

Appendix B2
Platinum Triangle Standardized Development Agreement Form – Office District

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City Council
City of Anaheim
c/o City Clerk
P.O. Box 3222
Anaheim, California 92805

(Space Above Line For Recorder's Use)

DEVELOPMENT AGREEMENT NO. _____
BETWEEN
THE CITY OF ANAHEIM
AND

Appendix B2
Platinum Triangle Standardized Development Agreement Form
Office District

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AND

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DEVELOPMENT AGREEMENT NO.
BETWEEN
THE CITY OF ANAHEIM
AND

This Development Agreement is entered into this ____ day of _____, 20__, by and between the City of Anaheim, a charter city and municipal corporation, duly organized and existing under the Constitution and laws of the State of California (hereinafter "CITY") and _____ (referred to herein as "OWNER"), pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division 1 of Title 7, Sections 65864 through 65869.5 of the California Government Code (the "Development Agreement Statute").

RECITALS

This Development Agreement is predicated upon the following facts:

A. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute, Sections 65864, *et seq.*, of the Government Code. The Development Agreement Statute authorizes CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to, among other things: encourage and provide for the development of public facilities in order to support development projects; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in project costs and encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; provide assurance to the applicants of development projects (1) that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to the conditions of approval of such projects and provisions of such development agreements, and (2) encourage private participation in comprehensive planning and reduce the private and public economic costs of development.

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

C. On May 25, 2004, the Anaheim City Council approved General Plan Amendment No. 2004-00419 setting forth the CITY's vision for development of the City of Anaheim, and certified Final Environmental Impact Report No. 330, adopting Findings of Fact and a Statement of Overriding Considerations, and associated Mitigation Monitoring Plans ("FEIR No. 330"), in conjunction with its consideration and approval of General Plan Amendment No. 2004-00419, amendment of the Zoning Code, and a series of related actions.

D. CITY desires that the approximately 820-acre area generally bounded by the Santa Ana River on the east, the Anaheim City limits on the south, the Santa Ana Freeway (Interstate 5) on the west, and the Southern California Edison Company Easement on the north (hereinafter called the "Platinum Triangle") be developed as a combination of high quality industrial, office, commercial and residential uses, as envisioned in the General Plan Amendment.

E. In order to carry out the goals and policies of the General Plan for the Platinum Triangle, on May 25, 2004, the City Council approved the Platinum Triangle Master Land Use Plan, setting forth the new vision for the Platinum Triangle.

F. To further implement the goals and policies of the General Plan for the Platinum Triangle, the City Council has established the Platinum Triangle Mixed-Use (PTMU) Overlay Zone (hereinafter the "PTMU Overlay Zone") consisting of approximately three hundred and eighty-three acres within the Platinum Triangle as depicted in the Platinum Triangle Master Land Use Plan to provide opportunities for high quality well-designed development projects that could be stand-alone projects or combine residential with non-residential uses including office, retail, business services, personal services, public spaces and uses, and other community amenities within the area.

G. On October 25, 2005, the Anaheim City Council certified Final Subsequent Environmental Impact Report No. 332, adopting a Statement of Findings of Fact, a Statement of Overriding Considerations and the updated and modified Mitigation Monitoring Program No. 106A ("FSEIR No. 332") to provide for the implementation of the Platinum Triangle Master Land Use Plan, and in conjunction with its consideration and approval of General Plan Amendment No. 2004-00420, Miscellaneous Case No. 2005-00089, Zoning Code Amendment No. 2004-00036 and a series of related actions.

H. On October 26, 2010, the Anaheim City Council adopted General Plan Amendment No. 2008-00471 and approved an amendment to the Platinum Triangle Master Land Use Plan (Miscellaneous Case No. 2007-00188) and certified EIR No. 2008-00339, to increase the maximum number of dwelling units permitted in the PTMU Overlay Zone to 18,909 dwelling units, increase the maximum number of commercial square footage to 4,909,682, increase the maximum number of office square footage to 14,340,522 and add 1,500,000 square feet of square footage of institutional land uses.

I. OWNER represents that it owns in fee approximately _____ acres of real property located at _____, in the City of Anaheim, County of Orange (hereinafter "County"), State of California, (hereinafter collectively called the "Property") in the Platinum Triangle and zoned PTMU Overlay and more particularly shown and described on Exhibit "A" attached hereto and made a part hereof by this reference.

J. OWNER desires to develop the Property in accordance with the provisions of this Development Agreement by developing a _____, all as more particularly set forth in the Final Site Plan (hereinafter collectively referred to as the "Project").

K. CITY desires to accomplish the goals and objectives set forth in the CITY's General Plan and the objectives for the PTMU Overlay Zone as set forth in subsection 18.20.010.020 of the Anaheim Municipal Code, and finds that the Project will accomplish said goals and objectives.

L. Pursuant to the Final Site Plan, OWNER will submit tentative maps and/or vesting tentative maps, if required. OWNER further anticipates the submission of detailed construction plans and other documentation required by CITY in order for the OWNER to obtain its building permits.

M. As consideration for the benefits gained from the vested rights acquired pursuant to the Development Agreement Statute, to conform with the requirements of the PTMU Overlay Zone, and to comply with the applicable mitigation measures imposed by Updated and Modified Mitigation Monitoring Program No. 106 C and Mitigation Monitoring Plan No. ____ for the Project, CITY is requiring that OWNER construct and install certain public improvements, including off-site traffic circulation improvements, and provide other public benefits.

N. In order to avoid any misunderstandings or disputes which may arise from time to time between OWNER and CITY concerning the proposed development of the Project and to assure each party of the intention of the other as to the processing of any land use entitlements which now or hereafter may be required for such development, the parties believe it is desirable to set forth their intentions and understandings in this Development Agreement. In order for both CITY and OWNER to achieve their respective objectives, it is imperative that each be as certain as possible that OWNER will develop and that CITY will permit OWNER to develop the Project and public improvements as approved by CITY within the time periods provided in this Development Agreement.

O. CITY, as a charter city, has enacted Ordinance No. 4377 on November 23, 1982, which makes CITY subject to the Development Agreement Statute. Pursuant to Section 65865 of the Development Agreement Statute, CITY adopted Resolution No. 82R-565 (the "Procedures Resolution") on November 23, 1982. The Procedures Resolution establishes procedures and requirements for the consideration of development agreements upon receipt of an application.

P. On _____, 20____, as required by Section 1.0 of the Procedures Resolution, OWNER submitted to the Planning Department an application for approval of a development agreement (hereinafter called the "Application"). The Application included a proposed development agreement (the "Proposed Development Agreement").

Q. On _____, 20____, as required by Section 65867 of the Development Agreement Statute and Section 2.1 of the Procedures Resolution, the Planning Director gave public notice of the City Planning Commission's intention to consider a recommendation to the City Council regarding adoption of a development agreement.

R. On _____, 20____, as required by Section 65867 of the Development Agreement Statute and Section 2.2 of the Procedures Resolution, the City Planning Commission held a public hearing on the Application.

S. On that date, the City Planning Commission, after considering the requirements of CEQA, including Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, found and determined and recommended that the City Council find that previously-certified FSEIR No. 339, together with the Updated and Modified Mitigation Monitoring Program No. 106C for the Platinum Triangle, and Mitigation Monitoring Plan No. _____, are adequate to serve as the required environmental documentation for this Development Agreement, and related Project Actions, and satisfy all of the requirements of CEQA, and that no further environmental documentation need be prepared for this Development Agreement.

T. The Planning Commission further found that the Development Agreement meets the following standards set forth in Section 2.3 of the Procedures Resolution, to wit, that the Proposed Project: (i) is consistent with the CITY's existing General Plan, (ii) is compatible with the uses authorized in and the regulations prescribed for the applicable zoning district, (iii) is compatible with the orderly development of property in the surrounding area, and (iv) is not otherwise detrimental to the health, safety and general welfare of the citizens of CITY. Based upon the aforesaid findings, the City Planning Commission recommended that the City Council approve the Application and this Development Agreement pursuant to Resolution No. PC _____.

U. On _____, 20____, as required by Section 65867 of the Development Agreement Statute and Section 3.1 of the Procedures Resolution, the City Clerk caused public notice to be given of the City Council's intention to consider adoption of a development agreement.

V. On _____, 20____, as required by Section 65867 of the Development Agreement Statute and Section 3.2 of the Procedures Resolution, the City Council held a public hearing on the Application.

W. On that date, the City Council, after considering the requirements of CEQA, including Section 21166 of the California Public Resources Code and Section 15162 of the CEQA Guidelines, did find and determined that previously-certified FSEIR No. 339, together with the Updated and Modified Mitigation Monitoring Program No. 106C for the Platinum Triangle, and Mitigation Monitoring Plan No. _____, are adequate to serve as the required environmental documentation for this Development Agreement, and related Project Actions, and satisfies all of the requirements of CEQA, and that no further environmental documentation need be prepared for this Development Agreement.

X. On _____, 20____, the City Council did find and determined that this Development Agreement: (i) is consistent with the CITY's existing General Plan; (ii) is not otherwise detrimental to the health, safety and general welfare of the citizens of CITY; (iii) is entered into pursuant to and constitutes a present exercise of the CITY's police power; and (iv) is

entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Statute and the Procedures Resolution.

Y. In preparing and adopting the General Plan and in granting the Development Approvals, CITY considered the health, safety and general welfare of the residents of CITY and prepared in this regard an extensive environmental impact report and other studies. Without limiting the generality of the foregoing, in preparing and adopting the General Plan and in granting the Development Approvals, the City Council carefully considered and determined the projected needs (taking into consideration the planned development of the Project and all other areas within the CITY) for water service, sewer service, storm drains, electrical facilities, traffic/circulation infrastructure, police and fire services, paramedic and similar improvements, facilities and services within the Platinum Triangle, and the appropriateness of the density and intensity of the development comprising the Project and the needs of the CITY and surrounding areas for other infrastructure.

Z. On _____, 20____, the City Council adopted the Authorizing Ordinance approving and authorizing the execution of this Development Agreement.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, as it applies to CITY, and pursuant to the Enabling Ordinance, the Procedures Resolution and the CITY's inherent powers as a charter city, and pursuant to the mutual promises and covenants herein contained, the parties hereto agree as follows:

Section 1. DEFINITIONS.

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

1.1 Assessment District. "Assessment District" for purposes of this Development Agreement means a special district, assessment district or benefit area existing pursuant to State law or the charter powers of the CITY for purposes of financing the cost of public improvements, facilities, services and/or public facilities fees within a distinct geographic area of the CITY.

1.2 Authorizing Ordinance. The "Authorizing Ordinance" means Ordinance No. _____ approving this Development Agreement.

1.3 CITY. The "CITY" means the City of Anaheim, a charter city and municipal corporation, duly organized and existing under its charter and the Constitution and laws of the State of California.

1.4 Development. "Development" means the improvement of the Property for purposes of effecting the structures, improvements and facilities comprising the Project, including, without limitation: grading, the construction of infrastructure and public facilities related to the Project

whether located within or outside the Property; the construction of structures and buildings and the installation of landscaping.

1.5 Development Agreement. "Development Agreement" means this Development Agreement and any subsequent amendments to this Development Agreement which have been made in compliance with the provisions of this Development Agreement, the Development Agreement Statute, the Enabling Ordinance, and the Procedures Resolution.

1.6 Development Agreement Date. The "Development Agreement Date" means the later of (i) the date of recordation in the office of the County Recorder of this Development Agreement, or a memorandum thereof, or (ii) the effective date of the Authorizing Ordinance.

1.7 Development Agreement Statute. The "Development Agreement Statute" means Sections 65864 through 65869.5 of the California Government Code as it exists on the Development Agreement Date.

1.8 Development Approvals. "Development Approvals" means the Final Site Plan and all site specific plans, maps, permits and other entitlements to use, of every kind and nature, contemplated by the Final Site Plan which are approved or granted by CITY in connection with development of the Property, including, but not limited to: site plans (including Final Site Plans), tentative and final subdivision maps, vesting tentative maps, variances, conditional use permits and grading, building and other similar permits. To the extent any of such site plans, maps, permits and other entitlements to use are amended from time to time, "Development Approvals" shall include, if OWNER and CITY agree in writing, such matters as so amended. If this Development Agreement is required by law to be amended in order for "Development Approvals" to include any such amendments, "Development Approvals" shall not include such amendments unless and until this Development Agreement is so amended.

1.9 Enabling Ordinance. The "Enabling Ordinance" means Ordinance No. 4377 enacted by the CITY on November 23, 1982.

1.10 Existing Land Use Regulations. "Existing Land Use Regulations" mean the ordinances and regulations adopted by the City of Anaheim in effect on the Effective Date, including the adopting ordinances and regulations that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the Zoning Code, the Platinum Triangle Master Land Use Plan, Mitigation Monitoring Program No. 106C and Mitigation Monitoring Plan No. _____, and all other ordinances of the City establishing subdivision standards, park regulations, impact or development fees and building and improvement standards, but only to the extent the Zoning Code and such other regulations are not inconsistent with this Development Agreement. Existing Land Use Regulations do not include a non-land use regulation, including taxes.

1.11 Final Site Plan. The "Final Site Plan" means the Project as described in this Development Agreement and conditions with respect thereto, as set forth as Exhibit "B" attached hereto and made a part hereof by this reference.

1.12 Gross Floor Area/GFA. "Gross Floor Area" or "GFA" means the gross floor area of any buildings which are part of the Permitted Development.

1.13 Interim Development Fees. "Interim Development Fees" are the fees imposed within the Platinum Triangle pending adoption of permanent fee programs by the City as set forth in Paragraph 12.2 of this Agreement.

1.14 Mortgage. "Mortgage" means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security.

1.15 Mortgagee. "Mortgagee" means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

1.16 OWNER. "OWNER" is _____, and any person or entity with which or into which _____ may merge, and any person or entity who may acquire substantially all of the assets of _____, and any person or entity who receives any of the rights or obligations of under this Development Agreement in accordance with the provisions of Section 27 (Assignment) of this Development Agreement.

1.17 Parking Areas. The "Parking Areas" means all parking structure(s), and/or all surface parking servicing the Project.

1.18 Permitted Development. "Permitted Development" includes all buildings and other development, such as, the Parking Areas as identified in Section 6 of this Development Agreement, and as further set forth in the Final Site Plan. This Development Agreement establishes maximum and minimum characteristics for all Permitted Development as set forth in the Final Site Plan.

1.19 Platinum Triangle. "Platinum Triangle" means that portion of the City of Anaheim generally bounded on the east by the Santa Ana River, on the south by the Anaheim city limits, on the west by the Santa Ana Freeway, and on the north by the Southern California Edison Easement.

1.20 Procedures Resolution. The "Procedures Resolution" is Resolution No. 82R-565 adopted by CITY pursuant to Section 65865 of the Development Agreement Statute.

1.21 Project. The "Project" means the development project contemplated by the approved Final Site Plan with respect to the Property, including but not limited to on-site and off-site improvements, as such development project is further defined, enhanced or modified pursuant to the provisions of this Development Agreement and the Development Approvals.

1.22 Property. The "Property" means that certain real property shown and described on Exhibit "A" to this Development Agreement.

1.23 Support Commercial Uses. "Support Commercial Uses" are commercial\retail uses which may include retail uses, banking or financial offices, food service, restaurants, service establishments and other similar uses in keeping with the nature of the Project and the required uses needed to support the occupants of office buildings, other office development, sports and entertainment venues and residential development in the Platinum Triangle.

1.24 Term. "Term" is defined in Section 2 of this Development Agreement.

1.25 Zoning Code. "Zoning Code" refers to Title 18 of the Anaheim Municipal Code.

Section 2. TERM.

2.1 The term of this Development Agreement (hereinafter called "Term") shall be that period of time during which this Development Agreement shall be in effect and bind the parties hereto. The Term shall commence on the Development Agreement Date and shall extend for a period of five (5) years thereafter, terminating at the end of the day on the fifth anniversary of the Development Agreement Date, subject to the periodic review and modification or termination provisions defined in Section 25 and Section 27, respectively, of this Development Agreement, and further subject to a reasonable extension for completion of the Project in accordance with the Timing of Development schedule set forth in Section 15 of this Development Agreement.

2.2 This Development Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order, after all appeals have been exhausted, from a court with applicable jurisdiction directing CITY to set aside, withdraw or abrogate the approval of the City Council of this Development Agreement or if termination occurs pursuant to the provisions of the Procedures Resolution and such termination is so intended thereby.

2.3 If not already terminated by reason of any other provision in this Development Agreement, or for any other reason, this Development Agreement shall automatically terminate and be of no further force and effect upon completion of the Project in its entirety pursuant to the terms of this Development Agreement and the issuance of all occupancy permits and acceptance by CITY of all dedications and improvements as required by the development of the Project.

Section 3. BINDING COVENANTS.

The provisions of this Development Agreement to the extent permitted by law shall constitute covenants which shall run with the Property for the benefit thereof, and the benefits of this Development Agreement shall bind and inure to the benefit of the parties and all successors in interest to the parties hereto.

Section 4. EFFECT OF AGREEMENT.

As a material part of the consideration of this Development Agreement, unless otherwise provided herein, the parties agree that the Existing Land Use Regulations shall be applicable to development of the Project. In connection with all subsequent discretionary actions by CITY required to implement the Final Site Plan and any discretionary actions which CITY takes or has the right to take under this Development Agreement relating to the Project, including any review, approval, renewal, conditional approval or denial, CITY, shall exercise its discretion or take action in a manner which complies and is consistent with the Final Site Plan, the Existing Land Use Regulations and such other standards, terms and conditions expressly contained in this Development Agreement. CITY shall accept and timely process, in the normal manner for processing such matters as may then be applicable, all applications for further approvals with respect to the Project called for or required under this Development Agreement, including, any necessary site plan, tentative and final subdivision maps, vesting tentative maps and any grading, construction, building and other similar permits filed by OWNER in accordance with the Development Approvals.

Section 5. PROJECT LAND USES.

5.1 The Property shall be used for such uses as may be permitted by the Development Approvals and the Existing Land Use Regulations. The Term, the density and intensity of use, developable GFA, footprint square footage, the maximum height and size of proposed buildings and structures, lot sizes, set back requirements, zoning, public improvements, and the provisions for reservation or dedication of land for public purposes shall be those set forth in the Development Approvals, the Existing Land Use Regulations and this Development Agreement pursuant to Section 65865.2 of the Development Agreement Statute.

Section 6. PERMITTED DEVELOPMENT.

6.1 Description of Permitted Development. The Permitted Development shall be as set forth on the Final Site Plan. The Project shall be constructed substantially in conformance with the Final Site Plan.

6.2 Parking Areas. The Parking Areas shall be constructed so that there will be sufficient parking spaces available within the Property to serve the Project, as depicted and substantially in conformance with the Final Site Plan. Prior to issuance of the first building permit, the Owner shall record a covenant against the property in a form approved by the City Attorney's Office that requires Owner and its heirs, assignees and successor-in-interests to reimburse the City for the full cost associated with the use of any Police Department and/or Traffic Management Center staff that may be needed for traffic control purposes related to the use of Parking Areas for public parking in connection with events in the Platinum Triangle, including events at Angel Stadium, the Honda Center, or the Grove of Anaheim.

Section 7. DENSITY OF PERMITTED DEVELOPMENT.

The Permitted Development shall be between the minimum and maximum sizes, and shall not exceed the maximum heights and maximum footprints set forth on the Final Site Plan.

Section 8. ENFORCEMENT.

Unless this Development Agreement is terminated or cancelled pursuant to the provisions of this Development Agreement, this Development Agreement or any amendment hereto, shall be enforceable by any party hereto notwithstanding any change hereafter in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance or building ordinance adopted by CITY which alters or amends the rules, regulations or policies of Development of the Project as provided in this Development Agreement pursuant to Section 65865.4 of the Development Agreement Statute; provided, however, that the limitations of this Section shall not apply to changes mandated by State or Federal laws or other permissible changes or new regulations as more particularly set forth in Section 23 of this Development Agreement.

Section 9 PUBLIC IMPROVEMENTS AND SERVICES.

In addition to performing any other obligations heretofore imposed as conditions of approval set forth in Exhibit "C," as material consideration for the CITY's entering into this Development Agreement, OWNER shall undertake the construction and installation of the following public improvements required to support the Project and to enhance area-wide traffic circulation and emergency police and fire protection service within the time periods as set forth below and in conformance with the Existing Land Use Regulations. CITY shall cooperate with OWNER for the purpose of coordinating all public improvements constructed under the Development Approvals or this Development Agreement to existing or newly constructed public improvements, whether located within or outside of the Property. OWNER shall be responsible for and use good faith efforts to acquire any right(s)-of-way necessary to construct the public facility improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement or any Development Approvals. Should it become necessary due to OWNER's failure or inability to acquire said right(s)-of-way within four months after OWNER begins its efforts to so acquire said right(s)-of-way, CITY shall negotiate the purchase of the necessary right(s)-of-way to construct the public improvements as required by, or otherwise necessary to comply with the conditions of, this Development Agreement and, if necessary in accordance with the procedures established by State law, and the limitations hereinafter set forth in this Section, CITY may use its powers of eminent domain to condemn said required right(s)-of way. OWNER agrees to pay for all costs associated with said acquisition and condemnation proceedings. If the CITY cannot make the proper findings or if for some other reason under the condemnation laws CITY is prevented from acquiring the necessary right(s)-of-way to enable OWNER to construct the public improvements required by, or otherwise necessary to comply with the conditions of, this Development Agreement, then the parties agree to amend this Development Agreement to modify OWNER's obligations accordingly. Any such required modification shall involve the substitution of other considerations or obligations by OWNER (of similar value) as are negotiated in good faith between the parties hereto. Nothing contained in this Section shall be deemed to constitute a determination or resolution of necessity by CITY to initiate condemnation proceedings.

9.1 Utilities (Water, Electrical, Gas, Sewer, and Drainage). OWNER shall construct the public improvements necessary for the provision of requisite water, electrical, gas, sewer and drainage requirements for Project as more fully set forth in the Development Approvals. OWNER shall construct and relocate utilities as may be required to provide services to the Permitted Development on the Property or that are displaced by the construction of the Permitted Development. As OWNER submits detailed construction plans in order to obtain building permits for a Permitted Development and/or the size and nature of the Project varies, the utilities that OWNER will construct or relocate may be revised accordingly by the CITY.

9.1.1 Water Service. OWNER will provide engineering studies to size the water mains for ultimate development within the Project. Said engineering studies will be conducted prior to rendering of water service or signature approval of the final water improvement plans, whichever occurs first. The studies shall be subject to the approval of the General Manager, Public Utilities Department or authorized designee. Alternatively, at OWNER'S election, the water system may be constructed incrementally, provided that said incremental phasing is adequate to provide municipal demands and fire flow protection for the proposed development phasing. OWNER will conform with Rule 15D of the Water Utility's Rates, Rules and Regulations which provides for, in part, a fee based on GFA and the advancement of additional funds to construct the upgraded water facilities. OWNER shall be entitled to reimbursement in accordance with the terms of Rule 15D for the advancement of additional funds to construct the upgraded water facilities.

9.1.2 Sanitary Sewer and Storm Drains. Prior to final building and zoning inspections for the first building within the Permitted Development, OWNER will construct all sanitary sewers, storm drains, and appurtenant structures (including treatment control BMP's as required by the WQMP) to serve the ultimate development of the Property as provided by areawide engineering studies to be conducted prior to issuance of any building permits for the first building within the Permitted Development and updated prior to the issuance of any building permits for each subsequent building within the Permitted Development. All studies shall be subject to the approval of the City Engineer. OWNER will construct improvements identified in said studies. The systems may be constructed incrementally subject to the approval of the City Engineer, provided that said incremental phasing is adequate to provide capacity for the proposed development phasing.

9.2 Timing, Phasing and Sequence of Public Improvements and Facilities. The phasing and sequence of the construction of public improvements and facilities or the payment of fees therefor shall be constructed or paid in accordance with the timing, phasing and sequence set forth in this Development Agreement and the Final Site Plan.

9.3 Traffic Circulation Improvements. In order to assist CITY in providing for area-wide traffic circulation as required by this Project, OWNER shall cause to be made the traffic circulation improvements identified for the Project including all applicable measures from the Updated and Modified Mitigation Monitoring Program No. 106C approved in conjunction with

FSEIR No. 339, and Mitigation Monitoring Plan No. _____, and as shown on the Final Site Plan.

Section 10. REIMBURSEMENT PROVISION.

In the event OWNER is required to construct public improvements which are supplemental to the requirements of the Project for the benefit of other properties, CITY will work with OWNER to establish mechanisms for proportional reimbursement from owners of the benefited properties. All costs associated with establishing said mechanisms shall be paid by OWNER.

Section 11. DEDICATIONS AND EXACTIONS.

Prior to issuance of the first building permit for the Project, OWNER shall irrevocably offer for dedication the rights-of-way, including the public connector streets, collector streets and Market Street, if applicable, and other areas as more fully set forth in the Final Site Plan. These dedications shall be in fee or as an easement at the discretion of CITY, and upon completion and acceptance by CITY of the associated improvements in compliance with the specifications as approved by CITY, CITY shall accept OWNER's offer of dedication. Nothing contained in this Development Agreement, however, shall be deemed to preclude CITY from exercising the power of eminent domain with respect to the Property or the Project, or any part thereof.

Section 12. FEES, TAXES, AND ASSESSMENTS.

12.1 Fees, Taxes and Assessments. OWNER shall be responsible for the payment of fees in the amount and at the times set forth in the Existing Land Use Regulations, as said amounts and timing may be modified in accordance with this Development Agreement.

12.2 General Plan and Environmental Processing Fee. OWNER will pay a processing fee prior to the issuance of the certificate of occupancy for the project attributable to the cost of creating and establishing the Master Land Use Plan and the PTMU Overlay Zone for the Platinum Triangle, as well as the costs of associated environmental documentation, as said additional costs are set forth in Exhibit "D."

12.3 Excluded Development Fees. The following fees shall not be included among the fees which would otherwise fall within the definition of Existing Land Use Regulations:

12.3.1 Water Utilities Fees. OWNER will pay all applicable fees in accordance with the Water Utilities Rates, Rules and Regulations in effect at the time of application for service including Rule 15D which provides for, in part, a fee based on GFA to construct the necessary water facility improvements within the Platinum Triangle.

12.3.2 Electrical Utilities Fees. OWNER will pay all fees in accordance with the Electrical Utilities Rates, Rules and Regulations in effect at the time of application for service.

12.3.3 City Processing Fees. OWNER shall pay all standard City-wide processing fees for building permits, zoning review, and other similar fees associated with the Development of the Project which are in existence at the time of approval of this Development Agreement at the rate in existence at the time said fees are normally required to be paid to CITY.

12.4 Platinum Triangle Infrastructure and/or Maintenance Assessment District. Prior to the date a building or grading permit is issued relating to implementation of the Final Site Plan, or within a period of ninety (90) days from the date of execution of this Development Agreement, whichever occurs first, OWNER shall execute and record an unsubordinated covenant in a form approved by the City Attorney's Office wherein OWNER agrees not to contest the formation of any assessment district(s) which may be formed to finance Platinum Triangle infrastructure and/or maintenance, which district(s) could include the Property. The covenant shall not preclude OWNER from contesting (i) the determination of benefit of such improvements to the Property, (ii) the properties included in said district or area, (iii) the manner in which said fee is determined or (iv) the manner in which said improvement costs are spread.

12.5 Accounting of Funds. CITY will comply with applicable requirements of Government Code Section 65865 relating to accounting of funds.

12.6 Imposition of Increased Fees Taxes or Assessments. Except as expressly set forth or reserved in this Development Agreement, CITY shall not, without the prior written consent of OWNER, impose any additional fee, tax or assessment on the Project or any portion thereof as a condition to the implementation of the Project or any portion thereof, except such fees, taxes and assessments as are described in or required by this Development Agreement, including the Existing Land Use Regulations or the Development Approvals. The rates of such fees, taxes and assessments shall be the rates in existence at the time said fees, taxes and assessments are normally required to be paid to CITY, except as otherwise provided in this Development Agreement. Nothing contained herein shall be construed to prohibit CITY from imposing fees, taxes or assessments on the Property which are unrelated to the approval or implementation of the Project.

Section 13. COVENANTS, CONDITIONS AND RESTRICTIONS.

In consideration for CITY entering into this Development Agreement and other consideration set forth in this Agreement, OWNER agrees to record unsubordinated covenants, conditions and restrictions (CC&Rs) applicable to the Property in a form and content satisfactory to the Planning Director, City Engineer and the City Attorney incorporating the requirements and obligations set forth in Exhibit "E" to this Agreement, entitled the "Development Requirements and Maintenance Obligations."

Section 14. NEXUS/REASONABLE RELATIONSHIP CHALLENGES.

OWNER consents to, and waives any right it may have now or in the future to challenge the legal validity of the conditions, requirements, policies or programs required by Existing Land Use Regulations or this Development Agreement including, without limitation, any claim that

they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

Section 15. TIMING OF DEVELOPMENT.

Timing of Development shall be as set forth in the Final Site Plan.

Section 16. EXISTING USES.

CITY and OWNER agree that those existing legally established uses on the Property may be retained until the Project is implemented.

Section 17. FUTURE APPROVALS.

17.1 Basis for Denying or Conditional Granting Future Approvals. Before OWNER can begin grading on the Property or other development of the Property, OWNER must secure several additional permits and/or approvals from CITY. The parties agree that to the extent said Development Approvals are ministerial in nature, CITY shall not, through the enactment or enforcement of any subsequent ordinances, rules, regulations, initiatives, policies, requirements, guidelines, or other constraints, withhold such approvals as a means of blocking construction or of imposing conditions on the Project which were not imposed during an earlier approval period unless CITY has been ordered to do so by a court of competent jurisdiction. Notwithstanding the previous sentence, CITY and OWNER will use their best efforts to ensure each other that all applications for and approvals of grading permits, building permits or other developmental approvals necessary for OWNER to develop the Project in accordance with the Final Site Plan are sought and processed in a timely manner.

17.2 Standard of Review. The rules, regulations and policies that apply to any additional Development Approvals which OWNER must secure prior to the Development of the Property shall be the Existing Land Use Regulations, as defined in this Development Agreement.

17.3 Future Amendments to Final Site Plan. Future amendments to all or a portion of the Final Site Plan which increase the intensity or density of the Development of the Property, or change the permitted uses of the Property, and are not among those described in Section 17.4 of this Development Agreement may subject the portion or portions of the Project being amended or affected by the amendment to any change in the CITY's General Plan, zoning designations and rules applicable to the Property and further environmental review and possible mitigation of adverse impacts under CEQA in effect at the time of such amendment. Any such amendment to the Final Site Plan shall be processed concurrently with the processing of an amendment to this Development Agreement. It is the desire and intent of both parties, except as set forth herein, that any such future amendment of the Final Site Plan will not alter, affect, impair or otherwise impact the rights, duties and obligations of the parties under this Development Agreement with respect to those portions of the Final Site Plan that have not been amended.

Section 18. AMENDMENT.

18.1 Initiation of Amendment. Either party may propose an amendment to this Development Agreement.

18.2 Procedure. Except as set forth in Section 17.4 below, the procedure for proposing and adopting an amendment to this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance. Such procedures are set forth in Sections 2, 3 and 5 of the Procedures Resolution.

18.3 Consent. Except as provided elsewhere within this Development Agreement, any amendment to this Development Agreement shall require the consent of both parties. No amendment of this Development Agreement or any provision hereof shall be effective unless set forth in writing and signed by duly authorized representatives of each party hereto.

18.4 Amendments. Subject to the foregoing provisions of this Section, 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 Development Agreement. The parties desire to retain a certain degree of flexibility with respect to the details of the Development of the Project and with respect to those items covered in general terms under this Development Agreement. If and when the parties find that changes or adjustments are necessary or appropriate to further the intended purposes of this Development Agreement, they may, unless otherwise required by law, effectuate such changes or adjustments as specified in the Development Approvals.

18.5 Effect of Amendment to Development Agreement. The parties agree that except as expressly set forth in any such amendment, an amendment to this Development Agreement will not alter, affect, impair, modify, waive or otherwise impact any other rights, duties or obligations of either party under this Development Agreement.

Section 19. NON-CANCELLATION RIGHTS.

Subject to defeasance pursuant to Sections 24, 25 or 26 of this Development Agreement, the Final Site Plan and other Development Approvals as provided for in this Development Agreement shall be final and the rights once granted thereby shall be vested in the Property upon recordation of this Development Agreement.

Section 20. BENEFITS TO CITY.

The direct and indirect benefits CITY (including, without limitation, the existing and future anticipated residents of CITY) expects to receive pursuant to this Development Agreement include, but are not limited to, the following:

a. The participation of OWNER in the accelerated, coordinated and more economic construction, funding and dedication to the public, as provided in this Development Agreement, of certain of the vitally needed on-site and area-wide public improvements and facilities, and assurances that the entire Project will be developed as set forth in the Final Site Plan and this Development Agreement in order to encourage development of the Platinum Triangle; and

b. The considerations set forth in Sections 9 and 11 of this Development Agreement.

Section 21. BENEFITS TO OWNER.

OWNER has expended and will continue to expend large amounts of time and money on the planning and infrastructure construction for the Project. OWNER asserts that OWNER would not make any additional expenditures, or the advanced expenditures required by this Development Agreement, without this Development Agreement and that any additional expenditures which OWNER makes after the Development Agreement Date will be made in reliance upon this Development Agreement. Without limiting the generality of the foregoing, this Development Agreement provides for the completion of public improvements and facilities prior to the time when they would be justified economically in connection with the phasing of the Project, and of a size which would be justified only by the magnitude of the Project provided for by the Final Site Plan and this Development Agreement. The benefit to OWNER under this Development Agreement consists of the assurance that OWNER will preserve the right to develop the Property as planned and as set forth in the Final Site Plan and this Development Agreement. The parties acknowledge that the public benefits to be provided by OWNER to CITY pursuant to this Development Agreement are in consideration for and reliance upon assurances that the Property can be developed in accordance with the Final Site Plan and this Development Agreement.

Section 22. UNDERTAKINGS AND ASSURANCES CONTEMPLATED AND PROMOTED BY DEVELOPMENT AGREEMENT STATUTE.

The mutual undertakings and assurances described above and provided for in this Development Agreement are for the benefit of CITY and OWNER and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infrastructure and facilities supporting development which was contemplated and promoted by the Development Agreement Statute. CITY agrees that it will not take any actions which are intended to circumvent this Development Agreement; provided, however, that any action of the electorate shall not be deemed an action for purposes of this Section.

Section 23. RESERVED AUTHORITY.

23.1 State and Federal Laws and Regulations. In the event that the State or Federal laws or regulations enacted after the this Development Agreement has been entered into, prevent or preclude compliance with one or more provisions of the Development Agreement, such provisions of the Development Agreement shall be modified or suspended as may be necessary

to comply with such State or Federal laws or regulations, provided, however, that this Development Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. Notwithstanding the foregoing, CITY shall not adopt or undertake any rule, regulation or policy which is inconsistent with this Development Agreement until CITY makes a finding that such rule, regulation or policy is reasonably necessary to comply with such State and Federal laws or regulations.

23.2 Model Codes. This Development Agreement shall not prevent CITY from applying new rules, regulations and policies contained in model codes, including, but not limited to, the Anaheim Building Code as adopted in Title 15, Section 15.02.

23.3 Public Health and Safety. This Development Agreement shall not prevent CITY from adopting new rules, regulations and policies, including amendments or modifications to model codes described in Section 22.2 of this Development Agreement which directly result from findings by CITY that failure to adopt such rules, regulations or policies would result in a condition injurious or detrimental to the public health and safety. Notwithstanding the foregoing, CITY shall not adopt any such rules, regulations or policies which prevent or preclude compliance with one or more provisions of this Development Agreement until CITY makes a finding that those rules, regulations or policies are reasonably necessary to correct or avoid such injurious or detrimental condition.

Section 24. CANCELLATION.

24.1 Initiation of Cancellation. Either party may propose cancellation of this Development Agreement.

24.2 Procedure. The procedure for canceling this Development Agreement shall be the same as the procedure required for entering into this Development Agreement in the first instance. Such procedures are set forth in Sections 2, 3 and 5 of the Procedures Resolution and Section 65868 of the Government Code.

24.3 Consent of OWNER and CITY. Any cancellation of this Development Agreement shall require the mutual consent of OWNER and CITY.

Section 25. PERIODIC REVIEW.

25.1 Time for Review. CITY shall, at least every twelve (12) months after the Development Agreement Date, review the extent of good faith compliance by OWNER with the terms of this Development Agreement. OWNER's failure to comply with the phasing schedules set forth in the Final Site Plan combined with OWNER's failure to explain the reason for said non-compliance shall constitute rebuttable evidence of OWNER's lack of good faith compliance with this Development Agreement. Such periodic review shall determine compliance with the terms of this Development Agreement pursuant to California Government Code Section 65865.1 and other successor laws and regulations.

25.2 OWNER's Submission. Each year, not less than forty-five (45) days nor more than sixty (60) days prior to the anniversary of the Development Agreement Date, OWNER shall submit evidence to the City Council of its good faith compliance with the terms and conditions of this Development Agreement. OWNER shall notify the City Council in writing that such evidence is being submitted to CITY pursuant to the requirements of Section 6.2 of the Procedures Resolution. OWNER shall pay to CITY a reasonable processing fee in an amount as CITY may reasonably establish from time to time on each occasion that OWNER submits its evidence for a periodic review.

25.3 Findings. Within forty-five (45) days after the submission of OWNER's evidence, the City Council shall determine, on the basis of substantial evidence, whether or not OWNER has, for the period under review, complied in good faith with the terms and conditions of this Development Agreement. If the City Council finds that OWNER has so complied, the review for that period shall be deemed concluded. If the City Council finds and determines, on the basis of substantial evidence, that OWNER has not complied in good faith with the terms and conditions of this Development Agreement for the period under review, OWNER shall be given at least sixty (60) days to cure such non-compliance and if the actions required to cure such non-compliance take more than sixty (60) days, then CITY shall give OWNER additional time provided that OWNER is making reasonable progress towards such end. If during the cure period, OWNER fails to cure such noncompliance or is not making reasonable good faith progress towards such end, and then the City Council may, at its discretion, proceed to modify or terminate this Development Agreement or establish a time schedule for compliance in accordance with the procedures set forth in Section 26 of this Development Agreement.

25.4 Initiation of Review by City Council. In addition to the periodic review set forth in this Development Agreement, the City Council may at any time initiate a review of this Development Agreement upon the giving of written notice thereof to OWNER. Within thirty (30) days following receipt of such notice, OWNER shall submit evidence to the City Council of OWNER's good faith compliance with this Development Agreement and such review and determination shall proceed in the manner as otherwise provided in this Development Agreement.

Section 26. EVENTS OF DEFAULT.

26.1 Defaults by OWNER. Within forty-five (45) days after the submission of OWNER's evidence, the City Council shall determine on the basis of substantial evidence, whether or not OWNER has, for the period under review, complied in good faith with the terms and conditions of this Development Agreement. If the City Council finds that OWNER has so complied, the review for that period shall be deemed concluded. If the City Council finds and determines, on the basis of substantial evidence, that OWNER has not complied in good faith with the terms and conditions of this Development Agreement for the period under review, OWNER shall be given at least sixty (60) days to cure such non-compliance and if the actions required to cure such non-compliance take more than sixty (60) days, then CITY shall give OWNER additional time provided that OWNER is making reasonable progress towards such

end. If during the cure period OWNER fails to cure such non-compliance or is not making reasonable progress towards such end, then the City Council may, at its discretion, proceed to modify or terminate this Development Agreement or establish a time schedule for compliance in accordance with the procedures set forth in Section 26 of this Development Agreement.

26.2 Specific Performance Remedy. Due to the size, nature and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Development Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Development Agreement and will be investing even more significant time in implementing the Project in reliance upon the terms of this Development Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts. For the above reasons, CITY and OWNER agree that damages would not be an adequate remedy if CITY fails to carry out its obligations under this Development Agreement. Therefore, specific performance of this Development Agreement is the only remedy which would compensate OWNER if CITY fails to carry out its obligations under this Development Agreement, and CITY hereby agrees that OWNER shall be entitled to specific performance in the event of a default by CITY hereunder. CITY and OWNER acknowledge that, if OWNER fails to carry out its obligations under this Development Agreement, CITY shall have the right to refuse to issue any permits or other approvals which OWNER would otherwise have been entitled to pursuant to this Development Agreement. If CITY issues a permit or other approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by OWNER in the future, and if OWNER then fails to satisfy such condition, CITY shall be entitled to specific performance for the sole purpose of causing OWNER to satisfy such condition. The CITY's right to specific performance shall be limited to those circumstances set forth above, and CITY shall have no right to seek specific performance to cause OWNER to otherwise proceed with the Development of the Project in any manner.

26.3 Liquidated Damages Remedy. The parties hereto agree that this Development Agreement creates an obligation and duty upon OWNER to undertake and complete development of the Project within the time and manner specified herein. In the event OWNER breaches this Development Agreement by failing to undertake and complete development of the Project within the time and manner specified herein, the parties further agree that CITY will suffer actual damages as a result thereof, the amount of which is uncertain and would be impractical or extremely difficult to fix; therefore, OWNER agrees to pay CITY, in the event of any such breach by OWNER, the sum One Hundred Thousand Dollars (\$100,000) as liquidated and actual damages, which sum shall be in addition to any other remedies available to CITY as result of such breach pursuant to this Section 25.

Section 27. MODIFICATION OR TERMINATION.

If pursuant to Section 24 and 25 of this Development Agreement, CITY elects to modify or terminate this Development Agreement or establish a revised time schedule for compliance as herein provided, then CITY shall proceed as set forth in this Section.

27.1 Notice to OWNER. CITY shall give notice to OWNER of City Council's intention to proceed to modify or terminate this Development Agreement or establish a time schedule for compliance within ten (10) days of making the CITY's findings.

27.2 Public Hearing. The City Council shall set and give notice of a public hearing on modification, termination or a time schedule for compliance to be held within forty (40) days after the City Council gives notice to OWNER.

27.3 Decision. The City Council shall announce its findings and decisions on whether this Development Agreement is to be terminated, how this Development Agreement is to be modified or the provisions of the Development Agreement with which OWNER must comply and a time schedule therefor not than ten (10) days following completion of the public hearing.

27.4 Standard of Review. Any determination by CITY to terminate this Development Agreement because OWNER has not complied in good faith with the terms of this Development Agreement must be based upon a finding by the City Council, based on the preponderance of evidence, that OWNER is in default and has not cured that default in the timeframe permitted by Sections 24 and 25 above, as applicable.

27.5 Implementation. Amending or terminating this Development Agreement shall be accomplished by CITY enacting an ordinance. The ordinance shall recite the reasons which, in the opinion of the CITY, make the amendment or termination of this Development Agreement necessary. Not later than ten (10) days following the adoption of the ordinance, one copy thereof shall be forwarded to OWNER. This Development Agreement shall be terminated or this Development Agreement as modified shall become effective on the effective date of the ordinance terminating or modifying this Development Agreement.

27.5 Schedule for Compliance. Setting a reasonable time schedule for compliance with this Development Agreement may be accomplished by CITY enacting a resolution. The resolution shall recite the reasons which, in the opinion of CITY, make it advisable to set a schedule for compliance and why the time schedule is reasonable. Not later than ten (10) days following adoption of the resolution, one copy thereof shall be forwarded to OWNER. Compliance with any time schedule so established as an alternative to modification or termination shall be subject to periodic review as provided in this Development Agreement and lack of good faith compliance by OWNER with the time schedule shall be basis for termination or modification of this Development Agreement.

Section 28. ASSIGNMENT.

28.1 Right to Assign. OWNER shall have the right to sell, mortgage, hypothecate, assign or transfer this Development Agreement, and any and all of its rights, duties and obligations hereunder, to any person, partnership, joint venture, firm or corporation at any time during the term of this Development Agreement, provided that any such sale, mortgage, hypothecation, assignment or transfer must be pursuant to a sale, assignment or other transfer of the interest of OWNER in the Property, or a portion thereof. In the event of any such sale, mortgage, hypothecation, assignment or transfer, (a) OWNER shall notify CITY of such event and the name of the transferee, together with the corresponding entitlements being transferred to such transferee and (b) the agreement between OWNER and such transferee shall provide that either OWNER or the transferee or both shall be liable for the performance of all obligations of OWNER pursuant to this Development Agreement and the Development Approvals. Such transferee and/or OWNER shall notify CITY in writing which entity shall be liable for the performance of such obligations, and upon the express written assumption of any or all of the obligations of OWNER under this Development Agreement by such assignee, transferee or purchaser shall, without any act of or concurrence by CITY, relieve OWNER of its legal duty to perform said obligations under this Development Agreement with respect to the Property or portion thereof, so transferred, except to the extent OWNER is not in default under the terms of this Development Agreement.

28.2 Release Upon Transfer. It is understood and agreed by the parties that the Property may be subdivided following the Development Agreement Date. One or more of such subdivided parcels may be sold, mortgaged, hypothecated, assigned or transferred to persons for development by them in accordance with the provisions of this Development Agreement. Effective upon such sale, mortgage, hypothecation, assignment or transfer, the obligations of OWNER shall become several and not joint, except as to OWNER's obligations set forth in Section 9 of this Development Agreement. Upon the sale, transfer, or assignment of OWNER's rights and interests under this Development Agreement as permitted pursuant to the Section 27.1 above, OWNER shall be released from its obligations under this Development Agreement with respect to the Property, or portion thereof so transferred, provided that (a) OWNER is not then in default under this Development Agreement, (b) OWNER has provided to CITY the notice of such transfer specified in Section 27.1 above, (c) the transferee executes and delivers to CITY a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all the obligations of OWNER under this Development Agreement and the Development Approvals with respect to the property, or portion thereof, so transferred and (d) the transferee provides CITY with security equivalent to any security provided by OWNER to secure performance of its obligations under this Development Agreement or the Development Approvals. Non-compliance by any such transferee with the terms and conditions of this Development Agreement shall not be deemed a default hereunder or grounds for termination hereof or constitute cause for CITY to initiate enforcement action against other persons then owning or holding interest in the Property or any portion thereof and not themselves in default hereunder. Upon completion of any phase of development of the Project as determined by CITY, CITY may release that completed phase from any further obligations under this Development Agreement. The provisions of this Section

shall be self-executing and shall not require the execution or recordation of any further document or instrument. Any and all successors, assigns and transferees of OWNER shall have all of the same rights, benefits and obligations of OWNER as used in this Development Agreement and the term "OWNER" as used in this Development Agreement shall refer to any such successors, assigns and transferees unless expressly provided herein to the contrary.

Section 29. NO CONFLICTING ENACTMENTS.

By entering into this Development Agreement and relying thereupon, OWNER is obtaining vested rights to proceed with the Project in accordance with the terms and conditions of this Development Agreement, and in accordance with, and to the extent of, the Development Approvals. By entering into this Development Agreement and relying thereupon, CITY is securing certain public benefits which enhance the public health, safety and general welfare. CITY therefore agrees that except as provided in Section 22 of this Development Agreement, neither the City Council nor any other agency of CITY shall enact a rule, regulation, ordinance or other measure which relates to the rate, timing or sequencing of the Development or construction of all or any part of the Project and which is inconsistent or in conflict with this Development Agreement.

Section 30. GENERAL.

30.1 Force Majeure. The Term of this Development Agreement and the time within which OWNER shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably by strikes, lock-outs, Acts of God, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, initiative or referenda, moratoria, enemy action, civil disturbances, fire, unavoidable casualties, or any other cause beyond the reasonable control of OWNER.

30.2 Construction of Development Agreement. The language in all parts of this Development Agreement shall in all cases, be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience only and shall not be considered or referred to in resolving questions of constructions. This Development Agreement shall be governed by the laws of the State of California. The parties understand and agree that this Development Agreement is not intended to constitute, nor shall be construed to constitute, an impermissible attempt to contract away the legislative and governmental functions of CITY, and in particular, the CITY's police powers. In this regard, the parties understand and agree that this Development Agreement shall not be deemed to constitute the surrender or abnegation of the CITY's governmental powers over the Property.

30.3 Severability. If any provision of this Development Agreement shall be adjudged to be invalid, void or unenforceable, such provision shall in no way affect, impair or invalidate any other provision hereof, unless such judgment affects a material part of this Development Agreement, the parties hereby agree that they would have entered into the remaining portions of

this Development Agreement not adjudged to be invalid, void or illegal. In the event that all or any portion of this Development Agreement is found to be unenforceable, this Development Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the parties; and the parties further agree that in such event they shall take all steps necessary to comply with such public hearings and/or notice requirements as may be necessary in order to make valid this Development Agreement or that portion which is found to be unenforceable. Notwithstanding any other provisions of this Development Agreement, in the event that any material provision of this Development Agreement is found to be unenforceable, void or voidable, OWNER or CITY may terminate this Development Agreement in accordance with the provisions of the Development Agreement Statute and the Procedures Resolution.

30.4 Cumulative Remedies. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

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

30.6 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Development Agreement and/or the Development Approvals, the parties hereby agree to cooperate fully with each other in defending said action and the validity of each provision of this Development Agreement, however, OWNER shall be liable for all legal expenses and costs incurred in defending any such action. OWNER shall be entitled to choose legal counsel to defend against any such legal action and shall pay any attorneys' fees awarded against CITY or OWNER, or both, resulting from any such legal action. OWNER shall be entitled to any award of attorneys' fees arising out of any such legal action.

30.7 Public Agency Coordination. CITY and OWNER shall cooperate and use their respective best efforts in coordinating the implementation of the Development Approvals with other public agencies, if any, having jurisdiction over the Property or the Project.

30.8 Initiative Measures. Both CITY and OWNER intend that this Development Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, referendum, statute, ordinance or other limitation (whether relating to the rate, timing or sequencing of the Development or construction of all or any part of the Project and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use approved, issued or granted within the CITY, or portions of the CITY, and which Agreement shall apply to the Project to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation is inconsistent or in conflict with this Development Agreement. Should an initiative, measure, moratorium, referendum, statute, ordinance, or other limitation be enacted by the citizens of CITY which would preclude construction of all or any part of the Project, and to the extent such initiative, measure, moratorium, referendum, statute, ordinance or other limitation be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Development Agreement, OWNER shall have no recourse against CITY pursuant to the Development Agreement, but shall retain all other rights, claims and causes of action under this Development Agreement not so invalidated and any and all other rights, claims and causes of action as law or in equity which OWNER may have independent of this Development Agreement with respect to the project. The foregoing shall not be deemed to limit OWNER's right to appeal any such determination that such initiative, measure, referendum, statute, ordinance or other limitation invalidates or prevails over all or any part of this Development Agreement. CITY agrees to cooperate with OWNER in all reasonable manners in order to keep this Development Agreement in full force and effect, provided OWNER shall reimburse CITY for its out-of-pocket expenses incurred directly in connection with such cooperation and CITY shall not be obligated to institute a lawsuit or other court proceedings in this connection.

30.9 Attorneys' Fees. In the event of any dispute between the parties involving the covenants or conditions contained in this Development Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

30.10 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall not be construed as a waiver of any succeeding breach of non-performance of the same or other covenants and conditions hereof.

30.11 Authority to Execute. The person executing this Development Agreement on behalf of OWNER warrants and represents that he/she has the authority to execute this Development Agreement on behalf of his/her partnership and represents that he/she has the authority to bind OWNER to the performance of OWNER's obligations hereunder.

30.12 Notice.

30.12.1 To OWNER. Any notice required or permitted to be given by CITY to OWNER under or pursuant to this Development Agreement shall be deemed sufficiently given if in writing and delivered personally to an officer of OWNER or mailed with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed; to OWNER as follows:

Attention:

or such changed address as OWNER shall designate in writing to CITY.

30.12.2 To CITY. Any notice required or permitted to be given to CITY under or pursuant to this Development Agreement shall be made and given in writing, if by mail addressed to:

City Council
City of Anaheim
c/o City Clerk
P.O. Box 3222
Anaheim, California 92803

With copies to:

City Manager
City of Anaheim
P.O. Box 3222
Anaheim, California 92803

City Attorney
City of Anaheim
P.O. Box 3222
Anaheim, California 92803

or such changed address as CITY shall designate in writing to OWNER.

Alternatively, notices to CITY may also be personally delivered to the City Clerk, at the Anaheim Civic Center, 200 S. Anaheim Blvd., Anaheim, California, together with copies marked for the City Manager and the City Attorney or, if so addressed and mailed, with postage thereon fully prepaid, registered or certified mail, return receipt requested, to the City Council in care of the City Clerk at the above address with copies likewise so mailed to the City Manager and the City Attorney, respectively and also in care of the City Clerk at the same address. The provisions of this Section shall be deemed permissive only and shall not detract from the validity of any notice given in a manner which would be legally effective in the absence of this Section.

30.13 Captions. The captions of the paragraphs and subparagraphs of this Development Agreement are for convenience and reference only and shall in no way define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Development Agreement.

30.14 Consent. Any consent required by the parties in carrying out the terms of this Development agreement shall not unreasonably be withheld.

30.15 Further Actions and Instruments. Each of the parties shall cooperate with the other to the extent contemplated hereunder in the performance of all obligations under this Development Agreement and the satisfaction of the conditions of this Development Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

30.16 Subsequent Amendment to Authorizing Statute. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute in effect as of the Development Agreement Date. Accordingly, subject to Section 22.1 above, to the extent that subsequent amendments to the Government Code would affect the provisions of this Development Agreement, such amendments shall not be applicable to this Development Agreement unless necessary for this Development Agreement to be enforceable or unless this Development Agreement is modified pursuant to the provisions set forth in this Development Agreement and Government Code Section 65868 as in effect on the Development Agreement Date.

30.17 Governing Law. This Development Agreement, including, without limitation, its existence, validity, construction and operation, and the rights of each of the parties shall be determined in accordance with the laws of the State of California.

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

30.19 Mortgagee Protection. Entering into or a breach of this Development Agreement shall not defeat, render invalid, diminish, or impair the lien of Mortgagees having a mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Development Agreement to perform OWNER's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu thereof.

30.20 Notice of Default to Mortgagee, Right of Mortgagee to Cure. If the City Clerk timely receives notice from a Mortgagee requesting a copy of any notice of default given to

OWNER under the terms of this Development Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, for a period up to ninety (90) days after the receipt of such notice from CITY to cure or remedy, or to commence to cure or remedy the default unless a further extension of time to cure is granted in writing by CITY. If the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or non-compliance within thirty (30) days after obtaining possession. If any such default or non-compliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or non-compliance if such Mortgagee commences cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

30.21 Bankruptcy. Notwithstanding the foregoing provisions of Section 29.20 of this Development Agreement, if any Mortgagee is prohibited from commencing or pursuing and prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving CITY, the times specified in this Section for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

30.22 Disaffirmance.

29.22.1 CITY agrees that in the event of termination of this Agreement by reason of any default by CITY, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for OWNER or its property, CITY, if requested by any Mortgagee, shall enter into a new Development Agreement for the Project with the most senior Mortgagee requesting such new agreement, for the remainder of the Term, effective as of the date of such termination, upon the terms, provisions, covenants and agreements as herein contained to the extent and subject to the law then in effect, and subject to the rights, if any, of any parties then in possession of any part of the Property, provided:

30.22.2 The Mortgagee shall make written request upon CITY for the new Development Agreement for the Project within thirty (30) days after the date of termination;

30.22.3 The Mortgagee shall pay to CITY at the time of the execution and delivery of the new Development Agreement for the Project expenses, including reasonable attorneys' fees, to which CITY shall have been subjected by reason of OWNER's default; and

30.22.4 The Mortgagee shall perform and observe all covenants herein contained on OWNER's part to be performed, and shall further remedy any other conditions which OWNER under the terminated agreement was obligated to perform under its terms, to the extent the same are curable or may be performed by the Mortgagee.

30.22.5 Nothing herein contained shall require any Mortgagee to enter into a new agreement pursuant to Section 29.22.1 above, nor to cure any default of OWNER referred to above.

30.23 No Third Party Beneficiaries. This Development Agreement and all provisions hereof is made and entered into for the sole protection and benefit of CITY, OWNER and their successors and assigns. No other person shall have right of action based upon any provision in this Development Agreement.

30.24 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Development Agreement. No partnership, joint venture or other association of any kind is formed by this Development Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such private property.

30.25 Restrictions. Property OWNER shall place in any agreements to sell or convey any interest in the Property or any portion thereof, provisions making the terms of this Development Agreement binding on any successors in interest of OWNER and express provision for OWNER or CITY, acting separately or jointly, to enforce the provisions of this Development Agreement and to recover attorneys' fees and costs for such enforcement.

30.26 Recitals. The recitals in this Development Agreement constitute part of this Development Agreement and each party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Development Agreement.

30.27 Recording. The City Clerk shall cause a copy of this Development Agreement to be executed by CITY and recorded in the Official Records of Orange County no later than ten (10) days after CITY approves this Development Agreement.

30.28 Title Report. CITY is required to sign this Development Agreement only after OWNER has provided CITY with a satisfactory preliminary title report evidencing and showing OWNER's legal and equitable ownership interest in the Property, current within six (6) months, unencumbered except for the exceptions (hereinafter the "Permitted Exceptions") set in the preliminary title reports for the Property attached hereto as Exhibit "F" (the "Preliminary Title Reports"). Any instrument of monetary encumbrance such as a deed of trust or a mortgage entered into subsequent to the date of the Preliminary Title Report and prior to the Development Agreement Date, shall contain language expressly subordinating such instruments of monetary encumbrance to the provisions of this Development Agreement. OWNER shall present evidence, satisfactory to CITY, of OWNER's legal title to Property, subject only to the Permitted Exceptions and any such subordinated instruments of monetary encumbrance, at the time of recordation of this Agreement, or a memorandum thereof.

30.29 Entire Agreement. This Development Agreement, constitutes the entire agreement between the parties with respect to the subject matter of this Development Agreement, and this Development Agreement supersedes all previous negotiations, discussions and agreements between the parties, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof.

30.30 Successors and Assigns. The burdens of the Development Agreement shall be binding upon, and the benefits of the Development Agreement inure to all successors in interest and assigns of the parties to the Development Agreement.

30.31 OWNER's Title to Property. Neither party hereto shall be bound by any provision of this Agreement unless and until OWNER shall record this Development Agreement or a memorandum thereof, in the office of the County Recorder of the County sufficient to cause this Agreement and the obligations contained herein to attach to and encumber OWNER's fee title to Property.

30.32 Exhibits. All exhibits, including attachments thereto, are incorporated in this Development Agreement in their entirety by this reference.

IN WITNESS WHEREOF, CITY and OWNER have executed this Development Agreement as of the date and year first above written.

“CITY”

“OWNER”

CITY OF ANAHEIM, a
municipal corporation

By: _____
Mayor

By: _____
Name: _____
Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Appendix B2
Platinum Triangle Standardized Development Agreement Form
Office District

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Appendix B2
Platinum Triangle Standardized Development Agreement Form
Office District

EXHIBIT "B"

FINAL SITE PLAN

Appendix B2
Platinum Triangle Standardized Development Agreement Form
Office District

EXHIBIT "C"

CONDITIONS OF APPROVAL

EXHIBIT "D"

GENERAL PLAN AND ENVIRONMENTAL PROCESSING FEE

Non-residential Uses: \$0.03 per sq. ft.

These fees are intended to recover the costs associated with the Platinum Triangle including the designation of portions of the Platinum Triangle for mixed use and office development by the General Plan, the Platinum Triangle Master Land Use Plan, the Platinum Triangle Mixed Use Overlay, the Platinum Triangle Standardized Development Agreement Form, Zone Reclassifications, all other associated documents and amendments thereto, and all associated environmental documentation. The fees are based upon the following calculations:

Costs

Consultant Contract Costs: \$670,623 (includes costs related to DSEIR No. 339)
Planning Department Costs: \$456,765 (to be updated with costs related to DSEIR No. 339)
Public Works Costs: \$41,325 (to be updated with costs related to DSEIR No. 339)
 \$1,168,713 (to be updated with costs related to DSEIR No. 339)

New Development Allowed in the Platinum Triangle

Non-Residential Uses

14,340,522 square feet office development
4,909,682 square feet commercial development
+ 1,500,000 square feet institutional
20,750,204 total square feet non-residential development

Residential Uses

18,909 residential units
x 800 square feet (estimated average unit size)
15,127,200 total square feet of residential development

Total Square Feet

20,750,204 total square feet non-residential development
+ 15,127,200 total square feet of residential development
35,877,404 total square feet of residential and non-residential uses

Fees (to be updated with DSEIR Planning and Public Works Costs)

\$1,168,713 costs = \$0.03 per square foot
35,877,404 total square feet

EXHIBIT "E"

DEVELOPMENT REQUIREMENTS AND MAINTENANCE OBLIGATIONS

Appendix B2
Platinum Triangle Standardized Development Agreement Form
Office District

EXHIBIT "F"

PRELIMINARY TITLE REPORT

Appendix B2
Platinum Triangle Standardized Development Agreement Form
Office District