



## City Council Special Meeting

**Thursday, May 21, 2020**

6:00 p.m. - General Session

**Marty Simonoff**, Mayor

**Steven Vargas**, Mayor Pro Tem

**Cecilia Hupp**, Council Member

**Christine Marick**, Council Member

**Glenn Parker**, Council Member

This agenda contains a brief general description of each item Council will consider. The City Clerk has on file copies of written documentation relating to each item of business on this Agenda available for public inspection. Contact the City Clerk's Office at (714) 990-7756 or view the Agenda and related materials on the City's website at [www.cityofbrea.net](http://www.cityofbrea.net). Materials related to an item on this agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office at 1 Civic Center Circle, Brea, CA during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

### **Procedures for Addressing the Council**

The Council encourages interested people to address this legislative body by making a brief presentation on a public hearing item when the Mayor calls the item or address other items under Matters from the Audience. State Law prohibits the City Council from responding to or acting upon matters not listed on this agenda. This meeting is being conducted consistent with Governor Newsom's Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. Public comments will be accepted in writing, a separate location on-site, and by teleconference. The meeting will also be broadcast live at [www.cityofbrea.net](http://www.cityofbrea.net).

Written comments may be sent to the City Clerk's Office at [cityclerksgroup@cityofbrea.net](mailto:cityclerksgroup@cityofbrea.net) no later than 12:00 p.m. on Thursday, May 21, 2020. All written comments will be read aloud during the meeting by the City Clerk. Some written comments may be summarized as to not exceed the speaking time allotted. To provide comments in person, the public must use video conferencing equipment provided in Community Rooms A and B, located on the 2nd Floor of the Brea Civic & Cultural Center at 1 Civic Center Circle. To provide comments by teleconference, members of the public must contact City Staff at (714) 990-7756 or [cityclerksgroup@cityofbrea.net](mailto:cityclerksgroup@cityofbrea.net) no later than 12:00 p.m. on Thursday, May 21, 2020 to obtain the Zoom Meeting ID number and password. Teleconference participants will be muted until recognized at the appropriate time by the Council.

### **Special Accommodations**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (714) 990-7757. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

### **Important Notice**

The City of Brea shows both live broadcasts and replays of City Council Meetings on Brea Cable Channel 3 and over the Internet at [www.cityofbrea.net](http://www.cityofbrea.net). Your attendance at this public meeting may result in the recording and broadcast of your image and/or voice as previously described.

**GENERAL SESSION**  
**6:00 p.m. - Council Chamber**  
**Plaza Level**

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**CALL TO ORDER/ ROLL CALL - COUNCIL**

**1. Pledge of Allegiance**

**2. Matters from the Audience**

*Written comments may be sent to the City Clerk's Office at [cityclerksgroup@cityofbrea.net](mailto:cityclerksgroup@cityofbrea.net) no later than 12:00 p.m. on Thursday, May 21, 2020. All written comments will be read aloud during the meeting by the City Clerk. Some written comments may be summarized as to not exceed the speaking time allotted. To provide comments in person, the public must use video conferencing equipment provided in Community Rooms A and B, located on the 2nd Floor of the Brea Civic & Cultural Center at 1 Civic Center Circle. To provide comments by teleconference, members of the public must contact City Staff at (714) 990-7756 or [cityclerksgroup@cityofbrea.net](mailto:cityclerksgroup@cityofbrea.net) no later than 12:00 p.m. on Thursday, May 21, 2020 to obtain the Zoom Meeting ID number and password. Teleconference participants will be muted until recognized at the appropriate time by the Council.*

**3. Response to Public Inquiries - Mayor / City Manager**

**OLD BUSINESS**

- 4. Zone Change No. ZC 19-01, Planned Community Master Plan No. PCMP 19-01, Development Agreement No. DA 19-01, and Final Environmental Impact Report No. FEIR 19-01 for the Mercury Residential Development Proposal at the Southeast corner of Mercury Lane and Berry Street–** Continue deliberations and consider adoption of Resolution No. 2020-032, certifying Final Environmental Impact Report No. FEIR 19-01 and introduction of Ordinance No. 1214, approving Zone Change No. ZC 19-01, Planned Community Master Plan No. PCMP 19-01, and Development Agreement No. DA 19-01 for the Mercury Residential Development Proposal at the Southeast Corner of Mercury Lane and Berry Street. Council action will be based on the public hearings that took place on May 12, 2020 and May 19, 2020.

**ADMINISTRATIVE ANNOUNCEMENTS**

**5. City Manager**

**6. City Attorney**

**7. Council Requests**

**COUNCIL ANNOUNCEMENTS**

**ADJOURNMENT**

City of Brea

**COUNCIL COMMUNICATION**

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**TO:** Honorable Mayor and City Council Members

**FROM:** Bill Gallardo, City Manager

**DATE:** 05/21/2020

**SUBJECT:** ZONE CHANGE NO. ZC 19-01, PLANNED COMMUNITY MASTER PLAN NO. PCMP 19-01, DEVELOPMENT AGREEMENT NO. DA 19-01, AND FINAL ENVIRONMENTAL IMPACT REPORT NO. FEIR 19-01 FOR THE MERCURY RESIDENTIAL DEVELOPMENT PROPOSAL AT THE SOUTHEAST CORNER OF MERCURY LANE AND BERRY STREET

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**RECOMMENDATION**

**MAY 19, 2020 REGULAR CITY COUNCIL MEETING**

On May 19, 2020, the Brea City Council considered the proposed Mercury Lane workforce housing project. At the public hearing, the City Council provided comments and/or direction to City staff on the proposed project, which has resulted in changes to the Draft Resolution, Draft Ordinance and Conditions of Approval, and Draft Development Agreement. Updated versions of all documents have been forwarded to the Council for additional consideration at the May 21, 2020 City Council special meeting (Attachments A-C).

**MAY 12, 2020 SPECIAL CITY COUNCIL MEETING**

On May 12, 2020, the Brea City Council considered the proposed Mercury Lane workforce housing project. At the public hearing, the City Council provided comments and/or direction to City staff on the proposed project, which resulted in changes to the Draft Ordinance and Conditions of Approval as well as the Draft Development Agreement. The public hearing was continued to the May 19, 2020 regular meeting of the City Council.

**PLANNING COMMISSION RECOMMENDATION**

On April 28, 2020, the Planning Commission reviewed the Mercury Residential development proposal ("Project") which includes the following requests:

- A Zone Change from Commercial Industrial to Planned Community;
- A Planned Community Master Plan including site-specific development standards, property management, and implementation requirements for a high-density, workforce housing project in an industrial zone consisting of 114 studio, one bedroom and two-bedroom rental units located on a 1.01-acre parcel;
- A Development Agreement granting vested rights and requiring certain community benefits; and
- A Final Environmental Impact Report ("EIR") inclusive of all environmental analysis, mitigation measures and findings to address environmental impacts.

The Planning Commission recommended (5-0) the City Council approve the Project with modifications and recommendations contained in the Conditions of Approval within the Draft Ordinance.

## **BACKGROUND/DISCUSSION**

### **BACKGROUND**

On January 15, 2019, the City Council initiated Zone Change No. ZC 19-01 in response to a request by the Applicant to rezone the subject property from Commercial Industrial (C-M) to Planned Community (PC). The Applicant then submitted requests for consideration of Planned Community Master Plan No. PCMP 19-01 ("Master Plan"), and Development Agreement No. 19-01 ("Development Agreement") for development of a 5-story building with 114 residential units. An EIR for the Project pursuant to the requirements of the California Environmental Quality Act ("CEQA") was prepared for this request.

#### **Summary of Project**

The subject is located on the southeast corner of Mercury Lane and Berry Street. The property has a General Plan designation of Light Industrial and is zoned C-M, Commercial Industrial. The property is currently vacant, adjacent to the Downtown and is surrounded by industrial uses.

The Project proposes to change the zoning to allow a Planned Community designation for a high-density, workhouse housing residential project in an industrial zone. The residential complex would include the construction of a 5-story building, 68-feet in height on a 1.01-acre parcel. The Applicant has a vision for a private approach to affordable housing. The Project proposes to provide 114 multi-family residential apartments. The units range in size from studios (452-596 square feet), one bedrooms (651-675 square feet) and 2 bedrooms (1,111 square feet). The Project identifies these apartments as "workforce" units due to their size and proximity to major employment centers including: Mercury Insurance, Downtown Brea businesses, and adjacent commercial and industrial uses. The Applicant has also incorporated into the Project a plan to offer and maintain affordable rents based on the design, location, size and management of the complex. More specific information about the Project can be found in the staff reports prepared for the Planning Commission and the Master Plan.

#### **Planning Commission Review**

On January 28, 2020, the Planning Commission held a public hearing to consider the Project and the Final EIR. The Planning Commission continued the hearing until February 25, 2020.

On February 25, 2020, the Planning Commission reviewed additional information provided by Staff, received additional public testimony and closed the public hearing. The Planning Commission directed Staff prepare a draft Resolution with Conditions of Approval to address several remaining issues/concerns. The Planning Commission continued the item to the March 23, 2020 regularly scheduled meeting.

The March 23, 2020 Planning Commission meeting was canceled due to the current COVID-19 emergency. The City re-noticed the Mercury project for the April 28, 2020 Planning Commission meeting. At this meeting, the Commission considered additional information presented by Staff, the Applicant, and during public testimony. The public hearing was closed and the Commission deliberated and provided their recommendation as outlined above.

## **DISCUSSION**

### **Zone Change**

The subject property is currently zoned Commercial Industrial, which does not allow for residential uses. The applicant has requested the zoning designation be changed to Planned Community, which would allow for development consistent with an approved Planned Community Master Plan. Pursuant to Section 20.424.020(A) of the City Code, the following findings must be made before the approval of a

## Zone Change:

1. The Zone Change is in conformity with the General Plan;
2. The subject property is suitable for the development in the Planned Community Zone under the proposed Planned Community Master Plan, in terms of access, size of parcel, relationship to similar or related uses and other considerations; and
3. The proposed change of zone is not detrimental to the use of land in any adjacent zone.

The draft ordinance, if adopted, would approve the proposed Zone Change based on these findings and facts about the Project in the record. Support for the findings are found in the draft Ordinance and within the associated staff reports.

## Planned Community Master Plan

The proposed Planned Community Master Plan sets forth the site-specific development standards, property management, and implementation requirements for the proposed high-density workforce housing project consisting of 114 studio, one bedroom, and two-bedroom rental units on the subject 1.01-acre parcel.

Pursuant to Section 20.272.030(G)(6) of the City Code, the following findings must be made before approval of the Planned Community Master Plan:

1. The Master Plan is consistent with the General Plan;
2. The Master Plan is consistent with the Brea Envisions Community Strategic Plan;
3. The Master Plan would provide for an innovative development in an area of the City that presents unique planning challenges due to considerations such as geography, topography, and changing patterns of development not otherwise addressed by the city's existing zoning rules;
4. The properties included in the Master Plan are suitable for the proposed uses, in terms of access, size, their relationship to adjacent properties and similar or related uses, and other relevant considerations; and
5. The Master Plan is in the best interest of the City as a whole.

The draft Ordinance, if adopted, would approve the proposed Master Plan based on these findings and facts about the Project in the record. Support for the findings are found in the draft ordinance and within the associated staff reports.

## Development Agreement

Section 20.272.030(G)(3) of the City Code requires a Development Agreement for every Planned Community Master Plan to provide the community and applicants the assurance that the proposed development, and its associated community benefits, will be realized by granting the applicant vested rights to develop in accordance with the approved plan.

The following outlines the community benefits that are currently part of the proposed Development Agreement:

- a. Revitalization and use of a vacant site consistent with state, regional, and local long-term goals to provide additional housing opportunities and affordable housing.
  1. Affordable Housing: Eleven (11) units would be reserved at or below low-income thresholds (as defined by state law) for a minimum of 55 years.
  2. Workforce Housing: At least eighty (80) of the units will have rents between \$1,200 to \$1,695 with the ability to increase rents up to a maximum of three percent (3%) annually for a period of forty (40) years with the following rental categories:

- Six (6) units would have rents of not more than \$1,295
- Six (6) units would have rents of not more than \$1,395
- Six (6) units would have rents of not more than \$1,495
- Six (6) units would have rents not more than \$1,595
- Fifty-six (56) units would have rents not more than \$1,695

- b. Contribution of video surveillance hardware and software to serve traffic circulation and public safety goals for the Project area (\$10,000).
- c. Contribution towards future improvements to Imperial Highway (\$10,000), which would be a fair share contribution to mitigation measures that are deemed infeasible in the Final EIR because of Caltrans' jurisdiction over Imperial Highway.
- d. Contributions towards sidewalk and bike lane improvements on Mercury Lane (\$180,000).
- e. Contribution towards the use and maintenance costs of the City's West Downtown Parking Garage. The applicant is proposing that the City allow the Project's tenants to utilize the West Downtown parking garage for guest parking subject to payment of \$25 per space, per month towards such use. Additionally, the applicant is proposing that the City use those annual payments on maintenance, repair, and upkeep of the parking garage.
- f. Alternative transportation options in the City through creation of a car-share and bike-share program to serve the Project and provide local shuttle or similar system.

## **ENVIRONMENTAL ASSESSMENT**

The Final EIR for the Project complies with all of the requirements of CEQA and addresses all of the Project's significant environmental impacts. It also includes a Findings of Fact, Statement of Overriding Consideration and Mitigation Monitoring & Reporting Program.

## **FISCAL IMPACT/SUMMARY**

The Project provides a positive impact on the General Fund with contributions outlined in the Development Agreement including a \$10,000 contribution toward traffic improvements and \$180,000 towards sidewalk and bike lane improvements.

## **RESPECTFULLY SUBMITTED:**

William Gallardo, City Manager

Prepared by: Maribeth Tinio, Senior Planner

Concurrence: Tracy Steinkruger, Community Development Director

Concurrence: Jennifer A. Lilley, AICP, City Planner

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## **Attachments**

Attachment A - Resolution

Attachment B - Draft Ordinance and Conditions of Approval

Attachment C - Draft Development Agreement

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## **RESOLUTION NO. 2020-032**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BREA CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT NO. FEIR 19-01 (SCH NO. 2018121032) FOR THE PROPOSED MERCURY RESIDENTIAL DEVELOPMENT LOCATED AT THE SOUTHEAST CORNER OF MERCURY LANE AND BERRY STREET AND ADOPTING FINDINGS, A MITIGATION MONITORING AND REPORTING PROGRAM, A STATEMENT OF OVERRIDING CONSIDERATIONS REGARDING THE SAME PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

#### **A. RECITALS**

1. On January 15, 2019, the City Council initiated Zone Change No. ZC 19-01 ("Zone Change 19-01") in response to a request by Dwight Manley ("Applicant") to rezone the property located at the southeast corner of Mercury Lane and Berry Street ("Subject Property") from Commercial Industrial (C-M) to Planned Community (PC), and the Applicant subsequently submitted applications for approval of Planned Community Master Plan No. PCMP 19-01 ("PCMP 19-01"), and Development Agreement No. 19-01 ("DA 19-01") to develop a 5-story building with 114 workforce residential units pursuant to the proposed Residential Planned Community Master Plan. Zone Change 19-01, PCMP 19-01, and DA 19-01 are collectively referred to herein as "the Project." Copies of PCMP 19-01 and DA 19-01 are each on file with the City.

2. Pursuant to the requirements of the California Environmental Quality Act ("CEQA"), the City prepared Final Environmental Impact Report No. FEIR 19-01 (the "FEIR") and a related Mitigation Monitoring and Reporting Program ("MMRP"), CEQA Findings of Fact ("CEQA Findings") and Statement of Overriding Considerations ("SOC"). Copies of the FEIR, the MMRP, CEQA Findings, and SOC are each on file with the City.

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Additional copies of the CEQA Findings and SOC are found in Exhibit A to this Resolution, which is hereby incorporated by reference as though set forth in full.

3. On January 28, 2020, February 25, 2020, and April 28, 2020, the Planning Commission held a duly noticed public hearing to consider the Project and the FEIR, at which all persons present had an opportunity to speak on the matter. After considering all of the evidence presented, including but not limited to all written evidence and testimony presented during that hearing, the Planning Commission voted to recommend that the City Council certify the FEIR, and adopt the MMRP, the CEQA Findings, and the SOC.

4. On May 12, 2020, the City Council held a duly noticed public hearing to consider the Project and the FEIR, at which all persons present had an opportunity to speak on the matter. After considering all of the evidence presented, including but not limited to all written evidence and testimony presented during that hearing, the City Council voted to continue the public hearing to its regular meeting on May 19, 2020.

5. On May 19, 2020, the City Council held a duly noticed continued public hearing to consider the Project and the FEIR, at which all persons present had an opportunity to speak on the matter. After considering all of the evidence presented, including but not limited to all written evidence and testimony presented during that hearing, the City closed the public hearing and voted to continue the item to a special meeting on May 21, 2020.

6. On May 21, 2020 the City Council held a special meeting to consider the Project and the FEIR. After considering all of the evidence presented, including but not

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limited to all written evidence and testimony presented during the public hearings, the City Council voted to adopt this resolution.

7. All legal prerequisites to adoption of this Resolution have been met.

## **B. RESOLUTION**

### **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BREA HEREBY FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:**

1. The City Council finds that all facts set forth in the Recitals, Part A of this Resolution, are true and correct.

2. Based on the findings in the preceding paragraphs of this Resolution, the evidence included in the record of proceedings, including but not limited to all written evidence and testimony presented during above-referenced public hearings, and its own independent judgment and analysis, the City Council finds the FEIR has been completed in compliance with CEQA and presented to the City Council, the City Council has reviewed the FEIR and considered the information contained therein, and the FEIR reflects independent judgment and analysis of the City Council.

3. Based on the findings in the preceding paragraphs of this Resolution, the evidence included in the record of proceedings, including but not limited to all written evidence and testimony presented during above-referenced public hearings, and its own independent judgment and analysis, hereby certifies the FEIR and adopts the MMRP, the CEQA Findings, and the SOC.

4. The City Clerk shall certify to the adoption of this Resolution cause it to be entered into the Book of Resolutions of the City Council.

**RESO NO. 2020-032**  
May 21, 2020

**ADOPTED AND APPROVED this 21st day of May, 2020**

\_\_\_\_\_  
Marty Simonoff, Mayor

ATTEST: \_\_\_\_\_  
Lillian Harris-Neal, City Clerk

**RESO NO. 2020-032**  
May 21, 2020

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Resolution was adopted at a special meeting of the Council of the City of Brea, held on the 21st day of May, 2020, by the following vote:

AYES: COUNCILMEMBER

NOES: COUNCILMEMBER

ABSENT: COUNCILMEMBER

ABSTAIN: COUNCILMEMBER

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Lillian Harris-Neal, City Clerk

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## **EXHIBIT A**

### **Exhibit A Findings and Facts in Support of Finding & Statement of Overriding Considerations**

(Previously provided as attachment 10 to the May 12, 2020 staff report)

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May 21, 2020

## **ORDINANCE NO.**

### **AN ORDINANCE OF THE CITY OF BREA APPROVING THE MERCURY RESIDENTIAL PLANNED COMMUNITY MASTER PLAN NO. PCMP 19-01 AND RELATED ZONE CHANGE NO. ZC 19-01 AND DEVELOPMENT AGREEMENT NO. 19-01 FOR DEVELOPMENT OF 114 WORKFORCE RESIDENTIAL UNITS ON A 1.01-ACRE PARCEL LOCATED AT THE SOUTHEAST CORNER OF MERCURY LANE AND BERRY STREET, AND MAKING FINDINGS IN SUPPORT THEREOF**

#### **A. RECITALS.**

1. On January 15, 2019, the City Council initiated Zone Change No. ZC 19-01 ("Zone Change 19-01") in response to a request by Dwight Manley ("Applicant") to rezone the property located at the southeast corner of Mercury Lane and Berry Street ("Subject Property") from Commercial Industrial (C-M) to Planned Community (PC), as shown in Exhibit A to this Ordinance, which is hereby incorporated as though set forth in full. The Applicant subsequently submitted applications for approval of Planned Community Master Plan No. PCMP 19-01 ("PCMP 19-01") and Development Agreement No. 19-01 ("DA 19-01") to develop a 5-story building with 114 workforce residential units on the Subject Property pursuant to PCMP 19-01. Zone Change 19-01, PCMP 19-01, and DA 19-01 are collectively referred to herein as "the Project." Copies of PCMP 19-01 and DA 19-01 are each on file with the City.

2. Pursuant to the requirements of the California Environmental Quality Act ("CEQA"), the City prepared Final Environmental Impact Report No. FEIR 19-01 (the "FEIR") and a related Mitigation Monitoring and Reporting Program ("MMRP"), CEQA Findings of Fact ("CEQA Findings") and Statement of Overriding Considerations ("SOC"). Copies of the FEIR, the MMRP, CEQA Findings, and SOC are each on file with the City.

3. On January 28, 2020, February 25, 2020, and April 28, 2020, the Planning Commission held a duly noticed public hearing to consider the Project and the FEIR, at

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which all persons present had an opportunity to speak on the matter. After considering all of the evidence presented, including but not limited to all written evidence and testimony presented during that hearing, the Planning Commission voted to recommend that the City Council certify the FEIR, and adopt the MMRP, the CEQA Findings, and the SOC.

4. On May 12, 2020, the City Council held a duly noticed public hearing to consider the Project and the FEIR, at which all persons present had an opportunity to speak on the matter. After considering all of the evidence presented, including but not limited to all written evidence and testimony presented during that hearing, the City Council voted to continue the public hearing to its regular meeting on May 19, 2020.

5. On May 19, 2020, the City Council held a duly noticed continued public hearing to consider the Project and the FEIR, at which all persons present had an opportunity to speak on the matter. After considering all of the evidence presented, including but not limited to all written evidence and testimony presented during that hearing, the City Council closed the public hearing and voted to continue the item to a special meeting on May 21, 2020.

6. On May 21, 2020, the City Council held a special meeting to consider the Project and the FEIR. After considering all of the evidence presented, including but not limited to all written evidence and testimony presented during the public hearing, the City Council voted to certify the FEIR and adopt the MMRP, the CEQA Findings, and the SOC.

7. All legal prerequisites to adoption of this Ordinance have been met.

**B. ORDINANCE.**

**THE CITY COUNCIL OF THE CITY OF BREA DOES ORDAIN AS FOLLOWS:**

1. The City Council finds that all facts set forth in the Recitals, Part A of this

**ORDINANCE NO.**

Resolution, are true and correct.

2. Based on its findings in the preceding paragraphs of this Ordinance, the evidence presented at the above-referenced public hearings, including but not limited to the FEIR, the MMRP, the CEQA Findings, the SOC, the Conditions of Approval for PCMP 19-01 set forth in Exhibit B to this Ordinance, which is hereby incorporated as though set forth in full, all written evidence and testimony presented during those hearings, and its own independent judgment and analysis, the City Council hereby finds as follows:

a. The Project is in conformity with the General Plan on grounds that include but are not necessarily limited to the following. The Project proposes a planned community master plan for 114 workforce residential units at a low and moderate rental affordability located directly adjacent to Downtown Brea and major commercial and industrial employers within a ¼ to ½ mile biking and walking distance. General Plan Policy HE 3.2 promotes providing opportunities for mixed use and infill housing development opportunities in Downtown Brea as part of the City's ongoing revitalization strategy for the area. General Plan Policy CD 1.9 encourages new development that is organized around compact, walkable, mixed-use neighborhoods and districts to conserve open space resources, minimize infrastructure costs, and reduce reliance on the automobile. Policy CD-9.2 encourages accommodation of emerging housing trends, and encourage pedestrian linkage to surrounding neighborhoods and activity centers. Policy CD-9.5 promotes providing quality, affordable housing that would accommodate young families, college students, and educators. The General Plan expressly recognizes the use of Planned Communities as a flexible planning tool for achieving a cohesive land use plan

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for a property or related properties.

b. The Subject Property is suitable for the Project in terms of access, size of parcel, relationship to similar or related uses and other considerations on grounds that include but are not necessarily limited to the following. The Subject Property is 1.01 acres in size, which can accommodate the proposed 5-story high density residential apartment building 68-feet in height that would be directly adjacent to Downtown Brea and major commercial and industrial employers within a ¼ to ½ mile biking and walking distance. Access for vehicles would be provided from Mercury Lane, and pedestrian and bicycle access would be ensured by frontage improvements along Berry Street and Mercury Lane. The alternative development guidelines and standards found in PCMP 19-01 regarding building height, setbacks, floor area ratio and other development standards are suitable for the development.

c. Zone Change 19-01 is not detrimental to the use of land in any adjacent zone on grounds that include but are not necessarily limited to the following. The Project would introduce residential uses into an area currently developed for commercial industrial uses but will be located on the edge of those uses. Existing commercial industrial uses would be buffered by Berry Street, Mercury Lane, and a parking lot predominantly used for trailer parking. Potential noise problems have been addressed by Project features and the required disclosures to future residents. Property values in adjacent zones will also benefit from the investment in improvements that will accompany and may follow the development of the new residential use.

d. The Project is consistent with the Brea Envisions Community Strategic Plan on grounds that include but are not necessarily limited to the following. The



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Project promotes higher density living, affordable housing, and site specific standards to ensure quality design and rental affordability. The Project is located directly adjacent to The Tracks at Brea Trail, Downtown Brea, and major employers within a ¼ to ½ mile walking and biking distance. The Project will therefore enhance and promote pedestrian friendly development throughout our community and within the public spaces and will promote the Tracks at Brea Trail as an alternative pathway through the community. Brea Envisions calls for planning for additional, safe public pathways for pedestrians and cycling in zoning and development decisions. The Project will contribute funds towards bike lane and sidewalk improvements. Brea Envisions calls for the possible creation of development zones in the City that would encourage and allow for different uses within each zone; promoting higher density living and mixed affordable housing where appropriate for the existing neighborhood. The Project will maintain a consistent and acceptable balance of both residential and commercial/industrial development. The Project would provide for an innovative development in an area of the City that presents unique planning challenges due to considerations such as geography, topography, and changing patterns of development not otherwise addressed by the Zoning Code on grounds that include but are not necessarily limited to the following. PCMP 19-01 provides innovative site specific standards to allow innovative workforce housing at an affordable level in an area uniquely located between, and with pedestrian and vehicle access to, major commercial and industrial employers, which would not be possible under the otherwise applicable provisions of the Zoning Code.

e. The Project is in the best interest of the City as a whole on grounds that include but are not necessarily limited to the following. PCMP 19-01 provides an

**ORDINANCE NO.**

emerging residential product not currently provided for by the Zoning Code and provides site specific standards to ensure quality and affordability. The Project provides 114 workforce housing residential units at a low and moderate rental affordability. The Project also provides priority to Brea employers and employees as opportunity to live, work and play within the City. It further helps fulfill State and Regional housing goals for the City as outlined by the Southern California Association of Governments' Regional Transportation Plan/Sustainable Communities Strategy. It also fulfills goals and Policies of the City's General Plan, Housing Element and the Brea Envisions Community Strategic Plan.

3. Based on its findings in the preceding paragraphs of this Ordinance, the City Council hereby approves Zone Change No. ZC 19-01, Planned Community Master Plan No. PCMP 19-01, and Development Agreement No. DA 19-01, subject to the Conditions of Approval for PCMP 19-01 found in Exhibit B.

4. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published as required by law.

ADOPTED AND APPROVED this 21st day of May, 2020

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Marty Simonoff  
Mayor

I, Lillian Harris-Neal, City Clerk to the City Council of the City of Brea, do hereby certify that the foregoing Ordinance was introduced at the special meeting of the City Council of the City of Brea held on the 21<sup>st</sup> day of May, 2020 and adopted by the City Council at the regular meeting of the City Council of the City of Brea on the \_\_\_ day of June, 2020 by the

**ORDINANCE NO.**

following votes:

AYES: COUNCILMEMBER

NOES: COUNCILMEMBER

ABSENT: COUNCILMEMBER

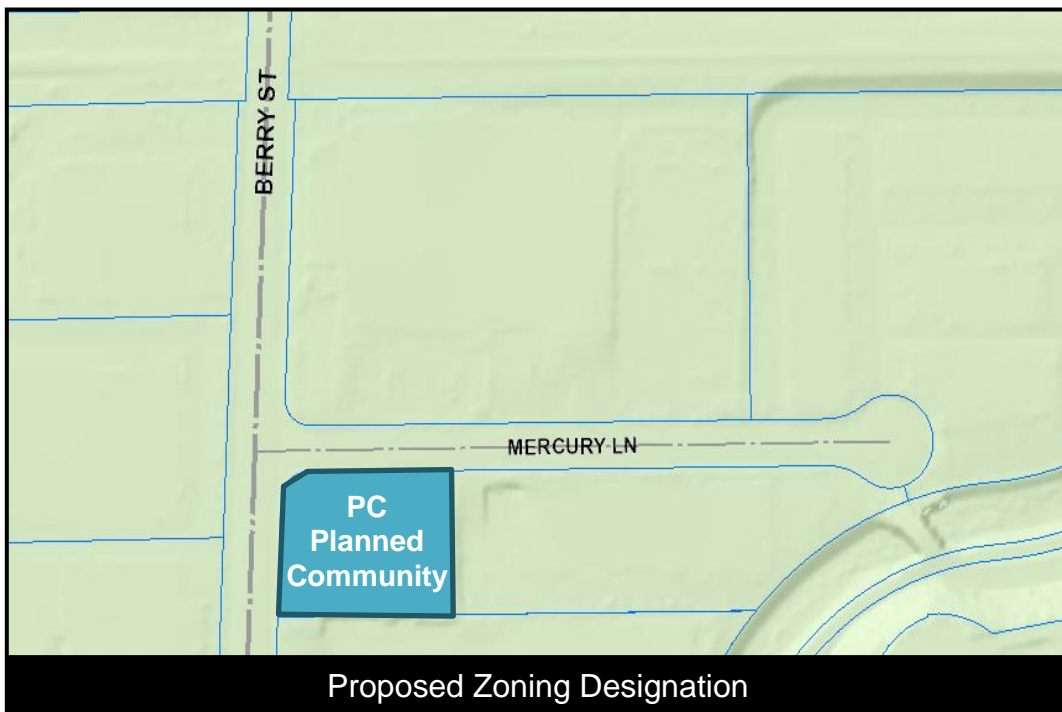
ABSTAIN: COUNCILMEMBER

ATTEST: \_\_\_\_\_  
Lillian Harris-Neal  
City Clerk

ORDINANCE NO.

**EXHIBIT A**  
**ZONE CHANGE NO. ZC 19-01**

The Property described as Assessor Parcel Number 296-141-05 shall be designated as PC Planned Community Zone on the City's official Zoning Map.



**EXHIBIT B**  
**CONDITIONS OF APPROVAL FOR PCMP 19-01**

Planned Community Master Plan No. PCMP 19-01 is approved subject of the following conditions, which the Applicant shall incorporate into a revised version of the Planned Community Master Plan to be submitted to the City for the final review and approval of the Community Development Director prior to issuance of building permits.

1. Project Plans: Development must occur in substantial conformance with the plans and specifications submitted to the City Council dated May 12, 2020, which includes Planned Community Master Plan No. PCMP 19-01, site plan, conceptual architectural elevations and associated details, conceptual landscape plans on file in the Planning Division, the conditions contained herein, and all applicable City regulations.
2. Conformance: The Community Development Director's review and approval of all proposed structures for substantial conformance with Planned Community Master Plan No. PCMP 19-01, plans and standards set forth herein as to building location, building square footage, site circulation, signage, and architecture is required prior to the issuance of any building permit. Operation and development of the Project shall remain in substantial conformance with Planned Community Master Plan No. PCMP 19-01 in perpetuity. Significant changes to the Project may require the amendment to Planned Community Master Plan No. PCMP 19-01.
3. Mitigation Monitoring and Reporting Program: All Mitigation Measures contained in the Mitigation Monitoring and Reporting Program from Final Environmental Impact Report No. FEIR 19-01 are incorporated herein by reference as conditions of approval for the Project.
4. Digital Plans and Exhibits: The Applicant must provide a digital copy (suitable for archival storage) of the plans and specifications noted in Condition 1 to the Brea Planning Division prior to the issuance of any building permits for the development.
5. Setbacks: Final building location and setbacks must be consistent with the layout shown within Planned Community Master Plan No. PCMP 19-01 as illustrated in the plans and specifications presented to and approved by the City Council. Where the plans and specification do not address setback requirements the standards of the Mixed Use I or R-3, Multi-Family Residential, or most closely applicable zoning district as determined by the City Planner, shall apply.
6. Parking: Vehicle parking requirements in Planned Community Master Plan No. PCMP 19-01 must be revised to require a minimum of 1.35 parking stalls per unit and no reduction in the number of required parking spaces shall be allowed to accommodate any bicycle parking stalls. The Applicant shall provide 118 vehicle parking spaces on-site as specified on the plans submitted to the City Council dated May 12, 2020.

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7. Parking Management Plan: The Applicant must prepare and submit a Parking Management Plan ("PMP"), which must be prepared by a registered civil/traffic engineer. The PMP may be reviewed by the City's parking consultant, time and fees to be paid for by the Applicant, as determined necessary by the City. The PMP shall be subject to review and approval by the Community Development Director and City Engineer and ratification by the Council prior to issuance of any building permits.

Key goals of the PMP shall be to limit off-site parking impacts to the adjacent property owners and to promote alternative transportation. The PMP must also identify a process and central contact to address and resolve any on-site parking discrepancies or issues in a timely fashion. The PMP shall include, but is not limited to, the following strategies:

- 7.1. A tenant outreach plan indicating parking areas in the on-site structure and the prohibition of parking on adjacent private property (unless off-site parking agreements are secured). The outreach plan shall include, but is not limited to, a map of the proximity of the Project to Downtown Brea and options and encouragement of alternative transportation.
- 7.2. Timely, private enforcement of on-site parking requirements and off-site parking requirements, if any, in the event that monitoring reveals that the Project's total parking demand consistently exceeds the total provided parking supply (e.g. secure additional parking).
- 7.3. Preparation of a parking monitoring report to assess on-site and off-site parking demands and the efficacy of any trip/parking reducing measures. The report shall be prepared by the Applicant and submitted to the City within one year of the Project reaching at least 50% occupancy. On-site parking locations shall be remain accessible to the City for the purposes of collecting data regarding parking demands or when a complaint threshold determined by the Community Development Director has been exceeded.
- 7.4. Use of on-site parking spaces shall be limited to the parking of resident/owners motor vehicles (i.e. cars, trucks, SUVs, motorcycles). Storage of any materials that precludes the parking of vehicles is prohibited. The storage of recreational vehicles in a garage or structured residential vehicle space is prohibited.
- 7.5. Alternative Transportation & Parking Strategies to reduce vehicle dependency. Such strategies shall include, but are not limited to, parking cash-outs, car share, carpool/vanpool programs, rideshare or ride-matching, on-site bicycle parking spaces, bike share, etc. Any such strategies shall also be required to meet any applicable public health and safety requirements.

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- 7.6. Use of West Downtown Parking Garage; Offsite Parking. The Project may provide some of the required parking off-site subject to the further review and approval of the Community Development Director; provided that any use of the West Downtown Parking Structure shall also require an agreement with the City approved by the City Council.
8. Mercury Lane Parking and City Transportation Issues:
- 8.1 Designation of reserved truck loading areas on Mercury Lane with appropriate markings and postings. No changes shall be made to the cul-de-sac on Mercury Lane as part of the Project.
- 8.2 No changes are made to City policies that currently prohibit overnight parking on Mercury Lane and Berry Street as part of the Project.
- 8.3 The Project site shall be added to the route for the micro-transit circulator trolley when the City implements it.
9. Bike Storage: The Applicant must maintain a minimum of 114 bicycle stalls on-site consistent with Planned Community Master Plan No. PCMP 19-01 in perpetuity. Additionally a bike maintenance area inclusive of adequate maintenance tools (e.g. bike pump, repair kit, tools, etc.) shall be maintained on-site and available in perpetuity. Should the need for bicycle storage and maintenance area and equipment be changed or discontinued, the Applicant shall provide a plan and justification indicating purpose of the changing need (e.g. emerging transportation trends, improved use to accommodate parking demand, etc.) and planned use for the space. Such justification and plan are subject to the review and approval of the Community Development Director. The plan shall serve to continue to promote alternative transportation and/or help support the parking demand for the Project.
10. Noise:
- 10.1. The Project site shall be designated as “non-residential “ for purposes of applying the City’s noise standards, and the following requirements must be met:
- 10.2. The Project shall incorporate building construction techniques that achieve an interior noise standard of 45 dBA CNEL for all residential units.
- 10.3. A “windows closed “condition shall be required for all residential units within the Project site to meet the interior noise standard. To accommodate a windows closed conditions, all units shall be equipped with adequate fresh air ventilation, per the requirements of the California Uniform Building Code (UBC).
- 10.4. The Project shall install upgraded windows and sliding glass doors with a minimum Standard Transmission Class (STC) ratings of 31.

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- 10.5. Prior to issuance of building permits, the Applicant shall demonstrate to the City building department that the proposed building shell and window assemblies will achieve exterior to interior noise exposure of 45 dBA CNEL or less.
- 10.6. The Project shall comply with California Title 24 building insulation requirements for exterior walls, roofs and common separating assemblies (e.g. floor/ceiling assemblies and demising walls), as specified in the California Code of Regulations Title 24, California Building Standards Code.
- 10.7. Party wall and floor-ceiling assembly designs must provide a minimum STC of 50, based on lab tests. Field tested assemblies must provide a minimum noise isolation class (NIC) of 45
- 10.8. Floor-ceiling assembly designs must provide for a minimum impact insulation class (IIC) of 50, based on lab tests. Field tested assemblies must provide a minimum FIIC of 45.
- 10.9. Entry doors from interior corridors must provide an STC of 26 or more.
- 10.10. Penetrations or openings in sound rated assemblies must be treated to maintain required ratings.
- 10.11. Interior noise levels due to exterior sources must not exceed a community noise equivalent level (CNEL) or a day-night level (LDN) of 45 dBA, in any habitable room.
- 10.12. For proper acoustical performance, all exterior windows, doors, and sliding glass doors shall have a positive seal and leaks/cracks must be kept to a minimum.
- 10.13. The courtyard and roof top deck shall be shielded from undesirable exterior noise exposure by enclosing the space with a solid faced screening wall facing the adjacent roadways. The designed noise screening barrier's weight must be at least 3.5 pounds per square foot of face area without decorative cutouts or line-of-site openings between the shielded areas and the Project site. All gaps (except for weep holes) shall be filled with grout or caulking to avoid flanking. The noise control barrier must be constructed using one, or any combination of the following materials: masonry block; stucco veneer over wood framing (or foam core), or 1-inch thick tongue and groove wood of sufficient weight per square foot; and/or transparent glass (3/8 inch thick), acrylic, polycarbonate, or other transparent material with sufficient weight per square foot.
11. Landscaping: The Applicant must provide a detailed final landscaping and irrigation plan consistent with Planned Community Master Plan No. PCMP 19-01. Such landscaping and irrigation plan must be reviewed and approved by the City Planner and Public Works Department prior to the issuance of any building permits. Approved



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landscaping and irrigation shall be installed prior to occupancy. All landscaping and irrigation shall comply with the provisions of the City's Water Conservation Water Supply Shortage Program (Brea City Code Chapter 13.20). The final landscaping and irrigation plans shall be in accordance with the final site and grading plans and shall include, but not be limited to the following:

- 11.1. The number of trees provided shall not be less than the amount depicted on the conceptual landscape plans contained within Planned Community Master Plan No. PCMP 19-01. A minimum of 75% of the trees shall be a minimum 36-inch boxed size or larger with a minimum trunk height of 8-feet and the balance of the trees shall be a minimum 24-inch boxed size with a minimum trunk height of 8-feet.
- 11.2. Details shall include the quantity, species type and placement of final trees.
- 11.3. All landscaped areas shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing and trimming. Unhealthy, dead or damaged plant materials shall be removed and replaced within thirty (30) days following written notice from the Community Development Department.
- 11.4. Common Open Space and Outdoor Living Areas: Common open space and outdoor living space shall be consistent with the details and specifications in Planned Community Master Plan No. PCMP 19-01. Where any ambiguity in size/area specifications exists the provisions of the Brea Zoning Code most closely matching the issue shall be observed. These spaces are to be provided to residents and maintained by the property management or property owner in perpetuity.
12. HVAC and Venting: All HVAC and ground mounted equipment must be depicted in the construction drawings during building plancheck submittal and must be fully screened by landscaping and/or architecturally compatible screening subject to the review and approval of the Planning Division. The location of the HVAC venting and intake must be located in such a way to ensure optimal location for air quality benefits and shall be subject to the review and approval of the Building Official.
13. Mailboxes: Final mailbox designs and locations shall be reviewed and approved by the Planning Division and United States Postal Service.
14. Trash and Storage: All trash storage, including bins and containers, must be shielded from public view within a building, garage, or a gated enclosure having walls at least six (6) feet in height. The design of enclosures shall be visually consistent with the architecture used for the building and shall require a separate review and approval of the Planning Division and the Public Works Department prior to installation.
15. Signs: The Applicant shall provide detailed sign plans consistent with the Sign Criteria outlined in Planned Community Master Plan No. PCMP 19-01 subject to the review and approval of the City Planner prior to the approval of any individual sign

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installation permit. Such plans shall include pertinent details regarding maximum sign area, letter sizes, locations, number, and associated details. Signage shall be designed to minimize aesthetic and light and glare impacts within and surrounding the Project.

**16. Utilities, Grading & Site Improvements:**

16.1. Prior to issuance of a grading permit, the Applicant shall submit easement document (i.e. legal and plat) of the required dedication for City Engineer's review and approval. The legal and plat shall be prepared by a licensed Land Surveyor. The required dedications are as follow:

16.1.1. Berry Street: additional 2-foot right-of-way for 5-foot landscaped parkway and 5-foot sidewalk.

16.1.2. Mercury Lane: additional 5-foot right-of-way for 5-foot parkway and 5-foot sidewalk.

16.1.3. Corner Cutoff at Berry Street and Mercury Lane per City Code Chapter 20.08.060.

16.2. Prior to issuance of a grading permit, the Applicant shall submit public improvement plans prepared by a Registered Civil Engineer in accordance with City of Brea Standard Plans and specifications for City Engineer's review and approval. The public improvements, include but are not limited to the following:

16.2.1. Remove and reconstruct the curb and gutter on Mercury Lane fronting the Project.

16.2.2. Remove and reconstruct the ADA ramp at the corner of Berry Street and Mercury Lane per latest City standards.

16.2.3. Construction of 5-foot sidewalk on Berry Street and Mercury Lane.

16.2.4. Re-stripe and install street signage (as applicable) on Mercury Lane and Berry Street.

16.2.5. No depressed curb (i.e. curb cuts) shall be permitted on Berry Street. This includes any curb cuts to access the proposed service/maintenance enclosures.

16.2.6. The Loading/Unloading/Rideshare pick-up and drop-off zone on Mercury Lane shall be placed minimum 60-foot from the Berry Street intersection.

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- 16.2.7. Location of the building doors where the building has less than 5-foot set-back from the property line shall be included in the Civil Plans. The proposed door-swing and landing area for any door openings shall not encroach into the corner cut-off area.
- 16.2.8. Location of parkway trees shall be included on the Civil Plans per City Code Chapter 12.20.
- 16.3. Prior to issuance of a grading permit, the Applicant shall submit Solid Waste/Trash Collection Circulation Plan for City Engineer's review and approval. The proposed trash bins shall be moved to the street level through the proposed driveway approach on Mercury Lane. A separate depressed curb/curb cut shall not be permitted for this purpose. The trash bin staging area shall be provided within the private property to minimize the trash collection activities within the street.
- 16.4. Prior to issuance of a grading permit, any decorative paving proposed in the public right-of-way shall be reviewed and approved by City Engineer. The Applicant shall enter into an Encroachment License Agreement for construction and maintenance of decorative features and proposed landscape and parkway trees by the Applicant.
- 16.5. Prior to issuance of a grading permit, the Applicant shall submit a CCTV video inspection of the existing 8-inch sewer lateral located at the southwest corner of the property to City for review of the existing condition prior to approval to connect. If the existing 8-inch sewer lateral is suitable to connect to, the Applicant shall be responsible to construct a sewer lateral for the proposed development.
- 16.6. All proposed shelters, including benches, for rideshare waiting purpose shall be located within the private property.
- 16.7. Prior to issuance of a grading permit, the Applicant shall submit final Water Quality Management Plan for review and approval.
- 16.8. The Applicant shall submit final Hydrology and Hydraulic Study for review and approval. The Hydrology and Hydraulic study shall include but not be limited to the following:
  - 16.8.1. Any increased runoff from the development shall be detained on-site and the proposed discharge shall be equal or less than the pre-existing conditions in terms of quantity and velocity.
  - 16.8.2. The final study must demonstrate that the adjacent properties, streets and existing storm drain system are not negatively impacted by the Project.

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- 16.8.3. Any storm drain connection shall be constructed as a lateral to the storm drain main. A storm drain connection to the back of existing catch basin shall not be permitted.
- 16.8.4. Project site is designated as Zone X and has tendency to result in shallow flooding with average depths of less than one foot. The final study shall discuss how the proposed development is protected from the shallow flooding.
- 16.9. The Applicant shall be responsible to prepare document and pay for any publication fee (if applicable) for City to vacate the existing City owned sewer easement located at the south west corner of the property.
- 16.10. The Applicant shall be responsible to obtain the permission to perform any work on the adjacent private properties.
- 16.11. The Applicant shall be responsible for securing the required encroachment permits or licenses for installation of any structures, piping and landscaping in easements of record on the Project. Such approval from easement holders will be required by the City Engineer prior to the issuance of any permits.
- 16.12. The Applicant shall complete the construction of all required public improvements, including any field punch list items prior to issuance of building occupancy.
- 17. Fire Master Plan: The Applicant shall prepare and submit a separate Fire Master Plan for the review and approval by the Fire Marshal and Fire Prevention Staff. This plan shall convey all fire and life safety details and shall include final plans for roadway and fire access, necessary water requirements and supply, conditions for the Project, signage and street markings, and other related items as deemed necessary by Fire Services. Upon evaluation of the Fire Master Plan, additional access to the southeast corner of the building shall be reviewed for sufficient ingress/egress.
- 18. Wall & Fencing Plan: The design and location for all walls and fences shall be subject to the review and approval of the City Planner. All perimeter walls shall be of a decorative masonry construction with appropriate capstones and columns. A final Wall & Fencing Plan shall be submitted for review and approval prior to the issuance of building permits.
- 19. Art in Public Places Program (APP): The Applicant shall be responsible for meeting Brea's Art in Public Places requirement per the current Art in Public Places Policy Manual and Ordinance. The minimum required public art allocation shall be 1% of the total building construction valuation as determined by the International Conference of Building Officials (ICBO) at the time building permits are issued. The Applicant shall adhere to the following:

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- 19.1. Submit Part 1 of the APP application prior to issuance of building permits.
- 19.2. Submit Part 2 of the APP application and obtain APP Committee approval within six (6) months of building permit issuance.
- 19.3. Submit Part 3 of the APP application and complete sculpture installation prior to Certificate of Occupancy Issuance.
20. Fees: The Applicant shall pay any and all fees due prior to the issuance of any building permits unless otherwise outlined in Development Agreement No. DA 19-01.
21. Housing Opportunity: The Applicant shall advertise and provide notice of the housing opportunity presented by the Project to City residents and persons working in the City as outlined in Planned Community Master Plan No. PCMP 19-01.
22. Relationship to the Zoning Code: Development Agreement No. DA 19-01 and Planned Community Master Plan No. PCMP 19-01 augment the development regulations and standards of the Brea Zoning Code. Whenever a question arises regarding implementation of the Project that is not addressed in the Development Agreement and/or the Planned Community Master Plan, the regulations of the Zoning Code that are most applicable to the issue, condition or situation shall apply. In the event that the provisions of the Development Agreement and/or Planned Community Masterplan are in conflict with the Zoning Code, the conditions of the Development Agreement and/or Planned Community Masterplan shall prevail. Words, phrases, and terms not specifically defined herein shall have the same definition as provided in the Brea Zoning Code unless it appears from the context that a different meaning was intended.
23. Interpretation: The Community Development Director shall have the responsibility to interpret the provisions of Development Agreement No. DA 19-01, Planned Community Masterplan No. PCMP 19-01, and these conditions of approval, subject to appeal to the Planning Commission.
24. Workforce Housing in an Industrial and Commercial Area: This Project is identified as "Workforce Housing adjacent to Industrial and Commercial Uses". As such the property owner/property manager shall be required to prepare a disclosure and residential waiver and submit such documents for the review of the Community Development Director. The property owner/ property manager shall provide such disclosure to all potential residents prior to signing of lease or receiving of security deposit of rent or any other binding agreement to occupy a unit and shall obtain the signature of the potential tenant on the waiver and understanding of potential noise, parking, industrial neighborhood challenges, etc. prior to accepting any security for occupying a unit.
25. Indemnification; Hold Harmless: To the fullest extent permitted by law, the Applicant shall indemnify, defend and hold the City, its elected officials, officers, contractors serving as City officers, agents, and employees (collectively, "Indemnitees") free and

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harmless from: (i) any and all claims, liabilities and losses whatsoever occurring or resulting to any and all persons, firms, entities, or corporations furnishing or supplying work, services, materials, or supplies in connection with, or related to, the performance of work or the exercise of rights authorized by or pursuant to approval of Final Environmental Impact Report No. 19-01, Zone Change No. ZC 19-01, Planned Community Master Plan No. PCMP 19-01, Development Agreement No. 19-01, or any of these approvals; (ii) any and all claims, lawsuits, liabilities, and/or actions arising out of, or related to such approval or approvals or the granting or exercise of the rights authorized by any or all of these approvals; and (iii) any and all claims, liabilities and losses occurring or resulting to any person, firm, entity, corporation for property damage, personal injury, or death, arising out of or related to any or all of these approvals, or exercise of rights granted by them. The Applicant's obligation to indemnify, defend, and hold the Indemnitees free and harmless as required hereinabove shall include, but is not limited to, paying all fees and costs incurred by legal counsel of the Indemnitees' choice in representing the Indemnitees in connection with any such claims, losses, lawsuits, or actions, and any award of damages, judgments, verdicts, court costs or attorneys' fees in any such lawsuit or action.

**RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL  
TO:**

**CITY OF BREA  
1 CIVIC CENTER CIRCLE  
BREA, CALIFORNIA 92821  
ATTN: CITY CLERK**

**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

**EXEMPT FROM RECORDING FEE PER GOVERNMENT CODE SECTION 6103**

**DEVELOPMENT AGREEMENT NO. 19-01  
REGARDING THE MERCURY LANE RESIDENTIAL PLANNED COMMUNITY,  
BREA, CALIFORNIA**

This Development Agreement ("Agreement" or "Development Agreement") is made and entered into as of the "Effective Date" set forth herein, by and between Mercury CXIV, LLC, a California limited liability company ("Developer") and the City of Brea, a California municipal corporation ("City").

**RECITALS**

1. California Government Code Section 65864, et seq. (the "Development Agreement Statute") authorizes cities to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.
2. Developer owns that real property located entirely within City, the common and legal descriptions of which is set forth in Exhibit "A" attached hereto and incorporated herein by this reference and hereinafter is referred to as the "Site." Developer intends to construct a work-force housing multi-family residential development, inclusive of a maximum of 114 multi-family rental units ("Rental Units"), on the Site.
3. City and Developer mutually desire to enter into this Development Agreement pursuant to the Development Agreement Statute in order to implement the Project.
4. On \_\_\_\_\_, 2020, following second reading, the Council adopted Ordinance No. \_\_\_\_\_, approving Zone Change 19-01 and PC Master Plan 19-01. Ordinance No. \_\_\_\_\_ and all attachments and exhibits thereto are hereby incorporated by this reference. For purposes of this Agreement, the proposed development as approved and defined by Ordinance \_\_\_\_\_ is referred to herein as the "Project," and Ordinance \_\_\_\_\_ is referred to as the "Project Approvals."
5. On \_\_\_\_\_, 2020, City adopted Ordinance No. \_\_\_\_\_ (the "Ordinance"), approving this Development Agreement among the City and Developer, which is effective as of \_\_\_\_\_, \_\_\_\_\_. All of the requirements of the California Environmental Quality Act have been met with \_\_\_\_\_.

respect to the Project, Project Approvals, and this Agreement, and this Agreement is consistent with the City's General Plan.

6. As set forth in the Project Approvals and this Agreement, the Project would provide the following community benefits: (i) revitalization and use of the Site consistent with state, regional, and local long term goals to provide additional housing opportunities and affordable housing; (ii) contribution of video surveillance hardware and software to serve traffic circulation and public safety goals for the project area; (iii) contributions to future improvements to Imperial Highway, sidewalk and bike lane improvements on Mercury Lane, and the use and maintenance costs of the City's West Downtown Parking Garage; (iv) alternative transportation options in the City through creation of a car-share and bike-share program to serve the Site and providing a local shuttle or similar system; and (v) creation of local and regional construction jobs and a permanent jobs base within new development.

## **AGREEMENT**

NOW, THEREFORE, the parties hereto agree as follows:

**Section 1. Definitions.** In this Agreement, unless the context otherwise requires, the following terms shall have the following meaning:

"City" means the City of Brea.

"Developer" means Mercury CXIV, LLC, a California limited liability company.

"Effective Date" shall mean the date that the Ordinance becomes effective.

"Municipal Code" means the Brea Municipal Code, as amended from time to time.

"Ordinance" means Ordinance No. \_\_\_\_\_, which approved this Agreement.

"Project" means the proposed development of the Site as defined in the Recitals to this Agreement by reference to Ordinance \_\_\_\_\_.

"Project Approvals" means Ordinance \_\_\_\_\_, which is also referenced in the Recitals to this Agreement.

"Site" means the real property that is the subject of the Project Approvals and as legally described in Exhibit "A" to this Agreement.

"Term" shall have the meaning ascribed to it in Section 6 below.

"Transfer" means any sale, lease, encumbrance or other transfer of all or any portion of the Project or any interest therein.

"Transferee" means any person who acquires an interest in the Site pursuant to a Transfer and agrees, or is deemed, to assume Developer's obligations hereunder with respect to such interest.



**Section 2. Recitals.** The recitals are part of this Agreement and shall be enforceable as any other provision of this Agreement.

**Section 3. Interest of Developer.** Developer warrants and represents that, as of the Effective Date, it has or will have legal title to or an equitable interest in the Site; that it has full legal right to enter into this Agreement; and that the persons executing this Agreement on behalf of each Developer have been duly authorized to do so.

**Section 4. Binding Effect of Agreement.** Developer hereby subject the Project and the Site to the covenants, reservations, and restrictions as set forth in this Agreement. The City and Developer hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon each of Developer's successors and assigns in title or interest to the Site. Each and every contract, deed, or other instrument hereinafter executed, covering, or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, reservations, and restrictions expressed in this Agreement, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument.

The City and Developer hereby further declare their understanding and intent that the benefit of such covenants, reservations, and restrictions touch and concern the land by enhancing and increasing the enjoyment and use of the Site by Developer and the future occupants of the Site, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which this Agreement is adopted.

**Section 5. Relationship of Parties.** It is understood that the contractual relationship between City and Developer is such that City and each Developer are each an independent party and neither is the agent or partner of the other for any purpose whatsoever and neither shall be considered to be the agent or partner of the other for any purpose whatsoever.

**Section 6. Term of Agreement.** The initial term of this Agreement (the "Term") shall commence on the Effective Date and shall expire ten (10) years thereafter.

**Section 7. Timing of Development.** Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties to provide for the timing of development resulting in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the City's and Developer' intent here to cure that deficiency by acknowledging and providing that Developer shall have the right (without obligation), subject to the provisions of this Development Agreement, to complete the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of their subjective business judgment.

**Section 8. Transfers and Assignments.**

A. Transfers. Developer may enter into one or more Transfers without the prior consent of City. Developer shall provide City with notice of all Transfers promptly following the consummation thereof. Developer shall remain liable to perform all of the terms and conditions of this Agreement with respect to any portion of, or interest in, the Project that shall be the subject

of a Permitted Transfer unless Developer and the applicable Transferee shall execute and deliver to City an Assignment and Assumption Agreement, in which case Developer shall be released from its obligations with respect to such portion of, or interest in, the Project that was the subject of such Transfer.

B. General Conditions Applicable to Transfers. Notwithstanding whether a Transferee has executed an Assignment and Assumption Agreement, upon a Transfer the Transferee shall be deemed to have assumed all Developer's obligations and been assigned all of Developer's rights under this Agreement, and will be deemed the Developer hereunder. This Agreement may only be transferred to a person who acquires fee title to the entire site. Notwithstanding anything herein to the contrary, in no event shall any Mortgagee have any obligation under this Agreement unless and until such Mortgagee purchases at a foreclosure sale, or accepts a deed in lieu of foreclosure, the portion of the Project that was subject to a Mortgage.

**Section 9. General Rights, Standards, and Restrictions.** The following specific rights, standards, and restrictions shall apply to the development and use of the Site pursuant to this Development Agreement:

A. Developer shall have the right to develop the Project on the Site in accordance with the terms and conditions of the Project Approvals and this Agreement, and City shall have the right to control development of the Site in accordance with the provisions of the Project Approvals and this Agreement.

B. The type, density, intensity, configuration of uses allowed, size, and location of buildings and other improvements and provisions for the reservation or dedication of land for public purposes, location of public improvements, including, but not limited to landscaping, irrigation, sidewalk, and drive approaches, together with other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and this Agreement.

**Section 10. Obligations of City.** In consideration of the benefits to the City arising from the development of the Site and the entering into of this Agreement, the City agrees as follows:

A. Upon acceptance by the City, the following items shall be maintained by the City and Developer, subject to City review and approval of a maintenance agreement with the Developer, respectively:

Public Improvements to be maintained by City

1. Concrete curb and gutter.
2. Concrete sidewalk constructed per City standards (non-decorative).
3. Street lights, pull boxes and conduits.
4. Fire hydrants.
5. Water services up to the meter.

Public Improvements immediately adjacent to the Site to be maintained by Developer

1. Landscaping and Irrigation.
2. Parkway Trees.
3. Water service lateral
4. Sewer lateral.
5. Decorative sidewalk.
6. Driveway approach (from curb to Developer property line).

B. With respect to any bonds or similar security (including letters of credit or cash) posted by Developer in connection with the development of the Site in favor of the City, within sixty (60) days after completion or satisfaction of all requirements related to such bonds or other security and the respective Developer's request (or such earlier time as required by law), the City shall cause the release of such bonds.

#### **Section 11. Affordable Housing and Rent Restrictions:**

A. Affordable Housing. Developer shall enter into an Affordable Housing Agreement with the City prior to the issuance of any grading or construction permits, which agreement must result in recorded covenants upon the property to assure affordable rents as set forth in this Section for a minimum of fifty-five (55) years following first occupancy and which shall provide terms and procedures and details, including a process for annual compliance reporting to the City. Eleven (11) units shall be reserved at or below the LOW INCOME threshold and for occupancy by qualifying tenants, as defined by applicable State Law. These units constitute a minimum of 10% of the total number of units within the project and shall fulfill the City's 10% Inclusionary Affordable Housing requirement for the project.

B. Work Force Housing. At least eighty (80) of the units shall be rented at a projected rent between \$1,200 to \$1,695 per month within the following rental categories: a minimum of six (6) units shall have rents of not more than \$1,295, six (6) units shall have rents of not more than \$1,395, six (6) units shall have rents of not more than \$1,495, six (6) units shall have rents of not more than \$1,595, and fifty-six (56) units shall have rents of not more than \$1,695, and shall remain between the LOW TO MODERATE INCOME threshold, as defined by applicable State Law, exclusive of utilities, commencing on the Effective Date with an ability to increase rents a maximum amount of three percent (3%) annually for a period of 40 years. Developer shall record a Restrictive Covenant in a form reasonably approved by the Director and the City Attorney referencing these obligations, including a process for annual compliance reporting to the City.

C. Brea Workforce Preference Program. The Affordable Housing Agreement and the Restrictive Covenant shall also include a program to give priority preference to prospective tenants that work in Brea and shall provide a priority for a minimum of eighty percent (80%) of the units for such tenants (however, Developer is allowed to lease such units to other tenants to the extent

such units are available after leasing to all qualified local worker priority tenants). Developer agrees to implement such a program substantially in the form attached hereto as Exhibit “B.”

It is acknowledged that Developer may modify the terms of affordability for the Work Force Housing units described in Section 11.B in the event the State or any other governmental agency enacts any new legislation that causes any increase in property tax (including any special tax or assessment) to be implemented upon the property (*e.g.* modification of Prop 13) but only to the extent reasonably necessary to re-capture any increase in property-related tax. Developer shall notify City of any such adjustment.

## **Section 12. Developer’s Contributions.**

A. Contribution of video camera hardware and software. Developer shall provide Ten Thousand Dollars (\$10,000) for the procurement and installation of video surveillance cameras for the Imperial Highway and Berry Street intersection, Berry Street and Mercury Lane, and for Mercury Lane and the West Downtown parking garage. Said cameras shall be integrated into the existing fiber optic system from the West garage connecting to the Civic and Cultural Center, and integrated with the City’s existing video surveillance systems, with related details and specifications subject to the review and approval of the City prior to the issuance of any occupancy permits.

B. Contribution to Future Sidewalk, Bike Lane and Bridge Improvements. Developer shall pay City a financial contribution in the total amount of One Hundred Eighty Thousand Dollars (\$180,000) toward the cost to construct (1) sidewalks and bike lane improvements on Mercury Lane (approximately \$80,000) and (2) pedestrian and ADA improvements from the eastern terminus of Mercury Lane, across or next to the existing flood control channel bridge, and along the existing access road to the Western Downtown Parking Garage (approximately \$100,000). Developer shall make a payment in the amount of \$80,000 to the City prior to issuance of any building permits. Developer shall make a payment in the amount of \$100,000 to the City upon the City Manager indicating in writing that the City is ready to execute a contract for design or civil engineering for the pedestrian and ADA improvements described in clause (2) of the first sentence of this paragraph. Said funding shall be used at the sole discretion of the City of Brea for those improvements and is not subject to timing restrictions for use or refunding to the Developer.

C. Contribution to Future Improvements to Imperial Highway. Developer shall pay City a lump sum financial contribution in the amount of Ten thousand Dollars (\$10,000) toward the cost of future improvements to Imperial Highway. Developer shall make such payment in full to the City to the satisfaction of the City Manager prior to issuance of any occupancy permits for the project. Said funding shall be used at the sole discretion of the City of Brea and is not subject to timing restrictions for use or refunding to the Developer.

D. Contribution to Use and Maintenance of West Downtown Parking Garage. Developer may elect to use the West Downtown parking garage (the “Parking Garage”) for guest parking of Project residents, provided that the number and location of parking spaces reserved for such use shall be subject to City’s reasonable terms and conditions and its advance review and approval on an annual basis; provided that in no event shall the Parking Garage be used by Developer or Project residents for vehicle storage. In exchange for such limited use of the Parking

Garage, Developer's Tenants shall pay City \$25.00 per space, per month, which amount shall increase annually according to the CPI for the Orange County area. City shall use said annual payments solely for the maintenance, repair, and upkeep of the Parking Garage.

E. Car-Share and Bike-Share Program. Developer shall develop and implement car-share and bike-share programs to serve the Project. Developer shall submit a detailed program implementing these programs for the review and approval of the Community Development Director prior to the occupancy of any residential units. Said program shall provide for the availability of on-site shared automobiles and bicycles for residents and may include appropriate fees for such services.

**Section 13. Effect of City Regulations on Development of Project.** Except as expressly provided in this Agreement, all substantive and procedural requirements and provisions contained in City's ordinances, specific plans, rules, and regulations, including, but not limited to, the Brea Municipal Code, in effect as of the Effective Date of this Development Agreement, shall apply to the construction and development of the Project and Site.

A. The provisions of this Section shall not preclude the application to the development of the Project and the Site of those changes in City ordinances, regulations, plans, or specifications that are: (i) specifically mandated and required by changes in state or federal laws or regulations as provided in California Government Code Section 65869.5 or any successor provision or provisions; (ii) required to ensure public safety and are made applicable throughout the City; or (iii) are required to ensure access under the Americans with Disabilities Act. In the event such changes prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended or performance thereof delayed, to the extent necessary to comply with such changes in the law.

B. All fees currently charged by the City in connection with the construction of the Project, including land use approvals, development fees, building permits, etc., shall be no higher than those fees in effect at the Effective Date for a period of five (5) years from the Effective Date, subject to the following exceptions:

i. The City's existing development impact fees may increase over time and shall be paid in the amounts in effect at the time application is made for such approvals or permits that require payment.

ii. All City requirements associated with the City's affordable housing requirements are being fully satisfied through the provision of the affordable units provided by the Project pursuant to the Project Approvals and this Agreement. No other fees or exactions shall be charged for Affordable Housing.

iii. All development impact fees shall be due at certificate of occupancy.

C. City may apply to the Project any and all new health and safety regulations (e.g., fire, building, and seismic, plumbing, and electric codes) that become applicable to the City pursuant to State and Federal law as a whole after the Effective Date.

**Section 14. Annual Review.** During the term of this Development Agreement, City shall annually review the extent of good faith compliance by Developer with the terms of this Agreement. Developer shall file an annual report with the City indicating information regarding compliance with the terms of this Agreement no later than January 7 for the previous calendar year, commencing January 7, 2021.

**Section 15. Indemnification and Legal Challenge.** To the maximum extent permitted by law, Developer must defend, indemnify, and hold City and its elected officials, officers, contractors serving as City officials, agents, and employees (“Indemnitees”) harmless from liability for damage and/or claims for damage for personal injuries, including death, and claims for property damage, and with respect to all other actions and liabilities for damages caused or alleged to have been caused by reason of Developer’s activities in connection with the development and/or construction of the Project, and which may arise from the direct or indirect operations of Developer or those of Developer’s contractors, agents, tenants, employees, or any other persons acting on Developer’s behalf, which relate to the development and/or construction of the Project. This indemnity provision applies to all damages and claims for damage, as described above, regardless of whether or not the City prepared, supplied, or approved the plans, specifications, or other documents for the Project. Developer shall also defend, indemnify, and hold the Indemnitees harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from or related to Developer’s failure, or any of its contractor’s failure, to pay prevailing wages pursuant to Labor Code Section 1720 *et seq.* in connection with construction of the Project and associated public and private improvements.

In the event of any legal action challenging the validity, applicability, or interpretation of any provision of this Agreement, any of the entitlement documents pertaining to the Project including, without limitation, the City’s General Plan, Zoning Ordinance, or any other supporting document relating to the Project, Developer must indemnify, defend, and hold harmless the Indemnitees, and each of them, with respect to all liability, costs, and expenses incurred by, and/or awarded against, the City or any of the Indemnitees in relation to such action. The City shall have the right to select counsel of its choice. The parties hereby agree to cooperate in defending such action. In the event of any litigation challenging the effectiveness of this Agreement, or any portion hereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless otherwise ordered by the court. Absent issuance of an injunction, Developer may elect to continue development under this Agreement pending completion of the litigation but it shall do so at its sole risk, and the City shall not be liable for any loss suffered as a result thereof. This Section shall survive the expiration or earlier termination of this Agreement.

**Section 16. Amendments.** This Agreement may be amended or canceled, in whole or in part, only by mutual written consent of the parties and then in the manner provided for in California Government Code § 65868, *et seq.*, or successor provisions thereto.

**Section 17. Enforcement.** In the event of a default under the provisions of this Agreement by Developer, City shall give written notice to Developer (or its successor) by registered or certified mail addressed at the address stated in this Agreement, and if such violation is not corrected to the reasonable satisfaction of City within thirty (30) days after such notice is served on Developer, or if not corrected within such reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within said thirty (30) days (provided that acts to cure the breach

or default must be commenced within said thirty (30) days and must thereafter be diligently pursued by Developer), then City may, without further notice, declare a default under this Agreement and, upon any such declaration of default, City may bring any action necessary to specifically enforce the obligations of Developer growing out of the operation of this Development Agreement, apply to any court, state or federal, for injunctive relief against any violation by Developer of any provision of this Agreement, or apply for such other relief as may be appropriate.

**Section 18. Event of Default.** Developer is in default under this Agreement upon the happening of one or more of the following events or conditions:

A. If a material warranty, representation, or statement made or furnished by Developer to City set forth herein or in any document incorporated by reference herein is false or proved to have been false in any material respect when it was made;

B. If a finding and determination is made by City following an annual review pursuant to this Agreement, upon the basis of substantial evidence, that Developer has not complied in good faith with any material terms and conditions of this Agreement, after notice and opportunity to cure as provided by this Agreement; or

C. A breach by Developer of any of the provisions or terms of this Agreement, after notice and opportunity to cure as provided in this Agreement.

**Section 19. No Waiver of Remedies.** City does not waive any claim of defect in performance by Developer if on periodic review City does not enforce this Agreement. Nonperformance by Developer shall not be excused because performance by Developer of the obligations herein contained would be unprofitable, difficult, or expensive, or because of a failure of any third party or entity, other than City. Subject to the provisions of Section 22, all other remedies at law or in equity which are not otherwise provided for in this Agreement are available to each party to pursue in the event that there is a breach of this Development Agreement by the other party (subject to applicable notice and cure periods). No waiver by City or Developer of any breach or default under this Development Agreement by the other party shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.

**Section 20. City Not Liable For Damages.** It is acknowledged by the parties that the City would not have entered into this Agreement if it could be held liable in damages under or with respect to this Agreement or the application thereof. Consequently, and except for the payment of attorneys' fees in accordance with this Agreement, the City shall not be liable in damages to Developer, or to any assignee, transferee, or any other person, and Developer covenants on behalf of itself and its successors in interest not to sue for or claim any damages:

A. For any breach of this Agreement;

B. For the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto;

C. Arising out of or connected with any dispute, controversy, or issue regarding the application or interpretation or effect of the provisions of this Agreement; or

D. For any injury to or interference with the rights of the property owner, allegedly or actually arising out of, or incurred in connection with, the parties entering this Agreement, or their exercise of any rights under this Agreement.

**Section 21. Rights of Lenders Under this Agreement.** Should Developer place or cause to be placed any encumbrance or lien on the Project, or any part thereof, the beneficiary (“Lender”) of said encumbrance or lien shall have the right at any time during the term of this Agreement and the existence of said encumbrance or lien to:

A. Do any act or thing required of Developer under this Agreement, or cure any default of Developer under this Agreement within the time limits set forth in this Agreement, and any such act or thing done or performed by Lender or cure shall be as effective as if done by Developer;

B. Realize on the security afforded by the encumbrance or lien by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the security document evidencing the encumbrance or lien (hereinafter referred to as “a trust deed”);

C. Transfer, convey or assign the title of Developer to the Site to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in a trust deed; and

D. Acquire and succeed to the interest of Developer by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to a court order or pursuant to a power of sale contained in a trust deed.

Should any Lender require or request an amendment of this Agreement in respect of the rights and remedies granted to a Lender, City hereby agrees to consider such an amendment in good faith and in accordance with state and local law so long as the proposed amendment does not materially and adversely affect the rights, powers, and remedies of the City in respect of a default by Developer hereunder.

**Section 22. Notice to Lender.** City shall give written notice of any default or breach under this Agreement by Developer to Lender (if known by City) simultaneously with such notice of default City gives to Developer and afford Lender the opportunity after receipt of service of the notice to:

A. Cure the breach or default within thirty (30) days after service of said notice, where the default can be cured by the payment of money;

B. Cure the breach or default within thirty (30) days after service of said notice where the breach or default can be cured by something other than the payment of money and can be cured within that time; or

C. Cure the breach or default in such reasonable time as may be required where something other than payment of money is required to cure the breach or default and cannot be performed within thirty (30) days after said notice, provided that acts to cure the breach or default are commenced within a thirty (30) day period after service of said notice of default on Lender by City and are thereafter diligently continued by Lender.



**Section 23. Action by Lender.** Notwithstanding any other provision of this Agreement, a Lender may forestall any action by City for a breach or default under the terms of this Agreement by Developer by commencing proceedings to foreclose its encumbrance or lien on the Site. The proceedings so commenced may be for foreclosure of the encumbrance by order of court or for foreclosure of the encumbrance under a power of sale contained in the instrument creating the encumbrance or lien. The proceedings shall not, however, forestall any such action by the City for the default or breach by Developer unless:

A. They are commenced within thirty (30) days after service on Developer (and on Lender if Lender's address is provided by notice to the City pursuant this Agreement) of the notice described hereinabove;

B. They are, after having been commenced, diligently pursued in the manner required by law to completion; and

C. Lender keeps and performs all of the terms, covenants, and conditions of this Agreement requiring the payment or expenditure of money by Developer until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, or payment.

**Section 24. Notice.** Any notice required to be given by the terms of this Agreement shall be provided by certified mail, return receipt requested, at the address of the respective parties as specified below or at any other such address as may be later specified by the parties hereto.

To Developer.: Mercury CXIV, LLC  
330 W. Birch, Suite E  
Brea, California 92821  
Attention: Dwight Manley

To City: City of Brea  
1 Civic Center Circle  
Brea, California 92821  
Attention: City Manager

With a copy to: Richards, Watson & Gershon  
1 Civic Center Circle  
P.O. Box 1059  
Brea, California 92822-1059  
Attention: Brea City Attorney

**Section 25. Attorneys' Fees.** In any proceedings arising from the enforcement of this Development Agreement or because of an alleged breach or default hereunder, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees and experts' fees incurred during the proceeding (including appeals) as may be fixed within the discretion of the court.

**Section 26. Binding Effect.** This Agreement shall bind, and the benefits and burdens hereof shall inure to, the respective parties hereto and their legal representatives, executors, administrators, successors and assigns, wherever the context requires or admits.

**Section 27. Applicable Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. Venue for any action or litigation brought for breach or to enforce any provision of this Agreement shall be the County of Orange, California.

**Section 28. Partial Invalidity.** If any provisions of this Agreement shall be deemed to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**Section 29. Recordation.** The City Clerk shall record this Agreement in the Official Records of the County Recorder of the County of Orange within ten (10) business days following the Effective Date. Upon the expiration of the terms of this Agreement and the request of Developer, the City will execute and deliver, in recordable form, an instrument confirming that this Agreement is terminated and of no further force or effect.

**Section 30. Force Majeure.** In the event that any party hereto shall be delayed or hindered or prevented from performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, riots, insurrection, terrorism, war or other reason of similar nature not the fault of the party delayed in performing the work or doing the acts required under the terms of this Agreement, then the performance of such act shall be excused for the period of the delay caused by the foregoing. Financial inability shall not be deemed an excuse for delay under this Section.

**Section 31. Integrated Agreement.** This Development Agreement consists of this Agreement together with all Exhibits attached hereto, and all of the same are hereby incorporated by reference. The provisions of this Agreement shall govern over any inconsistent or conflicting provisions set forth in the Exhibits. No representation or promise, verbal or written, not expressly set forth herein shall be binding or have any force or effect.

**Section 32. Headings.** Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

**Section 33. Time of Essence.** Time is of the essence in every provision hereof in which time is a factor.

**Section 34. Operating Memoranda.** The provisions of this Agreement require a close degree of cooperation between the City and Developer. Refinements to the Project during implementation and development may require clarifications of this Agreement to ensure proper implementation of this Agreement and/or the Project Approvals. If, when, and as it becomes necessary or appropriate to take implementing actions or make such clarifications, the Parties may effectuate such actions, or clarifications through an operating memorandum ("Operating Memorandum") approved by the parties in writing which references this Section. Such Operating Memorandum shall not require public notices and hearings or an amendment to this Agreement unless otherwise required by this Agreement or applicable law. The City Manager shall be authorized, after consultation with and approval of Developer, to determine whether a requested clarification or implementing action: (i) may be effectuated pursuant to this Section and is consistent with the intent and purpose of this Agreement and the Project Approvals; or (ii) is of the type that would constitute an amendment to this Agreement. The authority to enter into such Operating Memorandum is hereby delegated to

the City Manager and the City Manager is hereby authorized to execute any Operating Memorandum hereunder without further City Council action.

**Section 35. Authority of City Manager.** Any consent, approved or other instrument described in this Agreement may be granted, given or executed by the City Manager or designee on behalf of the City and the City Manager or designee shall be authorized to take any other action on behalf of the City without the need for further authorization from the City Council; provided, however that, notwithstanding the foregoing, the City Manager or designee may, in his or her sole discretion, refer to the City Council any item for which the City Manager or designee has authority to act hereunder.

**Section 36. Conflicts of Interest; Prohibited Interests.**

A. No director, employee or agent of City shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value, or enter into any business arrangement with any director, employee or agent of a Developer, its affiliates, other than as a representative of a Developer or its affiliates, without prior written notification thereof to such Developer. Any representatives authorized by Developer may audit any and all records of City for the purpose of determining whether there has been compliance with this provision.

B. Developer warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Developer, and that if any such interest comes to the knowledge of Developer at any time during the term of this Agreement, Developer shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited “conflict of interest” under applicable laws.

**Section 37. Cooperation.** Each of the parties shall cooperate with and provided reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed by the parties and shall be effective on the Effective Date set forth hereinabove.

CITY OF BREA,  
a Municipal Corporation

MERCURY CXIV, LLC  
a California limited liability company

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Marty Simonoff  
Mayor

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lillian Harris-Neal  
City Clerk

Approved as to form:

\_\_\_\_\_  
Terence R. Boga  
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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 SITE**



## EXHIBIT B

### Brea Employer Preference Program

The Mercury

Brea, California

A primary purpose of The Mercury is to provide workforce housing to workers of local Brea businesses to allow those workers to avoid lengthy commutes and exorbitant rents, while becoming residents as well as workers in our community. To that end, we invite local Brea employers to enroll in our Brea Employer Preference Program, outlined below.

**Tenant Selection:** When The Mercury receives multiple applications for an available workforce housing unit, preference shall be given to applicants who are full-time employees of Brea employers enrolled in this Program, subject to the following qualifications:

1. **Applicant Suitability:** The Mercury reserves the right to determine any applicant's suitability as a tenant. The Mercury may consider an applicant's credit history, rental history, and criminal history when selecting a tenant and the preference provided does not prevent making such a determination between competing applicants.
2. **Filling Vacancies:** The Mercury will not "hold" vacant units for local workers. If a local worker cannot sign a lease when a unit becomes available, The Mercury may offer the unit to another applicant. Local workers may be added to a waiting list, and The Mercury may contact them as units become available. Local workers selected as potential tenants shall be required to comply with the same requirements as other tenants, such as executing a written lease, adhering to the terms and conditions of such lease (including limits on number of occupants), and limits on sub-leasing. Violation of any terms of their leases shall be grounds for eviction.
3. **Non-Discrimination:** The Mercury adheres to the Fair Housing Act, Federal Civil Rights Laws, and California Fair Employment and Housing Act. We will not discriminate against applicants or tenants based on race, color, national origin, sex, age, disability, religion, familial status, or any other protected status. To that end, The Mercury reserves the right to reevaluate or deviate from this Program if, in its discretion, they may have an unjustified disparate impact on a protected class of people or it concludes it is necessary to do so to comply with local, state or federal laws.

**Brea Employer Qualification to Enroll:** A Brea employer qualified to participate under this Program is defined as a business/employer physically located within the City of Brea. Brea employers physically situated within a 1/2 mile radius from The Mercury property shall be entitled to first priority and all other Brea employers shall be entitled to a second priority under this Program. The Mercury shall consider other applicants only after exhausting the enrolled Brea employer priorities.

**Employer Participation:** Brea employers may enroll in this Program by filling out the form attached below and paying a nominal processing fee of \$500 per unit, per year. Employers must renew their enrollment and pay the processing fee annually. As a condition of enrollment and consideration of worker applications, enrolled employers must cooperate with The Mercury when asked to verify the employment status of local worker applicants. Failure to respond to The Mercury's requests for verification and/or failure to provide accurate information about an applicant's employment status are each grounds for losing a priority to a specific vacancy or termination of enrollment.

**Notice of Vacancies:** The Mercury will make reasonable efforts to provide electronic notice by email of upcoming vacancies to all Brea employers who are enrolled in this program to facilitate leasing of units. However, failure to give or receive notice will not affect any leases entered into by The Mercury.

**Termination of Tenancies:** If a tenant/worker with an enrolled Brea employer changes employment during the term of his or her tenancy, that worker's tenancy may continue per the terms of the current rental agreement. Upon expiration, that worker can reapply if he or she desires, but that application will be considered in the same manner as a new application and in light of any Brea employer preferences pursuant to this Program.

\* \* \*

If you would like more information about this Program, please contact us at: The Mercury (\_\_\_\_) \_\_\_\_-\_\_\_\_\_. [Email TBD]

## Brea Worker Preference Program – Enrollment Form

### **The Mercury**

Name of Employer:	
Contact Person:	
Address:	
Telephone Number:	
Email Address:	
	Date: _____  _____ Signature  _____ Printed Name  _____ Title

For Internal Office Use Only:

☐ Date of Receipt: \_\_\_\_\_

☐ Processing Fee Paid: Y/N

☐ Received by: \_\_\_\_\_