

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)

**FIRST AMENDMENT TO
DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF ANAHEIM
AND
SRB MANAGEMENT, LLC**

This First Amendment to Disposition and Development Agreement (“**First Amendment**”) is entered into this ____ day of _____, 2022, 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 SRB Management, LLC (referred to herein as “**Developer**”) (and together, the “**Parties**”), 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.

RECITALS

- A. City and Developer are Parties to that certain Disposition and Development Agreement (“**DDA**”) authorized by the City Council’s adoption of Ordinance No. 6497 on October 6, 2020.
- B. The Parties now wish to update and amend the DDA in accordance with Ordinance No. 4377 and adopted Resolution No. 82R-565 (the “**Procedures Resolution**”), which establishes procedures and requirements for the consideration of development agreements.
- C. Except as expressly amended hereby, the DDA remains valid, unmodified, and in full force and effect.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute, as it applies to the 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 and in the Purchase Agreement, the Parties agree that the DDA is amended as follows:

AGREEMENT

1. Definitions. All capitalized terms used but not defined in this First Amendment shall have the respective meanings given to them in the DDA. From and after the date of this First Amendment, all references to the “**DDA**” in the DDA or this First Amendment shall mean and refer to the DDA as amended by this First Amendment.

2. Vested Development Rights. Romanette (ii) of Section 6.1 is hereby deleted and replaced in its entirety by the following: “(ii) develop the Property with the Project and the Project Uses, with each Project Use having the maximum density and intensity, with buildings and structures having the maximum height, size, and number of units in accordance with the Existing Land Use Regulations, the Development Approvals and this DDA;”.

3. Vesting Tentative Tract Map and VTTM. All references in the DDA to “Project Vesting Tentative Tract Map”, “Vesting Tentative Tract Map” and “VTTM” shall hereby be replaced by the terms “Project Tentative Track Map”, “Tentative Tract Map” and “TTM”, respectively; provided, however, that the replacement of such terms shall not effect, or be interpreted to effect, any of the vested rights granted pursuant to the DDA as amended whatsoever.

4. Signage Permitting. A new Section 6.2 is hereby added, to read in its entirety as follows:

6.2 Sign Permits. The City acknowledges and agrees it (i) has reviewed all permit applications submitted by Developer that are necessary for the City to approve and issue permits for the digitization of the existing tri-panel signage displays located on the Property (the “Digitized Sign Permits”), and (ii) is prepared to approve and issue the Digitized Sign Permits to Developer upon Caltrans’ review and approval of such permit applications. The City agrees it shall, at its sole cost and expense, diligently and

continuously complete the processing of the Digitized Sign Permits in coordination with Caltrans and shall, subject to and contingent upon Caltrans' approval of such permit applications, issue the Digitized Sign Permits to Developer upon receipt of Caltrans' approval.

5. Regional Storm Drain. A new sentence is hereby added to the end of Section 8.2(c), to read in its entirety: "Notwithstanding the foregoing, Developer shall be solely responsible for the cost and expense of designing, constructing, and permitting (including coordinating with any required governmental agencies) any additional storm drain connections to the Santa Ana River not specifically depicted on Exhibit E and that primarily serve the storm drain requirements of the Project, provided the City shall act as the applicant agency in any applications for such additional connections."

6. Utilities. Section 8.3 is hereby revised to add the following paragraphs, in their entirety:

"Notwithstanding the foregoing, the City shall not accept for dedication any portions of the Developer's sanitary sewer system until the average volumetric flow velocity for such system, conforms to City of Anaheim Sewer Design Manual for gravity mains and Orange County Sanitation District Engineering Design Guidelines for siphons, measured continuously over 26 consecutive weeks, excluding stadium event days, shall meet or exceed the threshold standards mentioned above. The City shall approve the locations of the flow monitoring for segments of the sewer system offered for dedication. The City shall not accept any portions of the Developer's sanitary sewer system that is not contiguous to the downstream mainline connection. Prior to acceptance of the Developer's sanitary sewer system the City will physically inspect the system proposed for acceptance.

All proposed public sewers within each sewer shed that feed to Orange County Sanitation District (OCSD) trunk lines within State College Blvd as shown on the TTM within public utility easements shall be privately owned and maintained until such time that the entire system within each sewer shed subarea segment is constructed, inspected, accepted. The only exception to this is the point of connection to the OCSD trunk line and the first pipe segment upstream of said connection, up to and including the first manhole in that sewer line. This connection pipe segment shall be publicly owned and maintained upon completion of construction, inspection and acceptance by the City."

7. Amendment to Section 8.4. Section 8.4 of the DDA is hereby amended in full to read as follows:

8.4 Lower and Very Low Income Housing. The Parties acknowledge and agree that in order to require Developer to provide units reserved for lower and very low income households within the Project, at Closing the City will have paid Developer \$27,734,189 through a purchase price credit at the Closing under the Purchase Agreement. The restricted income limits must comply with the State Income Limits for Orange County determined and published annually by the California Department of Housing and Community Development (collectively, "Lower and Very Low Income Units") as referenced in California Health and Safety Code (H&SC) Section 50079.5 for Lower Income households and H&SC Section 50105 for Very Low Income Households. Therefore, Developer agrees that it shall incorporate into the Project and set aside, or cause to be set aside, either (i) 58 Very Low Income units and 46 Lower Income units, or (ii) 84 Very Low Income units, to be income restricted per H&SC, and rented at an affordable rent as defined and published by the California Tax Credit Allocation Committee ("CTCAC"). For the purposes of determining the maximum affordable rents, the following restrictions shall apply: (i) Lower Income units shall be restricted to a maximum affordable rent up to 80% AMI for Orange

County as determined and published annually by CTCAC for a family of a size appropriate to the unit; and (ii) Very Low Income units shall be restricted to a maximum affordable rent up to 50% AMI for Orange County as determined and published annually by CTCAC for a family of a size appropriate to the unit. Nothing in this DDA shall require any given project to include Lower and Very Low Income Units, provided that to the extent such Lower and Very Low Income Units are incorporated into projects with market rate units, the Lower and Very Low Income Units shall reflect the unit mix, corresponding size, and type of amenities for the market rate units in the same project.

8.4.1 Lower and Very Low Income Unit Delivery. No later than twenty-five (25) years after the Closing under the Purchase Agreement, the Lower and Very Low Income affordable units required by this Section 8.4 shall have been constructed and offered for rent.

8.4.2 Affordable Covenants. The continued affordability of each Lower and Very Low Income Unit required by this Section 8.4 shall be secured by a covenant in favor of the City (“Affordable Covenant”) running with the land recorded against each lot, parcel, or airspace lot in which such unit is located, ensuring its continued affordability for 55 years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program) from the issuance of the temporary or final certificate of occupancy, which covenant shall be reviewed and reasonably approved by the City.

8.4.3 Remedies for Failure to Meet Section 8.4.1 Delivery Obligations. Notwithstanding the provisions of Section 18.3, the Parties agree that the City’s sole and exclusive remedies for Developer’s failure to fulfill its obligations under Section 8.4.1 shall be as follows:

a. If at the end of the period set forth in Section 8.4.1 Developer has failed to deliver the required number of completed affordable housing units, Developer shall within thirty (30) days deliver to the City a plan for how it will deliver the number of units required to meet its delivery obligations (the “Remedial Plan”), which the City shall review and approve in its reasonable discretion.

b. If the City approves Developer’s Remedial Plan, Developer shall deliver the required number of units to fulfill its affordable housing delivery obligations within 18 months after the date of the City’s approval, unless Developer and the City agree to a different fulfillment deadline. If Developer fails to fulfill its obligations under the Remedial Plan within such period, or if the City does not approve Developer’s Remedial Plan, the City may, in its sole discretion, seek specific performance, and/or withhold all Development Approvals for projects that have not received building permits until Developer delivers the Lower or Very Low Income units required under the Remedial Plan.

8. Development Milestones. Section 9.3 of the DDA is hereby amended in full to delete Sections 9.3.1(b) through and including Section 9.3.1(e) in their entirety.

9. Arena/Stadium Special Sign District (“Spectaculars”). Section 9.4 of the DDA is hereby deleted and replaced in its entirety by the following:

9.4 Arena/Stadium Special Sign District. The Parties acknowledge and agree the Property contains an Arena/Stadium Special Sign District, and that subject to Anaheim Municipal Code 4.04.401, Developer may apply for an

Arena/Stadium Sign Permit to erect advertising displays consistent with the Arena/Stadium Coordinated Sign Program, provided that Developer hereby agrees to waive its right to apply to the City for such Arena/Stadium Sign Permit, and the City shall have no obligation to issue an Arena/Stadium Sign Permit, unless the Parties shall have entered into a revenue sharing agreement for such displays.

10. Incentives to Encourage Additional Affordable Housing. A new Section 9.5 is hereby added, to read in its entirety as follows:

9.5 Incentives to Encourage Additional Affordable Housing. The City shall make reasonable, good faith efforts to work with the California Department of Housing and Community and other public and private entities to develop economic and land use incentives to encourage SRB to develop additional Lower or Very Low Income Units at the Property; provided, however, that SRB shall have sole and unlimited discretion to accept or decline any proposed incentives and shall have no obligation to develop any Lower or Very Low Income Units at the Property other than as required by Section 8.4 of this DDA. Incentives may include, but shall not be limited to, federal, state or regional funding; tax credits; density bonuses over and above the Property's 5,175 unit base residential density (including density bonus incentives, concessions and waivers). The award of density bonuses, incentives, concessions, and waivers in accordance with the Chapter 18.52 (Housing Incentives) of the Anaheim Municipal Code and/or California Government Code Section 65915 et seq. (State Density Bonus Law) to facilitate the development of Lower or Very Low Income Units at the Property in addition to those Lower or Very Low Income Units required by Section 8.4 of this DDA shall not require an amendment to this DDA, the Master Site Plan for the Project, or the Project Tentative Tract Map.

11. Effect of Amendment. Except as specifically modified by the terms of this First Amendment, the DDA remains unchanged and in full force and effect. In the event of a conflict between any term or provision of the DDA and this First Amendment, the terms and provisions of this First Amendment shall control. The parties hereby ratify and confirm the DDA, subject to the modifications contained in this First Amendment.

12. Entire Agreement. The DDA, as amended by this First Amendment, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral with respect to the subject matter of the DDA, as hereby amended.

13. Incorporation of Recitals. The Recitals are true and are incorporated herein by reference.

14. Effective Date. This Amendment shall be effective as of the recordation of the DDA authorized by the City Council's adoption of Ordinance No. 6497 on October 6, 2020.

15. Counterparts. This Amendment may be executed and delivered in counterparts, each of which will be deemed an original and which together will constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, CITY and DEVELOPER have executed this First Amendment as of the date and year first above written.

“CITY”

DEVELOPER

CITY OF ANAHEIM,
a municipal corporation

SRB MANAGEMENT, LLC,
a Delaware limited liability company

By: _____
Mayor

By: _____

Title: _____

Name: _____

ATTEST:

Theresa Bass, City Clerk

APPROVED AS TO FORM:

Robert Fabela, City Attorney