



# CITY COUNCIL AGENDA REPORT

MEETING DATE: APRIL 15, 2014

ITEM NUMBER:

**SUBJECT: 125 EAST BAKER STREET APARTMENT PROJECT:  
FINAL EIR (STATE CLEARINGHOUSE # 2013081051); GENERAL PLAN AMENDMENT  
GP-13-02; REZONE R-13-02; ZONING CODE AMENDMENT CO-13-02; MASTER PLAN  
PA-13-11, AND DEVELOPMENT AGREEMENT DA-14-02  
125 EAST BAKER STREET**

**FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT**

**PRESENTATION BY: MEL LEE, SENIOR PLANNER**

**DATE: APRIL 3, 2014**

**FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP (714) 754-5611  
mel.lee@costamesaca.gov**

## **RECOMMENDATIONS**

The Planning Commission recommends that the City Council take the following action:

1. Certify the Final Environmental Impact Report for the project.

Additionally, staff is recommending that, based on the recommendation of the Planning Commission, that the City Council grant tentative approval of the General Plan Amendment pending final approval as part of a future General Plan Cycle and take the following actions:

2. Tentatively approve by adoption of resolution General Plan Amendment GP-13-02.
3. Give first reading to the ordinance approving Rezone R-13-02.
4. Give first reading to the ordinance approving Zoning Code Amendment CO-13-02.
5. Approve by adoption of resolution Master Plan PA-13-11, subject to conditions of approval and the EIR Mitigation Monitoring and Reporting Program for the project.
6. Approve Development Agreement DA-14-02 between the applicant and the City of Costa Mesa to fund public infrastructure improvements in the area.

This staff report provides a summary of the proposed project and entitlements, as well as the Planning Commission's action related to the project. Please refer to the Planning Commission staff report dated March 24, 2014 for detailed information and analysis related to the proposed project.

**PLANNING APPLICATION SUMMARY**

Location: 125 East Baker Street Applications: GP-13-02/R-13-02/ CO-13-02/PA-13-11/ DA-14-02/FEIR (SCH No. 2013081051)

Request: Approval of entitlements for 125 E. Baker Apartment Project

**SUBJECT PROPERTY:**

**SURROUNDING PROPERTY:**

Zone: <u>CL (Current); PDR-HD (Proposed)</u>	North: <u>(Across Baker) MP, church and industrial uses</u>
General Plan: <u>IP (Current); HDR (Proposed)</u>	South: <u>(Across Pullman) MP, industrial uses</u>
Lot Dimensions: <u>Irregular</u>	East: <u>(Across Pullman) MP, industrial uses</u>
Lot Area: <u>181,415 SF (4.17 AC)</u>	West: <u>CM (55) freeway off-ramp and drainage channel</u>
Existing Development: <u>Two-story office building (to be demolished)</u>	

**DEVELOPMENT STANDARD COMPARISON (Based on Proposed PDR-HD Zoning)**

<u>Development Standard</u>	<u>Required/Allowed</u>	<u>Proposed/Provided</u>
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<b>Lot Size:</b>		
Lot Width	N/A	340 FT
Lot Area	43,560 SF (1 AC)	181,415 SF (4.17 AC)
<b>Density (High Density Residential):</b>		
Zone	20 du's/AC (83 Units Max.)	58 du's/AC (240 Units Prop.) (1)
General Plan	20 du's/AC (83 Units Max.)	58 du's/AC (240 Units Prop.) (1)
<b>Maximum Site Coverage (Overall Project):</b>		
Buildings	NA	NA
Perimeter Open Space	20 FT Abutting Public ROW	20 FT Abutting Public ROW
Open Space (Total Site Area)	42%	46.5%
Min. Private Open Space (Patio/Balcony)	Min. 5 FT Dimension/100 SF	Min. 5 FT Dimension/100 SF (2)
<b>Building Height:</b>		
	NA	5 Stories/63 FT (Apartments) (3) 6 Stories/62.5 FT (Parking Structure) (3)
<b>Setbacks (Overall Project):</b>		
Front (Baker Street)	NA	20 FT
Side (left-Pullman Street/right-55 FWY)	NA	20 FT/20 FT
Rear	NA	NA
<b>On-Site Parking:</b>		
	538 Spaces	457 Spaces (In Parking Structure) 4 Spaces (At Grade Open Parking) 461 Spaces Total (4)
Driveway Width	16 FT Min.	25 FT
NA = Not Applicable or No Requirement.		
(1) Site specific density requires General Plan Amendment and Zoning Code Amendment (see staff report discussion).		
(2) 100 SF requirement may be met through a combination of private balcony area and other deck areas in the common area, as long as the overall dimension of the balcony/deck is not less than 5 FT.		
(3) Site specific building height requires General Plan Amendment (see staff report discussion).		
(4) Reduction in number of on-site spaces requested (see staff report discussion).		
CEQA Status	Environmental Impact Report (EIR)	
Final Action	City Council	

## **BACKGROUND**

### ***Project Site/Environs***

The project site is located at the southwest corner of Baker Street and Pullman Street. The site is approximately 4.17-acres in size (181,415 square feet), is roughly triangular-shaped, and is currently occupied by a 66,000-square-foot two-story office building constructed in 1974, a surface parking lot, signage, and landscaped areas within the parking area and around the perimeter of the site. The property is currently zoned CL (Commercial Limited) and has a General Plan Land Use Designation of Industrial Park (MP). The site is bounded to the north (across Baker Street) by buildings containing a church and various industrial uses zoned MP (Industrial Park), with a General Plan Land Use designation of Industrial Park; to the south and east (across Pullman Street) by various industrial buildings zoned MP (Industrial Park) with a General Plan Land Use designation of Industrial Park; to the west is the off-ramp for the Costa Mesa Freeway (SR-55) and a drainage channel surrounded by chain link fencing. The site is also located approximately one-half mile to the west of John Wayne Airport (JWA).

### ***Project Proposal***

The proposed project involves replacing the existing office building and surface parking areas with an apartment building and parking structure as described above. The apartment units are comprised of studio, one-bedroom, two-bedroom, and three-bedroom units. A breakdown of the unit types are summarized in the table below:

<b>Studio &amp; Lofts</b>	<b>1 Bedroom &amp; Lofts</b>	<b>2 Bedroom &amp; Lofts</b>	<b>3 Bedroom</b>	<b>TOTAL</b>
30 Units	107 Units	95 Units	8 Units	240 Units

The building design and roof elements are modern style, i.e., characterized by simplified square and rectangular building forms with a variety of flat planes, projections, and recesses. The exterior consists of alternating stucco, smooth fiber cement panels with exposed attachments, and wood siding finishes. Additional accents include wood balcony rails and trellises, welded wire mesh grid systems that support the growth of landscape vines, and “caged rock” planters.

The vehicular entrance to the parking structure is proposed to be provided from a single drive approach on Pullman Street. The project will include four outdoor on-grade parking spaces to serve the leasing office and 457 parking spaces provided within a six-level parking structure, which will also serve as a sound barrier to the adjacent freeway noise. Access to each residential level will be provided directly from each level of the parking structure and additionally by stairs and elevators throughout the development.

The site plan includes private open space and courtyard areas that allow for circulation through the project while still maintaining a sense of privacy for the residents. The project also contains resident amenities that include a pool, a spa, a state-of-the-art cardio gym, a dog park, a roof top deck, a business center, community gardens, and a clubhouse.

A detailed description of the project is provided in the Environmental Impact Report (EIR) prepared for the project, under separate cover.

## **SUMMARY OF PLANNING COMMISSION ACTION**

On March 24, 2014 the Planning Commission recommended City Council approval of the proposed project on a 5-0 vote.

## **SUMMARY OF PROPOSED ENTITLEMENTS**

### ***General Plan Amendment GP-13-02***

As noted earlier, a change in the land use designation of the 4.17-acre development site from Industrial Park to High Density Residential is proposed to accommodate the development. The proposed General Plan Amendment GP-13-02 would amend the following sections of the Land Use Element as *underlined and italicized below*:

### ***LAND USE DESIGNATIONS***

#### ***High-Density Residential***

*In 2014, General Plan Amendment GP-13-02 was approved; it consisted of a site-specific residential density increase for a 4.17-acre site at 125 East Baker Street. The maximum density allowed is 58 units/acre, which allows a maximum of 240 dwelling units.*

#### ***Building Height***

The Zoning Code does not specify a maximum building height for the PDR-HD zone; however, a maximum building height of four stories for buildings south of the San Diego (I-405) Freeway is established as an objective and a policy in the General Plan Land Use Element (Objective LU-1C and Policy LU-1C.2). Because the subject property for the proposed development is south of the I-405 Freeway, the four-story maximum height would apply to the project.

The proposed revision to the General Plan objective/policy language is *underlined and italicized below*:

**Objective LU-1C** Promote land use patterns and development, which contribute to community and neighborhood identity.

**Policy LU-1C.2** Limit building height to four stories above grade south of the I-405 Freeway, except for special purpose housing, such as elderly, affordable, or student housing. An exception is for the Newport Plaza property at 1901 Newport Boulevard where a six-level parking structure is allowed, *and the property at 125 East Baker Street where a five-story, 240-unit apartment building and six-story parking structure are allowed (GP-13-02).*

**Rezone R-13-02**

A rezone (or change) of the zoning classification of the 4.17-acre development site from Commercial Limited (CL) to Planned Development Residential – High Density (PDR-HD). The proposed rezone to PDR-HD would be consistent with the proposed High Density Residential General Plan designation for the project site.

**Zoning Code Amendment CO-13-02**

A zoning ordinance to amend Costa Mesa Municipal Code Title 13 for a site-specific density of 58 dwelling units per acre would be required. The proposed 240-unit project would require an amendment to Table 13-58 (Planned Development Standards) to allow a site-specific density of 58 dwelling units per acre for this project. The revised Table 13-58 is presented with changes as underlined and italicized below.

Revised Table 13-58 (Planned Development Standards)						
Development Standard	PDR-LD	PDR-MD	PDR-HD	PDR-NCM	PDC	PDI
Maximum Density per Section 13-59 MAXIMUM DENSITY CRITERIA. (dwelling units per acre)	8	12	20 Note: See North Costa Mesa Specific Plan for exceptions. <u>Note: The maximum density for 125 East Baker Street is 58 dwelling units per acre (CO-13-02).</u>	35	20	Note: The maximum density for 1901 Newport Boulevard is 40 dwelling units per acre. See North Costa Mesa Specific Plan for exceptions.

**Master Plan PA-13-11**

As noted earlier, the Master Plan application is for the proposed development of a five-story 240-unit residential apartment building (63 feet overall height) that wraps around a six-story parking structure (62.5 feet overall height) with 457 parking spaces in the parking structure and four outdoor on-grade parking spaces with a deviation from the following zoning code development standards: on-site parking spaces (538 parking spaces required; 461 parking spaces proposed).

After the EIR was prepared, the following revision to the maximum height of the parking structure was made for the Baker Street Apartment Project:

Original Parking Structure Height as Evaluated in the Project EIR	Parking Structure Height Indicated On Submitted Plans	Parking Structure Revised Height
57 Feet	67 Feet	62 Feet, 6 Inches

According to the applicant, the revision was necessary due to changes in the shape and layout of the parking structure, which led to some parking stalls being relocated to the top of the structure and the lengthening of the ramps within the parking structure. However, the project architect was able to reduce the height to 62'-6" to conform to the 65-foot maximum

building height previously determined by the Federal Aviation Administration (FAA). The number of overall stories within the parking structure (6) remains unchanged.

The consultant that prepared the EIR for the project has reviewed the changes and determined that although the change results in a higher point visually for the parking structure, the Aesthetics Section in the EIR previously concluded that the project is improving the aesthetic value of the site and the overall height of the project is still under 63 feet. Thus, no revisions to the EIR analysis and conclusions are necessary.

### ***Development Agreement DA-14-02***

The applicant has agreed to enter into a Development Agreement with the City in the amount of \$250,000.00 to fund future public infrastructure improvements in the area (street paving, sidewalks, open space enhancements, etc.). If the project is converted into condominium in the future, the project would still be subject to the payment of Quimby Act park land impact fees. The Development Agreement is for a period of five years, during that time the \$250,000.00 payment would be credited toward the required Quimby Act Fee.

If approved by the City Council, staff recommends the following additional condition of approval for Master Plan PA-13-11:

- *Per Development Agreement DA-14-02, the applicant shall provide a payment to the City in the amount of \$250,000.00 to fund future public infrastructure improvements in the area.*

### **ENVIRONMENTAL DETERMINATION**

An Environmental Impact Report (EIR) has been prepared for the project in accordance with the California Environmental Quality Act (CEQA). In accordance with CEQA Guidelines Section 15087, the Draft Environmental Impact Report was made available for a 45-day public review and comment period beginning on November 6, 2013, and remained available for comment until December 20, 2013. The Final EIR document can be found on the City's website at the below link:

<http://www.costamesaca.gov/index.aspx?page=151>

Electronic copies can also be obtained on CD's from the Planning Division at no charge. Hardcopies are also available for review at the following locations:

City of Costa Mesa  
Planning Division/Development Services Department  
77 Fair Drive  
Costa Mesa, CA 92628

The Costa Mesa/Donald Dungan Library  
1855 Park Avenue  
Costa Mesa, CA 92627

**Response to Comments**

In total, twelve comment letters regarding the Draft EIR were received during the public review and comment period from five public agencies, one organization, and six individuals. Additionally, the Draft EIR was presented to the Planning Commission during their regularly scheduled meeting on December 9, 2013, and five speakers provided comments on the proposed project during the Planning Commission Meeting. The comments have been incorporated, where appropriate, in the Final EIR document.

**Brief Summary of Significant Environmental Impacts and Mitigation Measures**

Under CEQA, a “significant impact” represents a substantial or potentially substantial adverse physical change to the environment. In evaluating specific effects of the project on the environment, the EIR identifies thresholds of significance for each effect, evaluates the potential environmental change associated with each effect, and then characterizes the effects as impacts. With the implementation of the mitigation measures identified in the EIR for the proposed project, all potentially significant impacts have been reduced to less than significant levels, as briefly summarized in the table below:

<b>Summary of Significant Environmental Impacts</b>		
<b>Potentially Significant Environmental Effects</b>	<b>Mitigation Measure Summary (1)</b>	<b>Level of Significance After Mitigation</b>
Air Quality	<ul style="list-style-type: none"> <li>• Maintain equipment during construction</li> <li>• Minimize dust during construction</li> <li>• Paint and building coatings to comply with air quality standards</li> <li>• Provide a sealed HVAC system for all units</li> </ul>	Less than significant
Hydrology/Water Quality	<ul style="list-style-type: none"> <li>• Provide a Water Quality Management Plan (WQMP)</li> </ul>	Less than significant
Land Use/Planning	<ul style="list-style-type: none"> <li>• Notification to future residents of airport in the vicinity of the project</li> </ul>	Less than significant
Noise	<ul style="list-style-type: none"> <li>• Comply with applicable noise attenuation standards</li> <li>• Minimize noise impacts during construction</li> </ul>	Less than significant
Transportation/Traffic	<ul style="list-style-type: none"> <li>• Provide a traffic signal at Baker/Pullman intersection</li> <li>• Provide street improvements at Red Hill/Baker intersection</li> <li>• Payment of traffic impact fees</li> <li>• Provide adequate sight distance for vehicles at all project drive approaches</li> </ul>	Less than significant

(1) Refer to the Final EIR document for detailed descriptions of each mitigation measure.

## **RECOMMENDATION FOR TENTATIVE APPROVAL**

As noted earlier, the proposed project involves a site specific amendment to the Land Use Element of the City's 2000 General Plan. Per Government Code Section 65358(b) a mandatory element of the General Plan cannot be amended more than four (4) times per calendar year. On January 21, 2014, City Council approved an update to the Housing Element of the City's General Plan, and several additional general plan amendments are in various stages of review by the City, including the 2012-2023 overall update to the General Plan. Therefore, staff is recommending that the City Council grant tentative approval of the General Plan Amendment GP-13-02, for this project, with final action to be later this year to allow this general plan amendment approval to be combined with other in a single general plan amendment cycle as allowed per the Government Code.

The Council can approve the Final EIR and Development Agreement DA-14-02, at this time. The Zoning Code Amendment CO-13-02 and Rezone R-13-02 can also be approved for first reading at this time. Master Plan PA-13-11 has been conditioned to required final approval of the associated General Plan Amendment to be valid and therefore can be approved subject to final approval of the General Plan Amendment GP-13-02.

## **LEGAL REVIEW**

The Final EIR and draft resolutions/ordinances have been reviewed and approved as to form by the City Attorney's Office.

## **CONCLUSION**

With implementation of the mitigation measures identified in the EIR for the proposed project, all potentially significant impacts have been reduced to less than significant levels. With the implementation of the recommended conditions of approval, the proposed project will be compatible and harmonious with uses that exist within the general neighborhood. The project features quality construction and materials. The proposal provides on-site amenities expected of quality residential developments of this type. The parking study prepared for the project identifies that the parking demand is adequate for this project. The Airport Land Use Commission for Orange County (ALUC) determined that the proposed project was consistent with the Commission's Airport Environs Land Use Plan (AELUP) for John Wayne Airport (JWA). Therefore, the Planning Commission recommended that the City Council Certify the Final EIR prepared for the project; grant Tentative Approval of the General Plan Amendment; and Approval of the DA (new item for City Council consideration) and Master Plan; and First reading to the Rezone and Zoning Code Amendment; subject to Conditions of Approval and the Mitigation Monitoring and Reporting Program.

## **ALTERNATIVES**

The City Council has the following alternatives:

1. Continue the item to allow additional time for further analysis or revisions to the project.
2. Deny the project. If the City Council denies the project, the applicant could not submit substantially the same type of application for six months.

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MEL LEE, AICP  
Senior Planner

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GARY ARMSTRONG, AICP  
Director of Economic & Development /  
Deputy CEO

- Attachments:
1. [Project Plans](#)
  2. [Draft Resolution for Final EIR Certification](#)
  3. [Draft Resolution for General Plan Amendment](#)
  4. [Draft Ordinance for Rezone](#)
  5. [Draft Ordinance for Zoning Code Amendment](#)
  6. [Draft Resolution for Master Plan](#)
  7. [Minutes of the March 24, 2014 Planning Commission Meeting](#)
  8. [March 24, 2014 Planning Commission Staff Report and Attachments](#)
  9. [Planning Commission Resolutions](#)
  10. [Final EIR](#)
  11. [Development Agreement](#)

cc:

- Chief Executive Officer
- Assistant Chief Executive Officer
- Director of Economic & Development / Deputy CEO
- City Attorney
- Public Services Director
- Transportation Svs. Mgr.
- City Engineer
- City Clerk (9)
- Staff (7)
- File (2)

Distribution List – Agencies and Persons Who Provided Comment  
on the Project EIR

Red Oak Investments  
Attn: Joe Flanagan  
2101 Business Center Drive, #230  
Irvine, CA 92612

Nader Properties  
3 Harbor Light  
Newport Beach, CA 92657

Atkins  
Attn: Trina S. Abbott  
3570 Carmel Mountain Road, Suite 300  
San Diego, CA, 92130

InFocus Consultants  
Attn: Peter Naghavi  
418 Avenida Salvador  
San Clemente, CA 92672



125 East Baker Street, Suite C-230  
Costa Mesa, CA 92626  
Toll Free 888.901.4207  
Fax: 949.891.0970

April 10, 2014

Honorable Mayor James Righeimer  
Honorable Mayor Pro Tem Stephen Mensinger  
Honorable City Council Members  
Planning Commissioners and City Planning Staff  
**CITY OF COSTA MESA**  
77 Fair Drive  
Costa Mesa CA 92626

**Re: Multi Family Rezone – 125 Baker Street**

Dear Honorable Mayor, City Council and Planning Staff:

I write this letter of support as a member of the community who will be truly impacted by this proposed development. Many people claim to be impacted by development but as a current tenant in the existing office building on the site, my company will be forced to relocate.

However, as the former Mayor of Huntington Beach, CA, I recognize that communities must evolve and recognize the value locked in old infrastructure. I had the opportunity to work with Red Oak Investments as the city initiated a Specific Plan process along the Beach and Edinger corridors. Red Oak was the owner of an office and retail center of similar vintage and size to 125 Baker. They worked closely with Staff and community stakeholders to craft a plan that is being realized today.

I know the importance of reinvesting in the community and this type of infill development should be encouraged as housing near jobs, transportation and retail amenities is good planning policy. 125 Baker Street's plan makes sense for Costa Mesa's future and I support it.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Hansen', with a large, stylized flourish at the end.

Don Hansen  
Chief Executive Officer

Public Hearing Item #2  
Attachment 11

Typo Error on Page 2 of the  
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~~5 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, 5<sup>th</sup> 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

By: \_\_\_\_\_  
 Its: \_\_\_\_\_

Mayor of the City of Costa Mesa

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