

**Exhibit "A"**

**PROPOSED DEVELOPMENT AGREEMENT**

**[See Attached]**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of Perris  
Attn: City Clerk  
101 North D Street  
Perris, CA 92570

(SPACE ABOVE FOR RECORDER'S USE ONLY)  
(EXEMPT FROM RECORDING FEE PER GOV. CODE § 6103)

**FIRST AMENDMENT  
TO  
DEVELOPMENT AGREEMENT  
  
BY AND BETWEEN  
  
MTC CONSOLIDATED LLC  
  
&  
  
CITY OF PERRIS**

\_\_\_\_\_, 2015

## AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement ("First Amendment") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the CITY OF PERRIS, a municipal corporation (hereinafter "City"), and MTC Consolidated LLC, a California Limited Liability Company (hereinafter "Developer").

### RECITALS

WHEREAS, pursuant to California Government Code sections 65864 *et seq.* on \_\_\_\_\_, \_\_\_\_ City and Developer entered into the Development Agreement ("Development Agreement") for the development of 58.8 acres into five parcels plus four publically dedicated roadway lots to develop a 484,300 square-foot commercial retail shopping center with a mix of 19 tenants consisting of retail and dining uses; and

WHEREAS, the Development Agreement shall expire on May 13, 2018, and, pursuant to Section 9.18 of the Development Agreement, no provision may be amended except by an agreement in writing signed by the Parties; and

WHEREAS, the Parties now wish to amend the Development Agreement to extend the term of the Development Agreement by ten years; and

WHEREAS, on \_\_\_\_\_, 2015, the Planning Commission conducted a duly-noticed hearing and determined that "the provisions of the Development Agreement are consistent with the general plan and applicable specific plan" pursuant to California Government Code Section 65867.5(b), and after a review of all pertinent testimony and evidence, including the First Amendment, recommended approval of the Development Agreement; and

WHEREAS, pursuant to California Government Code Section 65867.5, on \_\_\_\_\_ 2015, the City Council conducted a duly-noticed public hearing, reviewed all pertinent testimony, including the First Amendment, and the Planning Commission's recommendations; and

WHEREAS, the City finds and determines that all actions required of the City precedent to approval of this First Amendment by Ordinance No. \_\_\_\_ of the City Council have been duly and regularly taken.

### AGREEMENT

NOW, THEREFORE, based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, the Parties hereto agree as follows:

Section 1. Recitals. The recitals above are true and correct and incorporated herein by this reference.

**Section 2. Amendment to Section 2.5 of the Development Agreement.** Section 2.5 of the Development Agreement is hereby amended so that the Term of Agreement shall terminate on May 13, 2028.

**Section 3. Effective.** This First Amendment shall become effective upon the effective date of the ordinance approving this First Amendment and after execution by the Parties hereto.

**Section 4. Full Force and Effect.** The Parties agree, except as specifically provided in this First Amendment, the terms of the Development Agreement shall remain unchanged and in full force and effect.

**Section 5. Consent of Parties.** The person(s) executing this First Amendment on behalf of the Parties hereto warrant (i) such party is duly-organized and existing, (ii) they are duly-authorized to execute and deliver this First Amendment on behalf of said party, (iii) by so executing this First Amendment, such party is formally bound to the provisions of this First Amendment, and (iv) the entering into of this First Amendment does not violate any provision of any other agreement to which said party is bound.

IN WITNESS WHEREOF, City and the Developer have entered into this First Amendment as of the date set forth hereinabove.

CITY OF PERRIS

By: \_\_\_\_\_  
Daryl R. Busch, Mayor

ATTEST:

By: \_\_\_\_\_  
Nancy Salazar, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Eric L. Dunn, Esq.  
City Attorney

Developer: MTC CONSOLIDATED LLC, a  
California limited liability company

By: \_\_\_\_\_  
John D. Motte  
Its: Manager

By: \_\_\_\_\_  
Daniel L. Stephenson  
Its: Manager

[End of Signatures]

**PLANNING COMMISSION  
AGENDA SUBMITTAL**

**Meeting Date: February 18, 2015**

**SUBJECT:** Development Agreement No. 14-00070 to amend the existing Development 10-02-0003 for the approved Towne Center commercial project, located at the southeast corner of Ethanac Road and I-215. Applicant: MTC Consolidated, LLC

**REQUESTED ACTION:** APPROVE Resolution No. 15-04 recommending that the City Council to review and approve amendment to development agreement concerning previously approved Tentative Parcel Map 34999 and DPR 06-0337, extending the development window of the project until the expiration date of May 13, 2028.

**CONTACT:** Clara Miramontes, Director of Development Services 

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**BACKGROUND/DISCUSSION:**

On April 27, 2010 the City Council approved a resolution approving a development agreement between the City of Perris and MTC Consolidated, LLC for the Towne Center project. The Development Agreement was the City's standard agreement and proposed to extend the development window of the project to an expiration date of May 13, 2018. The Development Agreement will implement previously approved Tentative Parcel Map 34999, Street Vacations 07-0112 and 07-0113, and DPR 06-0337 for the development of a 58.8 acre commercially zoned (CC) site for a 484,300 square foot retail center. The Towne Center project was approved by the City Council on May 13, 2008.

The applicant is requesting a resolution from the Planning Commission recommending to the City Council an ordinance amending the development agreement between the City of Perris and MTC Consolidated, LLC for the Towne Center project. The amendment to the existing Development Agreement is to extend the development window of the project to an expiration date of May 13, 2018 to May 13, 2028. No other requests are proposed, and the project shall be developed in accordance to the City's prior approvals and Conditions of Approval.

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**BUDGET (or FISCAL) IMPACT:** Cost for staff preparation of this item, payment of development impact fees and costs of construction are borne by the applicant.

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Prepared by: Ilene Paik, Associate Planner IP  
City Attorney: N/A  
Assistant City Manager: N/A

**Public Hearing:** February 18, 2015

**Exhibits:** A. Resolution 15-04 with Amendment to Development Agreement  
B. Previously Approved Development Agreement

**RESOLUTION NO. 15-04**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PERRIS RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF PERRIS AND MTC CONSOLIDATED LLC RELATED TO DEVELOPMENT AGREEMENT 10-02-0003 FOR A COMMERCIAL PROJECT AT THE SOUTHEAST CORNER OF THE 215 FREEWAY AND ETHANAC ROAD.**

**WHEREAS**, the applicant, MTC Consolidated LLC, has requested an amendment to development agreement ("Development Agreement") to extend the time permitted for implementation of its Prior Approvals which provide for the subdivision of 58.8 acres of vacant land into five parcels to develop a 484,300 square-foot commercial retail shopping center with a mix of 19 tenants consisting of retail and dining uses; and

**WHEREAS**, the Prior Approval, which are incorporated herein by this reference, were approved by the City Council on April 27, 2010; and

**WHEREAS**, the Prior Approvals, which are incorporated herein by this reference, were approved by the City Council on May 13, 2008; and

**WHEREAS**, on February 18, 2015, the Planning Commission conducted a duly noticed public hearing and determined that "the provisions of the development agreement are consistent with the General Plan" pursuant to California Government Code Section 65867.5(b), constituting part of the Planning and Zoning Law and, therefore, recommends approval of the proposed development agreement to the City Council; and

**WHEREAS**, the City has duly noticed this Development Agreement;

**NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PERRIS, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The above recitals are all true and correct.

**Section 2.** The Planning Commission has reviewed and considered the information and determined that the proposed Development Agreement will not have a significant adverse effect on the environment. The Development Agreement proposes no physical changes to the project from the Prior Approvals, including the final Environmental Impact Report, and has been prepared in accordance with the California Environmental Quality Act, and is complete and no significant adverse environmental effects are identified.

**Section 3.** The Planning Commission, based on the information provided herewith and the Prior Approvals, hereby finds and determines that:

A. The proposed Development Agreement is consistent with the applicable General Plan, their objectives, the policies, general land uses, and programs.

B. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the General Plan land use district in which the real property is located.

C. The proposed Development Agreement is in conformity with and will promote public convenience, general welfare and good land use practice.

D. The proposed Development Agreement will not be detrimental to the health, safety and general welfare.

E. The proposed Development Agreement will not adversely affect the orderly development of the property or the preservation of property values.

F. The proposed Development Agreement will, promote and encourage the development of the proposed project by providing a greater degree of requisite certainty.

**Section 4.** The Development Agreement, a copy of which is attached, is hereby recommended to the City Council for approval.

**Section 5.** This resolution shall be effective upon adoption.

**Section 6.** The Chairperson shall sign and the Secretary shall certify to the passage and adoption of this Resolution.

***ADOPTED, SIGNED, and APPROVED*** this 18st day of February, 2015.

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CHAIRPERSON, PLANNING COMMISSION

Attest:

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Designee Secretary, Planning Commission

**STATE OF CALIFORNIA)  
COUNTY OF RIVERSIDE) §  
CITY OF PERRIS )**

**I, Clara Miramontes, Secretary of the Planning Commission of the City of Perris, do hereby certify that the foregoing Resolution Number 15-04 was duly adopted by the Planning Commission of the City of Perris, at a regular meeting thereof held on the 18th day of February, 2015, by the following vote:**

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:**

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**Secretary, Planning Commission**

**Attachment: First Amendment to Development Agreement**



**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

**City of Perris  
Attn: City Clerk  
101 North D Street  
Perris, CA 92570**

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**FIRST AMENDMENT  
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BY AND BETWEEN  
  
MTC CONSOLIDATED LLC  
  
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CITY OF PERRIS**

\_\_\_\_\_, 2015

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### RECITALS

WHEREAS, pursuant to California Government Code sections 65864 *et seq.* on \_\_\_\_\_, City and Developer entered into the Development Agreement ("Development Agreement") for the development of 58.8 acres into five parcels plus four publically dedicated roadway lots to develop a 484,300 square-foot commercial retail shopping center with a mix of 19 tenants consisting of retail and dining uses; and

WHEREAS, the Development Agreement shall expire on May 13, 2018, and, pursuant to Section 9.18 of the Development Agreement, no provision may be amended except by an agreement in writing signed by the Parties; and

WHEREAS, the Parties now wish to amend the Development Agreement to extend the term of the Development Agreement by ten years; and

WHEREAS, on \_\_\_\_\_, 2015, the Planning Commission conducted a duly-noticed hearing and determined that "the provisions of the Development Agreement are consistent with the general plan and applicable specific plan" pursuant to California Government Code Section 65867.5(b), and after a review of all pertinent testimony and evidence, including the First Amendment, recommended approval of the Development Agreement; and

WHEREAS, pursuant to California Government Code Section 65867.5, on \_\_\_\_\_ 2015, the City Council conducted a duly-noticed public hearing, reviewed all pertinent testimony, including the First Amendment, and the Planning Commission's recommendations; and

WHEREAS, the City finds and determines that all actions required of the City precedent to approval of this First Amendment by Ordinance No. \_\_\_\_ of the City Council have been duly and regularly taken.

### AGREEMENT

NOW, THEREFORE, based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, the Parties hereto agree as follows:

Section 1. Recitals. The recitals above are true and correct and incorporated herein by this reference.

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**Section 5. Consent of Parties.** The person(s) executing this First Amendment on behalf of the Parties hereto warrant (i) such party is duly-organized and existing, (ii) they are duly-authorized to execute and deliver this First Amendment on behalf of said party, (iii) by so executing this First Amendment, such party is formally bound to the provisions of this First Amendment, and (iv) the entering into of this First Amendment does not violate any provision of any other agreement to which said party is bound.

IN WITNESS WHEREOF, City and the Developer have entered into this First Amendment as of the date set forth hereinabove.

CITY OF PERRIS

By: \_\_\_\_\_  
Daryl R. Busch, Mayor

ATTEST:

By: \_\_\_\_\_  
Nancy Salazar, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Eric L. Dunn, Esq.  
City Attorney

Developer: MTC CONSOLIDATED LLC, a  
California limited liability company

By: \_\_\_\_\_  
John D. Motte  
Its: Manager

By: \_\_\_\_\_  
Daniel L. Stephenson  
Its: Manager

[End of Signatures]

Recording Requested by and  
When Recorded Return to:

City of Perris  
101 North D Street  
Perris, CA 92570

Attn: City Clerk

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(Space Above This Line for Recorder's Office Use Only)  
(Exempt from Recording Fee per Gov. Code § 6103)

### DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is entered into this 11<sup>th</sup> day of June, 2010, (hereinafter the "Effective Date") by and between the CITY OF PERRIS, a municipal corporation (hereinafter "City"), and MTC Consolidated LLC, a California limited liability Company ("hereinafter "Developer").

### RECITALS

A. California Government Code Sections 65864 *et seq.* ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. Developer is the owner of legal and/or equitable interests in certain real property legally described in Exhibit "A" attached hereto and incorporated herein (the "Property"), and thus qualifies to enter into this Agreement in accordance with Development Agreement Law.

C. Developer has received certain approvals and entitlements related to this project and desires to extend the term of said approvals.

D. Developer and City agree that a development agreement should be approved and adopted for this Property in order to memorialize the property expectations of City and Developer as more particularly described herein.

E. An Environmental Impact Report (State Clearinghouse #2006101147) has been approved for the Project (as defined herein). An Addendum to the EIR has been prepared related to this Development Agreement which outlines that there are no additional physical changes in the project.

F. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project (as hereinafter defined) will achieve a number of City objectives, including the orderly development of the Property; the providing of public benefits to the City and its residents

through public improvements, improvements to the Property, and street improvements in and around the Property.

G. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. \_\_\_ of the City Council have been duly and regularly taken.

### COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. The defined terms include the following:

1.1.1 **"Agreement"** means this Development Agreement and all attachments and exhibits hereto.

1.1.2 **"City"** means the City of Perris, a municipal corporation.

1.1.3 **"City Council"** means the City Council of the City.

1.1.4 **"Developer"** means MTC Consolidated LLC, a California limited liability Company, and its successors and assigns to all or any part of the Property.

1.1.5 **"Development"** means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and other facilities and improvements necessary or appropriate for the Project, and the maintenance, repair, or reconstruction of any building, structure, improvement, landscaping or facility after the construction and completion thereof on the Property.

1.1.6 **"Development Approvals"** means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals include, but are not limited to, general plan amendments, specific plans, site plans, tentative and final subdivision maps, design guidelines, variances, zoning designations, conditional use permits, grading, building, and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports and negative declarations, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include (i) rules, regulations, policies, and other enactments of general application within the City, or (ii) any matter where City has reserved authority under Article 3.0. Developer has heretofore received certain Development

Approvals, as approved by the City Council on May 13, 2008, which approvals include a final Environmental Impact Report (State Clearinghouse #2006101147), Tentative Map 34999, Street Vacation 07-0112 and 07-0113 and Development Plan Review 06-0337, including any conditions thereto (the "Prior Approvals"). The Development Approvals include the Prior Approvals attached hereto on Exhibit "B" and by this reference incorporated herein.

1.1.7 "*Development Plan*" means the proposed plan for Development of a portion of the Property pursuant to the Development Approvals, including the Prior Approvals, and Developer's application for Tentative Tract Map 34999, as has been approved by the City prior to the Effective Date. Conceptual drawings of the Tentative Tract Map are attached hereto as Exhibit "C."

1.1.8 "*Effective Date*" means the date inserted into the preamble of this Agreement after this Agreement has been approved by ordinance of the City Council and signed by Developer and City.

1.1.9 "*Existing Land Use Regulations*" means the Land Use Regulations which have been adopted and are effective on or before the Effective Date of this Agreement.

1.1.10 "*Land Use Regulations*" means all ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City's General Plan, any applicable Specific Plan, and Municipal Code and Zoning Code and including all development impact fees (except as otherwise provided in Section 3.5), which affect, govern or apply to the development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development of the Property, subject to the terms of this Agreement. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupancies generally; taxes and assessments; regulations for the control and abatement of nuisances; uniform codes; utility easements; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; health and safety regulations; environmental regulations; or similar matters or any other matter reserved to the City pursuant to Article 3.

1.1.11 "*Mortgagee*" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender or each of their respective successors and assigns.

1.1.12 "*Project*" means the Development of the Property consistent with the Development Plan and this Agreement.

1.1.13 "*Property*" means the real property described in and shown in Exhibit "A."

1.1.14 "*Public Improvements*" means the improvements to be constructed on and adjacent to the Property, as further described in the Development Approvals.

1.1.15 "*Reservation of Authority*" means the rights and authority accepted from the assurances and rights provided to Developer under this Agreement and reserved to City under Section 3.6 of this Agreement.

1.1.16 "*Subsequent Development Approvals*" means all Development Approvals issued subsequent to the Effective Date in connection with Development of the Property, which shall include, without limitation, the approvals defined herein as the Development Plan, excepting those for which approval has already been obtained.

1.1.17 "*Subsequent Land Use Regulations*" means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement), which governs development, and use of the Property.

1.1.18 "*Term*" shall mean the period of time from the Effective Date until the termination of this Agreement as provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit "A" (Legal Descriptions); Exhibit "B" (Prior Approvals); and Exhibit "C" (Tentative Tract Maps).

## 2. GENERAL PROVISIONS.

2.1 **Binding Effect of Agreement.** From and following the Effective Date, actions by the City and Developer with respect to the Development of the Property, including actions by the City on applications for Subsequent Development Approvals affecting the Property, shall be subject to the terms and provisions of this Agreement.

2.2 **Ownership of Property.** City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Property and thus Developer is qualified to enter into and be a party to this Agreement under the Development Agreement Law.

2.3 **Transfer Restrictions.** As used in this section, the term "transfer" shall include any assignment, conveyance, hypothecation, mortgage, pledge, or encumbrance of this Agreement or the Property, or the improvements thereon by Developer. A transfer shall also include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present equity ownership and/or more than twenty-five percent (25%) of the voting control of Developer (jointly and severally referred to herein as the "Trigger Percentages") or any general partner of Developer in the aggregate, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. A transfer of interests (in a cumulative basis) in the equity ownership and/or voting control of Developer in amounts less than Trigger Percentages shall not constitute a transfer subject to the restrictions set

forth herein. In the event Developer or any general partner comprising Developer or its successors is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Developer, or of beneficial interest of such trust; in the event that Developer or any general partner comprising is a limited or general partnership, such transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership interest; in the event that Developer or any general partner is a joint venture, such transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

Developer shall not transfer this Agreement or any of Developer's rights or obligations hereunder, or any interest in the Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, which shall not be unreasonably withheld, and if so purported to be transferred, the same shall be null and void. In considering whether it will grant approval to any transfer by Developer, which transfer requires City approval, City shall reasonably consider factors such as (i) whether the completion of the Project is delayed or jeopardized; (ii) the financial strength and capability of the proposed transferee to perform City's obligations hereunder; and (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership and operation of similar projects.

In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by the City assuming such obligations. No consent or approval by City of any transfer requiring City's approval shall constitute a further waiver of the provision of this Section 2.3 and, furthermore, City's consent to a transfer shall not be deemed to release Developer of liability for performance under this Agreement unless such release is specific and in writing executed by City.

**2.4 Transfer to Public Entity.** Transfer of any portion of the Property to a public entity, including but not limited to a school district, whether such transfer is voluntary or involuntary, shall not relieve Developer of its obligation to construct the Public Improvements required by this Agreement. Developer specifically acknowledges and agrees to construct the Public Improvements irrespective of such a transfer. To the extent such a transfer changes the Project contemplated by the Prior Approvals, the City and the Developer may cooperate in processing a revised Project through the appropriate entitlement process, which process may result in elimination of one or more of the Public Improvements contemplated by the Prior Approvals.

**2.5 Term of Agreement.** Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until May 13, 2018.

### **3. DEVELOPMENT OF THE PROPERTY.**

**3.1 Rights to Develop.** Subject to and during the Term of this Agreement, Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan, the Existing Land Use Regulations, and this Agreement.



**3.2 Effect of Agreement on Land Use Regulations.** Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be as set forth in the Existing Land Use Regulations which were in full force and effect as of the Effective Date of this Agreement as evidenced in the Prior Approval, subject to the terms of this Agreement. Pursuant to Government Code Section 66452.6, the term of any tentative map for the Property, street vacation and development plan review shall automatically be extended for the term of this Agreement.

**3.3 Timing of Development; Scope of Development.** Except as set forth herein, Developer shall be under no obligation to commence or complete the Development of the Property in any particular time frame, or at all. The purpose of this Agreement is to set forth the applicable rules and regulations applicable to the Development of the Property or portion thereof. The Property shall be developed in accordance with the Prior Approvals and any Subsequent Development Approvals, including Tentative Tract Map 34999 and Development Plan Review 06-0337 as conditioned and approved by the City (which as submitted by Developer to subdivide the existing, vacant 58.8 acres into five parcels plus four publicly dedicated roadway lots to develop a 484,300 square-foot commercial retail shopping center with a mix of 19 tenants consisting of retail and dining uses).

**3.4 Development Plan; Subsequent Development Approvals.** The Development Plan for the Project will require the processing of Subsequent Development Approvals. The City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The Parties acknowledge that subject to the Existing Land Use Regulations, under no circumstances shall City be obligated in any manner to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition, except that (i) the Subsequent Development Approvals shall be generally consistent with the Prior Approvals, the Public Improvement and Conceptual Tentative Tract Map. However, unless otherwise requested by Developer, City shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Property after such approvals have been granted by the City. Processing of Subsequent Development Approvals or changes in the Development Approvals or Development Plan made pursuant to Developer's application shall not require an amendment to this Agreement.

**3.5 Development Impact Fees.** Notwithstanding anything to the contrary in this Agreement, all requisite development impact fees shall be those existing on the date the applicable Development Approvals or Subsequent Development Approvals are granted. Development impact fees shall be paid at such time as payment for such fees is due and payable in accordance with the Land Use Regulations in effect at that time, for the portion of the Property to which such fees apply.

**3.6 Reservation of Authority.**

**3.6.1 Limitations, Reservations and Exceptions.** Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development of the Property:

(a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, and also adopted by City as Subsequent Land Use Regulations, if applicable City-wide.

(d) Regulations that may be in conflict with the Development Plan or this Agreement, but which City determines are materially necessary to protect the public health, safety, and welfare.

(e) Regulations that are not in conflict with the Development Plan or this Agreement.

(f) Regulations that are in conflict with the Development Plan or this Agreement, provided Developer has given written consent to the application of such regulations to Development of the Property.

(g) Federal, State, County, and multi-jurisdictional laws and regulations which City is required to enforce as against the Property or the Development of the Property.

(h) Subsequent Land Use Regulations applicable to local or regional development impact fees.

**3.6.2 Future Discretion of City.** This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Existing Land Use Regulations.

**3.6.3 Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.** In the event that Federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal, State, county, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to

the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce.

**3.7 Regulation by Other Public Agencies.** It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other public agencies.

**3.8 Public Improvements.** Developer shall construct the Public Improvements described in the Prior Approvals attached hereto as Exhibit "B". In addition, and notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to dedicate necessary land and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following conditions:

**3.8.1** The dedication, payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project;

**3.8.2** The timing of the Exaction should be reasonably related to the phasing of the development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of public; and

**3.8.3** When Developer is required by this Agreement and/or the Development Plan to construct any public works facilities which will be dedicated to the City or any other public agency upon completion, Developer shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work.

**3.9 Fees, Taxes and Assessments.** During the term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Development Agreement and/or the Development Plan, including those fees described in No. 41 of the City's Planning Conditions of Approval as part of the Prior Approvals. This Development Agreement shall not prohibit the application of fees, taxes or assessments as follows:

**3.9.1** Developer shall be obligated to pay those fees, taxes or City assessments which exist as the Effective Date or are included or contemplated in the Development Plan and any increases in same, as provided herein;

**3.9.2** Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as business license fees or taxes, sales or use taxes, utility taxes, and public safety taxes;

**3.9.3** Developer shall be obligated to pay any future fees or assessments imposed on an area-wide basis (such landscape and lighting assessments and community services

assessments), provided that Developer reserves its right to protest the establishment or amount of any such fees or assessments through the method prescribed by law;

3.9.4 Developer shall be obligated to pay any fees imposed pursuant to any assessment district established within the Project otherwise proposed or consented to by Developer;

3.9.5 Developer shall be obligated to pay any fees that may be imposed in connection with the implementation of the Transportation Uniform Mitigation Fee ("TUMF") program, the Multi-Species Habitat Conservation Plan ("MSHCP"), and the San Jacinto River Plan and similar types of fees of other public agencies; and

3.9.6 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code.

#### **4. REVIEW FOR COMPLIANCE.**

4.1 **Annual Review.** The City Council may, in its discretion, review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Developer with the terms of the Agreement ("Annual Review"). No failure on part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement.

4.2 **Special Review.** The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("Special Review"). Developer shall cooperate with the City in the conduct of such Special Reviews.

4.3 **Procedure.** Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If on the basis of the parties' review of any terms of the Agreement, either party concludes that the other party has not complied in good faith with the terms of the Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefore and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have thirty (30) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such thirty (30) days period to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice, it shall do so by responding in writing to said Notice within thirty (30) days after receipt of the Notice. If the response to the Notice of Non-Compliance has not been received in the offices of the party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall, for a period of not less than fifteen (15) days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice. In the event that a cure or remedy is not timely effected or, if the Notice is contested and the

parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 5. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "*force majeure*" as defined in, and subject to the provisions of, Section 9.10.

**4.4 Certificate of Agreement Compliance.** If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("Certificate") to Developer stating that after the most recent Annual Review or Special Review and based upon the information known or made known to the City Manager, Planning Commission, and City Council that (1) this Agreement remains in effect and (2) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer record the Certificate with the County Recorder. Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property, or any lot or parcel within the Property.

## **5. DEFAULT AND REMEDIES.**

**5.1 Specific Performance Available.** The parties acknowledge and agree that other than the termination of this Agreement pursuant to Section 5.2, specific performance is the only remedy available for the enforcement of this Agreement and knowingly, intelligently, and willingly waive any and all other remedies otherwise available in law or equity. Accordingly, and not by way of limitation, and except as otherwise provided in this Agreement, Developer shall not be entitled to any money damages from City by reason of any default under this Agreement. Further, Developer shall not bring an action against City nor obtain any judgment for damages for a regulatory taking, inverse condemnation, unreasonable exactions, reduction in value of property, delay in undertaking any action, or asserting any other liability for any matter or for any cause which existed or which the Developer knew of or should have known of prior to the time of entering this Agreement, Developer's sole remedies being as specifically provided above. Developer acknowledges that such remedies are adequate to protect Developer's interest hereunder and the waiver made herein is made in consideration of the obligations assumed by the City hereunder. The Developer's waiver of the right to recover monetary damages shall not apply to any damages or injuries to a third party caused by the City's negligence.

### **5.2 Termination of Agreement.**

**5.2.1 Termination of Agreement for Material Default of Developer.** City in its discretion may terminate this Agreement for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 4.3. Any material default by Developer of any of the conditions of approval of any of the

Development Approvals that is not timely cured by Developer shall be deemed a material default by Developer of this Agreement.

**5.2.2 Termination of Agreement for Material Default of City.** Developer in its discretion may terminate this Agreement for any material default by City; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 4.3.

**5.2.3 Rights and Duties Following Termination.** Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, or (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination. Termination of this Agreement shall not affect either party's rights or obligations with respect to any Development Approval granted prior to such termination.

## **6. THIRD PARTY LITIGATION.**

City shall promptly notify Developer of any claim, action or proceeding filed and served against City to challenge, set aside, void, annul, limit or restrict the approval and continued implementation and enforcement of this Agreement, including but not limited to challenges of the environmental review of the Project and this Agreement conducted pursuant to the California Environmental Quality Act. Developer and City agree to confer and cooperate with respect to such third party litigation. Developer shall defend, indemnify and hold harmless City, its agents, officers and employees from any such claim, action or proceeding, and shall indemnify City for all costs of defense and/or judgment obtained in any such action or proceeding; provided, however, if Developer elects, in its sole discretion, not to defend the action (preferring to either allow judgment to be entered or to enter into a settlement with plaintiff(s) which declares this Agreement to be void, annulled, or which limits or restricts this Agreement), Developer shall so notify City in writing and City shall then have the option, in its sole discretion, of defending the action at its cost. In the event this Agreement, as a result of a third party challenge, is voided or annulled, or is limited or restricted such a manner that the intent and purposes of this Agreement cannot be implemented as mutually desired by the parties hereto, this Agreement shall terminate and be of no further force or effect as of the date such judgment or settlement so voids, annuls, limits, or restricts the intent and purpose of this Agreement.

## **7. MORTGAGEE PROTECTION.**

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines such interpretation or

modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who takes title to or comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Plan applicable to the Property or such part thereof so acquired by the Mortgagee.

## **8. INSURANCE; INDEMNIFICATION.**

### **8.1 Insurance.**

#### **8.1.1 Types of Insurance.**

##### **(a) Public Liability Insurance.**

Prior to commencement and until completion of construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of City and Developer comprehensive broad form general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways,

affected by such use of the Property or for property damage, providing protection of a least Two Million Dollars (\$2,000,000) for bodily injury or death to any one person, at least Five Million Dollars (\$5,000,000) for any one accident or occurrence, and at least One Million Dollars (\$1,000,000) for property damage, which limits shall be subject to such increases in amount as City may reasonably require from time to time.

**(b) Builder's Risk Insurance.**

Prior to commencement and until completion of construction by Developer on the Property, Developer shall procure and shall maintain in force, or caused to be maintained in force, "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (1) above.

**(c) Worker's Compensation.**

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

**(d) Other Insurance.**

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

**(e) Insurance Policy Form, Sufficiency, Content and Insurer.**

All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed and admitted to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. In the event the City's Risk Manager determines that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates an increased or decreased risk



of loss to the City, Developer agrees that the minimum limits of the insurance policies required by this Section 8.1.1 may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that Developer shall have the right to appeal a determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City's Risk Manager.

#### **8.1.2 Failure to Maintain Insurance and Proof of Compliance.**

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

(a) For insurance required above, prior to issuance of any grading or building permit.

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

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

### **8.2 Indemnification.**

#### **8.2.1 General.**

Developer shall indemnify the City, its officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Property, whether or not there is current passive or active negligence on the part of the City, its officers, agents, or employees and in connection therewith.

(a) Developer will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Developer will promptly pay any judgment rendered against the City, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of the Developer hereunder, and Developer agrees to save and hold the City, its officers, agents, and employees harmless therefrom.

(c) In the event the City, its officers, agents, or employees is made a party to the action or proceeding filed or prosecuted against for such damages or other claims

arising out of or in connection with operation or activities of Developer hereunder, Developer agrees to pay the City, its officers, agents, or employees any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to legal costs and attorneys' fees.

#### **8.2.2 Exceptions.**

The foregoing indemnity shall not include claims or liabilities arising from the sole or gross negligence or willful misconduct of the City, its officers, agents, or employees, who are directly responsible for the City.

#### **8.2.3 Loss and Damage.**

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

#### **8.2.4 Period of Indemnification.**

The obligations for indemnity under this Section 8.2 shall begin upon the Effective Date and shall terminate upon termination of Development Agreement, provided that indemnification shall apply to all claims or liabilities arising during that period even if asserted at any time thereafter.

#### **8.3 Waiver of Subrogation.**

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

### **9. MISCELLANEOUS PROVISIONS.**

**9.1 Recordation of Agreement.** This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

**9.2 Entire Agreement.** This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence

of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

**9.3 Severability.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

**9.4 Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

**9.6 Singular and Plural.** As used herein, the singular of any word includes the plural.

**9.7 Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

**9.8 Waiver.** Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

**9.9 No Third Party Beneficiaries.** Except for the Mortgagee Protection provisions expressly set forth in Section 7 above, this Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

**9.10 Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than one (1) year.

**9.11 Mutual Covenants.** The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

**9.12 Counterparts.** This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

**9.13 Litigation.** Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, or such other appropriate court in said county. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between City and Developer seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorney's fees.

**9.14 Covenant Not To Sue.** The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, or based on any allegation or assertion in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

**9.15 Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the Development of 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 Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property and as future holder of fee title to such property, on the other hand. City agrees that by its approval of, and entering into, this Agreement that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement, including but not limited to Developer's obligation to provide the public improvements set forth herein.

**9.16 Further Actions and Instruments.** Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated here under in the performance of all obligations under this Agreement and the satisfaction of the conditions of this 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 Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

**9.17 Eminent Domain.** No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

**9.18 Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. [Notwithstanding the foregoing, implementation of the Project may require minor modifications of the details of the Development Plan and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, modifications of the Development Plan, which are found by the City Attorney to be non-substantive and procedural, shall not require an amendment to this Agreement. A modification will be deemed non-substantive and/or procedural if it does not result in material change in fees, cost, density, intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and construction standards and specifications for the Project.]

**9.19 Corporate Authority.** The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

**9.20 Notices.** All notices under this Agreement shall be effective when delivered by (i) personal delivery, or (ii) reputable same-day or overnight courier or messenger service, (iii) overnight United States Postal Service Express Mail, postage prepaid, or (iv) by United States Postal Service mail, registered or certified, postage prepaid; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City:                      City of Perris  
   101 North "D" Street  
   Perris, CA 92570  
   Attn: City Manager

With copy to:                Aleshire & Wynder, LLP Tower 17  
   18881 Von Karman Avenue, Suite 400  
   Irvine, CA 92612  
   Attn: Eric L. Dunn, Esq.

To Developer: MTC Consolidated LLC  
455 S. D Street  
Perris, CA 92570  
Attn: John D. Motte and Daniel L. Stephenson

**9.21 Non-liability of City Officials.** No officer, official, member, employee, agent, or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.


**9.22 No Brokers.** City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorney's fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement arising out of agreements by the indemnifying party to pay any commission or finder's fee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

Dated:

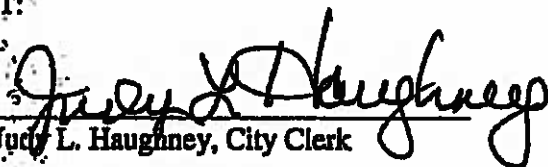
City: CITY OF PERRIS, a municipal corporation

By

  
Daryl R. Busch  
Mayor, City of Perris

ATTEST:


By

 3/9/11  
Judy L. Haughney, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By

  
Eric L. Dunn, City Attorney

Developer: MTC CONSOLIDATED LLC,  
a California limited liability  
company

By:

  
John D. Motte  
Its: Manager

By:

  
Daniel L. Stephenson  
Its: Manager

[End of Signatures]

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF RIVERSIDE )

On June 21, 2010, before me, PAULA B HACKBARTH, a Notary Public, personally appeared DANIEL L STEPHENSON, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

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

WITNESS my hand and official seal.

Signature Paula B HackbARTH (Seal)





STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF RIVERSIDE )

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

Real property in the City of Perris, County of Riverside, State of California, described as follows:

[TO BE INSERTED]

**LEGAL DESCRIPTION**

Real property in the City of Perris, County of Riverside, State of California, described as follows:

**PARCEL A:**

**PARCEL 1 :**

**LOTS 1 AND 2 OF TRUMBLE FARMS, AS SHOWN BY MAP ON FILE IN BOOK 11 PAGE 38 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;**

**EXCEPTING THEREFROM THOSE PORTIONS OF SAID LOTS 1 AND 2, LYING WESTERLY, NORTHWESTERLY AND NORTHERLY OF THE EASTERLY, SOUTHEASTERLY AND SOUTHERLY LINES OF PARCEL 7 AS DESCRIBED IN FINAL ORDER OF CONDEMNATION, RECORDED MARCH 16, 1966 AS INSTRUMENT NO. 27809 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;**

**ALSO EXCEPTING THEREFROM SAID LOT 2, THAT PORTION LYING SOUTHEASTERLY OF THE NORTHWESTERLY LINE OF ENCANTO DRIVE.**

**PARCEL 2 :**

**THAT PORTION OF LOT 32 OF TRUMBLE FARMS, AS SHOWN BY MAP ON FILE IN BOOK 11 PAGE 38 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS;**

**BEGINNING AT THE INTERSECTION OF THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT WITH THE NORTHERLY LINE OF THE SOUTHERLY 30 FEET OF ETHANAC ROAD, AS SHOWN ON SAID MAP;  
THENCE ALONG SAID PROLONGATION AND SAID WESTERLY LINE, SOUTH 0° 01' 15" EAST 77.24 FEET, TO THE TRUE POINT OF BEGINNING;  
THENCE NORTH 88° 10' 20" EAST 159.68 FEET;  
THENCE SOUTH 18° 56' 00" EAST 23.99 FEET TO A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 220 FEET;  
THENCE SOUTHWESTERLY ALONG SAID CURVE FROM A TANGENT BEARING SOUTH 10° 46' 28" WEST, THROUGH AN ANGLE OF 66° 24' 31", AN ARC DISTANCE OF 255 FEET TO SAID WESTERLY LINE OF SAID LOT;  
THENCE ALONG SAID WESTERLY LINE, NORTH 0° 01' 15" WEST, TO THE TRUE POINT OF BEGINNING.**

**APN: 331-100-001-9 AND 331-100-002-0**

**PARCEL B:**

**THE NORTH 198 FEET OF LOT 28 OF TRUMBLE FARMS, AS SHOWN BY MAP ON FILE IN BOOK 11, PAGE 38 OF MAPS, RIVERSIDE COUNTY RECORDS.**

**APN: 331-100-013**

**PARCEL C:**

**THE NORTHERLY ONE ACRE OF THE SOUTHERLY TWO ACRES OF LOT 28, TRUMBLE FARMS, AS**

Order Number: 0625-2277989 (lp)

Page Number: 18

SHOWN BY MAP ON FILE IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA. (THE FRONTAGE OF THIS PARCEL BEING THE NORTHERLY 66 FEET OF THE SOUTHERLY 132 FEET FRONTAGE OF TRUMBLE ROAD, THE DEPTH OF THIS PARCEL BEING 660.78 FEET), AS RECORDED IN BOOK 11, PAGE 38.

APN: 331-100-014-1

PARCEL D:

THE SOUTHERLY ONE ACRE OF LOT #28, TRUMBLE FARMS, AS SHOWN BY MAP ON FILE IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

PARCEL E:

LOT 26 OF TRUMBLE FARMS, IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF THE CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 11, PAGE 38 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 331-100-017-4, 331-100-021-7 AND 331-100-022-8

PARCEL F:

LOT 7 OF TRUMBLE FARMS, AS SHOWN BY MAP ON FILE IN BOOK 11 PAGE 38 OF MAPS, RIVERSIDE COUNTY RECORDS;

EXCEPTING THEREFROM THOSE PORTIONS CONDEMNED BY THE STATE OF CALIFORNIA BY DECREES OF CONDEMNATION RECORDED APRIL 21, 1966 AS INSTRUMENT NO. 42062 AND JUNE 23, 1966 AS INSTRUMENT NO. 65098;

ALSO EXCEPTING THEREFROM THOSE PORTIONS ACQUIRED BY THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION, CASE NO. 85862, A CERTIFIED COPY OF WHICH WAS RECORDED APRIL 21, 1966 AS INSTRUMENT NO. 42062.

APN: 331-100-023-9

PARCEL G:

LOTS 2, 3, 4 AND 5 OF TRUMBLE FARMS, IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE(S) 38 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THOSE PORTIONS ACQUIRED BY THE STATE OF CALIFORNIA BY FINAL ORDER OF CONDEMNATION, CASE NO. 85062, A CERTIFIED COPY OF WHICH WAS RECORDED MARCH 16, 1966, AS INSTRUMENT NO. 27809 AND APRIL 21, 1966 AS INSTRUMENT NO. 42062, OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION OF LOT 2 LYING NORTHERLY OF ENCANTO DRIVE.

APN: 331-100-024

PARCEL H:

PARCEL 1, 2, 3 AND 4 AS SHOWN ON CERTIFICATE OF COMPLIANCE NO. 04-0086, AS

Order Number: 0525-2277989 (lp)

Page Number: 19

EVIDENCED BY DOCUMENT RECORDED JULY 26, 2004, AS INSTRUMENT NO. 04-0576656 OF OFFICIAL RECORDS.

PARCEL I:

LOTS 6 AND 27 OF TRUMBLE FARMS, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP ON FILE IN BOOK 11, PAGE 38, OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPT FROM LOT 6 THAT PORTION LYING WEST OF THE EAST LINE OF ENCANTO DRIVE AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDER APRIL 21, 1966 AS INSTRUMENT NO. 42062, OFFICIAL RECORDS, RIVERSIDE COUNTY, CALIFORNIA.

APN: 331-100-019

**EXHIBIT "B"**  
**PRIOR APPROVALS**



## **CITY OF PERRIS**

**DEVELOPMENT SERVICES DEPARTMENT  
PLANNING DIVISION**

135 N. "D" Street, Perris, CA 92570-2200  
TEL: (951) 943-5003 FAX: (951) 943-8379

June 4, 2008

Michael Naggar  
MTC Consolidated, LLC  
445 South "D" Street  
Perris, California 92570-2134

**Subject: Approval of Towne Center Project  
(Environmental Impact Report – State Clearinghouse #2006101147 - Tentative  
Map 34999, Street Vacations 07-0112 and 07-0113, and Development Plan  
Review 06-0337)**

Dear Mr. Naggar:

The City of Perris City Council approved the above referenced project on May 13, 2008, subject to the enclosed Conditions of Approval.

The project is a Tentative Map, two Street Vacations, and Development Plan Review to subdivide the existing, vacant 58.8 acres (at the southeast corner of the 215 Freeway and Ethanac Road) into five parcels plus four publicly dedicated roadway lots, and: (1) the public dedication of a new "A" Street to bisect the project site and connect Encanto Drive to Trumble Road; (2) the vacation of Encanto Drive between the new "A" Street and Ethanac Road to allow safer off-ramp/intersection movements along Ethanac Road; and (3) the vacation of Trumble Road between the new "A" Street and the Homeland-Romoland drainage channel to alleviate potential traffic congestion on the residential roads south of the project site, to develop a 484,300 square-foot commercial retail center with a mix of 19 tenants consisting of retail and dining uses.

By signing this letter and returning it to the Planning Division, the applicant and property owner acknowledge the requirements of the City before the issuance of any permits, and agree to all Conditions of Approval. This letter shall be signed and returned to the Planning Division prior to the issuance of any permits.

If you have any questions or require additional information, please contact me at (951) 943-5003, extension 231 or at [nhutar@cityofperris.org](mailto:nhutar@cityofperris.org).

Sincerely,



Nancy M. Hutar, AICP  
Project Planner

**EXHIBIT "C"**

**CONCEPTUAL TENTATIVE TRACT MAP 34999**

**[TO BE ATTACHED]**



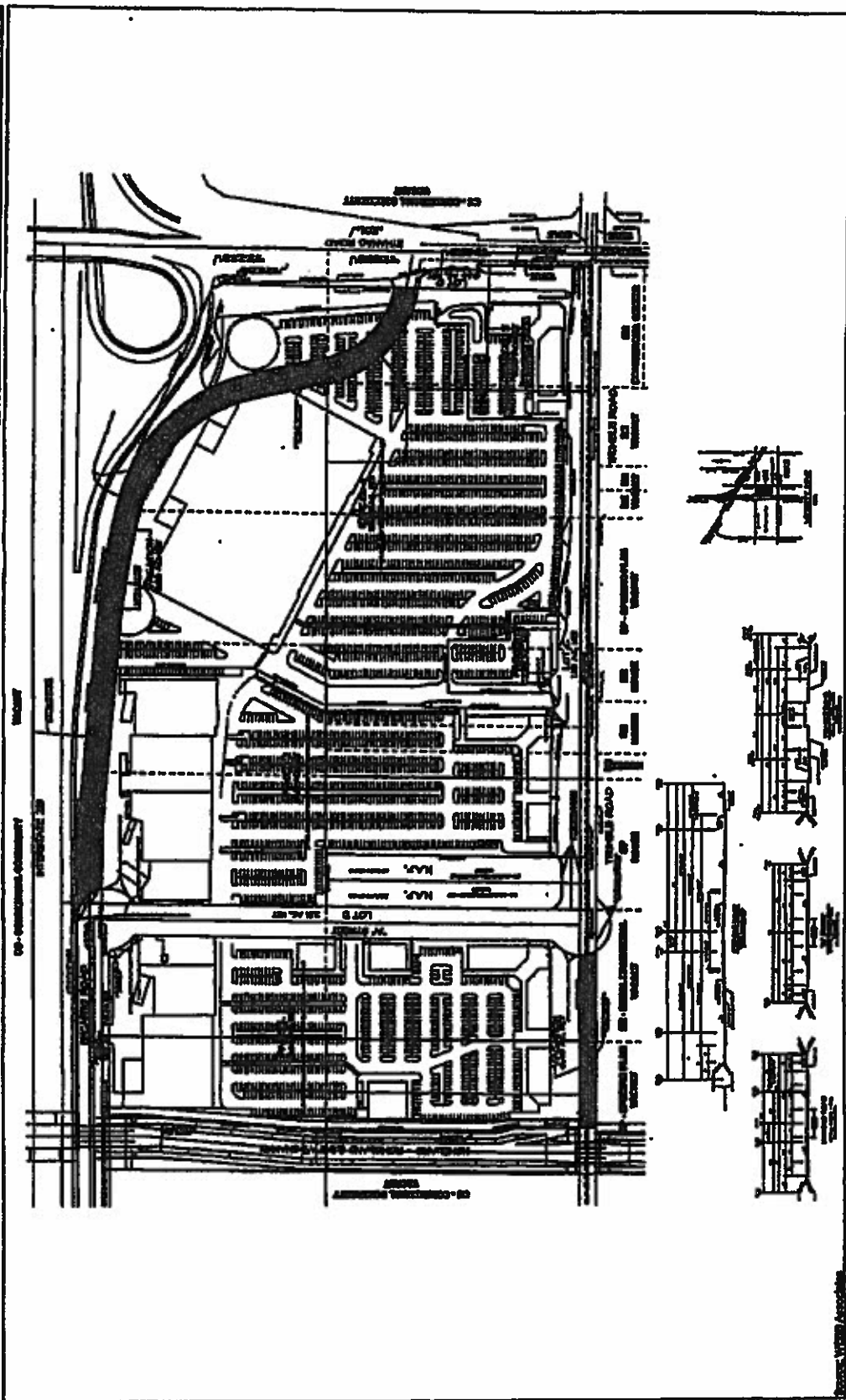


Figure 3-3

Tentative Parcel Map No. 34989

**ADDENDUM TO ENVIRONMENTAL IMPACT REPORT  
TOWNE CENTER PROJECT**

**April 21, 2010**

**INTRODUCTION**

This is an Addendum to the Final Environmental Impact Report (Final EIR – State Clearinghouse No. 2006101147) ("Final EIR") for the Towne Center Project and the associated entitlement requests approved by the City Council of the City of Perris on May 13, 2008. The Final EIR is by this reference incorporated herein. This Addendum has been prepared for a proposed Development Agreement ("Development Agreement") to be entered into between the City and the developer, MTC Consolidated, LLC, related to the Project. The Development Agreement will extend the time-period for implementation of the entitlements to May 13, 2018. The City's Addendum documents the City's decision not to require the preparation of a subsequent EIR for this change to the project.

A subsequent EIR can be required only if:

- Substantial changes in the project are proposed which require major revisions to the previous EIR due to new significant environmental increase in the severity of previously identified significant effects (Section 15162 (a) (1));
- Substantial changes have occurred with respect to the circumstances under which the project is being undertaken which require major revisions to the previous EIR due to new significant environmental effects or a substantial increase in the severity of previously identified effects (Section 15162 (a)(2)); or
- New information of substantial importance has become available since the prior EIR was certified that shows any of the following:
  - The project will have one or more significant effects not discussed in the previous EIR;
  - Significant effects previously examined will be substantially more severe than shown in the previous EIR;
  - Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the measure or alternative; or
  - Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternative (Section 15162 (a) (3)).

Since the Final EIR was approved in May, 2008, the circumstances under which the Towne Center Project are being developed have not changed substantially, nor has new information of substantial importance come to light such that any of the conditions for a subsequent EIR have

been met. Thus, the focus of this Addendum is the effect of the extension of time on the same entitlements as there are no physical changes to the Project. The analysis shows that there will not be any new significant environmental effects other than those previously identified in the Final EIR and provided for.

This Addendum constitutes an attachment to the Final EIR, which has been incorporated herein by reference. The Final EIR and the previously approved entitlements for the Towne Center Project are available to the public at the City of Perris City Hall, 101 North "D" Street, Perris, California. The contact person regarding this Addendum is Diane Sbardellati, Associate Planner at (951) 943-5003.

## **ORIGINAL PROJECT DESCRIPTION / BACKGROUND**

### **Project Location and Description**

The Project proposes to construct and operate a retail commercial shopping center (called Towne Center) on approximately 58.8 acres located in the southeastern portion of the City of Perris, east of Interstate 215 and south of Eathanac Road. Entitlements required and obtained for the Project include (a) the Environmental Impact Report (State Clearinghouse No. 2006101147), (b) Tentative Map 34999, (c) Street Vacations 07-0112 and 07-0113, and (d) Development Plan Review 06-0337. A revision to the Circulation Element of the City of Menifee's General Plan is required.

The Project would construct approximately 484,265 square feet of building space for 19 tenants, as well as install surface parking areas and drive aisles; screened loading docks; signage; lighting; walls; roadway improvements, traffic controls, utility infrastructure; and landscaping. The shopping center would be anchored by a major retail store occupying the northwest portion of the site. Two multi-tenant buildings and twelve smaller commercial buildings also are proposed. The Site Plan indicates a 22.3% building-to-site ratio. The site is subdivided into five parcels to accommodate commercial development and four parcels to accommodate roadway improvements.

As part of the Project, a segment of Trumble Road (from the intersection with proposed 'A' Street to McLaughlin Road) and a segment of Encanto Drive (from Eathanac Drive to the intersection with proposed 'A' Street) are to be vacated. An amendment to the Riverside County General Plan Circulation Element is also required, which affects segments of Encanto Road, future 'A' Street, and Trumble Road. Off-site, the Project is conditioned to improve Encanto Road from two lanes to four lanes between Trumble Road and Sherman Road and to construct improvements at the Encanto Road/Sherman Road intersection.

### **CEQA Process / Environmental Impact Report**

An Environmental Impact Report (EIR) was prepared for the project in accordance with the City's guidelines implementing the California Environmental Quality Act (CEQA). The EIR was available for public inspection and comment during a state-mandated 45-day public review period (December 21, 2007 through February 4, 2008). The EIR identified three air quality impacts, one noise impact, and two traffic impacts that would result in environmental impacts for which

mitigation measures are not available to reduce the impacts to below levels of significance. For these potentially significant, non-mitigatable environmental impacts, the City Council adopted a Statement of Overriding Considerations of Environmental Impact prior to approving the proposed project.

The EIR identified all other potential environmental impacts as either not an impact, a less than significant impact, or a less than significant impact with mitigation. A Mitigation Monitoring Program was prepared for those potential impacts requiring mitigation and is part of the Final EIR.

### **PROPOSED PROJECT MODIFICATION AND ANALYSIS OF PROPOSED MODIFICATION**

The Developer is not proposing any physical modification to the project. The Developer has proposed an extension of the time period related to implementation of the Project pursuant to the Development Agreement. The original approval was for two years. The Perris Municipal Code (Section 19.050.80) and the Subdivision Map Act (Government Code Sections 66410 *et. seq.*) permit and/or require certain extensions which may allow up to six years of extensions on certain approvals. Thus, permitted extensions under the current law would permit certain aspects of the project to be extended until eight years after approval. The Developer is only requesting an additional two years under the Development Agreement to 2018. Under the Development Agreement, time for implementation will be increased to ten (10) years from the date of approval by City Council.

There will be no physical changes to the project and hence no additional physical effects have been identified since the approval of the Project in 2008, and which have not been analyzed and/or subject to overrides by the City Council pursuant to the Draft and Final EIR. There is no change in use, size, tenant mix, or resources required to serve the project.

### **CONCLUSION**

The extension of time for implementation of the Project to ten (10) years from date of approval will not generate new environmental impacts or affect impacts identified in the Final EIR.

**CITY COUNCIL  
AGENDA SUBMITTAL**

**Meeting Date: April 27, 2010**

**SUBJECT:** Development Agreement No. 10-02-0003 for the approved Towne Center commercial project, located at the southeast corner of Ethanac Road and I-215. Applicant: MTC Consolidated, LLC

**REQUESTED ACTION:** APPROVE the first reading of an Ordinance to approve an Addendum to the Towne Center project EIR and a development agreement concerning previously approved Tentative Parcel Map 34999 and DPR 06-0337, extending the development window of the project until the expiration date of May 13, 2018.

**CONTACT:** Brad Eckhardt, Planning Manager *BE*

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**BACKGROUND/DISCUSSION:**

Approval is requested of a Ordinance approving a development agreement between the City of Perris and MTC Consolidated, LLC for the Towne Center project. The Development Agreement will implement previously approved Tentative Parcel Map 34999, Street Vacations 07-0112 and 07-0113, and DPR 06-0337 for the development of a 58.8 acre commercially zoned (CC) site for a 484,300 square foot retail center. The Towne Center project was approved by the City Council on May 13, 2008. The Development Agreement is the City's standard agreement and proposes to extend the development window of the project to an expiration date of May 13, 2018. No other requests are proposed, and the project shall be developed in accordance to the City's prior approvals and Conditions of Approval.

An Addendum to the project EIR has been prepared. Since the Final EIR was approved in May, 2008, the circumstances under which the Towne Center Project will be developed have not substantially changed. Moreover, no new information of substantial importance has come to light that would meet the conditions for a subsequent EIR to be prepared. The focus of the Addendum is the effect of the extension of time on the approved entitlements only, since there are no physical changes to the Project. The analysis shows that there will not be any new significant environmental effects other than those previously identified and provided for in the Final EIR.

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**BUDGET (or FISCAL) IMPACT:** Cost for staff preparation of this item, payment of development impact fees and costs of construction are borne by the applicant.

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Prepared by: Diane Sbardellati, Associate Planner *DS*  
City Attorney: N/A  
Asst. City Manager: Ron Carr *RC*

**Public Hearing:** April 27, 2010

**Attachments:** Ordinance, Draft Development Agreement, Addendum to the EIR

# Planning Commission Agenda

CITY OF PERRIS  
02/18/15

## Item

# 7B