

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

City of Costa Mesa
 77 Fair Drive
 Costa Mesa, CA 92626
 Attn: City Clerk

Space Above This Line Reserved for Recorder's Use Only

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR SAKIOKA FARMS
DEVELOPMENT PROPERTY**

This **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR SAKIOKA FARMS DEVELOPMENT PROPERTY** (“**Agreement**”) is entered into as of [•], 2021, by and between the **CITY OF COSTA MESA**, a general law city (“**City**”), and **ROY K. SAKIOKA & SONS**, a California general partnership (“**RKSS**”). City and RKSS are collectively referred to herein as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. City, RKSS, and Sakioka Farms, a California general partnership (“**Sakioka**”) entered into that certain Development Agreement for Sakioka Farms Development Property dated as of November 15, 1999 (the “**Development Agreement**”), recorded on February 3, 2000 as Instrument No. 20000060847 of the Official Public Records of Orange County, California (the “**Official Records**”) which contains certain rights, duties, and obligations relating to the development of that certain property located in the City of Costa Mesa, County of Orange, California.

B. Pursuant to that certain Assignment and Assumption of Development Agreement for Sakioka Farms Development Property dated as of February 17, 2004 (the “**DA Assignment**”), recorded on April 2, 2004 as Instrument No. 2004000275186 of the Official Records, Sakioka, together with ISCINA-SUNFLOWER LLC, a California limited liability company, RTS-SUNFLOWER, LLC, a California limited liability company, and MARJACK LLC, a California limited liability company, as successors-in-interest to the Development Agreement, assigned to RKSS all of their rights and interests under the Development Agreement with respect to that certain real property described on Exhibit A attached hereto and incorporated herein by this reference (the “**RKSS Lot 2 Property**”), including, but not limited to, all vested entitlement and development rights applicable to the RKSS Lot 2 Property.

C. Section 8 of the DA Assignment provides that any amendment to the Development Agreement requiring the approval of the “Developer” thereunder, which (a) pertains solely to the development of the RKSS Lot 2 Property and (b) does not modify or reduce the intensity or permissible uses of the real property described on Exhibit B attached hereto and incorporated herein by reference (the “**Sunflower Partners Property**”), shall only require the approval in writing of RKSS.

D. The Development Agreement defined the term of the agreement as the period of time from the Effective Date until the date that is twenty (20) years after the Effective Date, unless otherwise extended by the Parties. The Effective Date was conditioned on the occurrence of several conditional events.

E. Pursuant to a letter from the City dated as of December 11, 2019, the City has confirmed that the Effective Date of the Development Agreement was May 15, 2001, and accordingly the current term of the Development Agreement expires on May 15, 2021.

F. The Parties now desire to modify the term of the Development Agreement solely with respect to the RKSS Lot 2 Property, as more particularly set forth herein. Any capitalized word or term used in this Agreement shall have the definition or meaning ascribed to such word or term as provided in the Development Agreement, unless the word or term is otherwise expressly defined in this Agreement, in which event such word or term shall have the definition or meaning as provided herein.

G. The modifications to the Development Agreement set forth herein pertain solely to the development of the RKSS Lot 2 Property, and do not otherwise affect the development, intensity or permissible uses of the Sunflower Partners Property, nor the term of the Development Agreement with respect to the Sunflower Partners Property.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. EFFECTIVE DATE. Section 3.1 of the Development Agreement is hereby deleted in its entirety and replaced with the following: “This Agreement shall be effective as of May 15, 2001 (the “Effective Date”). However, notwithstanding anything to the contrary in this Agreement, including but not limited to Exhibit B to this Agreement (and consistent with Section 2.2 (ii) of this Agreement), the “City of Costa Mesa General Plan (2015-2035)” as adopted June 21, 2016 and the “North Costa Mesa Specific Plan” as adopted on September 6, 2016 shall be the versions of these documents included in the terms "Existing Land Use Regulations", “Existing Development Approvals”, and “Project” as those terms are utilized in this Agreement.”
2. TERM. The first sentence of Section 3.2 of the Development Agreement is hereby deleted in its entirety and replaced with the following: “This Agreement shall be operative commencing on the Effective Date, and continuing thereafter until May 15, 2031, subject to earlier termination upon the completion, performance, and discharge of the obligations hereunder.
3. DEDICATIONS. The Parties hereby acknowledge and agree that as of the date hereof, RKSS has fulfilled the requirements set forth in Sections 2.1(i), 2.1(ii), 2.1(iii), and 2.1(iv) of the Development Agreement with respect to the RKSS Lot 2 Property, and that RKSS shall have no further obligations with respect to the foregoing sections of the Development

Agreement, and there are no outstanding defaults or any occurrence or omission that but for the passage of time or the giving of requisite notice (or both) would constitute a default, under any provision of the Development Agreement.

4. MONETARY DEVELOPMENT EXACTIONS. Notwithstanding any provision of the Development Agreement to the contrary, the applicable park fees and other development impact fees to be paid by Developer, subject to credits for dedications and contributions as set forth in Section 2.2(v), shall be the park fees and other development impact fees adopted and in place as of September 6, 2016; provided, however, that Section 2.2(vi) of the Development Agreement shall continue in full force and effect with respect to Traffic Impact Fees.

5. MISCELLANEOUS.

5.1 This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed one original.

5.2 Each person executing this Agreement on behalf of each Party warrants and represents that he, she, or they have the authority to execute this Agreement on behalf of such Party and warrants and represents that he, she, or they has/have the authority to bind such Party to the performance of its obligations hereunder.

5.3 The Parties intend hereby to amend the Development Agreement only as set forth herein, and the Parties hereby agree that, except as expressly amended hereby, all other terms and conditions of the Development Agreement are hereby confirmed and shall remain in full force and effect.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR SAKIOKA
FARMS DEVELOPMENT PROPERTY**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year set forth below.

CITY OF COSTA MESA

John Stephens, Mayor

Dated: _____

ATTEST:

Brenda Green, City Clerk

Dated: _____

APPROVED AS TO FORM:

Kimberly Hall Barlow, City Attorney

Dated: _____

RKSS

ROY K. SAKIOKA & SONS,
a California general partnership
JKS-RKS, LLC, a California limited
liability company, General Partner
By: Sakioka Company, LLC
a Delaware limited liability company

George M.K. Sakioka, its Manager

Dated: _____

AMS Craig, LLC, a Delaware
limited liability company,
General Partner

Craig R. Kaihara, Manager

Dated: _____

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

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 _____ }

On _____ before me, _____,
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

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.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

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 _____ }

On _____ before me,
_____ ,
Date (Insert Name and Title of the Officer)

personally appeared

Name(s) of Signer(s)

_____,

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.

Place Notary Seal and/or Stamp above Signature:

Signature of Notary Public

EXHIBIT A

RKSS Lot 2 Property

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING THAT PORTION OF LOT 2, TRACT NO. 10950 AS SHOWN ON A MAP THEREOF FINED IN BOOK 515, PAGES 1 THROUGH 8 INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHWESTERLY OF THAT CERTAIN COURSE SHOWN ON SAID MAP AS "NORTH 25°19'40" WEST 752.22 FEET" ALONG THE SOUTHWESTERLY LINE OF SAID LOT 2, SAID TERMINUS BEING ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 290.468 METERS, A RADIAL LINE OF SAID CURVE TO SAID TERMINUS BEARS SOUTH 38°03'27" EAST; THENCE SOUTHWESTERLY ALONG SAID CURVE AND THE NORTHWESTERLY LINE OF LOT 3 OF SAID TRACT 20.460 METERS THROUGH A CENTRAL ANGLE OF 4°02'09" TO THE TRUE POINT OF BEGINNING; THENCE NON-TANGENT FROM SAID CURVE SOUTH 35°35'40" EAST, 104.306 METERS TO SAID SOUTHWESTERLY LINE OF LOT 2; THENCE CONTINUING SOUTH 35°35'40" EAST, 72.408 METERS TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 51.400 METERS; THENCE SOUTHERLY ALONG SAID CURVE 50.048 METERS THROUGH A CENTRAL ANGLE OF 55°47'21" TO SAID SOUTHWESTERLY LINE OF LOT 2.

LOT 2 OF TRACT NO 10950, IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 515, PAGES 1 TO 8 INCLUSIVE OF MISCELLANEOUS MAPS; RECORDS OF ORANGE COUNTY, CALIFORNIA, AND AS CORRECTED BY THAT CERTAIN CERTIFICATE OF CORRECTION RECORDED APRIL 23, 1986, AS INSTRUMENT NO. 86-160488, OFFICIAL RECORDS OF SAID ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE CITY OF COSTA MESA RECORDED OCTOBER 11, 1994, AS INSTRUMENT NO. 94-0604167 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED RECORDED APRIL 10, 2000 AS INSTRUMENT NO. 20000182742 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE CITY OF COSTA MESA RECORDED MAY 8, 2000, AS INSTRUMENT NO. 20000237233 AND MAY 8, 2000, AS INSTRUMENT NO. 20000237235, BOTH OF OFFICIAL RECORDS.

EXHIBIT B

Sunflower Partners Property

LOT 1 OF TRACT NO. 10950, IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 515, PAGES 1 TO 8 INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS CORRECTED BY THAT CERTAIN CERTIFICATE CORRECTION RECORDED APRIL 23, 1986, AS INSTRUMENT NO. 86-160488 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

THAT PORTION OF PARCEL 2 OF LOT LINE ADJUSTMENT NO. LL-90-11, IN THE CITY OF COSTA MESA, COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED APRIL 16, 1991, AS INSTRUMENT NO. 91-178038 OF OFFICIAL RECORDS LYING EASTERLY OF THE EASTERLY LINE OF THE LAND DESCRIBED IN DEED TO JACK TOSHIKI SAKIOKA AND JOHNNY KATSUI SAKIOKA RECORDED JULY 27, 1956, IN BOOK 3592, PAGE 553 OF OFFICIAL RECORDS OF SAID COUNTY.