ATTACHMENT 11
DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF COSTA MESA, A CALIFORNIA MUNICIPAL CORPORATION AND RED OAK INVESTMENTS, A CALIFORNIA LIMITED LIABILITY CORPORATION FOR THE PROPERTY LOCATED AT 125 EAST BAKER STREET

WHEREAS, Red Oak Investments ("Developer") proposes a project located at 125 East Baker Street, Costa Mesa, CA consisting of a five-story, 240-unit apartment complex located on the southwest corner of Baker Street and Pullman Street ("Project"); and

WHEREAS, on or about March 24, 2014, the Planning Commission recommended the City Council certify the Final Environmental Impact Report; approve General Plan Amendment GP-13-02, give first reading to the ordinance approving Rezone R-13-02, give first reading to the ordinance approving Zoning Code Amendment CO-13-02, and approve, by adoption of resolution, Master Plan PA-13-11 (collectively, the Project Approvals); and

WHEREAS, City ordinances and regulations do not require the payment of park impact fees for the Project because park impact fees apply only to projects that require subdivision, however, the Developer agrees to make a public infrastructure improvement contribution to the City of Costa Mesa; and

WHEREAS, on or about April 14, 2014, the City Council is scheduled to approve DA-14-02 subject to final approval of the General Plan Amendment for the Project.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

1. **Recitals**. The City Council finds that the foregoing recitals are true and correct.
2. **Term**. This Agreement shall be for a term of five (5) years from the Effective Date (as defined below).
3. **Effective Date**. Effective Date means the date on which General Plan Amendment GP-13-02 is approved by the City Council.
4. **Traffic Impact Fees**. Developer acknowledges that traffic in the Project vicinity will be impacted due to construction and cars to and from the Project. As a result, Developer hereby agrees to pay the Traffic Impact fee estimated at one hundred sixty five thousand two hundred fifty three dollars ($165,253.00) but subject to final calculation based upon the prevailing schedule approved by the City Council prior to the issuance of certificate of occupancy.
5. **Public Infrastructure Improvement Contribution**. Developer acknowledges that the Project will place increased burden on the City's infrastructure. As a result, Developer hereby agrees to provide two hundred, fifty thousand dollars ($250,000.00) as a public infrastructure improvement contribution payable to the City prior to issuance of the first certificate of occupancy for the Project.

6. **Park Impact Fees**. The City and Developer hereby agree that if the Project is subdivided, the Developer shall pay the current park impact fee of thirteen thousand and eight hundred twenty nine dollars ($13,829.00) per dwelling unit ("Park Impact Fees"). Moreover, the Public Infrastructure Improvement Contribution set forth in paragraph 4 shall be credited against the Developer's Park Impact Fees.
7. **Vested Right to Develop the Project.** The City hereby grants to the Developer the vested right to develop the Project on the Property to the extent and in the manner provided in this Agreement subject to Developer obtaining all applicable land use approvals for the Project. Any change in the Applicable Rules adopted or becoming effective after the Effective Date (Subsequent Rules), other than the Project Approvals, shall not be applicable to or binding upon the Project or the Property. This Agreement will bind the City to the terms and obligations specified in this Agreement and will limit, to the degree specified in this Agreement and under state law, the future exercise of the City's ability to regulate development of the Project
8. **Applicable Rules**. Applicable Rules means the rules, regulations, ordinances and official policies of the City which were in force as of the Effective Date, including, but not limited to, the Project Approvals, the General Plan, City zoning ordinances and other entitlements, development conditions and standards, public works standards, subdivision regulations, grading requirements, and provisions related to density, growth management, environmental considerations, and design criteria applicable to the Project. Notwithstanding the foregoing, Applicable Rules does not include any changes to the City's prevailing schedule and/or fee schedule that is the subject of any rules, regulations, ordinances and official policies of the City.
9. **Development of the Property.** The Developer agrees that the Property shall only be developed in accordance with the Project Approvals and any conditions and mitigation measures imposed on the Project through final approval of the Project, and the provisions of this Development Agreement. Notwithstanding anything set forth in this Agreement to the contrary, unless Developer proceeds with development of the Property, Developer is not obligated by the terms of this Agreement to affirmatively act to develop all or any portion of the Project, pay any sums of money, dedicate any land, or to otherwise meet or perform any obligation with respect to the Project, except and only as a condition of development of any portion of the Project.
10. **Indemnity**. Developer shall defend, indemnify, and hold harmless City, and their respective officers, officials, members, employees, agents, representatives, and volunteers, from all claims, demands, damages, defense costs or liability of any kind or nature relating in any manner to the amount, adequacy or application of development fees for the Project.
11. **Notices**. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be delivered by either (a) personal delivery, (b) reliable courier service that provides a receipt showing date and time of delivery, (c) registered or certified U.S. Mail, postage prepaid, return receipt requested, or (d) facsimile. Notices shall be addressed

to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other party hereto:

To City:	City of Costa Mesa Attn: Gary Armstrong 77 Fair Drive Costa Mesa, CA 92626
Copy to:	Jones & Mayer Attn: Thomas P. Duarte 3777 N. Harbor Blvd. Fullerton, CA 92832
Developer:	Red Oak Investments Attn: Joseph Flanagan 2101 Business Center Dr. Ste. 230 Irvine, CA 92612
Copy to:	Allen Matkins Attn: William Devine, Esq. 1900 Main Street, 5th Floor Irvine, CA 92614

Each notice shall be deemed delivered on the date delivered if by personal delivery or by overnight courier service, on the date of receipt as disclosed on the return receipt if by mail, or on the date of transmission with confirmed successful transmission and receipt if by telefax. By giving to the other parties written notice as provided above, the parties to this Agreement and their respective successors and assigns shall have the right from time to time, and at any time during the term of this Agreement, to change their respective addresses.

12. **Attorneys' Fees**. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party its expert witness fees (if any), its reasonable costs and expenses including, without limitation, litigation costs, and its reasonable attorneys' fees.
13. **Binding on Heirs.** This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors, and assigns.
14. **Scope Agreement, Waivers, and Amendments**. This Agreement is limited to the payment of park and traffic impact fees. Nothing herein shall be construed as addressing the Developer's other obligations for the Project. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate

authorities of the party to be charged. Any amendment or modification to this Agreement must be in writing and executed by Agency and Developer.

15. **Interpretation; Governing Law**. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California.
16. **Severability**. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
17. **Execution in Counterpart**. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on both parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart.
18. **Attachments**. Attachment No. 1 to this Agreement is incorporated herein by this reference and made a part hereof. Said Attachment(s) are identified as follows:

Attachment 1: Legal Description *(To Be Provided Under Separate Cover)*

IN WITNESS WHEREOF, City and Developer have entered into this Agreement as of this ____ day of _____, 2014.

"City"
City of Costa Mesa, a California Municipal Corporation

Mayor of the City of Costa Mesa
By:_____
Its:_____

ATTESTATION

_____
Brenda Green, City Clerk

APPROVED AS TO FORM

_____
Tom Duarte, City Attorney

"Developer"

Red Oak Investments, a California Corporation

By:_____
Joseph Flanagan, Red Oak Investments