

Excerpt from Related Santa Clara DDA – Developer Obligations

5.3.2 Minimum Initial Buildings. The “**Minimum Initial Buildings**” shall consist of the following: (i) not less than six hundred thousand (600,000) square feet of office, hotel and/or Retail Buildings in Phase 1, which shall include a minimum of a three hundred (300) key (or larger) hotel other than an extended stay hotel and fifty thousand (50,000) square feet of Retail uses; (ii) not less than seven hundred thousand (700,000) square feet of Buildings in Phase 2, consisting of (x) five hundred thousand (500,000) square feet of Retail, and (y) two hundred thousand (200,000) square feet of office and/or a three hundred (300) key (or larger) hotel; and (iii) not less than two hundred (200) residential units in the aggregate in Phases 1 and 2 (the “**Minimum Residential Buildings**”). The Minimum Initial Buildings may be submitted in one or more DAPs within Phases 1 and 2 and may be constructed over time, so long as all of the Minimum Initial Buildings are Completed by the Outside Dates therefor set forth in the applicable Phase Schedule of Performance, in accordance with Article 9 hereof (as such Outside Dates may be extended for Excusable Delay).

5.3.3 Additional Initial Buildings. In addition to the Minimum Initial Buildings, the Master Developer shall use best efforts to build an additional two hundred thousand (200,000) square feet of office, Retail and/or residential Buildings in Phase 1, and shall use best efforts to build an additional two hundred and thirty thousand (230,000) square feet of office, Retail and/or residential Buildings in Phase 2 (collectively, the “**Additional Initial Buildings**”). The Additional Initial Buildings may be included in one or more DAPs within Phases 1 and 2, as applicable, may be constructed over time and shall be subject to the best efforts provisions set forth in Section 5.3.7 below.

5.3.4 Minimum Retail Buildings. The “**Minimum Retail Buildings**” shall consist of the following: (i) not less than fifty thousand (50,000) square feet of Retail Buildings in Phase 1; and (ii) not less than seven hundred and fifty thousand (750,000) square feet of Retail Buildings in the aggregate in Phases 2 and 3. The total square feet of the Minimum Initial Buildings and Additional Initial Buildings intended for such Retail uses within the applicable City Center Phase(s) shall be included in any calculation of Minimum Retail Buildings. The Minimum Retail Buildings may be included in one or more DAPs within each of the City Center Phases and may be constructed over time, so long as all of the Minimum Retail Buildings are Completed by the Outside Date therefor set forth in the applicable Phase Schedule of Performance, in accordance with Article 9 hereof (as such Outside Dates may be extended for Force Majeure).

5.3.5 Additional Retail Buildings. Developer shall use best efforts to build an aggregate of one million five hundred thousand (1,500,000) square feet of Retail, within Phases 2 and 3 (collectively, the “**Additional Retail Buildings**”). The total square footage of the Minimum Retail Buildings within Phases 2 and 3 shall be included in any calculation of the Additional Retail Buildings. The Additional Retail Buildings may be included in one or more DAPs within Phases 2 and 3, as applicable, may be constructed over time and shall be subject to the best efforts provisions set forth in Section 5.3.7 below.

5.3.6 Department Stores. Without limiting the foregoing provisions regarding the Minimum Retail Buildings and Additional Retail Buildings, Developers shall use best efforts to Complete and ensure the opening of two (2) to three (3) department stores of one hundred thousand (100,000) gross square feet or larger with middle to high price points in terms of caliber of merchandise (each, a “**Major Department Store**”), at least two (2) of which would be stores that are not presently located within the City, unless otherwise reasonably approved by City. Examples of the contemplated caliber of “Major Department Stores” include Nordstrom and Neiman Marcus. The Major Department Stores may be included in one or more DAPs within each of Phase 1, Phase 2, and/or Phase 3, may be constructed over time and shall be subject to the best efforts provisions set forth in Section 5.3.7 below.

5.3.7 Best Efforts for Additional Buildings and Additional Retail Buildings. For purposes of Sections 5.3.3, 5.3.5, and 5.3.6 hereof, “best efforts” shall mean the following:

(a) Required Efforts. The applicable Phase Developer shall engage in diligent marketing efforts reasonably designed to identify and obtain credit-worthy tenants at market rates sufficient to justify the construction of the Additional Buildings, Additional Retail Buildings, or Major Department Stores, as applicable. On the earlier of (i) the date that is sixty (60) days after the Effective Date of this Agreement or (ii) the submission of a Phase Option Notice for any Phase, Master Developer shall submit to the City Manager a report that describes the efforts undertaken by Master Developer and each applicable Phase Developer to achieve the development of the Additional Buildings, Additional Retail Buildings, or Major Department Stores within Phase 1, Phase 2 and Phase 3, as applicable (the “**Best Efforts Report**”). Master Developer shall subsequently submit an updated Best Efforts Report to the City Manager according to the following schedule: (a) every six (6) months after submission of the first Best Efforts Report; (b) as part of the submission of a Phase Option Notice for Phase 1, Phase 2, and/or Phase 3; (c) as part of the submission of a DAP for Phase 1, Phase 2, and/or Phase 3; and (d) as part of any request to implement an Alternate Leasing Plan (as described in Section 5.3.7(b) below). The Best Efforts Report shall include a description of the leasing plan for the applicable Phase, marketing and leasing outreach efforts designed to identify and obtain tenants as necessary to justify the construction and/or tenanting of the Additional Buildings, Additional Retail Buildings, or Major Department Stores, a description of the success or failure of such efforts and a list of brokers engaged to market the property, if any, recognizing that the majority of Master Developer’s leasing efforts may be conducted in-house. Master Developer’s obligation to submit updated Best Efforts Reports shall continue until Master Developer has either achieved the development of the Additional Buildings, Additional Retail Buildings, and Major Department Stores within Phase 1, Phase 2 and Phase 3, as applicable, or has obtained relief from all or a portion of such requirement, as described in Section 5.3.7(b) below.

(b) Alternate Leasing Plan/Relief from Best Efforts. The Parties recognize that, despite best efforts, many factors could contribute to Developer’s failure to achieve some or all of the Additional Buildings, Additional Retail Buildings, or Major Department Stores within Phase 1, Phase 2 and Phase 3, as applicable, including a lack of market demand, financial infeasibility based on construction and entitlement costs (including availability of labor and materials), prevailing market rents and the availability of financing at commercially

reasonable terms. If, any time after Take Down for the applicable Phase, Developer reasonably determines that despite its best efforts, it will be unable to achieve some or all of the Additional Buildings, Additional Retail Buildings, or Major Department Stores within Phase 1, Phase 2 and Phase 3, as applicable, and that an alternative leasing plan would enable the Phase Developer to feasibly develop the Development Parcels with other uses that may not satisfy, in part or in full, the achievement of the Additional Initial Buildings, Additional Retail Buildings, or Major Department Stores (the “Alternate Leasing Plan”), Developer may pursue an Alternate Leasing Plan and be relieved of the obligation to undertake best efforts for all or a portion of the Additional Buildings, Additional Retail Buildings, or Major Department Stores for the applicable Phase in accordance with the process set forth in this Section 5.3.7(b). In order to be relieved of the best efforts obligation, Developer shall first submit to the City a written request that it be relieved of all or a portion of its best efforts obligations, which request will include the following: (i) a written request as to the nature and scope of the requested relief, including the applicable Phase(s) and square footage of improvements; (ii) a copy of its Alternate Leasing Plan for the applicable Phase(s); and (iii) an updated Best Efforts Report covering a minimum period of twenty-four (24) months (starting with the April 2013 execution of the ENA) that will include a description of factors that have contributed to Developer’s inability to develop the applicable Additional Buildings, Additional Retail Buildings, or Major Department Stores for which it seeks relief. Such factors may include market studies showing a lack of demand, pro formas, case histories describing negotiations with major tenants and the reasons that such tenants were unable or unwilling to lease the Additional Initial Buildings, Additional Retail Buildings, or Major Department Stores, the availability of financing at commercially reasonable terms and/or costs of construction (including availability of labor and materials). Upon receipt, City and Developer shall meet and confer in good faith for a period of up to ninety (90) days to review and discuss the updated Best Efforts Report and the Alternate Leasing Plan. The parties’ rights and obligations during such ninety (90) day period shall be as follows:

(i) Within the first forty-five (45) days of the ninety (90) day period, the City Manager shall present an informational report to the City Council concerning the Master Developer’s Best Efforts Report, Alternate Leasing Plan, and request for relief pursuant to this Section 5.3.7(b). The Master Developer shall be invited to participate in the presentation, and the City Council will be invited to provide feedback on the request.

(ii) During the ninety (90) day meet and confer period, City shall have the right to suggest additional marketing efforts or revisions to the Alternate Leasing Plan, to which Developer shall be obligated to respond in good faith by (a) taking any specific steps requested by City, including but not limited to contacting certain potential tenants, and (b) reasonably exploring any other options suggested by City. Notwithstanding the foregoing, however, the updated Best Efforts Report and Alternate Leasing Plan shall not be subject to City approval, nor shall Developer be obligated to adopt or institute changes thereto proposed by the City.

(iii) Prior to the expiration of the ninety (90) day period, so long as Developer has complied with the substantive and procedural requirements set forth in this Section 5.3.7(b), the City Manager shall issue a letter relieving Developer of the applicable best efforts requirement.

Nothing herein shall relieve Developer of its obligation to obtain the approvals specified in the DAP Procedures for the Alternate Leasing Plan (which shall be processed in accordance with the DAP Procedures and not withheld for failure to include the Additional Initial Buildings, Additional Retail Buildings, or Major Department Stores) or any amendment to the MCP to the extent required (which may be given or withheld by City in its sole discretion).

(c) The issuance of a Certificate of Occupancy for any portion of the Additional Initial Buildings or Additional Retail Buildings, or the opening for business of the Major Department Stores shall satisfy the best efforts requirements under Sections 5.3.3, 5.3.5, and/or 5.3.6 hereof, as applicable, as to those improvements.