

PROJECT AGREEMENT
FOR
THE PASEO NUEVO SHOPPING CENTER

This Project Agreement (“Agreement”) dated this ____ day of March, 2024, is entered into by the City of Santa Barbara, a California charter city (the “City”) and Paseo Propco LLC, a Delaware limited liability company (the “Paseo Propco”). Collectively, the City and Paseo Propco are referred to herein as the “Parties” and each a “Party”.

RECITALS

WHEREAS, the City is the owner of multiple parcels of real property, which together are commonly known as the “Paseo Nuevo Properties,” that it acquired from the Successor Agency of the Redevelopment Agency of the City of Santa Barbara pursuant to Successor Agency Resolution No. 15-099, City Council Ordinance No. 5731, and Grant Deed No. 61-456 recorded February 19, 2017 as Instrument No. 2016-0007814 in the Official Records of the County of Santa Barbara, which parcels are identified as the Paseo Nuevo Properties in Exhibit A; and

WHEREAS, the Paseo Nuevo Properties are encumbered by numerous Paseo Nuevo Agreements identified in the *Assignment and Assumption of Paseo Nuevo Documents*, recorded in the Official Records of the County of Santa Barbara as Instrument No. 2018-001378, including three long-term ground leases; and

WHEREAS, Paseo Propco is the successor in interest and current long term lessee under two long-term ground leases of the parcels are identified in Exhibit A and referred to in this Agreement as the “Subject Property”, which are a portion of the Paseo Nuevo Properties; and

WHEREAS, the Paseo Propco’s ground leases each have a term that expires on December 31, 2065, and only allow Paseo Propco to use the Subject Property for retail, office and service establishments common to high quality regional shopping centers or a performing arts center; and

WHEREAS, the Subject Property is developed with an outdoor regional shopping center commonly referred to as Paseo Nuevo Shopping Center, which covers both the Subject Property and neighboring parcels that are not part of the Subject Property, which are identified in Exhibit A and referred to in this Agreement as the “Neighboring Parcels”; and

WHEREAS, the Parties agree and acknowledge that the current use of the Subject Property does not provide the financial or community benefits originally envisioned in the Ground Lease; and

WHEREAS, the Parties agree that the redevelopment of the Subject Property into a high-quality mixed use project would enhance the City’s central business district by incorporating a mix of commercial and residential uses; and

WHEREAS, the City has expressed a desire to provide a significant amount of housing within the City's central business district and redevelopment of the Subject Property provides an opportunity to do so; and

WHEREAS, the Parties that it is in their mutual interest to explore redevelopment of the Subject Property with a mixed-used development with multi-family residential units, retail, open space, community amenities, and parking, that could include the general components as described in Exhibit B to this Agreement (the "Proposed Project"); and

WHEREAS, the redevelopment of the Subject Property will create significant opportunities for economic growth in the City, revitalize the central downtown business district, compliment the City's proposed State Street Master Plan, and provide much-needed housing in the City's central business district; and

WHEREAS, the Parties acknowledge that for the redevelopment of the Subject Property to occur, the Parties must work cooperatively and in good faith to ensure the Proposed Project is financially viable and provides the appropriate community benefits and to this end the Parties commit to identify and pursue to the extent feasible sources of public financing that may be needed to successfully implement the Proposed Project; and

WHEREAS, the Parties agree that certain elements for the redevelopment of the Subject Property are vital to the success of a project and by this Agreement acknowledge a commitment to pursue these elements through the review and processing of any discretionary approvals, as that term is defined below; and

WHEREAS, the Subject Property and Neighboring Parcels are additionally encumbered by that certain Construction, Operation and Reciprocal Easement Agreement ("REA") executed in November 1987, which among other things, provides that no part of the Paseo Nuevo Shopping Center, including the Subject Property, may be used for housing; and

WHEREAS, because the parties to the REA include a long-term lessee of a Neighboring Parcel, the City may not unilaterally relieve Paseo Propco of the restrictions preventing the development of housing on the Subject Property; and

WHEREAS, the Parties agree and acknowledge that any redevelopment of the Subject Property requires a substantial planning, engineering, environmental review, entitlement, and financing process, along with one or more subsequent agreements between the Parties, and possibly unrelated third parties, that contemplate the transfer of the Subject Property to the Lessee as part of an overall development and financing program under appropriate terms and conditions agreed to by the Parties; and

WHEREAS, the Parties desire to enter into this Agreement to acknowledge their respective commitment to pursue the redevelopment of the Property in an expeditious and cooperative manner based on the terms and conditions set forth in this Agreement; and

WHEREAS, Paseo Propco is an affiliate of AB Commercial Real Estate Debt Fund III, SICAV-SIF S.C.SP, ("AB Commercial"), the lender and beneficiary under a Leasehold Deed of

Trust, Security Agreement, Assignment of Leases and Fixture Filing recorded on March 12, 2019 as Instrument No. 2019-009562 in the Official Records of County of Santa Barbara, California, and AB Commercial has consented to this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other valuable consideration the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereto covenant and agree as follows:

Article 1. Agreement Purpose.

1.1 Purpose. The purpose of this Agreement is to set forth certain terms and conditions agreed to by the Parties with respect to the possible redevelopment of the Subject Property and to memorialize each Party's commitment to pursue and negotiate in good faith and diligence the Proposed Project including the following:

A. An agreement that allows for the transfer of fee title to the Subject Property from the City to the Paseo Propco and the development of the Proposed Project, subject to terms and conditions to be agreed upon by the Parties through a future Disposition and Development Agreement (“DDA”); and

B. Agreement by the Parties to the parameters and general components of the Project Description, as defined below; and

C. Agreement by the Parties on the terms and conditions for development and financing of the Project, including waivers of development restrictions such as height limitations as authorized or required by State law, necessary or convenient to accomplish implementation of the Proposed Project; and

D. Agreement on the terms and conditions of potential public financial incentives or participation as necessary for implementation of the of the Proposed Project to be agreed upon in the DDA(collectively, the “Agreement Purpose”).

1.2 Good Faith Cooperation. The City and the Paseo Propco shall cooperate with one another in good faith to carry out the Agreement Purpose. Such cooperation shall include commercially reasonable efforts to respond to one another as expeditiously as is reasonably possible with regard to requests for information or approvals required hereby.

A. With regard to materials or documents that require approval of one or more Parties, if such materials or documents are not approved as initially submitted, then the Parties shall engage in such communication as is necessary under the circumstances to resolve the issues resulting in such disapproval.

B. A spirit of good faith and a mutual desire to carry out the Agreement Purpose successfully shall govern the Parties' relationship under this Agreement including, for instance, when unforeseen events, changes in law, regulation, policy, procedure, general market conditions not controlled by the Parties, and other facts or conditions discovered after the execution of this Agreement require the Parties to modify the Agreement.

C. Notwithstanding paragraphs A and B of this section, this Agreement shall not be construed as an irrevocable commitment by the City with respect to the approval, conditional approval, or denial of any environmental review document or development permit or agreement for the Proposed Project or another project at the Subject Property under applicable law. Subject only to the City's covenant to work cooperatively and in good faith with Paseo Propco, nothing in this Agreement will be construed as limiting the City's discretionary decision-making authority.

1.3 Communications. The City and the Paseo Propco shall keep each other reasonably informed of all material events, information and communications relating to the Project and the Project Budget. To facilitate timely communication, the Parties shall designate a representative with responsibility for the routine administration of each Party's obligations under this Agreement. The Parties initially appoint the following as representatives: Eli Isaacson, Community Development Director (or his/her designee) for the City, and Edward Gellert and Yanshu Li (or his/her designee) for Paseo Propco.

1.4 Time of the Essence. The Parties agree that time is of the essence to carry out the Agreement Purpose successfully.

Article 2. Project

2.1 Transfer of Property. Subject to the successful negotiation and execution of a mutually agreed upon DDA by the Parties, the City shall transfer fee title to the Subject Property and additional portions of the Neighboring Parcels (excluding the Nordstrom Parcels as described in Exhibit A) that provide parking and ancillary uses for the Subject Property to Paseo Propco in exchange for the Paseo Propco's agreement to develop the Proposed Project under terms and conditions established in the DDA. Notwithstanding the foregoing, it is expressly understood by Paseo Propco that the City's decision to enter into a DDA with Paseo Propco for the Proposed Project is a legislative act to be made by the Santa Barbara City Council at a later date based on what it determines to be in the best interest of the City.

2.2 Project Description. The Parties agree and acknowledge that the Proposed Project presently contemplated by the Parties is generally described in Exhibit B ("Project Description"). Paseo Propco agrees it shall use commercially reasonable efforts, in accordance with its own business judgement and taking into account market conditions and economic considerations, to undertake the planning and entitlement of the Project. However, nothing in this Agreement shall prohibit the Paseo Propco from seeking any land use approvals different from the land uses permitted on the Property or obligate the Paseo Propco to develop the Property or any portions thereof.

2.3 Project Height. The Parties agree and acknowledge that the Project Description contemplates a development that exceeds 60 feet in height at certain portions of the Subject Property. The City agrees that the Proposed Project may exceed 60 feet in height provided the Project qualifies for a waiver of development standards pursuant to the provisions of California's Density Bonus Law (Cal. Gov. Code Section 65915-65918). The Parties agree and acknowledge that the final height of the Proposed Project will be determined in accordance with this paragraph following environmental review and before execution of the DDA.

2.4 Project Financing. The Parties agree and acknowledge that as currently contemplated the Project requires additional sources of financing and without such additional financing, the Project cannot be developed. The Parties agree to work in good faith during the term of this Agreement to identify and pursue, to the extent commercially reasonable, additional sources of financing, some of which may require participation by the City.

Article 3. Disposition and Development Agreement.

3.1 Further Negotiations. The Parties agree to diligently negotiate in good faith a disposition and development agreement (“DDA”) wherein the Parties agree to terms and conditions by which the City shall transfer fee title to the Property to Paseo Propco and Paseo Propco shall agree to construct the Project. The DDA shall address the terms and conditions for development of the Proposed Project, (including without limitation, the overall height, number of units, the number of affordable units, open space, project construction schedule and phasing, and other land use aspects), the community benefits provided, and potential public financial support. The Parties agree to work cooperatively and in good faith to process the DDA for final approval within nine months after submission by Paseo Propco of a formal application to the City’s Community Development Department, which formal application contains a final project description mutually agreed by the Parties that includes the total number of rental units; the percentage of rental units that will be affordable to very-low, low-, and/or moderate-income households; and the maximum height of the Proposed Project. The Parties shall meet in person or electronically not less than once per month during the term of this Agreement to effectuate the completion and mutual execution of the DDA. The Parties acknowledge that the DDA will include a development agreement that must be processed and approved in accordance with California law and City ordinances and policies. Nothing in this Agreement is intended to limit the City’s authority or discretion under applicable law.

Article 4. Surplus Lands Act

4.1 Declaration of Exempt Surplus Lands. Concurrently with this Project Agreement, the City Council of the City has adopted a resolution titled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DECLARING DESIGNATED PARCELS OF CITY-OWNED PROPERTY TO BE EXEMPT SURPLUS LANDS PURSUANT TO SUBPARAGRAPH (J) OF PARAGRAPH (1) OF SUBDIVISION (f) OF CALIFORNIA GOVERNMENT CODE SECTION 54221, which is applicable to the Paseo Nuevo Properties, including the Subject Property.

Article 5. Miscellaneous

5.1 Term. This Agreement shall terminate upon the earlier of the following: (1) the mutual execution by the Parties of the DDA, or (2) the mutual written termination by the Parties.

5.2 No Express or Implied Contract. Nothing contained in this Agreement shall create or be construed to create an express or implied contract obligating the City or Paseo Propco to proceed

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With copy to: Mullen & Henzell, LLP
Attn: Graham Lyons
112 East Victoria Street
Santa Barbara, CA 93101

Email: gml@mullenlaw.com

5.6 Written Materials and Public Statements. The Parties agree to cooperate and consult with each other regarding any public statements or publication made regarding the Project. Paseo Propco shall provide the City with drafts of any written material prepared in connection with the Project prior to publication. Paseo Propco shall revise such drafts in accordance with reasonable requests by the City. In addition, Paseo Propco shall provide the City with any changes to documents that materially affect the activities or understandings reflected by this Agreement and final versions of all written submissions.

5.7 Further Assurances. Each Party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transactions contemplated by this Agreement.

5.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.

5.9 Interpretation and Governing Law. This Agreement shall not be construed against the Party who prepared it but shall be construed as though prepared by both parties. This Agreement shall be construed, interpreted, and governed by the laws of California.

5.10 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.

5.11 Parties Bound. No officer, director, shareholder, employee, agent, or other person authorized to act for and on behalf of either Party shall be personally liable for any obligation, express or implied, hereunder.

5.12 Modification of Agreement. This Agreement may be altered, modified, rescinded, or extended only by the Parties' mutual written agreement.

5.13 Headings. The headings in this Agreement are inserted for convenience only and shall not be used to define, limit, or describe the scope of this Agreement or any of the obligations herein.

5.14 Power to Execute. The undersigned individuals represent and warrant that they are expressly authorized by their respective entities or agencies to execute this Agreement and to bind their respective entities or agencies legally as set forth in this Agreement.

5.15 Reasonableness. The City and Paseo Propco shall act in a reasonable manner with respect to their respective obligation as set forth in this Agreement, including the granting of any consent or approval.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

City of Santa Barbara

By: _____
Sarah J. Knecht,
Interim City Administrator

APPROVED AS TO FORM:
Tava Ostrenger, Acting City Attorney

By: _____
Daniel S. Hentschke
Assistant City Attorney

Paseo Propco, LLC

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

EXHIBIT "A"

DESCRIPTIONS OF PROPERTY

Paseo Nuevo Properties

Parcels 1 through 14 of Parcel Map No. 20,504, according to the map thereof recorded February 24, 1989, filed in Book 42 of Parcel Maps, at pages 86 through 98, inclusive, of the Official Records of the County of Santa Barbara, California.

Subject Property

Parcels 2, 3, 9, 10, 11, and 12 of Parcel Map No. 20,504, according to the map thereof recorded February 24, 1989, filed in Book 42 of Parcel Maps, at pages 86 through 98, inclusive, of the Official Records of the County of Santa Barbara, California.

Neighboring Parcels

Nordstrom Parcels: Parcels 1, 7, and 9 of Parcel Map No. 20,504, according to the map thereof recorded February 24, 1989, filed in Book 42 of Parcel Maps, at pages 86 through 98, inclusive, of the Official Records of the County of Santa Barbara, California.

Parking and Ancillary Parcels: Parcels 4, 5, 6, 13, and 14 of Parcel Map No. 20,504, according to the map thereof recorded February 24, 1989, filed in Book 42 of Parcel Maps, at pages 86 through 98, inclusive, of the Official Records of the County of Santa Barbara, California.

EXHIBIT “B”**PROJECT DESCRIPTION**

The Proposed Project, as currently contemplated by the Parties, includes the following general components:

- Approximately 500 total rental units comprised of studios, 1-bedroom, 2-bedroom and 3-bedroom units. A designated number of units will be affordable to a variety of income-levels pursuant to the California Density Bonus Law. The quantity and location of the affordable units will be determined before approval of the DDA.
- Approximately 500,000 total square feet of residential.
- Approximately 85,000 square feet of retail focused on smaller restaurant and shop space, with a possible grocery (approximately 15,000 square feet) and gym (approximately 20,000 square feet).
- Approximately 96,700 square feet of open space, approximately 49,600 square feet of which will be public space (owned and managed by Paseo Propco).
- Development to be a mix of 2-7-story structures and 1 level of underground parking.
- Approximately 640 parking spaces.

The Parties agree to pursue the Proposed Project in good faith as provided in this Project Agreement, but also agree and acknowledge the above project description is subject to change and is not a commitment by either Party to development of the Subject Property in accordance with the above description.