownership" covenant consistent with the City's Affordable Housing Ordinance, Chapter 20.40 of the Brea City Code. No other fees or exactions shall be charged for Affordable Housing and Developer shall not be responsible for ongoing maintenance of public facilities unless otherwise expressly provided for in this Agreement, notwithstanding the expiration of this Agreement or any part thereof.

(c) City may apply any and all new ordinances, rules, regulations, plans and specifications of general application to the development of the Site after the Effective Date provided such new ordinances, rules, regulations, plans and specifications do not conflict with the terms of this Development Agreement as of the Effective Date. Any regulation whether adopted by initiative or otherwise, imposing a development moratorium or limiting the rate or timing of development of the Project shall be deemed to conflict with the Agreement and shall therefore not be applicable to the development of the Project.

(d) Nothing herein shall prevent the application of health and safety regulations (i.e., fire, building, seismic, plumbing and electric codes) that become applicable to the City as a whole after the Effective Date of this Agreement.

(e) The parties acknowledge that Developer cannot at this time predict when or the rate at which the Project would be developed and they acknowledge that the actual rate of development will depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, interest rates, absorption, completion, availability of financing and other similar factors. Because the California Supreme Court held in

Pardee Construction v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the intent of Developer and City to hereby cure that defect by acknowledging and providing that Developer shall have the right to develop the Property in such order and at such rate and at such times during the Term of this Agreement as Developer deems appropriate within the exercise of its sole business judgment. City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement. This Agreement shall immediately vest the right to develop the Property with the permitted uses of land and the density and intensity of uses set forth in the Project Approvals, subject only to the requirements of the Applicable Rules, the Project Approvals and the Conditions of Approval provided that such vested right shall terminate upon expiration of this Agreement with respect to any development on the Property that has not been commenced pursuant to issued building permits as of such expiration.

(f) City and Developer have agreed that Developer shall receive parks and recreation impact fee credit due to Developer's provision of the Park as detailed within the Specifications and Park Amenities, based upon the following:

(i) City shall determine the amount of the Parks and Recreational Fees that Developer would be obligated to pay, based upon the Project composition of 452 multiple-family dwelling units, pursuant to Brea Municipal Code section 18.64.080, and as further defined within this Development Agreement, as of the Effective Date.

(ii) Developer shall provide the following Park amenities as further defined within the Specifications and Conditions of Approval:

- Interactive Water Play Area (Splash pad)
- Mobility area for seniors
- Fountain Plaza
- Age separated Play Area with ADA surfacing and shade sail structures
- Passive gathering areas
- Walking paths and art display area
- Public signage

(iii) In exchange for the above specific improvements, as depicted within Exhibits and Specifications contained within Exhibit "D", and maintenance thereof; the Park Fee due shall be reduced to \$1,927,291. The parties acknowledge and agree that the estimated cost assumptions for construction improvements provided by the applicant may change but the credit and in-lieu fee due of \$1,927,291 is the final agreed to amount and shall not be subject to further modification.

(g) The Parties acknowledge that in the future Caltrans may include in its State Transportation Improvement Program improvements to the State Route 57 ramps at Lambert Road (the "Lambert Ramps"), and in its updated Nexus Program, the City has included such improvements to the Lambert Ramps. Developer shall pay its fair share for the cost of the improvements through the City's Traffic Nexus Program as of the effective date with no further fees associated with the ramps. The collection of traffic nexus fees shall be in compliance with applicable regulations and subject to review as proscribed in Government Section 66000-66008.

(h) Developer agrees that a Community Facilities District (CFD) will be formed to off-set the cost of services generated from the project (no capital costs). The proceeds received by the City through imposition of the CFD shall be used to pay for public safety services, including law enforcement, fire protection, paramedic services, public works maintenance including the operation and maintenance of storm drains. The CFD shall be formed prior to any conveyance of any development parcel and prior to issuance of a grading permit.

10. Permitted Uses and Special Design Features. Approved land uses shall be consistent with the descriptions provided within the Specifications, Exhibit "D", and provisions of the Mixed Use II zoning district except as further limited by the conditions contained within Exhibit "2".

11. Benefits to City. Developer shall incorporate or contribute the following items, which are public benefits and included as part of the Project:

(a) Provision of ten percent (10%) of the total residential units reserved at the moderate income level.

(b) Provision of the Park, to be maintained in perpetuity by Developer or its various owners association(s), with the amenities meeting the City's goals for underserved needs within existing city parks.

(c) Developer's agreement to meet the City's goal of a fiscally self sufficient development by forming a Community Facility District (CFD) to reimburse City's cost of services required by the development.

(d) Revitalization of the site consistent with local and regional long term goals for mixed use development and to realize an activity node for Northwest Brea as envisioned by the City's General Plan.

(e) Potential for Medical Office facilities for existing and future medical office tenants to serve the needs of the Brea community, specifically the significant senior population with age restricted housing in close proximity to the project.

(f) Inclusion of sustainable design and construction methods at a level higher than Building code requirements. The project's participation in the Build It Green program will assist with local and regional goals for sustainability and energy savings.

(g) Providing for local and regional construction jobs and permanent jobs base within new development.

(h) Supports goals from the 2012 Regional Transportation Plan/Sustainable Community Strategy (RTP/SCS) and 2011 Orange County Sustainable Community Strategy (SCS) by providing infill development of a site currently underutilized with mixed-use development.

(i) By reclassifying the site's General Plan designation to Mixed Use II in concert with its zoning to Mixed Use II provides a 15-acre opportunity site for housing not currently identified in the Housing Element's land inventory. This ensures that 452 housing units will be secured from this site in the next Regional Housing Needs Assessment housing cycle.

12. Obligations of City. In consideration of the benefits to the City arising from the development of the Site and the entering into of this Agreement, the City agrees as follows:

(a) Upon acceptance by the City, the City shall at its sole cost and expense maintain, repair and replace the improvements described on Exhibit "3" so as to keep such improvements in good and safe condition.

(b) With respect to any bonds or similar security (including letters of credit or cash) posted by Developer in connection with the development of the Site in favor of the City, within sixty (60) days after completion or satisfaction of all requirements related to such bonds or other security and the respective Developer's request (or such earlier time as required by law), the City shall cause the release of such bonds.

13. Annual Review. During the term of this Development Agreement, City shall annually review the extent of good faith compliance by Developers with the terms of this Development Agreement in conformance with California Government Code Section 65865.

14. Indemnification. Each Developer agrees to, and shall, hold City and its elected officials, officers, consultants, contractors, agents and employees (collectively "Indemnitees") harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect operations of Developer or those of its contractor, subcontractor, agent, employee or other person acting on its behalf which relate to the construction and operation of the Project. Developer agrees to, and shall, defend Indemnitees with respect to actions for damages caused or alleged to have been caused by reason of such Developer's activities in connection with the Project. This hold harmless provision applies to all damages and claims for damage suffered or alleged to have been suffered by reason of the operations referred to in this Development Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Project and further shall survive the termination of this Agreement and remain a valid and enforceable obligation of such Developer for ten (10) years from the Effective Date.

15. Amendment of Development Agreement.

(a) Procedure. Except as set forth in this Section 15 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure for entering into this Agreement in the first instance and as required by law.

(b) Consent. Except as expressly provided in this Agreement, any amendment to this Agreement shall require the written consent of the City and the owner of the applicable part of the Project. No amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of such parties.

(c) Operating Memoranda. The parties acknowledge that refinements and further development of the Project may demonstrate that changes are appropriate with respect to the details and performance of the parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project Development and with respect to those items covered in the general terms under this Agreement. If and when the parties mutually find that changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, they may, unless otherwise required by law, effectuate such changes, adjustments, or clarifications without amendment to this Agreement as specified in the Project Approvals or through operating memoranda mutually approved by the parties, which, after execution, shall be attached hereto as addenda and become a part hereof, with further approval by City Manager on behalf of the City and by the managing member on behalf of each Developer. Any such changes, adjustments, or clarifications shall in no way violate the intent of any of the standards or conditions of the Development Agreement. Where the City Manager determines that an alteration of such intent would occur as the result of any proposed change, adjustment or clarification, a formal modification, through the public hearing process, of this Agreement shall be required. Unless otherwise required by law or by the Project Approvals, no such changes, adjustments, or clarifications shall require prior notice or hearing.

16. Enforcement. In the event of a default under the provisions of this Agreement by a party, including the non-conformance of any condition of development or operational factor, a non-defaulting party may give written notice to the defaulting party by registered or certified mail addressed at the address stated in this Agreement, and if such violation is not corrected to the reasonable satisfaction of the non-defaulting party within thirty (30) days after such notice is given, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach or default must be commenced) within said thirty (30) days and must thereafter be diligently pursued by the defaulting party), then the non-defaulting party may, without further notice, declare a default under this Agreement and, upon any such declaration of default, the non-defaulting party may bring any action necessary to specifically enforce the obligations of such defaulting party growing out of the operation of this Development Agreement, apply to any court, state or federal for injunctive relief against any violation by such defaulting party of any provision of this Agreement, or apply for such other relief as may be appropriate.

17. Event of Default. A party is in default under this Agreement upon the happening of one or more of the following events or conditions:

(a) If a material warrant, representation or statement made or furnished by such party contained in this Agreement is false or proved to have been false in any material respect when it was made;

(b) With respect to a Developer, if a finding and determination is made by City following an annual review pursuant to Section 13 hereinabove, upon the basis of substantial

evidence, that such Developer has not complied in good faith with any material terms and conditions of this Agreement, after notice and opportunity to cure as described in Section 16 hereinabove; or

(c) A breach by a party of any of the provisions or terms of this Agreement, after notice and opportunity to cure as provided in Section 16 hereinabove.

18. No Waiver of Remedies. A party does not waive any claim of defect in performance by any other party for failure to enforce this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement are available to the parties to pursue in the event that there is a breach of this Development Agreement. No waiver by a party of any breach or default under this Development Agreement shall be deemed to be a waiver of any other subsequent breach hereof or default hereunder.

19. Rights of Lenders Under this Agreement. Should a Developer place or cause to be placed any encumbrance or lien on the Project, or any part thereof, the beneficiary ("Lender") of said encumbrance or lien shall have the right at any time during the term of this Agreement and the existence of said encumbrance or lien to:

(a) Do any act or thing required of the applicable Developer under this Agreement, and any such act or thing done or performed by Lender shall be as effective as if done by such Developer;

(b) Realize on the security afforded by the encumbrance or lien by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the security document evidence the encumbrance or lien (hereinafter referred to as "a trust deed");

(c) Transfer, convey or assign the title of such Developer to the Project to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in a trust deed; and

(d) Acquire and succeed to the interest of such Developer by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to a court order or pursuant to a power of sale contained in a trust deed.

20. Notice to Lender. City shall give written notice of any default or breach under this Agreement by a Developer to Lender (if known by City) and afford Lender the opportunity after service of the notice to:

(a) Cure the breach or default within thirty (30) days after service of said notice, where the default can be cured by the payment of money; or

(b) Cure the breach or default in such reasonable time as may be required where something other than payment of money is required to cure the breach or default, provided that acts to cure the breach or default are commenced within a thirty (30) day period after service of said notice of default on Lender by City and are thereafter diligently continued by Lender.

21. Action by Lender. Notwithstanding any other provision of this Agreement, a Lender may forestall any action by City for a breach or default under the terms of this Agreement by a Developer by commencing proceedings to foreclose its encumbrance or lien on the Project or portion thereof. The proceedings so commenced may be for foreclosure of the encumbrance by order of court or for foreclosure of the encumbrance under a power of sale contained in the instrument creating the encumbrance or lien. The proceedings shall not, however, forestall any such action by the City for the default or breach by a Developer unless:

(a) They are commenced within sixty (60) days after service on Lender of the notice described hereinabove;

(b) They are, after having commenced, diligently pursued in the manner required by law to completion; and

(c) Lender keeps and performs all of the terms, covenants and conditions of this Agreement requiring the payment or expenditure of money by such Developer until the foreclosure proceedings are complete or are discharged by redemption, satisfaction or payment.

22. Notice. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized courier services which provides a written receipt of delivery, or by facsimile, to the addresses set forth in this Section 22, with a copy to designated legal counsel. The notices or other communications shall be deemed received and effective upon: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, the date of delivery or refusal to accept delivery indicated in the certified or registered mail receipt; (iii) if given by courier service, on the date of delivery evidenced by the receipt for delivery provided by the courier service; or (iv) if faxed, when sent. Any notice, request, demand, direction or other communication sent by fax must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

For City:

City of Brea
1 Civic Center Circle
Brea, California 92821
Attention: City Manager
Tel: (714) 990-7600
Fax: (714) 990-2258

With a copy to:

Richards, Watson & Gershon
1 Civic Center Circle
P.O. Box 1059
Brea, California 92822-1059
Attention: James L. Markman
Tel: (714) 990-0901
Fax: (714) 990-6230

Developer:

Ernie Rivas
Brea Central, LLC.

500 Newport Center Drive Suite 900
Newport Beach, California 92660

With a copy to:

AllenMatkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, California 92614-7321
Attention: John C. Condas, Esq.
Tel: (949) 553-1313
Fax: (949) 553-8354

Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either Party may from time to time designate in writing as provided in this Section. Notice shall be effective upon the date of personal delivery or, in the case of mailing, on the date of delivery or attempted delivery as shown on the U.S. Postal Service certified mail return receipt.

23. Attorneys' Fees. In any proceedings arising from the enforcement of this Development Agreement or because of an alleged breach or default hereunder, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred during the proceeding as may be fixed within the discretion of the court.

24. Binding Effect. This Agreement shall bind, and the benefits and burdens hereof shall inure to, the respective parties hereto and their legal representatives, executors, administrators, successors and assigns, wherever the context requires or admits. This Agreement supersedes all prior agreements, oral or written about the subject matter hereof, and can be amended only in writing.

25. Applicable Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

26. Partial Invalidity. If any provisions of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

27. Recordation. This Agreement shall, at the expense of Developers, be recorded in the Official Records of the County Recorder of the County of Orange within sixty (60) calendar days following the Effective Date. In the event this Agreement is not executed by all parties and recorded as of the date specified herein, this Agreement shall be null and void.

28. Estoppel Certificates. Any party may at any time deliver written notice to another party requesting an estoppel certificate (the "Estoppel Certificate") stating:

- (a) The Agreement is in full force and effect and is a binding obligation of the parties.
- (b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

(c) No default in the performance of the requesting party's obligations under the Agreement exists, or, if a default does exist, the nature and amount of any default.

A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The City Manager or any person designated by the City Manager may sign the Estoppel Certificate on behalf of the City. Any officer of a Developer may sign on behalf of such Developer. An Estoppel Certificate may be relied on by assignees and mortgagees.

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

29. Authority of City Manager. Any consent, approved or other instrument described in this Agreement may be granted, given or executed by the City Manager or designee on behalf of the City and the City Manager or designee shall be authorized to take any other action on behalf of the City without the need for further authorization from the City Council; provided, however that, notwithstanding the foregoing, the City Manager or designee may, in his or her sole discretion, refer to the City Council any item for which the City Manager or designee has authority to act hereunder.

30. Conflicts of Interest. No director, employee or agent of City shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value, or enter into any business arrangement with any director, employee or agent of a Developer, its affiliates, other than as a representative of a Developer or its affiliates, without prior written notification thereof to such Developer. Any representatives authorized by a Developer may audit any and all records of City for the purpose of determining whether there has been compliance with this provision.

31. Cooperation. Each of the parties shall cooperate with and provided reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

32. Processing. City agrees that it shall accept for processing and use its best efforts to promptly take action on all applications, provided they are in a proper form and acceptable for processing, for discretionary permits, tract or parcel maps, or other land use entitlements for development of the Project in accordance with the provisions of this Agreement. City shall cooperate with Developers in providing expeditious review of any such applications, permits, or land use entitlements and, upon request and payment of any costs and/or extra fees associated therewith by Developer, City shall assign to the Project planner(s), building inspector(s) and/or other staff personnel as required to insure the fast-track processing (at Developer's additional cost and expense) and completion of the Project. In addition, City agrees that continued processing of the plans and specifications for the improvements shall result in changes made to such plans and specifications by Developer to meet City requirements, and such changes made by Developer at the request of City employees shall be deemed approved under this Agreement when approved by the City's Community Development Department.

33. Force Majeure. No party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquake, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years. Any party learning of a force majeure event shall, as soon as reasonable practicable, notify the other party in writing of the occurrence of the event, which notice shall include a statement as to the date on which the force majeure event commenced. Upon the cessation of the force majeure event or its effects which prevented performance hereunder, any party with knowledge of the cessation of the vent shall notify the other party in writing of such cessation, which notice shall include a statement as to the date on which the force majeure event ceased.

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

Dated: _____

"CITY"

THE CITY OF BREA,
a municipal corporation

By: _____
Mayor

Dated: _____

ATTEST:

By: _____
City Clerk

Dated: _____

"DEVELOPER"

BREA CENTRAL, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

Dated: _____

APPROVED AS TO FORM:

_____, City Attorney

By: _____

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "1"

LEGAL DESCRIPTION OF THE SITE

Parcel A:

Parcel 1, in the City of Brea, County of Orange, State of California, as shown on a map filed in book 39, page 35 of parcel maps, in the Office of the County Recorder of said County. Except that portion of said real property lying below a depth of 500 feet from the surface of said land, as reserved in a deed recorded December 29, 1971 in book 9944, page 20 of official records.

Parcel B:

Parcel 2, in the City of Brea, County of Orange, State of California, as shown on a map filed in book 39, page 35 of parcel maps, in the Office of the County Recorder of said County. Except that portion of said real property lying below a depth of 500 feet from the surface of said land, as reserved in a deed recorded January 2, 1973 in book 10497, page 114 of official records.

Parcel C:

Parcel 3, in the City of Brea, County of Orange, State of California, as shown on a map filed in book 70, page 4 of parcel maps, in the Office of the County Recorder of said County. Except that portion of said real property lying below a depth of 500 feet from the surface of said lands, as reserved in a deed recorded May 27, 1975 in book 11412, page 1271 of official records.

Parcel D:

An easement for ingress and egress over the easterly 8.00 feet of Lot 2 of Tract No. 12030, in the City of Brea, County of Orange, State of California, as per map recorded in book 582, pages 42, 43, and 44 of Miscellaneous Maps, in the Office of the County Recorder of said County. Except therefrom the southerly 33.50 feet.

Parcel E:

An easement for ingress and egress over that portion of Lot 2 of Tract No. 12030, in the City of Brea, County of Orange, State of California, as per map recorded in book 582, pages 42, 43, and 44 of Miscellaneous Maps, in the Office of the County Recorder of said County, described as follows:

Commencing at the northeast corner of said Lot 2; thence north 89° 58' 30" west 8.00 feet along the northerly line of said Parcel 2 to the true point of beginning, said point being on the westerly line of Parcel E described above;

Thence continuing north 89° 58' 30" west 7.00 feet along the northerly line to a line parallel with and westerly 15.00 feet from the easterly line of said Lot 2; thence south 0° 01' 30" west 37.00 feet along said parallel line; thence south 10° 40' 12" east 36.78 feet to the beginning of a tangent curve, concave westerly having a radius of 10.00 feet; thence southerly 1.87 feet along said curve through a central angle 10° 41' 42" to a point of cusp in said westerly line; thence north 0° 01' 30" east 75.00 feet along said westerly line to the true point of beginning.

APN: 296-241-04 (Affects: Parcel 1); 296-241-05 (Affects: Parcel 2); and 296-241-03 (Effects: Parcel 3)

EXHIBIT “2”

CONDITIONS OF APPROVAL

1. **Project Plans**: Development shall occur in substantial conformance with the plans and Specifications submitted to the Planning Commission and dated April 24, 2012, and provided for subsequent City Council action, which includes Vesting Tentative Tract Map No. 17389, technical site plan, conceptual architectural elevations, landscape illustrative concepts for the park and associated visual details of the proposal; the Project Booklet and Concept Precise Development Submittal, dated April 24, 2012, includes all of the above details in addition to project specifics related to street configurations, grading, maximum building heights, project entries, perimeter wall details, pedestrian and bike paths of travel, lighting details, and Park amenities; all on file in the Planning Division, the conditions contained herein, and all applicable City regulations.
2. **Mitigation Monitoring and Reporting Program**: All Mitigation Measures contained in the Mitigation Monitoring and Reporting Program from Final Environmental Impact Report No. FEIR 11-01 are incorporated by reference to Development Agreement No. DA No. 12-01.
3. **Digital Set of Plans and Exhibits**: The applicant shall prepare a digital copy (suitable for archival storage) of the plans and specifications noted in Condition 1. This product shall be received by the Brea Planning Division prior to the issuance of any permits for the development.
4. **General Plan Amendment and Zone Change**: This Development Agreement shall not become effective until General Plan Amendment No. 12-01 and Zone Change No. 12-01 and have taken effect.
5. **Utilities, Grading, and Site Improvements**: All conditions from Tentative Tract Map No. 17389 are hereby incorporated by reference. Said conditions shall include provisions for the undergrounding of utility lines along the Central Avenue frontage.
6. **Precise Development Review**: The precise development of Central Park Village is required to submit for review and approval a Precise Development Application (PD) in compliance with the provisions of Section 20.260 of the Brea Zoning Code. The Precise Development review and approval shall be an administrative staff function and shall be based on the contents of the Concept Precise Development Submittal, which shall be subject to modification within this Final PD review. Decisions may be appealed to the Planning Commission consistent with the process contained in Section 20.420 of the Zoning Code. No final grading or building permits related any of this review shall be granted until Precise Development approval is first obtained.

The Precise Development Review shall demonstrate the inclusion of quality design, internally consistent architectural themes, use of upgraded building materials and well executed construction techniques as conceptually conveyed and portrayed for the project

within the descriptions and graphics provided in the Specifications, and the record as a whole, for the Parks, Recreation, Human Services Commission, Planning Commission and City Council actions; and all exhibits and/or attachments to this Development Agreement, to the satisfaction of the Deputy Director/City Planner.

7. Covenants, Conditions, and Restrictions (CC&Rs): CC&Rs for the project shall be provided for the review and approval of the City prior to the issuance of any building permits. CC&Rs shall include provisions for the creation of a Homeowners Association, any sub-associations as necessary, the establishment of private use areas, a definition of what is to be included in the “Common Elements,” a parking management plan (which will include controls for on-site street parking for all uses and proper use of garages for residential vehicle storage), provisions for adequate property maintenance of the common areas, provisions for the installation and maintenance of landscaping, and maintenance of the Art in Public Places and any other additional public art and rules related to the private open space areas and guarantees of public use and any necessary easements for the central park feature. The Developer shall provide the Community Development Department with a copy of the recorded CC&Rs within thirty days of final recordation.
8. Community Facility District: The Developer shall enter into necessary agreements with the City of Brea establishing a Community Facility District to address impacts to public services, prior to the sale of any portion of the project established through Vesting Tentative Tract Map 17389 and prior to issuance of a grading permit.
9. Landscaped Medians: Developer shall provide for landscaped medians for Central Avenue corresponding to the adjacency of the project site with specifications subject to the review and approval of the Public Works Director.
10. Park: The Central Park Village project’s “Park” feature shall be privately owned and maintained but shall remain open and available for use to the general public and project residents. Developer shall record a restrictive covenant, subject to the review and approval of the City that requires the Park to be available to the general public in perpetuity, notwithstanding any future City approval for alternate use. A Park construction plans and details submittal, consistent with the plans, features, and descriptions contained in the Specifications, and the record as a whole, shall be provided to the City for review and approval prior to the issuance of any residential building permit. All Park features shall be constructed and the Park opened for public use prior to the issuance of the 225th residential building permit. The Park construction plans and details submittal shall include, but shall not be limited to, the following information:
 - a) Detailed construction elements for the interactive water play area (i.e. Splash Pad). Said area shall be approximately 1400 square feet in size and shall contain features described to the PRHS Commission on March 27, 2012, such as multiple water spouting animal structures, a raining tree feature, stone wall with arching water spouts, pass-thru crawling tube with dripping water, and slip resistant surfacing, etc.

- b)** Detailed construction elements for the age-separated “sculptural tot lot” play area. Said area shall be provided with recreational play equipment, ADA rubber surfacing, and “shade-sail” features.
- c)** Detailed landscape and hardscape plans implementing the vision expressed and conveyed within the Specifications for the “Brea, California Interpretive Garden” and senior retreat passive area, informal open turf play area, pathways, sculpted turf mounding, fountain plaza amenity, drinking fountain(s), seat walls, and park furnishings and ADA accessibility details.
- d)** Park hours shall be posted and shall be consistent with City parks and open not less than dawn to dusk but may be open longer if proper lighting is installed. Maintenance of the Park shall be consistent with City park maintenance standards and City has the right to inspect the Park at any time and provide a checklist of maintenance items to bring the Park into conformance with industry standards for City park maintenance, which shall be remedied by the Developer/HOA. Public Works staff will provide the PRHSC an annual update regarding the status of the maintenance condition of the Park and other details of this Condition 10. The interactive water play area shall be open and operational within the months of March through October, seven days a week, weather permitting.
- e)** Free parking without time limitations, other than normal towing notification and management considerations for illegal use (e.g. long term park/ride commuter preclusions), shall be available in the adjacent surface parking area and in the two parking structures. A minimum of 50 stalls, within the closest proximity to the Park, shall be unreserved and available for general public and other general project uses.
- f)** A detailed signage and identification program for the Park. Goals for the program shall include identification to the general public (e.g. Central Ave signage) of the Park location and parking and its availability as a facility available for public use. Signage identifying publicly available restrooms shall be provided within the Park.
- g)** Provisions for the availability of the Park for City programming needs up to four (4) events per year shall be provided. A draft coordination process, providing relevant details of envisioned uses, dates, hours, etc. shall be provided by the Developer as a component of the Park construction plans and details submittal.
- h)** This Condition shall be incorporated into all Codes, Covenants, and Restrictions (CC&Rs) for the property and identifying the Homeowners Association(s) at Central Park Village for responsibility for compliance. If not included in its entirety, then reference to the Condition shall be provided. This Condition is further applicable to Developer and HOA’s concurrently as they may exist.

11. Sustainable Design Strategy: The project shall comply with the minimum mandatory requirements of the 2010 California Green Building Code, and all mitigation measures adopted for the project.

The Sustainable Design Strategy may be modified to include equivalent strategies for Greenhouse Gas (GHG) emissions and energy reductions, including but not limited to, measures within the California Green Building Code voluntary Tier I or Tier II requirements, subject to the review and approval of the City Planner. Alternatively, the Developer may obtain certification from the “BuildItGreen” program, and comply with the final Sustainable Design Strategy, as contained within its project application, dated April 5, 2010. Any proposed alternatives shall be demonstrated to be as or more effective in their energy savings and subsequent reduction to GHG emissions as the prescribed mitigation measures for the project, to the satisfaction of the City Planner.

12. Affordable Housing: The developer shall enter into an Affordable Housing Agreement with the City prior to the issuance of building permits. Said Agreement shall implement the terms of affordable housing as contained in section 9(b) of the Development Agreement. Said agreement shall additionally address the conversion of any for rent units to for sale and provisions to retain affordability protections for such unit conversions.

13. Universal Design: The project is required to utilize Universal Design features for residential units. These features include physical improvements that make a dwelling unit more accessible to older or physically challenged tenants. The goal of this condition shall be to provide for as many universal design features as possible as contained and described within the City’s Universal Design checklist. The applicant shall provide details prior to the issuance of a Building Permit on the specific Universal Design features incorporated in the project with the final set of working drawings.

14. Permitted Uses: The provisions of Mixed Use II of Chapter 20.258, Mixed Use Zoning District, shall govern land use activities for the property. In addition, the follow provisions shall also apply:

- A. Commercial: A total of 66,000 square feet of commercial space is permitted in the project. Within this cap a maximum of 35,000 square feet is designated as medical office space. The medical office component of the project shall be limited to such uses while a marketing program to secure such tenants is implemented. During this marketing period developer shall use best efforts to solicit and secure medical tenants for the building. Details regarding the marketing and solicitation for such tenancy shall be provided to the City and shall be implemented to the satisfaction of the Community Development Director (CDD). Should the developer be unable to secure such tenancy after implementing the marketing and solicitation plan uses may be expanded to include general administrative office uses and other allowable uses consistent with Chapter 20.258, Mixed Use II, Mixed Use Zoning District, subject to the review and approval of the CDD. Said review by the CDD shall consider the implementation efforts for securing medical tenancing and must conclude that earnest efforts have been implemented prior to converting to alternate uses.

- B. Urgent Care Facility: The developer shall reserve a minimum 5,000 square feet of commercial floor area and shall solicit and secure a Medical Urgent Care facility for this space within the project. Details regarding the marketing and solicitation for such tenancy shall be provided to the City and shall be implemented to the satisfaction of the Community Development Director (CDD). Should the developer be unable to secure such tenancy after implementing the marketing and solicitation plan to the satisfaction of the CDD, an alternate use of this square footage may be considered by the Planning Commission, any such use to be consistent with allowed uses of the Mixed Use II, Mixed Use Zoning District.
 - C. Restaurant/Specialty Food uses: A total not to exceed 12,500 square feet of remaining 31,000 square feet of commercial space shall be dedicated to dine-in restaurants, restaurants with outdoor dining, or specialty food establishments consistent with the KOA parking study and as defined by the definitions of the Mixed Use Zone.
 - D. Residential Use: A maximum of 452 residential units may be provided. It is envisioned that 83 of these units will be for sale townhomes and 369 of these units (lofts) will be rental apartments. All units may be offered for either sale or rent.
15. Parking: The minimum parking supply provided for the project shall be consistent with the details contained in the plans and specifications, including the provisions and recommendations of the parking analysis prepared by KOA, dated November 30, 2010. The following additional requirements shall apply:
- a. A Parking Management Plan (PMP) shall be prepared by the developer and provided for the review and approval of the Deputy Director/City Planner prior to the issuance of any project occupancy permits. Said PMP shall address the use of all on-site parking and shall incorporate management strategies to maximize the use of available parking (i.e. timed parking limitations and transition from a day time use of the medical office building to off-peak use by commercial and residential tenants and availability of parking for Park users). Said plan shall require all townhome units to maintain individual private garages available for two-car parking and shall also identify a process and central contact to address and resolve any on-site parking discrepancies or issues in a timely fashion. A key goal of the PMP shall be to prevent off-site parking impacts to adjacent property owners.
 - b. Any parking stalls within the two parking structures which are designated for exclusive commercial or commercial and residential combined use shall be a minimum 9' X 19' size with a minimum drive aisle width of 26'. No compact stalls shall be permitted. Any parking stalls within the two parking structures which are designated for exclusive residential use only may be a minimum 8'6" X 19' size with a minimum drive aisle width of 26 feet. Column placement must be adjusted to be away from the front/entry area of these residential stalls.

16. Landscaping: Developer shall provide a detailed final landscaping and full coverage irrigation plan subject to the review and approval of the Deputy Director/City Planner prior to the issuance of any building permits. Approved landscaping and irrigation shall be installed prior to occupancy for each phase of construction. All landscaping and irrigation shall comply with the provisions of the City's Water Efficient Landscape Ordinance No.1134. The final landscaping and irrigation plans shall be in accordance with the final site and grading plans and shall address the following additional considerations:
- a. Screening quality landscape treatments shall be incorporated along the southern property line adjacent to the adjoining industrial park development in order to provide a visual buffer.
 - b. Plans shall provide for an appropriate mix of larger, specimen sized, trees at initial planting, to the satisfaction of the City Planner.
 - c. Include provisions for an interim landscaping and maintenance plan for unutilized areas of the site during each phase of construction or if project implementation is significantly delayed.

All landscaped areas shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Unhealthy, dead or damaged plant materials shall be removed and replaced within thirty (30) days following written notice from the Community Development Director.

17. Common and Private Outdoor Living Areas for residential units: Public outdoor living areas for the 452 units shall be provided in the form of the pool/spa, residential courtyard, and paseo areas as labeled 7, 8, 9, and 10 on sheet L-1 of the Project Booklet. These common residential outdoor living spaces shall be shared by all the units within the development and are for resident use only. Additionally, outdoor living space shall be provided in the form of yard, patio, or balcony for each of the residential units developed at the project. Size specification and amenities for these common and private outdoor living areas shall be as depicted within the plan package for the Precise Development in keeping with the code requirements for open space of the Mixed Use II criteria.
18. Mailboxes: Final mailbox designs and locations shall be reviewed and approved by the Planning Division and United States Postal Service.
19. Trash and Storage: All trash storage including bins, containers or trash, shall be shielded from view within a building garage or enclosed by decorative masonry wall(s) a minimum six (6) feet in height with metal gate. The design of enclosures shall be in a manner consistent with the architecture used for the buildings and shall require a separate review as part of the Precise Development review with approval by the Deputy Director/City Planner, Public Works Department (Maintenance Division), and Brea Disposal prior to any installation.

20. Master Lighting Plan: The Developer shall provide a master exterior lighting plan for all public and landscape areas, including light fixture design details and photometric plan, for the review and approval of the Deputy Director/City Planner prior to the issuance of building permits. All public and landscape area lighting shall be on a time sensor or movement system.
21. Sign Program: The developer shall provide a detailed sign program subject to the review and approval of the Deputy Director/City Planner prior to the approval of any individual sign installation permit. Said program shall include pertinent details regarding residential entry signage, although the primary focus of the sign program shall be all aspects of signage related to the commercial center and medical office building. Said program shall define the maximum sign area, letter sizes, locations, number, and associated details for all on-site signs. Deviations from the signage criteria of the zoning ordinance may be considered within the Sign Program, subject to the review and approval of the Deputy Director/City Planner. Signage shall be designed to minimize aesthetic and light and glare impacts to the residential units within and surrounding the project.
22. Fire Master Plan: The Developer shall prepare and submit a separate Fire Master Plan for the review and approval by the Fire Marshal, Fire Prevention Staff, and Building and Safety Manager in the Community Development Department. This plan shall convey all fire and life safety details and include final plans for roadway and fire access, necessary water requirements and supply, backflow fire connection plans, conditions for the project, signage and street markings, and other related items as necessary by the Fire Department.
23. Encroachment into Easements: The Developer shall be responsible for securing the required encroachment permits or licenses for installation of any structures, piping and landscaping in easements of record on this Project. Said approval from easement holders will be required by the City Engineer prior to the issuance of any permits.
24. Wall & Fencing Plan: A final master wall and fencing plan shall be provided for the review and approval of the Deputy Director/City Planner prior to the issuance of building permits. Plans shall include provisions for temporary fencing and screening or interim landscaping for the areas of project not under construction during each project phase. Said plan shall provide design details and locations for all walls and fences. All walls shall be of a decorative masonry construction with appropriate capstones and columns.
25. Art in Public Places Program: The developer shall be responsible for meeting Brea's Art in Public Places requirement per the *Art in Public Places Policy Manual* and Ordinance in place at the time of project approvals. The developer's selected art piece shall be submitted for Community Services Department processing prior to the issuance of the any building permits for the project. In the event that the art piece is destroyed, damaged beyond repair, stolen or otherwise removed from the site, the owner(s) shall be required to replace the art piece with a new work of art. The allocation for new (replacement) art work shall be calculated at 1% of the total building valuation as calculated by the ICBO at the time the art work is replaced. The new (replacement) artwork shall be subject to the

requirements of Brea's *Art in Public Places Policy Manual* and Ordinance in effect at the time the art work is replaced.

26. Fees: The Developer shall pay any and all fees (less Park credit in section 9.f) due prior to the issuance of any building permits pursuant to each phase of development.
27. Housing Opportunity: The developer shall recognize and acknowledge that the City of Brea has a primary interest in ensuring that the residents of Brea are fully advised of the housing opportunity presented by the project and agrees to take actions and specific marketing outreach that ensure that such notice is expressly provided to Brea residents and those employed in Brea.
28. Relationship to the Zoning Ordinance: This Development Agreement augments the development regulations and standards of the Brea Zoning Ordinance. When an issue, condition, or situation occurs which is not covered or provided for in this Development Agreement, the regulations of the Zoning Ordinance that are most applicable to the issue, condition, or situation shall apply. In the event that the provisions of the Development Agreement are in conflict with the Zoning Ordinance, the conditions of the Development Agreement shall prevail. Words, phrases, and terms not specifically defined herein shall have the same definition as provided in the Brea Zoning Ordinance.
29. Conformance: The Community Development Director or designee shall review and approve any and all proposed structures for substantial conformance with the Plans and Specifications and standards and conditions set forth herein.
30. Interpretation: The Community Development Director or designee shall have the responsibility to interpret the provisions of these Development Agreement standards and regulations. Any property owner within the project that is aggrieved by such an interpretation may request that such interpretation be reviewed by the Planning Commission.
31. Hold Harmless: The property owner or owners and any and all successors in interest of the real property subject to this condition shall hereby agree to indemnify, protect, hold harmless, and defend the City with legal counsel of the City's own selection from any and all claims, actions, awards, judgments, or proceedings against the City to attack, set aside, annul, or seek monetary damages resulting, directly or indirectly, from any action in furtherance of an the approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board or legislative body including actions approved by the voters of the City, concerning the Project. The City shall be deemed for the purposes of this condition, to include any agency or instrumentality thereof, or any of its elected or appointed officials, officers, employees, consultants, contractors, legal counsel, and agents. City shall promptly notify the applicant and owner or owners of the real property of any claim, action, or proceeding to which this condition is applicable, and shall cooperate in the defense of the action. The City expressly reserves the right to take any and all actions the City deems to be in the best interest of the City and its citizens in regards to such defense.

EXHIBIT “3”

PROJECT IMPROVEMENTS TO BE MAINTAINED BY CITY

1. Public improvements within Central Avenue including street lights, traffic signals, sidewalks and medians.
2. The domestic water mains and services up to and including the water meters.
3. Storm Drains within Central and Tamarack Avenue.
4. Mainline sewers within Central and Tamarack Avenues.