

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into this ____ day of September 2019, by and between CENTERPOINT PROPERTIES TRUST, a Maryland real estate investment trust (“CenterPoint”), and the CITY OF MANTECA, a municipal corporation organized and existing under the laws of the State of California (“City”). CenterPoint and City are sometimes referred to herein as a “Party” or the “Parties”.

RECITALS

This Memorandum of Understanding (MOU) is predicated on the following facts, understandings, and intentions of the Parties:

- A. The subject matter of this MOU is the CenterPoint Intermodal Center-Manteca, located in the City of Manteca, County of San Joaquin, State of California, as depicted on the Site Plan attached hereto as Exhibit "A" and by this reference incorporated herein (the "Park").
- B. City and CenterPoint entered into that certain Development Agreement Regarding Development of the Northwest Airport Way Master Plan (the “Original Agreement”), which Original Agreement was approved by the Manteca City Council on November 16, 2010, and recorded with the San Joaquin County Recorder as Document No. 2012-158825. The Original Agreement was amended by: (i) that certain First Amendment to the CenterPoint Development Agreement dated July 17, 2012, and recorded December 4, 2012, with the San Joaquin County Recorder as Document No. 2012-158826 (the “First Amendment”); and (ii) that certain Second Amendment to the CenterPoint Development Agreement dated June 13, 2017, and recorded December 29, 2017, with the San Joaquin County Recorder as Document No. 2017-157483 (the “Second Amendment.” The Original Agreement, as amended by the First Amendment and the Second Amendment, is hereinafter referred to as the “Existing Agreement”).
- C. CenterPoint intends to develop an approximately 16.12 acre paved container yard within the Park, in the location shown as “CY2” on the Site Plan for the Park attached hereto as Exhibit "A" (the “CY2 Project”). The City Planning Commission has approved the CY2 Project, but placed restrictions on the hours of operation (the “CY2 Operating Hours Restrictions”).
- D. CenterPoint appealed the Planning Commission approval, placing restrictions on the hours of operation (the “CY2 Operating Hours Restrictions”), to the City Council and Council placed further restrictions on the CY2 hours of operation.
- E. The City and CenterPoint have discussed the City’s waiver of the CY2 Operating Hours Restrictions in the event that CenterPoint undertakes construction of the extension of Intermodal Way, in the location shown as “Intermodal Way Extension” on Exhibit "A" attached hereto (the “Intermodal Way Extension”).
- F. The purpose of this MOU is to set forth the understandings of the Parties regarding the City’s waiver of the CY2 Operating Hours Restrictions and issuance of a building permit for the CY2 Project and also the obligations of the Parties with respect to the design and construction of the Intermodal Way Extension, and to state generally the basis upon which

the Parties intend to negotiate either an amendment to the Existing Agreement or a new Development Agreement (the “DA”) regarding the same.

NOW, THEREFORE, the Parties agree as follows:

1. Further Negotiations regarding DA. The Parties will meet and confer with the intent to draft and execute more detailed documents dealing with the matters contained herein and any other related items including, without limitation a DA with respect to: (a) CenterPoint’s obligations for the design and construction of the Intermodal Way Extension, and (b) the City’s obligation to defer certain Public Facilities Implementation Plan (PFIP) Transportation Fees related to the Intermodal Way Extension. The foregoing documents are referred to collectively as the “Intermodal Way Documents.” The Parties shall in good faith process the appropriate Intermodal Way Documents and undertake the actions required by the same in accordance with the understandings set forth in this MOU.
2. Working with UPRR. CenterPoint will continue to work with the Union Pacific Railroad (UPRR) to construct the Intermodal Way Extension across the UPRR property in accordance with an existing agreement between CenterPoint and UPRR.
3. Working with SSJID and the Army Corps. CenterPoint and its consultant team will work with the South San Joaquin Irrigation District (SSJID) and the Army Corps of Engineers to obtain the requisite permissions, easements, and permits to allow the Intermodal Way Extension to cross Drain 3.
4. Construction of Intermodal Way. CenterPoint will construct the Intermodal Way Extension along the frontage abutting Container Yard 2 (APN 198-03-035) and along the abutting frontages of APNs 198-03-025 and 198-03-026.
5. PFIP Transportation Fee Deferral. Approval of this MOU will defer the Public Facilities Implementation Plan (PFIP) Transportation Fund Fees, due in conjunction with the Penske Expansion Project, to construct the Intermodal Way Extension along the abutting frontages of APNs 198-03-025 and 198-03-026.
6. Area of Benefit. CenterPoint, working collaboratively with City Staff, will pursue creating an Area of Benefit (AOB) including APNs 198-03-025, 198-03-026, and potentially other parcels, to reimburse the borrowed funds from the PFIP Transportation Fee, due with the CenterPoint Penske Expansion Project, to construct the Intermodal Way Extension along the abutting frontages of APNs 198-03-025 and 198-03-026 (note: it is not clear at this juncture if UPRR would be included in the AOB).
7. Removal of Operating Hours Restriction/Issuance of Building Permit. As a condition precedent, with the points listed above, constructing the Intermodal Way Extension adjacent to and north of Container Yard 2, and providing surety for the completion of the improvements, approval of this MOU will remove the Operating Hours Restriction conditions, limiting the hours of operation for Container Yard 2, placed on the project by both the Planning Commission and the City Council. The removal of the Operating Hours Restriction conditions shall take effect immediately upon execution of this MOU (effective with the last signature). Additionally, the City will issue a permit for the construction of the

CY2 Project upon that later of (i) the City Building Department sign off on completion of its plan review for the CY2 Project and (ii) the date CenterPoint posts a surety bond for the completion of the CY2 Project improvements with the City. The City also hereby agrees to issue a Temporary Certificate of Occupancy upon substantial completion of the CY2 Project, provided no life-safety items are outstanding, to allow for the operation of the CY2 Project without any Operating Hours Restrictions, and provided that: (i) the surety bond for the CY2 Project remains posted with the City until final completion of the CY2 Project; and (ii) CenterPoint is using commercially reasonable efforts to permit and/or complete the Intermodal Way Extension.

Note 1: By removing the Operating Hours of Restriction conditions, limiting the hours of operation, truck traffic would temporarily use Airport Way to access Container Yard 2; however, the period of time trucks would use Airport Way will be minimized since pursuing SSJID approval, the Army Corps permit, and construction of Intermodal Way would occur while Container Yard 2 is under construction.

Note 2: The improvement plans for Container Yard 2/Intermodal Way will also address improvements to existing conditions on Airport Way to minimize truck traffic noise by incorporating overlays at transitions, trench cuts, and pot holes.

Note 3: CenterPoint Container Yard 2 will still need to comply with the Noise Ordinance in the Manteca Municipal Code.

8. Intermodal Way Dedication by UPRR. At a point in the future, CenterPoint and City Staff will work together in an attempt to get UPRR to dedicate the section of Intermodal Way, that resides on UPRR property, to the City.
9. Intermodal Way Dedication by CenterPoint. At a point in the future, CenterPoint is willing to dedicate Intermodal Way to the City of Manteca, depending on the recommendations in the Citywide Truck Route Study.
10. Community Facilities Maintenance District. CenterPoint is supportive, in concept, of creating a Community Facilities District to fund maintenance of Intermodal Way.
11. Purpose. The purpose of this MOU is to reflect the intention of the Parties to facilitate the timely preparation of the DA and the agreement of the City to waive the CY2 Operating Hours Restrictions and issue a building permit for the CY2 Project in accordance with the terms above. The Parties agree that time is of the essence and the Parties agree to proceed diligently and in good faith.
12. Miscellaneous Provisions.
 - a. Amendments and Waivers. This Memorandum of Understanding may not be amended or modified, nor may any of its terms be waived, except by written instruments signed by the Parties. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.
 - b. Partial Invalidity. If at any time any provision of this Memorandum of Understanding is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of

this Memorandum of Understanding nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

c. Governing Law. This Memorandum of Understanding shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law rules. Venue for all disputes shall be proper in the Superior Court of San Joaquin County.

d. Counterparts. This Memorandum of Understanding may be executed in any number of counterparts, each of which shall be an original, but all of which together shall be deemed to constitute one instrument.

e. Cooperation. The Parties shall cooperate fully in carrying out the objective and goals hereof and, in furtherance thereof, agree to meet as is reasonably required and provide prompt responses to inquiries and requests for information.

f. Interpretation. This Memorandum of Understanding shall be construed as a whole and in accordance with the fair meaning of its language, and shall not be construed for or against any party. Each party has cooperated and participated in the drafting and preparation of this Memorandum of Understanding, and therefore, in any construction to be made of this Memorandum of Understanding or any of its terms, all Parties shall be construed to be equally responsible for the drafting and preparation of the same. Captions are for convenience and shall not be used in construing meaning.

i. Breach or Cure Excused. Neither Party shall be in default or breach of this Memorandum of Understanding unless a Party fails to cure any failure to timely perform its obligations hereunder within thirty (30) days after receiving written notice of same from the other Party; provided, however, that if the failure cannot reasonably be cured within such thirty (30)-day period, then a Party shall not be in breach of this Memorandum of Understanding if it commences such cure within such thirty (30)-day period and thereafter diligently pursues such cure to completion.

j. Successors. This Memorandum of Understanding, and the respective rights, duties and obligations of the Parties hereunder shall be binding upon and inure to the benefit of their successors and assigns.

k. Dispute Resolution. In the event of a dispute between the Parties in the interpretation of any provision of this Memorandum of Understanding or of the performance of either party expressly or impliedly required hereunder, prior to instituting any legal proceeding or action, the party claiming dispute shall notify the other party in writing of the nature of said dispute and request a meeting to confer regarding resolution thereof. The Parties shall meet and confer within fifteen (15) days of the date of said notice and shall endeavor in good faith to resolve the dispute by agreement or they may provide, by written mutual agreement, for the dispute to be resolved through mediation. Any such agreement shall specify the mediator to be used. If the Parties desire to resolve the dispute through mediation but are unable to agree upon a mediator, the dispute shall be submitted to the Superior Court to select a mediator. The cost of mediation shall be shared equally by the Parties. If the Parties do not agree to mediation, or agreement or resolution through mediation cannot be achieved within ninety (90) days from

the date that the mediator has been determined, the Parties may enforce their respective rights as they shall individually or collectively determine consistent with the laws of the State of California.

l. Attorney Fees. In the event that any Party hereto institutes an action or proceeding for a declaration of rights of the Parties under this Memorandum of Understanding, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Memorandum of Understanding, or the pursuant thereto, whether or not suit is filed or prosecuted to final judgment, each Party is responsible to pay for its own attorneys' fees, experts' fees, and any court costs incurred.

m. Notices. Any notice required, or convenient to the performance, hereunder, shall be in writing and may be given to the Parties by personal delivery, by a commercial overnight courier that guarantees next day delivery and provides a receipt, or by mail (first class or equivalent), postage prepaid, addressed as follows:

If to CenterPoint: CenterPoint Properties Trust
 1808 Swift Drive
 Oak Brook, Illinois 60523
 Attention: Michael Murphy and Ed Harrington

If to the City: City of Manteca
 1001 W. Center Street
 Manteca, CA 95337
 Attn: City Clerk

n. Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Memorandum of Understanding.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed by their duly authorized representatives all as of the date and year first written above.

CITY OF MANTECA:

By: _____

Tim Ogden, City Manager

ATTEST:

Lisa Blackmon, City Clerk

APPROVED AS TO FORM:

John D. Brinton, City Attorney

CENTERPOINT PROPERTIES TRUST, a
Maryland real estate investment trust

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT “A”

**SITE PLAN OF PARK / LOCATION OF CY2 PROJECT / LOCATION OF
INTERMODAL WAY EXTENSION**

[SEE ATTACHED]